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July 14, 2017

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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Ex Parte Submission
WC Docket No. 17-126
ITC-T/C-20170511-00094
ITC-T/C-20170511-00095

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

Dear Ms. Dortch:

The Wright Petitioners, by and through their counsel, and pursuant to Section 1.1206(b) of the Commission's rules, hereby submit this Ex Parte Response to the Notice of Ex Parte filed on July 10, 2017 (the "Notice"), by counsel for Securus Investment Holdings, LLC, Securus Technologies, Inc., T-NETIX, Inc., and T-NETIX Telecommunications Services, Inc. (collectively, "Securus").

The Notice, filed in WC Docket No. 17-126, disclosed meetings by the Vice President, General Counsel and Secretary of Securus, counsel for Securus, and counsel for SCRS Acquisition Corporation ("Platinum Equity") with members of the Commission's staff regarding the above-referenced proceeding involving the Joint Application filed by Securus and Platinum Equity. The Notice referenced nine points¹ and included a summary that Securus' General Counsel reviewed with the Commission's staff.

As a preliminary matter, the Wright Petitioners would like to point out that the Ex Parte Notice was not filed in IBFS for either pending International Section 214 transfer of control application, despite the fact the June 2, 2017, public notice regarding the two Section 214 transfer of control applications indicated that "[c]ommunications between outside parties and Commission staff concerning these applications are permitted subject to the Commission's rules for 'permit-but-disclose proceedings,'" citing Section 1.1206 of the Commission's rules.²

¹ The Notice misnumbered the listed points, skipping #2.

² See *Streamlined International Applications Accepted for Filing*, Rpt. No. TEL-018515 (rel. June 2, 2017). See also *Streamlined International Applications Accepted for Filing*, TEL-01855S (rel. June 30, 2017).

However, Section 1.1206(b)(2)(i) of the Commission's rules required the submission of the Notice in IBFS as well, since IBFS was "the electronic comment filing system available for that proceeding."³ Additionally, Securus also failed to submit its Opposition to the Wright Petitioners' Petition to Deny filed against the two International Section 214 Transfer of Control applications in IBFS, violating Section 63.20(a) of the Commission's rules.⁴

It is not clear why Securus and Platinum Equity have repeatedly failed to submit copies of their filings to the International Bureau through IBFS. Securus and Platinum Equity also failed to acknowledge that the Wright Petitioners complied with the procedural rules applicable to the International Bureau's review of the International Section 214 transfer of control applications, asserting instead that the Petition to Deny submitted on June 16, 2017 was not timely submitted.⁵ As noted in the Wright Petitioners' Petition to Deny and Reply,⁶ the Commission's rules require the International Bureau to review the Joint Application, which is also coordinated with the Wireline Competition Bureau.

Turning to the other nine points made by Securus and Platinum Equity in their joint presentation (the titles are those carried over from the Notice), the following responses are respectfully provided:

1. The Transaction Simply Involves a Transparent Parent Level Transfer of Control:

While Securus and Platinum Equity have made it clear that they construe the proposed transfer of control from ABRY Partners to Platinum Equity as a "simple, routine parent-level transfer of control," the Wright Petitioners have provided significant, concrete data demonstrating that Securus has been violating Section 64.6080 and Section 64.6090 for more than a year with respect to the intrastate ICS rates charged to families of inmates held in a large number of correctional facilities across the country.

³ See 47 C.F.R. § 1.1206(b)(2)(i) (2017).

⁴ See 47 C.F.R. § 63.20(a) (2017) ("Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Bureau Filing System (IBFS)"). Section 63.20(d) outlines the process of filing petitions to deny and oppositions to petitions, making the requirements in Section 63.20(a) applicable to Securus' Opposition.

⁵ See Notice, Summary.

⁶ See Petition to Deny of Wright Petitioners et al., filed June 16, 2017 (the "Petition"). See also Reply of Wright Petitioners et al., filed July 3, 2017 (the "Reply").

In particular, after the Commission's ban on per-call and flat-rate charges went into effect pursuant to the Second Report and Order in WC Docket 12-375,⁷ Securus shifted the now-prohibited per-call and flat-rate charges to intrastate ICS first-minute rates. The Wright Petitioners demonstrated the extent to which this practice occurred, highlighting:

- 24 correctional facilities serviced by Securus where the rate by which the intrastate ICS call increases by less than 1%.
- 47 correctional facilities serviced by Securus where the rate by which the intrastate ICS call increases by less than 5%.
- More than 200 correctional facilities serviced by Securus where the rate by which the intrastate ICS call for the 2nd minute increases by less than 10% of the first minute.⁸

Thus, the transaction contemplated herein raises substantial questions regarding the character qualifications of Securus, especially in light of the Platinum Equity's decision to retain the current management of Securus.⁹

Moreover, as discussed below, the presentation by Securus' management, its counsel, and counsel for Platinum Equity, to the Commission's staff on July 6th left out important – and often contradictory – information that undercuts the positions presented in the Notice.

2. [Missing in Notice]:

3. Transferee is Unquestionably Qualified:

Securus and Platinum Equity are correct that no questions have been raised regarding Platinum Equity's qualifications.¹⁰ However, as discussed in more detail below, the apparent decision by Platinum Equity to maintain the current management of Securus raises questions as to whether Platinum Equity has sufficiently demonstrated, by a preponderance of the evidence, which the public interest would be served by its acquisition of Securus.

⁷ See *Rates for Interstate Inmate Calling Services*, Second Report and Order, 30 FCC Rcd 12,763 (Nov. 5, 2015) (the "*Second Report and Order*")

⁸ See *Reply*, pg. 17.

⁹ See *Notice*, pg. 2.

¹⁰ See *Notice*, pg. 2.

Moreover, much as ABRY Partners did in 2013, Platinum Equity asserts that "there will be no changes to service rates, terms or conditions as a result of the Transaction."¹¹ The Wright Petitioners have previously noted that the intrastate ICS rates charged to Securus customers substantially increased after ABRY Partners acquired Securus.¹² Thus, to the extent that Securus and Platinum Equity are asserting the same argument now, further inquiry into Securus' past violations of the Commission's rules, policies and procedures is required. Without such an inquiry, the Commission cannot make an affirmative finding that the proposed transaction serves the public interest, convenience and necessity.

4. STI Compliance Record Justifies Approval of the Application:

The Wright Petitioners provided several past examples of the Commission being forced to issue public rebukes of actions taken by Securus, including *ex parte* presentation violations, submitting unauthorized filings, and providing guidance to its correctional facility clients that was "inaccurate and misleading."¹³

While the Notice focuses on the lack of action by the Enforcement Bureau, Securus ignores the public admonishment by the Wireline Competition Bureau,¹⁴ the determination that Securus was providing "inaccurate and misleading statements by the Wireline Competition Bureau,"¹⁵ and the finding that Securus submitted an impermissible *ex parte* presentation during the prohibited Sunshine period by the Office of General Counsel.¹⁶

¹¹ See Notice, pg. 2. See also *Applications Granted for the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, LLC*, Public Notice, 28 FCC Rcd 5720, 5723 (WCB 2013).

¹² See *Petition*, pg. 11.

¹³ See *Petition*, pgs. 11-13, *Reply*, 18-21. See *Letter to Robert Pickens, President, Securus Technologies, Inc.*, 30 FCC Rcd 13,666 (Dec. 3, 2016).

¹⁴ See *Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, 31 FCC Rcd 261, nt. 3 (WCB 2016).

¹⁵ See *Letter to Robert Pickens, President, Securus Technologies, Inc.*, 30 FCC Rcd 13,666 (Dec. 3, 2016).

¹⁶ See *Notice of Prohibited Presentations in the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, Public Notice, 30 FCC Rcd 13,424 (OGC, Nov. 20, 2015). See also *Wireline Competition Bureau Addresses The Payment of Site*

5. The Petitioners' Compliance Allegations are Exclusively Based on Intrastate Rate Structures:

Securus and Platinum Equity assert in the Notice that the Wright Petitioners' arguments regarding Securus' failure to comply with Section 64.6080 and 64.6090 "are exclusively based on intrastate ICS rates."¹⁷ As noted in the Wright Petitioners' Reply, the reason for the focus on Securus' intrastate rates after Section 64.6080 and 64.6090 went into effect is because the FCC-imposed rate caps on interstate ICS rates that had previously become effective in 2014, and thus, Securus could not impose a similar fee structure for interstate ICS calls.¹⁸ The Wright Petitioners provided conclusive evidence that, when the interstate ICS rate caps went into effect, Securus merely relabeled its existing interstate "per-connection" fee as an intrastate "first-minute" fee, and moved on.

The Wright Petitioners also argued in their Reply that the subsequent court of appeals decision remanding the FCC's Second Report and Order in WC Docket 12-375 does not excuse Securus' past failure to comply with the Commission's rules, especially because that decision is not yet final.¹⁹

Finally, the assertion made by Securus and Platinum Equity in the Notice that the court "agreed" with the decision by the current majority of the Commission to not defend the *Second Report and Order* is also not correct. In fact, the majority opinion in the *GTL Decision* found the posture of the case, resulting directly from the actions of the current majority of the Commission, as "unusual" and split on the question of whether the Commission was entitled to *Chevron* deference in light of the decision by the current majority of the Commission.²⁰

(Continued)

Commissions For Interstate Inmate Calling Services, Public Notice, 29 FCC Rcd 10,043, nt. 7 (WCB 2014).

¹⁷ See *Notice*, pg. 3.

¹⁸ See *Reply*, pg. 16.

¹⁹ See *Reply*, pg. 7-8. See also *Global Tel*Link v. F.C.C.*, No. 15-1461, Slip Op., (D.C. Cir. June 13, 2017) ("*GTL Decision*").

²⁰ See *GTL Decision*, at pg. 15. See also *Concurring Opinion by Senior Circuit Judge Silberman*.

Thus, the Commission must reject the reliance by Securus and Platinum Equity on the *GTL Decision* to justify more than a years' worth of rule violations. The *GTL Decision* is not yet final, and parties such as the Wright Petitioners have until July 28, 2017 to seek rehearing of the decision. While Securus and Platinum Equity would apparently like to ignore the Federal Rules of Appellate Procedure, the Commission may not.

In fact, on July 13, 2017, the Commission requested that the court panel reviewing the Commission's First Report and Order hold that case in abeyance, citing the Federal Rules of Appellate Procedure:

The deadline for petitions for rehearing in *Global Tel* is July 28, 2017. Fed. R. App. P. 40(a)(1); D.C. Cir. R. 35(a). If the Wright Petitioners file the petition they contemplate and this Court grants rehearing, it will likely take several months before the *Global Tel* litigation is resolved. Accordingly, it would be premature at this juncture for the Court to resolve how to proceed in the cases here. We ask that the Court continue these cases in abeyance until the period for seeking panel and en banc rehearing in *Global Tel* expires and any such petition for rehearing filed is decided.²¹

Thus, the Commission has acknowledged that the *GTL Decision* is not yet final, and the effect of that decision will not take place until some undetermined date in the future. In light of that determination, it is inconceivable that the Joint Application could be processed until a final ruling is made with respect to Securus' past – and ongoing – violations of Section 64.6080 and Section 64.6090 of the Commission's rules.

6. STI Did Not Violate Rules on Flat Rate or Per-Call Charges:

Securus and Platinum Equity asserted in the Notice that Securus did not violate the Commission's prohibition of flat-rate and per-call fees and charges.²² However, in their Petition and Reply, the Wright Petitioners

²¹ See *Motion of the Respondents To Govern Further Proceedings*, USCA Case No. 13-1280, filed July 13, 2017 ("It is the ordinary practice of this Court to withhold the issuance of the mandate in a case in which a petition for rehearing has been filed, pending the resolution of that petition (and eventual resolution of the case, if rehearing is granted). See Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1)"). A copy is attached hereto as Exhibit A.

²² See *Notice*, pg. 3.

provided concrete evidence, pulled directly from Securus' publically-available rate calculator that inmates and their families in more than 200 correctional facilities are charged significantly less for the second and subsequent minutes of each intrastate ICS call.²³

In fact, the Wright Petitioners provided evidence that the local ICS rates at three facilities, Boulder County Jail, CO, Cypress Creek, Texas, and Sandy Creek, Texas, *remained* as per-call or flat-rate charges.²⁴ Securus has not challenged the veracity of the rate information previously provided to the Commission by the Wright Petitioners. Therefore, Securus and Platinum Equity were simply wrong when they stated that "Securus did not violate" Section 64.6080 and Section 64.6090.

7. States Continue to Play A Role In ICS Rates:

While Securus and Platinum Equity state in the Notice that States are playing a role in keeping ICS rates low, it is important to note that Securus has been affirmatively advocating against state regulation of ICS rates and fees.

In fact, four days after Securus and its counsel met with Commission staff touting the States' continued role in regulating ICS rates, Securus filed comments in Iowa requesting that Iowa cease regulating Securus' ICS rates. Specifically, on July 10, 2017, Securus filed its brief in Iowa, asserting:

The Board should allow Securus to withdraw its tariff consistent with this movement toward deregulation. The IP-enabled ICS provided by Securus no longer fit within the coverage of Iowa Code § 476.91 (assuming they ever truly did fit). Alternatively, the Board has appropriately opted to forebear from the exercise of its authority where services are IP-enabled. Either way, the result is the same: the IP-enabled services provided by Securus should not be subject to Board regulation.²⁵

²³ See *Reply*, pg. 17.

²⁴ See *Reply*, Exhibit D. Rate calculator results for the referenced facilities are attached as Exhibit B.

²⁵ See *Brief in Support of Tariff Withdrawal*, pg. 1, Iowa Utilities Board, TF-2017-0041 (filed July 10, 2017). Copies of the Iowa Utilities Board Docket TF-2017-0041 are provided herein as Exhibit C.

In another submission by Securus before the Iowa Utilities Board, filed just two weeks ago, Securus opposed a petition for rulemaking proposing the adoption of intrastate ICS rate caps in Iowa.²⁶

Ironically, while Securus argued in the instant proceeding that the question of the FCC's jurisdiction over intrastate ICS rates became effective upon the issuance of the *GTL Decision*, Securus stated in its comments filed before the Iowa Utilities Board that:

In the ICS Order, the FCC had asserted jurisdiction over intrastate rates that would have largely preempted the rulemaking on which the Board seeks stakeholder comment. While the DC Circuit Court decision held that the ICS Order's attempted exercise of authority to set intrastate rates could not stand, that is neither the end of the analysis nor does it mean a state rulemaking would now be timely.²⁷

Foreshadowing its July 10th Comments, Securus bemoaned that the Iowa Utilities Board was still considering Securus' request for the "withdrawal of its tariff and raising issues about the interplay between ICS tariffs and the Board's recent revision to its Chapter 22 rules regarding IP-enabled services."²⁸

Securus' advocacy before the Iowa Utilities Board has become more relevant because just last week, Securus announced that "100% of all Prison and Jail Customers have been converted to its voice over internet protocol (VoIP) Secure Calling Platform (SCP)."²⁹

Securus has taken action in other states to eliminate oversight of ICS rates. For example, in an open docket before the Massachusetts Department of Telecommunications and Cable, Securus filed to withdraw and cancel its ICS rate tariff. Instead, Securus argued that Massachusetts has no authority over Securus' ICS rates because Securus offers "IP-Enabled services."³⁰

²⁶ See [Exhibit D](#).

²⁷ See *Id.*, pg. 2.

²⁸ See *Id.*

²⁹ See *Securus Announces 100% of all Prison and Jail Customers Have Been Converted to Our Voice Over Internet Protocol State-of-the-Art Secure Calling Platform (SCP)*, [Press Release](#) (Jul. 7, 2017).

³⁰ See *Letter of Paul C. Besozzi, Counsel to Securus Technologies, Inc.*, dated August 2, 2016 (attached as [Exhibit E](#)).

Also, in New Jersey, Securus attempted to block the recent efforts of the State of New Jersey to adopt ICS rate caps. Thanks to the support of the Office of the Attorney General of the State of New Jersey, along with the submission of an *amici curiae* letter filed by the American Civil Liberties Union of New Jersey, the Immigrant Rights Clinic of Washington Square Legal Services, Inc., New Jersey Advocates for Immigrants Detainees, First Friends of New Jersey and New York and the Prison Policy Initiative, the Superior Court of New Jersey, Mercer County-Law Division dismissed Securus complaint on June 28, 2017.³¹

It is unclear from the Notice whether Securus, its counsel, and counsel for Platinum Equity disclosed to the Commission's staff that these efforts to avoid state regulation of Securus' service offerings were in progress, but it is clear that Securus' efforts to ensure that "States [Do Not] Continue to Play A Role in ICS Rates" are ongoing and comprehensive.

Again, to the extent that the current management of Securus remains in place if Platinum Equity is permitted to acquire Securus, the Commission must consider whether the incomplete and inaccurate *ex parte* presentation on July 6th raises new concerns on Securus' character qualifications to operate the authorizations subject to the instant applications.

8. Other Grounds For Delay or Denial Are Without Merit:

The Wright Petitioners provided evidence in their Petition and Reply that Securus had abused the Commission's rules, policies and procedures. In particular, the Wright Petitioners provided direct citations to the past Orders and official correspondence from Commission staff directed to Securus to resolve its past actions, including misstatements made to Securus' clients.³²

While Securus attempted to characterize its past actions as mere "misunderstandings" or "misconceptions" the Commission's response to Securus' actions underscore the seriousness of Securus' activities. These past actions are particularly important because Platinum Equity has apparently committed to keeping the current management team in place,³³ with "no changes to services rates, terms or conditions."³⁴

³¹ Copies of the court filings are attached as Exhibit F.

³² See *Petition*, pgs. 11-13, Reply, pgs. 18-20.

³³ See *Opposition*, pg. 21. See also *Joint Application*, pg. 12.

³⁴ See *Notice*, pg. 2.

9. Damaging Impact of Delaying Transaction:

While Securus and Platinum Equity are undoubtedly concerned about "additional costs, potential loss of financing and higher interest rates,"³⁵ the Commission's sole concern is ensuring that the grant of the transfer of control applications serves the "public interest, convenience and necessity."³⁶ To that end, Platinum Equity must demonstrate "by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest."³⁷

While the Notice ambiguously references "service enhancements" as a justification for the grant of the applications, neither Securus nor Platinum Equity have identified any service enhancements in their submissions. Further, while the Notice indicated that Platinum Equity had "previously controlled several FCC-regulated entities," it also stated that Platinum Equity "is not even in this line of business."³⁸

Thus, the extent that the current management will continue to run the day-to-day operations of Securus,³⁹ Platinum Equity has not made any demonstration of what it brings to the table to offset the current management's past abuse of Commission rules, policies and procedures discussed above, and in the Wright Petitioners' Petition to Deny and Reply.

Moreover, to the extent that the presentation by Securus, its counsel and counsel for Platinum Equity on July 6th did not mention that it was actively seeking to eliminate state regulation over ICS rates – with comments filed just four days later that were diametrically opposed to the advocacy expressed in the Notice – then serious concerns remain about Securus' character qualifications to hold FCC authorizations.

Put simply, if all Platinum Equity brings to the table is deeper pockets than ABRV Partners,⁴⁰ then the Commission must find that Platinum Equity has failed to demonstrate that the public interest warrants the approval of the applications.

³⁵ See Notice, pg. 3.

³⁶ See *Application of AT&T Inc. and BellSouth Corporation Application to Transfer Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 19 (2007) (citing 47 U.S.C. §214(a) and 47 U.S.C. §310(d)).

³⁷ *Id.*

³⁸ See Notice, pg. 3.

³⁹ See *Opposition*, pg. 21. See also *Joint Application*, pg. 12.

⁴⁰ See Notice, Summary ("Securus will have access to additional funds.").

10. Positive ICS Marketplace Developments:

Finally, Securus and Platinum Equity apparently now seek to rely on "Positive ICS Marketplace Developments" – including intrastate rates – as a reason for granting the Applications.⁴¹ It is rather astounding that Securus takes this position, especially since Securus has been steadfast in its opposition to the "FCC efforts, led by Commissioner Clyburn" every step of the way.⁴²

In particular, Securus filed petitions for stay with the Commission to prevent the "FCC efforts" adopted in the [Report and Order](#), [Second Report and Order](#), and [Memorandum Opinion and Order](#), from ever becoming effective. Each time the Commission ruled against Securus, Securus then requested an appellate stay of the "FCC Efforts" at the Court of Appeals for the District of Columbia.⁴³ Thus, any positive effects arising from the "FCC Efforts" have occurred *in spite of* the efforts of Securus to stall the proceeding.

Moreover, past Securus press statements demonstrate outright hostility for the "FCC Efforts" referenced in the Notice. For example, in October 2015, Securus labeled the *Second Report and Order* a "wrong-headed order," further stating that the FCC lacked courage.⁴⁴ When Securus' stay was granted on March 9, 2016, thus thwarting the "FCC Efforts" it now touts, Securus asserted that the "FCC ridiculed [the] rule of law in favor of political expedience."⁴⁵

In fact, despite now touting Commissioner Clyburn's efforts in the Notice, Securus previously blamed Commissioner Clyburn for making "sensational accusations against the inmate calling services industry" which

⁴¹ See Notice, pg. 4.

⁴² *Id.*

⁴³ See *Petition for Stay of Report and Order Pending Appeal*, Securus Technologies, Inc., USCA Case No. 13-1280 (Oct. 22, 2013); See *Emergency Motion for Partial Stay of FCC Order 15-136 Pending Review*, Securus Technologies, Inc., USCA Case No. 15-1461 (Jan. 27, 2016); See also *Emergency Motion for Partial Stay of FCC Order 16-102 Pending Review*, Securus Technologies, Inc., USCA Case No. 16-1321 (Sept. 27, 2016).

⁴⁴ See *FCC Attempts to Assert Jurisdiction over Funding Fees and Third-Party Billing – The Record Does Not Support FCC Decision, Ripe for Appeal*, [Press Statement](#), October 21, 2015.

⁴⁵ See *Federal Communications Commission (FCC) Plan to Set Rates Below Carriers' Cost Is Halted – Rule of Law Prevails. Prisons and Jails Benefit and Retain Commissions But Class Action Lawsuits Continue*, [Press Statement](#), March 9, 2016.

Securus characterized as "distorted, sensationalized snippets to grab headlines."⁴⁶ Securus also asserted that the Commission intentionally made untrue and inaccurate statements.⁴⁷

As such, in light of Securus' press statements, congressional correspondence, and legal submissions, it is unclear whether Securus and Platinum Equity now support the "FCC Efforts" that Securus has fought so hard to prevent from ever taking effect. At the very least, Securus should have acknowledged that the "Positive ICS Marketplace Developments" occurred *in spite of* Securus' best efforts to block "the FCC's efforts."

* * * *

In sum, the July 6th ex parte presentation by Securus management, its counsel, and counsel for Platinum equity raises additional questions regarding the applicant's willingness to be forthright with the Commission and to follow the Commission's rules, policies and procedures.

To the extent that the advocacy presented to the Commission's staff was diametrically opposed to actions taken by Securus in Iowa, New Jersey, and Massachusetts, and sought to take credit for positive FCC efforts that it has consistently opposed, the Wright Petitioners submit that Securus and Platinum Equity have failed to demonstrate that the grant of the instant applications is in the public interest, convenience and necessity, and justify further investigation.

Should you have any questions regarding these matters, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

Counsel for the Wright Petitioners

⁴⁶ See *Letter to the Honorable Greg Walden and the Honorable Anna Eshoo*, [Ex Parte Submission](#), WC 12-375, November 20, 2015.

⁴⁷ See *Securus Files Formal Request to FCC Requesting Accurate Data Be Presented to the Media, Inmates, and Friends and Family Members on Inmate Calling Rates and Stop Incendiary Statements*, [Press Statement](#), October 27, 2015 ("That clearly is not true or accurate and the FCC knows it.").

cc (by/email):

Chairman Ajit Pai

Commissioner Mignon Clyburn

Commissioner Michael O'Rielly

Brendan Carr, General Counsel

Kris Monteith, Chief, Wireline Competition Bureau

Tom Sullivan, Chief, International Bureau

Kristine Fargostein, Office of Chairman Pai

Jay Schwarz, Office of Chairman Pai

Jim Bird, Office of General Counsel

Madeline Findley, Wireline Competition Bureau

Daniel Kahn, Wireline Competition Bureau

Jodie May, Wireline Competition Bureau

Sherwin Siy, Wireline Competition Bureau

Tracey Wilson, Wireline Competition Bureau

David Krech, International Bureau

Sumita Mukhoty, International Bureau

Paul C. Besozzi, Counsel for Transferor and Licensees

William B. Wilhelm, Jr., Counsel for the Transferee

EXHIBIT A

**MOTION OF THE RESPONDENTS
TO GOVERN FURTHER PROCEEDINGS**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<hr/>)
SECURUS TECHNOLOGIES, INC., <i>et al.</i> ,)
)
<i>Petitioners,</i>)
)
v.)
	Nos. 13-1280 (and)
	consolidated cases))
FEDERAL COMMUNICATIONS COMMISSION)
and UNITED STATES OF AMERICA,)
)
<i>Respondents.</i>)
<hr/>)
SECURUS TECHNOLOGIES, INC., <i>et al.</i> ,)
)
<i>Petitioners,</i>)
)
v.)
	Nos. 16-1321 (and)
	consolidated cases))
FEDERAL COMMUNICATIONS COMMISSION)
and UNITED STATES OF AMERICA,)
)
<i>Respondents.</i>)
<hr/>)

**MOTION OF THE RESPONDENTS
TO GOVERN FURTHER PROCEEDINGS**

Pursuant to orders entered in the above-captioned cases, and following this Court’s June 13, 2017, decision in *Global Tel*Link v. FCC*, Nos. 15-1461 et al. (decision reported at 859 F.3d 39), the respondents submit this Motion to Govern Further Proceedings in both dockets.

Beginning in 2013, the Federal Communications Commission issued a series of three rulemaking orders concerning inmate calling services. The first of those orders adopted interim rules governing interstate inmate calling services, and charges ancillary to those services.¹ Petitioners challenged that order before this Court in cases consolidated as *Securus Technologies, Inc. v. FCC*, Nos. 13-1280 et al. In 2015, the Commission adopted a more comprehensive set of rules governing both interstate and intrastate inmate calling services, as well as ancillary charges, in the order addressed by this Court in *Global Tel*.² While the *Global Tel* litigation was pending, the Commission issued a reconsideration order that modified the rules adopted in 2015.³ Petitioners challenged that order before this Court in cases consolidated as *Securus Technologies, Inc. v. FCC*, Nos. 16-1321 et al.

The issues in the three sets of inmate calling cases are interrelated. Since the release of the Court's June 13 decision, the Commission has been evaluating its impact on the cases here and considering all options for further administrative proceedings concerning inmate calling services.

We understand, however, that intervenors in support of the respondents—known in these proceedings as the “Wright Petitioners”—currently contemplate filing a petition for rehearing in *Global Tel*.

¹ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013).

² *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015).

³ *Rates for Interstate Inmate Calling Services*, 31 FCC Rcd 9300 (2016).

The deadline for petitions for rehearing in *Global Tel* is July 28, 2017. Fed. R. App. P. 40(a)(1); D.C. Cir. R. 35(a). If the Wright Petitioners file the petition they contemplate and this Court grants rehearing, it will likely take several months before the *Global Tel* litigation is resolved.⁴ Accordingly, it would be premature at this juncture for the Court to resolve how to proceed in the cases here. We ask that the Court continue these cases in abeyance until the period for seeking panel and en banc rehearing in *Global Tel* expires and any such petition for rehearing filed is decided.

⁴ It is the ordinary practice of this Court to withhold the issuance of the mandate in a case in which a petition for rehearing has been filed, pending the resolution of that petition (and eventual resolution of the case, if rehearing is granted). *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

Respectfully submitted,

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July 13, 2017

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITCertificate of Compliance With Type-Volume Limitation,
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/s/ Sarah E. Citrin

Sarah E. Citrin

Counsel for Respondents

CERTIFICATE OF FILING AND SERVICE

I, Sarah E. Citrin, hereby certify that on July 13, 2017, I electronically filed the foregoing Motion of the Respondents to Govern Further Proceedings with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Sarah E. Citrin

Sarah E. Citrin

Counsel for Respondents

EXHIBIT B

SECURUS RATE CALCULATOR RESULTS

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: BOULDER COUNTY JAIL

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 2.75
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Traditional Collect

Your Country:

United States

Your Phone Number:

1 3034413525

Facility State:

CO

Facility Name:

BOULDER COUNTY JAIL

RESET

SUBMIT

Facility: BOULDER COUNTY JAIL

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 2.75
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

Rate Quote

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Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: BOULDER COUNTY JAIL

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
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Additional Amount	\$ 0.00

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Your Phone Number:

Facility State:

Facility Name:

Facility: BOULDER COUNTY JAIL

Breakdown of Call Rate per Minute

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Rate periods are based upon the time of the day a call is accepted.

Rate Quote

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Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: CYPRESS CRK TRAVIS

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: CYPRESS CRK TRAVIS

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

Rate Quote

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Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: CYPRESS CRK TRAVIS

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

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Your Country:

Your Phone Number:

Facility State:

Facility Name:

Facility: CYPRESS CRK TRAVIS

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
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Rate periods are based upon the time of the day a call is accepted.

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First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

RESET SUBMIT

Facility: SANDY CREEK

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

International Calling may not be permitted at all Securus serviced Correctional Facilities.

Please note that facilities may have a connection charge per call, an initial rate for the first minute of call, and then a different rate for each minute after the first minute of a call. Rates are subject to change.

This rate quote is valid at July 14 2017, 08:00:00 CDT.

In addition to the quoted rate of the call, applicable taxes and fees may apply. Please refer to our [Terms and Conditions \(/web/securus/terms-and-conditions\)](#).

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

RESET SUBMIT

Facility: SANDY CREEK

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

International Calling may not be permitted at all Securus serviced Correctional Facilities.

Please note that facilities may have a connection charge per call, an initial rate for the first minute of call, and then a different rate for each minute after the first minute of a call. Rates are subject to change.

This rate quote is valid at July 14 2017, 08:01:00 CDT.

In addition to the quoted rate of the call, applicable taxes and fees may apply. Please refer to our [Terms and Conditions \(/web/securus/terms-and-conditions\)](#).

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

RESET SUBMIT

Facility: SANDY CREEK

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

International Calling may not be permitted at all Securus serviced Correctional Facilities.

Please note that facilities may have a connection charge per call, an initial rate for the first minute of call, and then a different rate for each minute after the first minute of a call. Rates are subject to change.

This rate quote is valid at July 14 2017, 08:02:00 CDT.

In addition to the quoted rate of the call, applicable taxes and fees may apply. Please refer to our [Terms and Conditions \(/web/securus/terms-and-conditions\)](#).

Rate Quote

Use Securus' Rate Quote to quickly and easily find out the cost of a call or another Securus service.

First, be sure that Securus services the correctional facility you would like to communicate with by checking our [Facilities We Serve \(/facilities-we-serve\)](#) page.

Please select a service below, complete the required information, and click submit.

Choose a Service:

Your Country:

Your Phone Number:

Facility State:

Facility Name:

RESET SUBMIT

Facility: SANDY CREEK

Breakdown of Call Rate per Minute

Connection Charge	\$ 0.00
Initial Amount	\$ 1.65
Additional Amount	\$ 0.00

Rate periods are based upon the time of the day a call is accepted.

International Calling may not be permitted at all Securus serviced Correctional Facilities.

Please note that facilities may have a connection charge per call, an initial rate for the first minute of call, and then a different rate for each minute after the first minute of a call. Rates are subject to change.

This rate quote is valid at July 14 2017, 08:03:00 CDT.

In addition to the quoted rate of the call, applicable taxes and fees may apply. Please refer to our [Terms and Conditions \(/web/securus/terms-and-conditions\)](#).

EXHIBIT C

IOWA UTILITIES BOARD

DOCKET TF-2017-0041

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2017-0041 BRIEF IN SUPPORT OF TARIFF WITHDRAWAL
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There can be no dispute that, whether in Iowa, at the federal level, or in other states, there is a strong and intentional movement toward the deregulation of communications services of all types. This is particularly true of Internet-protocol-enabled (“IP-enabled”) services. Securus Technologies, Inc. (“Securus”), a provider of IP-enabled inmate calling services (“ICS”)¹, notified the Iowa Utilities Board (“Board”) of its intent to withdraw its state tariff consistent with such deregulation of IP-enabled services through changes in Chapter 22 of the Board’s Rules which became final and effective March 22, 2017. The Board docketed that request in the above-captioned tariff docket, and allowed initial briefs on the proposed withdrawal. The Board should allow Securus to withdraw its tariff consistent with this movement toward deregulation. The IP-enabled ICS provided by Securus no longer fit within the coverage of Iowa Code § 476.91 (assuming they ever truly did fit). Alternatively, the Board has appropriately opted to forebear from the exercise of its authority where services are IP-enabled. Either way, the result is the same: the IP-enabled services provided by Securus should not be subject to Board regulation.

¹ A schematic diagram showing how Securus’s ICS is provided is attached.

I. THE IP-ENABLED SERVICES PROVIDED BY SECURUS ARE NOT SUBJECT TO IOWA CODE § 476.91

By way of background, in most of the 46 states in which Securus operates ICS is not treated as a subset of Alternative Operator Services (“AOS”). AOS services, as the name implies, were traditionally entities providing long distance calls in competition with, or as an alternative to, what had been a Bell System monopoly on completion of such calls. As the Iowa statute, which was enacted in 1989, suggests, these were otherwise conventional telephone services but usually from a multi-line location served by an intermediary long distance aggregator with its own operator services – locations like “motel, hotel, hospital, and college dormitory rooms.” *See* Iowa Code § 476.91(1)(d). As competition (and calling cards) grew, these often were dial-around providers, where a special code took you to an operator from a company other than a Bell System entity. Inmate calling, however, has never fit well in the same category as a call from personal phone in a college dorm room. Both in its technology and its circumstances, ICS is a wholly unique service – while it certainly allows for a conversation between an inmate and a family member, the equipment and how it is operated also contains a substantial suite of other specialized and mandated functions for security, investigations, and fraud prevention, many of which are entirely within the control of the correctional facility. Unlike the other examples from Iowa Code § 476.91 listed above, ICS calling is not two-way: calls may not be made to a Securus ICS device.

The development of IP-enabled services has only heightened these distinctions. Under the Board’s own rules, IP-enabled services are defined separately from traditional telecommunications services; provision of IP-enabled services is expressly excluded from the definition of a “telephone utility.” 199 Iowa Admin. Code (“Board Rules”) 22.1(3). Accordingly the Board should find that revenue on IP-enabled services – including IP-enabled ICS – are not

“telecommunication services revenues” for purposes of Iowa Code § 476.91(1)(a). Similarly, while “telephone” is not defined in § 476.91, it is not clear that an Internet access device in an IP-enabled environment is a “telephone” as contemplated by the statute. The service and equipment provided by Securus use the same technology as Vonage or a cable VoIP service, other than being one-way outgoing for security reasons, and are not akin to traditional telephones and telecommunications services. Although, unlike Vonage, the physical location of the calling device is non-nomadic, this does not diminish the fact the service provided by Securus is an IP-enabled service within the definition set forth in the revised Board rule. The recent decision of the United States District Court for Minnesota – the same court that issued the *Vonage*² decision – in *Charter Advanced Services v. Lange*³ makes clear that the mobility is not a critical part of the analysis. The ICS provided by Securus is even less like, and less amenable, to traditional telephone regulation than Charter’s VoIP service.

Iowa Code § 476.91 was adopted well before the adoption of, and does not contemplate, IP-enabled services. The IP-enabled ICS provided by Securus does not meet the elements of the definition that triggers § 476.91, foremost because Securus’s revenues are not “telecommunications service revenues.”

II. EVEN IF IOWA CODE § 476.91 APPLIES, THE BOARD HAS DETERMINED FORBEARANCE IS APPROPRIATE FOR IP-ENABLED SERVICES.

Iowa Code § 476.91 states that even if the Board has deregulated a service based on effective competition⁴, AOS providers as defined in § 476.91 “are subject to the jurisdiction of

² *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F.Supp.2d 993 (D. Minn. 2003), *aff’d on other grounds sub nom Minn. Pub. Utils. Comm’n v. F.C.C.*, 483 F.3d 570 (8th Cir. 2007).

³ *Charter Advanced Services (MN), LLC v. Lange*, Slip. Op., 2017 WL 1901414 (D. Minn., May 8, 2017) (finding state regulation of Charter’s non-nomadic VoIP service is preempted).

⁴ The first sentence of the jurisdictional savings clause in § 476.91 is predicated on the Board otherwise deregulating retail services based on effective competition. Because effective competition was not the basis for the Chapter 22 amendments, it is not clear that the jurisdictional savings clause is triggered.

the board and shall be rendered pursuant to tariffs approved by the board.” Nothing in that passage requires the Board to exercise all or any part of its jurisdiction, or in any particular way, nor does it specify the content or review process for the tariffs.

In its recent revisions to Chapter 22 of the Board’s Rules, however, the Board sought to modernize and streamline its regulations. In doing so, it furthered the broader trend of reducing regulation of communication services, and in particular on IP-enabled services. *See, e.g., In Re: Amendments To Telecommunications Service Regulations [199 IAC 22]*, Docket No. RMU-2015-0002, “Order Adopting Rules” (I.U.B., Jan. 24, 2017); *see generally* Board Rule 22.1(6) (listing prior deregulation decisions).⁵ The Board determined to deregulate IP-enabled services by removing such services from the definition of a “telephone utility” – the definition that forms the basis for most Board regulation. *See* Board Rule 22.1(1)(rules shall apply to any “telephone utility”, which in paragraph 1 is defined to encompass AOS); 22.1(3)(definitions of IP-enabled service and telephone utility). In the definition of “telephone utility,” the Board expressly provided:

The board shall not directly or indirectly regulate the entry, rates, terms, or conditions for Internet protocol-enabled service or voice over Internet protocol service. . .

This is an express forbearance of the Board’s otherwise available jurisdiction with respect to IP-enabled services. It is an exception to the otherwise applicable definition of a “telephone utility,” which, as stated in Board Rule 22.1(1), would encompass AOS. In other words, the Board’s Chapter 22 rules provide that where the AOS is an IP-enabled service, the Board has

⁵ *See also* Statement of FCC Chairman Ajit Pai, reviewing history of Telecommunications Act of 1996 (and post-Act) federal deregulation in traditional, Internet and wireless networks, and announcing docket regarding further deregulation of Internet services. < https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A2.pdf >. Additionally, other states have been deregulating communications services, including several who have recently deregulated IP-enabled services, including ICS. *See, e.g.,* Cal. Pub. Util. Code §§ 239, 710; General Laws of Massachusetts ch. 25C, § 6A; 73 Penn. Stat. § 2251; Tex. Utils. Code § 51.002.

decided not to regulate the entry, rates, terms or conditions of the service. This is the only logical reading of paragraphs 22.1(1) and 22.1(3) together. As a result, the Board's Rules forbear from most regulation of IP-enabled ICS even assuming Iowa Code § 476.91 applies.

CONCLUSION

ICS is a unique service that encompasses much more than just a communications link, and the terms of which are driven largely by contracts between correctional facilities and the ICS provider. It is unlike the other examples of AOS suggested and covered in Iowa law. The advent of IP-enabled ICS, like that provided by Securus, makes it even clearer that Iowa's regulatory regime should not apply. Securus's ICS does not fall within the definition to trigger Iowa Code 476.91. Even if it did, the Board's recent decision to forbear from regulation of *all* IP-enabled retail services would require that such forbearance extend to Securus. Under either approach, Securus must be permitted to withdraw its existing tariff filed with the Board.

Respectfully submitted this 10th day of July, 2017.

By: */s/ Bret A. Dublinske*

Bret A. Dublinske, AT0002232

FREDRIKSON & BYRON, P.A.

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Des Moines, IA 50309

Telephone: 515.242.8900

Facsimile: 515.242.8950

Email: bdublinske@fredlaw.com

**ATTORNEYS FOR SECURUS
TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

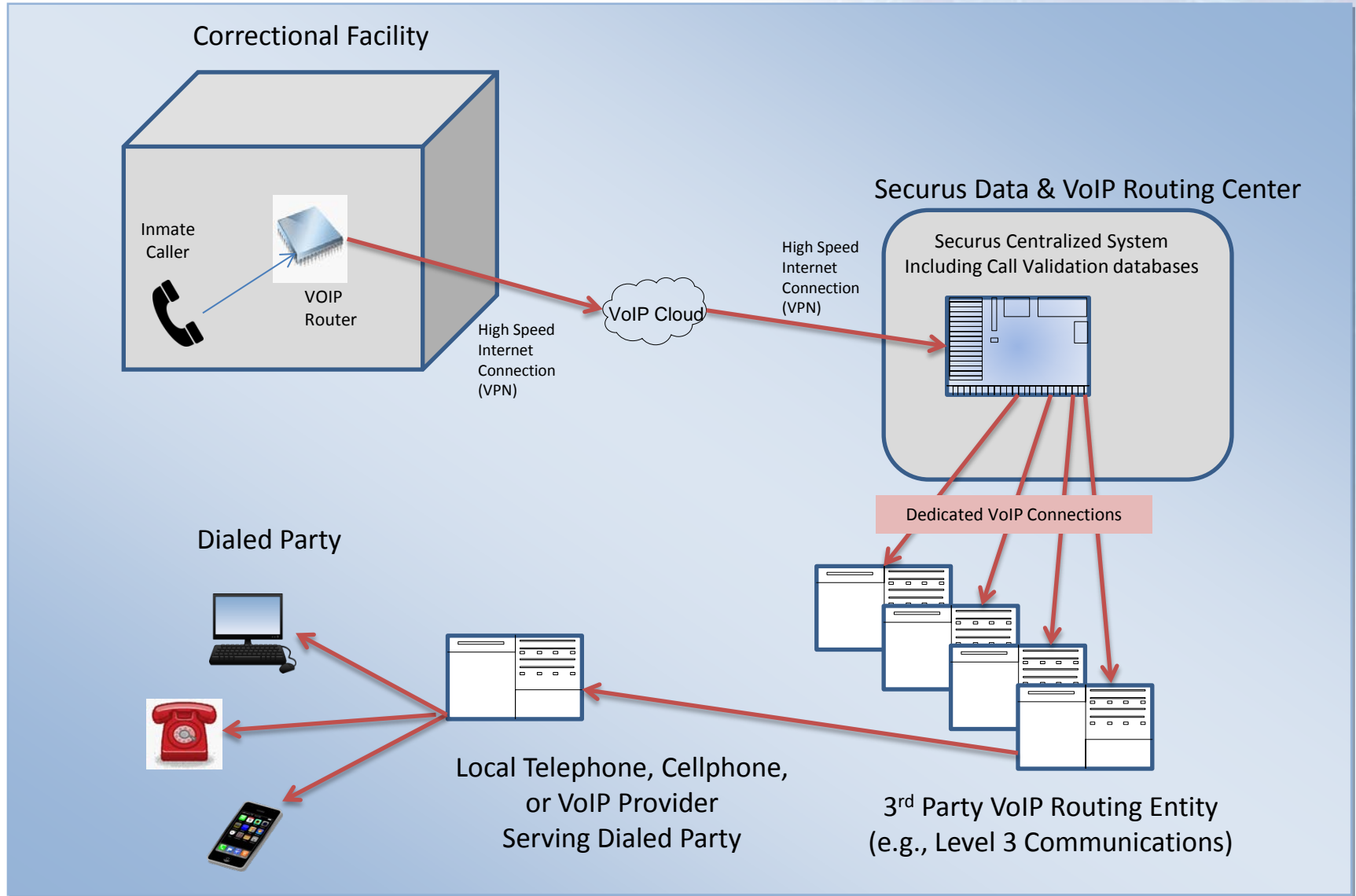
The undersigned hereby certifies that on this 10th day of July, 2017, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
Bret A. Dublinske



SECURUS
TECHNOLOGIES

SCP Centralized System – Path of Inmate Call



STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:	
SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2017-0041

**BRIEF IN OPPOSITION TO PROPOSED TARIFF WITHDRAWAL
and
REQUEST FOR HEARING**

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, submits this brief in opposition to the proposed withdrawal by Securus Technologies, Inc. (Securus) of its tariff governing intrastate inmate calling services. Securus' responses to OCA Data Request Nos. 1 through 6 are separately filed with this brief. OCA requests a hearing.

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INTRODUCTION

On November 5, 2015, the Federal Communications Commission (FCC or Commission) entered an ordering seeking to remedy the problem of excessive rates for inmate calling services, a problem described in the opening paragraph of the order as follows:

For families, friends, clergy, and attorneys to the over 2 million Americans behind bars and 2.7 million children who have at least one parent behind bars, maintaining phone contact has been made extremely difficult due to prohibitively high charges on those calls. Family members report paying egregious amounts, adding up to hundreds of dollars each month, just to stay connected to incarcerated spouses, parents and children. For over a decade, they have pleaded with this agency for help fighting these excessive and unaffordable phone charges.

In the Matter of Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, 30 F.C.C.R. 12763 (FCC 2015) (“FCC Order”), ¶ 1 (footnotes omitted).

The source of the difficulty was identified in the second paragraph of the order:

While the Commission prefers to rely on competition and market forces to discipline prices, there is little dispute that the ICS [inmate calling service] market is a prime example of market failure. Market forces often lead to more competition, lower prices, and better services. Unfortunately, the ICS market, by contrast, is characterized by increasing rates, with no competitive pressures to reduce rates. With respect to the consumers who pay the bills, ICS providers operate as unchecked monopolists. The record indicates that, absent regulatory intervention, ICS rates and associated ancillary fees likely will continue to rise.

Id., ¶ 2 (footnotes omitted).¹

On June 13, 2017, petitions to the United States Court of Appeals for the District of Columbia Circuit for review of the FCC’s order were granted in part and denied in part. *Global Tel*Link v. Federal Communications Commission*, No. 15-1461 (D.C. Cir. 2017). First and foremost, the court held that the FCC’s proposed caps on *intrastate*

¹After a decade of industry consolidation, three specialized inmate calling service firms—Global Tel*Link, Securus and Telmate—now control 85% of the market. *Global Tel*Link v. FCC*, No. 15-461 (D.C. Cir. 2017), slip op. at 11, citing FCC Order, 30 F.C.C.R. at 12801.

inmate calling service rates exceed the FCC's statutory authority under federal law. This holding is based on 47 U.S.C. § 152(b), which forbids the FCC from asserting jurisdiction over "charges, classifications, services, facilities, or regulations for or in connection with *intrastate* communication service." *Id.*, slip op. at 20 (emphasis supplied by the court).

The court did not reverse the FCC's findings or statement of the problem in paragraphs 1 and 2 of the FCC's order, quoted above. On the contrary, the court reinforced these findings and statement of the problem. The court said: "Due to a variety of market failures in the prison and jail payphone industry . . . , inmates in correctional facilities, or those to whom they placed calls, incurred prohibitive per-minute charges and ancillary fees for payphone calls." *Id.*, slip op. at 5.

The court explained:

In awarding contracts to providers, correctional facilities usually give considerable weight to which provider offers the highest site commission, which is typically a portion of the provider's revenue or profits. Site commissions apparently range between 20% and 63% of the providers' profits, but can exceed that amount. And ICS [inmate calling service] providers pay over \$460 million in site commissions annually.

Once a long-term, exclusive contract bid is awarded to an ICS provider, competition ceases for the duration of the contract and subsequent contract renewals. Winning ICS providers thus operate as locational monopolies with a captive consumer base of inmates and the need to pay high site commissions And ICS per-minute rates and ancillary fees together are extraordinarily high, with some rates as high as \$56.00 for a four-minute call.

In reviewing this market situation, the FCC found that inmate calling services are "a prime example of market failure." In its brief to this court, FCC counsel aptly explains the seriousness of the situation:

Inmates and their families cannot choose for themselves the inmate calling service provider on whose services they rely to communicate. Instead, correctional facilities each have a single provider of inmate calling services. And very often, correctional authorities award that monopoly franchise based principally on what portion of inmate calling revenues a provider will share with

the facility—*i.e.*, on the “site commissions.” Accordingly, inmate calling providers compete to offer the highest site commission payments, which they recover through correspondingly higher end-user rates. If inmates and their families wish to speak, they have no choice but to pay the resulting fees

The record compiled by the Commission fairly clearly supports its determination that ICS charges raise serious concerns. As noted in the FCC’s brief to the court:

Excessive rates for inmate calling deter communication between inmates and their families, with substantial and damaging social consequences. Inmates’ families may be forced to choose between putting food on the table or paying hundreds of dollars each month to keep in touch. When incarcerated parents lack regular contact with their children, those children—2.7 million of them nationwide—have higher rates of truancy, depression and poor school performance. Barriers to communication from high inmate calling rates interfere with inmates’ ability to consult with their attorneys, impede family contact that can “make[] prisons and jails safer spaces,” and foster recidivism.

Petitioners do not seriously contest these facts.

Id., slip op. at 10-13 (citations omitted).

The judge who wrote separately echoed the same concerns. She stated: “The administrative record is full of compelling evidence of dysfunction in the inmate-calling marketplace, with harsh consequences for inmates and their families The record shows that these high prices impair the ability of inmates, by definition isolated physically from the outside world, to sustain fragile filaments of connection to families and communities that they might hope to rejoin. . . . [C]alling costs . . . are not meaningfully subject to competition” *Id.*, slip op at 1 (Pillard, Circuit Judge, dissenting in part and concurring in part).

The court’s decision thus reinforces the FCC’s conclusion regarding the seriousness of the problem, while holding that the FCC lacks authority to address and solve the problem insofar as the calls are intrastate. The principal effect of the decision is therefore to clarify, insofar as the calls are intrastate, that the states bear sole responsibility for addressing and solving the

problem. Because more than 80 percent of the calls from and to correctional facilities are intrastate,² the decision presents a heightened and acute need for regulatory control at the state level.

Securus' Iowa de-tariffing attempt is diametrically opposed to that need. If successful, the attempt would leave Securus with unchecked inmate calling service monopolies. The consumers who pay the bills would suffer the excessive fees and harsh consequences described by the FCC and the court. The Board must prevent that outcome.

PROCEDURAL HISTORY

On April 11, 2017, Securus submitted a letter to the Board proposing to withdraw its inmate calling services tariff in its entirety. According to the letter, Securus' services fall within the definition of an "Internet protocol-enabled service," as newly defined at 199 IAC 22.1(3) (2017). As indicated in the letter, the Board recently amended the definition of "telephone utility" at 199 IAC 22.1(3) to exclude a retail provider of Internet protocol-enabled service.

On April 21, 2017, OCA objected to the proposed tariff withdrawal. The objection observed that, due to the absence of competitive choices for inmates and their loved ones, the pricing of inmate calling services has often been unjust and unreasonable. The objection noted the FCC had recently concluded it lacks jurisdiction over intrastate inmate calls. The objection urged that there is compelling reason for the Board to retain jurisdiction over intrastate inmate calling services, by regulatory amendment if necessary.

By order dated May 3, 2017, the Board suspended the proposed withdrawal of the tariff and docketed the matter for further review. The order invited either party to request a hearing if

²FCC Order, ¶ 7.

the party determined a hearing was necessary to address any material issues of fact. By order dated June 9, 2017, the Board established a briefing schedule.

I. SECURUS IS AN ALTERNATIVE OPERATOR SERVICES COMPANY WITHIN THE MEANING OF IOWA CODE § 476.91 (2017). ITS INMATE CALLING SERVICE IS THEREFORE SUBJECT IS TO THE BOARD’S JURISDICTION AND THE TARIFFING REQUIREMENT OF THE STATUTE.

Iowa law defines “alternative operator services company” as:

a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

Iowa Code § 476.91(1)“a” (2017).

The statute provides:

Jurisdiction. Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

Iowa Code § 476.91(2) (2017).

In its order dated May 3, 2017, the Board concludes: “Securus is an alternative operator services company (AOS) subject to the Board’s jurisdiction under Iowa Code § 476.91 (2017).”

In its memorandum dated April 18, 2017, the Board’s staff concludes: “The statute concerning these providers appears to be unaffected by the recent rule changes to Chapter 22.” Staff further

concludes: “It appears Securus remains subject to the requirements of this statute, including the continuing Board’s jurisdiction and the requirement for a filed tariff per Iowa Code § 476.91(2).”

OCA agrees with the Board’s and the Board’s staff’s conclusions as stated above.

Securus does not agree. In its letter dated April 11, 2017, Securus argues that its inmate calling service is an “Internet protocol-enabled service” and that Securus is therefore not a “telephone utility” as those terms are defined at 199 IAC 22.1(3) as amended. In Securus’ view, the Board has lost jurisdiction over Securus’ inmate calling service.

Securus’ discovery responses advance the same definitional argument. When asked whether it receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones, Securus responds: “Securus does not. Securus provides IP-enabled services, as defined in 199 IAC § 22.1(3) Because Securus’ services are defined as IP-enabled services under 199 IAC § 22.1(3), the revenues received by Securus would not be categorized as telecommunications services revenues.” When the question is slightly rephrased, Securus responds: “Substantially all of Securus’ revenues in Iowa are for IP-enabled services placed from Internet access devices located in correctional facilities.” When asked whether Securus is an alternative operator services company, Securus responds: “No it is not Securus provides services . . . as an internet-protocol-enabled . . . service provider as defined in 199 IAC § 22.1(3). These are not telecommunications services within the meaning of Section 476.91, which was enacted in 1989, long before the existence of IP-enabled services” Securus’ responses to OCA Data Request Nos. 2, 6 and 5.

Securus’ argument cannot be sustained. In the first place, the argument contradicts numerous previous statements and admissions made by Securus to the effect that its inmate

calling service *is* a telecommunications service. Most recently, for example, approximately a month *after* its April 2017 letter in these proceedings, Securus submitted an application to the FCC for transfer of its corporate parent's stock to a corporation in which Platinum Equity Capital Partners IV, L.P, would be the majority owner. The application stated: "*Licensees [including Securus] have been providing telecommunications services since the 1990s. Securus currently provides intrastate, interstate and international telecommunications services in connection with the inmate calling services and public payphones that it provides to or at confinement facilities throughout the U.S.*"³ This statement echoes like statements on numerous prior occasions made by Securus in its Iowa tariff⁴ and other filings.⁵ The statements attest to the fact that the inmate calling service provided by Securus is a telecommunications service within the meaning of Iowa Code § 476.91 (2017). *See also Evercom Systems, Inc. v. Iowa Utilities Bd.*, 805 N.W.2d 758,

³*In the Matter of Joint Application of Securus Investment Holdings, LLC, and others*, WC Docket No. 17-126, Joint Application of Securus and others, filed May 9, 2017, p. 3 (emphasis added). On June 19, 2017, in response to an opposition to the application submitted by parties concerned about excessive rates for inmate calling service, the FCC removed the application from streamlined treatment. According to the opposing parties, the price for the stock is \$1.5 billion, \$900 million more than the price on a previous stock transfer four years ago.

⁴Section 0.0 of the Securus "Telephone Tariff" posted on the Board's website states that the tariff "contains the regulations and rates applicable to intrastate telecommunications services provided by Securus . . ." Section 2.1.1 states that the services "consist of furnishing . . . intrastate telecommunications services to Inmate Users . . . of Confinement Facilities and who use a Company Pay Telephone on the premises thereof." Section 2.4.2 states that "all calls will be either automated collect only calls or those made utilizing Company's Prepaid Service." Section 3.1 states that the services "are activated when the Inmate User . . . dials the called party's telephone number."

⁵On October 7, 2016, Securus registered as an alternative operator services provider. *See* Docket No. REG-0241. In its "Telephone Utility Annual Report" filed March 16, 2017, it reported Iowa intrastate revenues, defined as "revenues from intrastate telephone services . . .," in the amount of \$1,599,831.27. In reply comments filed July 1, 2013, in Docket No. NOI-2013-0001, Securus stated: "Securus is a leading provider of telecommunications services in the . . . Inmate Telephone Service market." In Docket No. M-0241, by letter dated June 1, 2012, informing the Board that Windstream Communications was terminating its billing and collection agreement with Securus, Securus stated: "Securus is an inmate telephone service provider that handles inmate collect calls from confinement facilities throughout the United States, including Iowa." Also in Docket No. M-0241, by letter dated June 29, 2011, notifying the Board of a corporate stock transfer, Securus stated: "[Securus] currently provides telecommunications services to a number of confinement and correctional facilities in the State of Iowa." In Docket No. SPU-2010-0013, advising the Board of the name change from Evercom to Securus, the company stated: "Evercom . . . is registered with the Iowa Utilities Board to provide telecommunications services and provides inmate telecommunications services within the State of Iowa."

760 (Iowa 2011) (“Evercom [subsequently renamed Securus] provides telephone services to inmates in over 2900 correctional facilities throughout the country.”).

More fundamentally, the meaning of Iowa law is not dependent on a company’s vacillating characterization of the services it provides. In *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216 (Iowa 2014), the Supreme Court decided an issue that is virtually identical to the one presented here. The case considered a company providing Voice-over-Internet-Protocol (VoIP) service on cable wires. Holding that the company was a “telephone company” for purposes of a property tax assessment statute, the Court explained that a statute “can encompass technologies not in existence at the time of its promulgation.” *Id.* at 223. Similarly, “legislative enactments in general and comprehensive terms, prospective in operation, apply alike to all persons, subjects and business within their general purview and scope and coming into existence subsequent to their passage.” *Id.* The Court “appl[ies] the language of the statute in a common-sense manner rather than assuming the legislature intended to capture only technologies that existed when the law was enacted.” *Id.* at 225.

As the Court detailed in *Kay-Decker*, four earlier Supreme Court cases “underscore the importance of functionality” and “support[] the view that the [statutory] definition . . . adapts with changing technology” *Id.* at 225-26. In *Bruce Transfer Co. v. Johnston*, 227 Iowa 50, 287 N.W. 278 (1939), an 1872 statute authorizing lawsuits against railway corporations was held to apply to a trucking operation, even though automobiles did not exist in 1872. In *Kruck v. Needles*, 259 Iowa 470, 144 N.W.2d 296 (1966), a statute banning tire protuberances was held to apply to safety spike winter tires, even though tires of that particular type were not produced when the statute was enacted and even though the legislature “may not have had in mind prohibition of their use.” In *Iowa Union Tel. Co. v. Bd. of Equalization*, 67 Iowa 250, 25 N.W.

155 (1885), a law initially pertaining only to “every telegraph company” was held to apply to telephone companies. The Court reasoned: “Both the telephone and telegraph are used for distant communication by means of wires stretched over different jurisdictions. The fundamental principle in each by which communication is secured is the same.” In *Franklin v. Nw. Tel. Co.*, 69 Iowa 97, 28 N.W. 461 (1886), focusing on the fact that both telegraph and telephone companies achieved distant communication through wires, not the methods of signal transmissions, the Court held that a statute authorizing lawsuits against telegraph companies also applied to telephone companies.

The reasoning of the *Kay-Decker* Court, in particular its focus on functionality, is applicable and controlling here as to the meaning and interpretation of Iowa Code § 476.91 (2017). The earlier cases cited by the *Kay-Decker* Court “support the view that the [statutory] definition . . . adapts with changing technology, so long as there is a line and a comparable service is being provided.” *Id.* at 226. As was the case with the statute at issue in *Kay-Decker*, there is no requirement in Iowa Code section 476.91 (2017) that the service be provided using any particular technology or that the wire be made of a given material or assembled in a given way. *Id.* at 224.

The proper analysis is a functional one: a traditional cable company also providing phone service on its broadband network is treated the same as a traditional phone company that also provides Internet service on its broadband network. Both “are supplying telephone services, plus other services,” and both “are therefore telephone companies.” *Id.* Here, the drawing submitted by Securus with its April 2017 letter shows communication between an “Inmate Caller” with equipment visually represented by the handset of a traditional telephone and a

“Dialed Party” with equipment visually represented by a wireline telephone, cellphone or computer.

Like the cable VoIP provider in *Kay-Decker*, Securus provides end users with access to the public telephone network. *Id* at 227. To assert otherwise “misstates the reality of the situation.” *Id*. As indicated by the U.S. Court of Appeals for the District of Columbia Circuit in the *Global Tel*Link* decision discussed above, in which Securus was among the parties seeking review, the reality of the situation is that the service being provided is an “inmate telephone service.” Slip op. at 10.

The response given by Securus to OCA Data Request No. 3 raises a slightly different but equally unavailing objection. Securus states: “No live assistance is involved, only internet-enabled interactive voice response software.” According to section 1.0 of Securus’ tariff, “Inmate Operator Assisted Service,” the company uses an automated system that prompts the calling and called parties on how to complete a call, without the use of a live operator. The use of an automated operator makes no difference because “the [statutory] definition of an AOS company expressly includes operator assistance ‘either through live or automated intervention.’” *Equal Access Corp. v. Utilities Bd.*, 510 N.W.2d 147, 149 (Iowa 1993). “The fact that it is a computer-generated intervention, rather than a live person, is insignificant.” *Id*.

In summary, the inmate calling service provided by Securus is a telecommunications service within the meaning Iowa Code § 476.91 (2017). Securus is an alternative operator services company within the meaning of the same statute. Its Iowa intrastate inmate calling service is subject to the Board’s jurisdiction and to the tariffing requirement in the statute. Securus’ proposed withdrawal of the tariff must accordingly be denied.

II. EVEN IF THE RECENT REGULATORY AMENDMENT DID HAVE THE EFFECT OF ENDING SECURUS' STATUS AS AN ALTERNATIVE OPERATOR SERVICES COMPANY, THE PROPOSED DE-TARIFFING SHOULD STILL BE DENIED. THERE IS NO INDICATION THE BOARD INTENDED TO EXCLUDE JURISDICTION OVER INTRASTATE INMATE CALLING SERVICES.

For the reasons stated in brief point I, the Board retains jurisdiction under the statute, and there is no need for a regulatory amendment. Even were the Board to conclude, however, as urged by Securus, that the recent amendment to 199 IAC 22.1(3) divested the Board of jurisdiction over the inmate calling service provided by Securus, the policy concerns are compelling, and the Board should properly propose and adopt an amendment making clear that the Board retains jurisdiction over such service.

There is no indication that the Board, when it amended 199 IAC 22.1(3), intended to exclude Board jurisdiction over intrastate inmate calling services. Such an exclusion would leave the pricing of the calls in the hands of unchecked telecommunications monopolies, with the adverse consequences explained by the FCC and the U.S. Court of Appeals, as discussed above.

CONCLUSION AND REQUEST FOR HEARING

For the reasons stated above, Securus is an alternative operator service company within the meaning of Iowa Code § 476.91 (2017). Its Iowa intrastate inmate calling service is subject to the Board's jurisdiction and to the tariffing requirement of the statute. The proposed tariff withdrawal must accordingly be denied.

The data request responses provided by Securus raise questions regarding the nature of the service provided by Securus. The response to Data Request No. 3, for example, appears to be designed to lead or mislead the Board into thinking that Securus is providing data services and is not providing phone calls to inmate end users. OCA therefore requests a hearing to create a factual record to support the Board's decision.

The suspension of the proposed tariff withdrawal should remain in effect pending final resolution.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ Craig F. Graziano

Craig F. Graziano
Attorney

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OFFICE OF CONSUMER ADVOCATE

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SECURUS TECHNOLOGIES, INC.

DOCKET NO. TF-2017-0041

OCA EXHIBITS

The Office of Consumer Advocate submits as Exhibits 1 through 6 the attached responses from Securus Technologies, Inc. to OCA Data Request Nos. 1 through 6.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ Craig F. Graziano

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OFFICE OF CONSUMER ADVOCATE

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 22, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Nongovernmental Company Status

1. Please state whether Securus is a nongovernmental company, within the meaning of Iowa Code sec. 476.91. If not, why not?

Response:

Securus can find no definition of “nongovernmental company” in Iowa Code sec. 476.91. Securus is a private corporation which contracts to provide internet protocol-enabled (“IP-enabled”) services, as defined in 199 IAC §22.1(3), to governmental entities in Iowa, principally county and municipal correctional facilities.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 22, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Iowa Intrastate Telecommunications Services Revenues

2. Please state whether Securus receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones, within the meaning of Iowa Code sec. 476.91. If not, why not?

Response:

Securus does not. Securus provides IP-enabled services, as defined in 199 IAC §22.1(3), to correctional facilities. Additionally, 199 IAC §22.1(3) excludes IP-enabled service providers from the definition of a “*Telephone utility or utility*”. Because Securus’ services are defined as IP-enabled services under 199 IAC §22.1(3), the revenues received by Securus would not be categorized as telecommunications services revenues. Securus therefore does not meet the definition for coverage under Iowa Code §476.91.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 22, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Operator Assistance

3. Please state whether Securus provides operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, within the meaning of Iowa Code sec. 476.91. If not, why not?

Response:

The term “telephones” is not defined in Iowa Code sec. 476.91. Securus provides services to inmates within correctional intuitions in Iowa as an internet protocol-enabled (“IP-enabled”) service provider, using equipment that connects to the internet as an internet access device for the purpose of carrying data over the internet. No live assistance is involved, only internet-enabled interactive voice response software. Securus does not offer its IP-enabled services to residential or business customers. There are no Securus services that are placed from ordinary residence or business telephones.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 22, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Services Provided

4. Please confirm, if true, that Securus does not provide services under contract to rate-regulated local exchange utilities, within the meaning of Iowa Code sec. 476.91. If unable to confirm, please explain.

Response:

Securus does not provide its IP-enabled services under contract to rate-regulated local exchange utilities. The services are provided under contract with correctional institutions in Iowa.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 22, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Alternative Operator Services Company Status

5. Please state whether Securus is an alternative operator services company, within the meaning of Iowa Code sec. 476.91. If not, why not?

Response:

No it is not. As explained in Responses Nos. 1-4 Securus provides service to correctional intuitions in Iowa as an internet protocol-enabled (“IP-enabled”) service provider as defined in 199 IAC §22.1(3). These are not telecommunications services within the meaning of Section 476.91, which was enacted in 1989, long before the existence of IP-enabled services such as those provided by Securus. As noted further, the revenues from these services are not telecommunications services revenues within the meaning of that section.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

**OFFICE OF CONSUMER ADVOCATE
DATA REQUEST**

DATE : June 30, 2017
DOCKET NO. : TF-2017-0041
COMPANY : Securus Technologies, Inc.
SUBJECT : Iowa Intrastate Services' Revenues

6. Please state whether Securus receives more than half of its Iowa intrastate services' revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. If not, why not?

Response:

Substantially all of Securus' revenues in Iowa are for IP-enabled services placed from Internet access devices located in correctional facilities.

NOTE: In the event the response to this data request contains confidential information, do not simply mark the entire response or attached document(s) confidential. Please highlight, or otherwise identify, the specific information that is claimed to be confidential.

IOWA UTILITIES BOARD
Telecommunications Section

Docket No.: TF-2017-0041
Utility: Securus Technologies, Inc.
File Date: April 11, 2017 / May 11, 2017
Memo Date: April 18, 2017

TO: The Board
FROM: Dennis Rosauer
SUBJECT: Withdrawal of Tariff

I. Background

On April 11, 2017, Securus Technologies, Inc. (Securus) submitted a filing stating it was withdrawing its telephone tariff currently on file with the Utilities Board (Board) effective May 11, 2017. Securus stated that the recent rule changes to Chapter 22 effective March 22, 2017, will allow Securus to withdraw its telephone tariff as:

- 1) Its inmate calling services fall squarely within the definition of an “Internet protocol-enabled service as it uses session initiation protocol (SIP); and
- 2) This service is offered to “retail customers.”

II. Legal Standards

Iowa Code § 476.91 is the controlling statute for alternative operator services. It reads:

476.91 Alternative operator services.

1. Definitions. As used in this section, unless the context otherwise requires:

a. “Alternative operator “services company” means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

b. "Contracting entity" means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.

c. "End-user customer" means a person who places a local or toll call.

d. "Other than ordinary residence or business telephones" means telephones other than the residence or business telephones of the customary users of the telephones, including but not limited to pay telephones and telephones in motel, hotel, hospital, and college dormitory rooms.

2. Jurisdiction. Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

3. Requirements. The board shall adopt and enforce requirements for the provision of services by alternative operator services companies and contracting entities.

4. Billing by local exchange utilities. Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, a regulated local exchange utility shall not perform billing and collection functions relating to regulated telecommunications services provided by an alternative operator services company, unless the alternative operator services company has filed a statement with the local exchange utility signed by a corporate officer, or other authorized person having personal knowledge, that all regulated telecommunications services to be billed shall be rendered pursuant to tariffs approved by the board.

A. Analysis

Securus states that:

- 1) the new rules changed the definition for "telephone utility" that includes the following new language: ...but does not include a provider of internet protocol-enabled service or voice over internet protocol service with

regard to its provision of such service to retail customers. The Board shall not directly or indirectly regulate the entry, rates, terms, or conditions for internet protocol-enabled service or voice over internet protocol service.

- 2) 199 IAC § 22.1(3) provides a definition for “Internet protocol-enabled services,” and
- 3) 199 IAC § 22.1(c) defines “retail services.”

Securus states that the new rules do not allow the Board to directly or indirectly regulate the rates, terms, and conditions of Internet protocol-enabled services like Securus uses and proposes to withdraw its tariff.

However, Securus is an alternative service provider. The statute concerning these providers appears to be unaffected by the recent rule changes to Chapter 22. It appears Securus remains subject to the requirements of this statute including the continuing Board’s jurisdiction and the requirement for a filed tariff per Iowa Code § 476.91(2).

Staff proposes that Securus’ request to withdraw its tariff be docketed and a briefing schedule should be established to let the parties address the proper application of the statute and rules. At this point, staff believes there are no material issues of fact to be decided, so a hearing appears to be unnecessary. However, the schedule should include a deadline for any requests for a hearing.

B. Recommendation

Attached for the Board's consideration is an order docketing Securus Technologies, Inc.’s withdrawal of its tariff.

/dr

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2017-0041
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ORDER DOCKETING REQUEST TO WITHDRAW TARIFF

(Issued May 3, 2017)

On April 11, 2017, Securus Technologies, Inc. (Securus), filed a letter with the Utilities Board (Board) stating that Securus intended to withdraw its currently-filed Telephone Tariff effective May 11, 2017. Securus provides inmate calling services at some Iowa correctional facilities using “session initiation protocol,” an Internet protocol-enabled service, to connect inmates with persons outside the correctional facility, including intrastate communications. Securus says that the Board’s recent change to 199 Iowa Admin. Code subrule 22.1(3) prohibits the Board from directly or indirectly regulating the “rates, terms, and conditions of Internet protocol-enabled services.”

On April 21, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed its “Objection to Withdrawal of Tariff” with the Board. OCA alleges that the FCC has identified that the inmate calling services are frequently provided at unjust and unreasonable pricing, due to lack of competition. OCA claims that any modification to 199 IAC 22.1(3) that would limit jurisdiction over intrastate inmate calling services is unintentional and that there is a compelling reason for the Board to maintain jurisdiction over intrastate inmate calling services.

Securus is an alternative operator service company (AOS) subject to the Board's jurisdiction under Iowa Code § 476.91 (2017). The Board has recently received a request for rule making setting rate caps on the amount an AOS may charge inmates for intrastate telephone calls. Should the Board choose to pursue a rule making, it would be most appropriate to consider Securus' request to withdraw after giving interested parties the opportunity to comment in the rule-making proceeding. The Board will docket Securus's request to withdraw their tariff to permit Securus and OCA the opportunity to brief their respective positions. If either party determines a hearing is necessary, the party may request a hearing to address any material issues of fact.

IT IS THEREFORE ORDERED:

1. The tariff withdrawal proposed by Securus Technologies, Inc., on April 11, 2017, identified in Docket No. TF-2017-0041, is suspended and docketed for further review.
2. The Utilities Board will set forth a briefing schedule within 30 days of the conclusion of the Utilities Board decision in Docket No. RMU-2017-0001, if necessary.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Nick Wagner

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Richard W. Lozier Jr.

Dated at Des Moines, Iowa, this 3rd day of May 2017.

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

SECURUS TECHNOLOGIES, INC.

DOCKET NO. TF-2017-0041

Objection to Withdrawal of Tariff

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, objects to the withdrawal by Securus Technologies, Inc. (Securus) of its tariff governing intrastate inmate calling services and in support of the objection states:

1. The Federal Communications Commission (FCC) has described the unjust and unreasonable pricing for inmate calling services as follows:

For families, friends, clergy, and attorneys to the over 2 million Americans behind bars and 2.7 million children who have at least one parent behind bars, maintaining phone contact has been made extremely difficult due to prohibitively high charges on those calls. Family members report paying egregious amounts, adding up to hundreds of dollars each month, just to stay connected to incarcerated spouses, parents and children. For over a decade, they have pleaded with this agency for help fighting these excessive and unaffordable phone charges.

In the Matter of Rates for Interstate Inmate Calling Services, FCC 15-136, 30 F.C.C.R. 12763 (FCC 2015).

2. The FCC has attributed the unjust and unreasonable pricing for inmate calling services to the absence of competition:

While the Commission prefers to rely on competition and market forces to discipline prices, there is little dispute that the ICS [inmate calling services] market is a prime example of market failure. Market forces often lead to more competition, lower prices, and better services. Unfortunately, the ICS market, by contrast, is characterized by increasing rates, with no competitive pressures to reduce rates. With respect to the consumers who pay the bills, ICS providers operate as unchecked monopolists. The record indicates that, absent regulatory intervention, ICS rates and associated ancillary fees likely will continue to rise.

Id., ¶ 2 (footnotes omitted).

3. By letter dated April 11, 2017, citing the Board's recent amendment of the definition of "telephone utility" at 199 IAC 22.1(3) to exclude providers of Internet protocol enabled services, Securus stated its intention to withdraw its entire tariff, effective May 11, 2017.

4. The FCC has concluded it lacks jurisdiction over intrastate inmate calls, which are most of the calls made by inmates. See Docket No. RMU-2017-0001, Petition for Amendment of Rule 22.12, Exhibit 1, filed March 24, 2017.

5. The exclusion of Board jurisdiction over intrastate inmate calling services appears to have been an unintended consequence of the Board's amendment of the definition of "telephone utility" at 199 IAC 22.1(3).

6. There is compelling reason for the Board to retain jurisdiction over intrastate inmate calling services.

WHEREFORE, the Board, by regulatory amendment if necessary, should retain jurisdiction over intrastate inmate calling services and deny the proposed withdrawal of the Securus tariff.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ Craig F. Graziano

Craig F. Graziano
Attorney

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OFFICE OF CONSUMER ADVOCATE



April 11, 2017

VIA EFS

Cecil Wright
Chief Operating Officer
Iowa Utilities Board
1375 E. Court Avenue, Room 69
Des Moines, Iowa 50319

Re: Securus Technologies, Inc. – Docket No. M-_____

Dear Mr. Wright:

This letter sets forth the position of Securus Technologies, Inc. (“Securus” or the “Company”) concerning the application of 199 IAC Chapter 22 governing “Service Supplied By Telephone Utilities” to the Company’s Internet protocol-based inmate calling services provided in the State of Iowa to retain customers.

As you know, effective March 22, 2017, 199 IAC §22.1(3) now defines the term “telephone utility” for purposes of the Board’s exercise of its jurisdiction, as follows:

“Telephone utility” or “utility” means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation, but does not include a provider of internet protocol-enabled service or voice over internet protocol service with regard to its provision of such service to retail customers. The Board shall not directly or indirectly regulate the entry, rates, terms, or conditions for internet protocol-enabled service or voice over internet protocol service, but voice over internet protocol service may be subject to fees subsequently established by state or federal statute, rule, or requirement such as 911 or Dual Party Relay Service. (emphasis supplied).

199 IAC §22.1(3) also defines *“Internet protocol-enabled services”* as “any service, capability, functionality, or application provided using Internet protocol, or

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Cecil Wright, COO
Iowa Utilities Board
April 11, 2017
Page 2

any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video." (emphasis supplied).

Finally, 199 IAC §22.1(c) defines "*retail services*" in relevant part as "those communications services furnished by a telephone utility directly to end-user customers."

Securus's inmate calling services fall squarely within the definition of an "Internet protocol-enabled service." Further, the Company offers this service to "retail customers" (i.e., principally the friends and family called by inmates who fund accounts to pay for these calls). Specifically, Securus uses session initiation protocol ("SIP") - an Internet protocol format - to send inmate-initiated communications services through the entire course of the call until delivered to the terminating landline or wireless carrier for receipt by the end-user. For your convenience, I have attached hereto a diagram that provides a full description of the Securus system's call flows using SIP to send these communications.

In light of the new rule that the Board "shall not directly or indirectly regulate the rates, terms, and conditions of Internet protocol-enabled services" like Securus's, the Company intends to withdraw its Telephone Tariff currently on file with the Board effective May 11, 2017.

Please feel free to contact me with any questions related to this matter.

Thank you for your consideration.

Respectfully,

/s/ Bret A. Dublinske

Bret Dublinske

Attachment

cc: Curtis L. Hopfinger, Director, Regulatory & Government Affairs (via e-mail)
Paul C. Besozzi, Esq. (via e-mail)



SECURUS
TECHNOLOGIES

SCP Centralized System – Path of Inmate Call

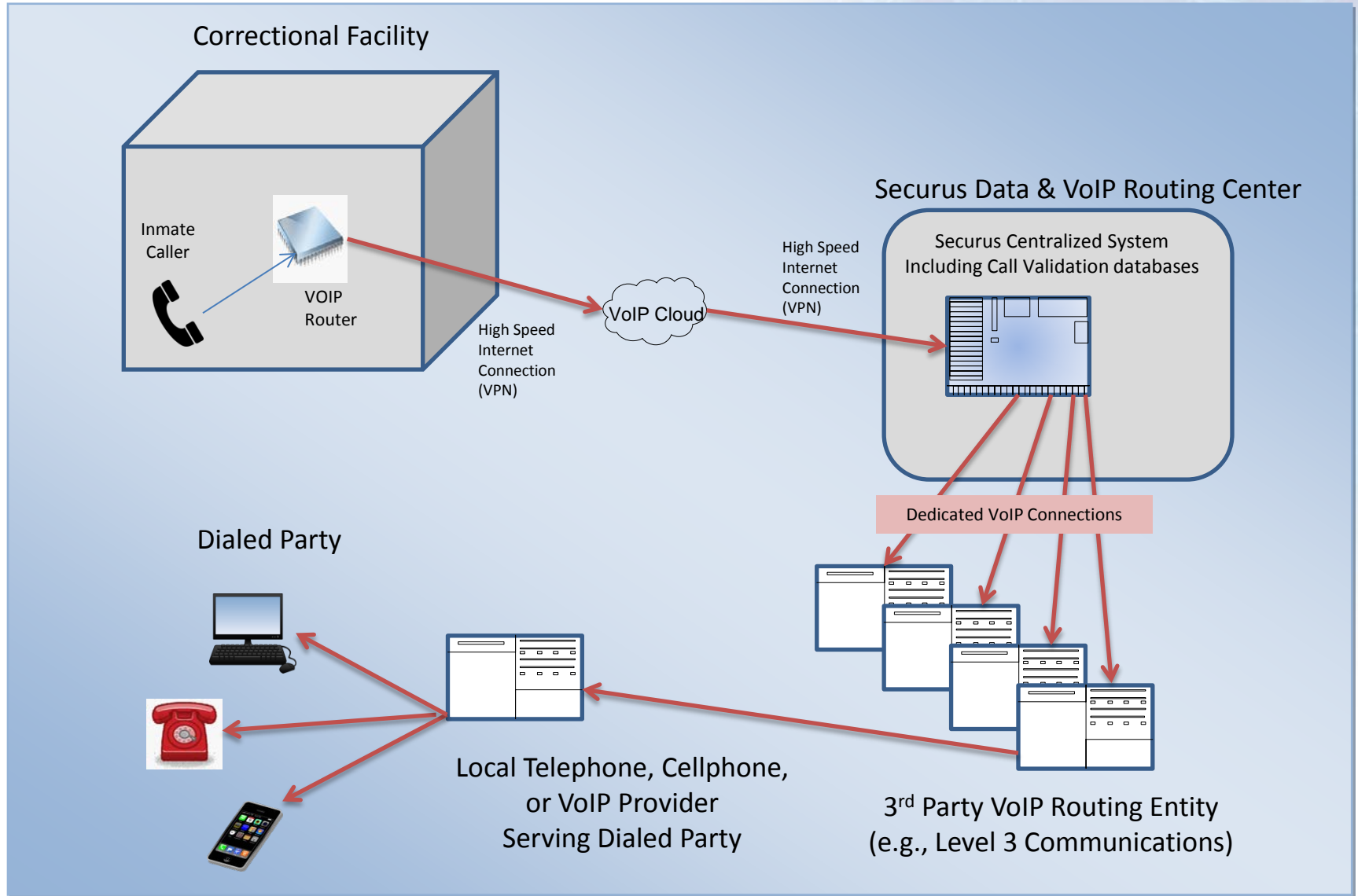


EXHIBIT D

IOWA UTILITIES BOARD

RMU-2017-0004

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: RULE MAKING REGARDING INMATE CALLING RATE CAPS [199 IAC CHAPTER 22]	DOCKET NO. RMU-2017-0004 COMMENTS OF SECURUS TECHNOLOGIES, INC
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On May 23, 2017, the Iowa Utilities Board (“Board”) issued an Order seeking stakeholder comments regarding potential changes to the Board’s Rules to set rate caps for inmate calling services (“ICS”). *See also Order Denying Petition*, Docket No. RMU-2017-0001 (May 23, 2017) at 1-2. Securus Technologies, Inc. (“Securus”), as one of the largest potentially affected stakeholders, welcomes the opportunity to comment on the proposed rulemaking.

Securus’ position on any such proposed rulemaking, in summary, is that taking up any such proposal is premature and unnecessary: critical, open issues relating to inmate calling services (“ICS”) are still pending at the federal level, and Securus has a pending docket before this Board seeking confirmation that the Board has chosen to forbear from regulation of Internet Protocol-enabled (“IP-enabled”) ICS.

Moreover, there is no evidence as to why such a proceeding would be necessary at this juncture. To the extent this effort more broadly was initiated by NCIC Inmate Telephone Services and Telespan Communications (collectively “NCIC”), they did not point to any increased level of complaints or any other evidence that the Board’s current rules are insufficient. For these and several other reasons, the Board should – as it did with the petition filed by NCIC – close this docket and determine no rule changes are necessary or appropriate at this time.

I. A STATE-LEVEL RULEMAKING ON ICS RATE CAPS IN IOWA IS PREMATURE

As a basic threshold starting point, there is no demonstrated rationale for taking up the issue of ICS rate caps at this time. In particular, there are open proceedings pending at the federal level and before the Board regarding these matters that should be resolved before proceeding with a rulemaking.

As the Board is likely aware, there is a still ongoing proceeding regarding ICS terms, conditions and regulations pending at the Federal Communications Commission (“FCC”). On June 13, 2017, the United States Court of Appeals for the District of Columbia (“DC Circuit Court”) entered a decision in *Global Tel*Link v. FCC*, Docket No. 15-1461. That case involved an appeal from several aspects of a 2015 FCC Order setting rate caps and other terms and conditions for ICS, including for intrastate ICS calls.¹ In the *ICS Order*, the FCC had asserted jurisdiction over intrastate rates that would have largely preempted the rulemaking on which the Board seeks stakeholder comment. While the DC Circuit Court decision held that the *ICS Order’s* attempted exercise of authority to set intrastate rates could not stand, that is neither the end of the analysis nor does it mean a state rulemaking would now be timely.² Particularly to the extent that the Iowa Board sees a benefit in coordination with federal rules regarding ICS, several relevant issues were remanded to the FCC and further proceedings will be taking place before determinations on those issues are final. For example:

- The issue of the inclusion of site commissions in rate setting was remanded. The FCC rates – and the rates NCIC had proposed in Iowa – excluded site commissions as ICS provider costs, which the DC Circuit Court found “devoid of reasonable decisionmaking.”³

¹ *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd. 12763 (Dec. 18, 2015)(“*ICS Order*”)

² Ironically, even as NCIC was seeking to initiate a state rulemaking in Iowa, it was advocating in the *Global Tel*Link* case for federal pre-emption of state law.

³ *Global Tel*Link* at 7.

- The issue of ancillary fee caps. The FCC had imposed caps on ancillary fees; the DC Circuit Court remanded the issue for the FCC to determine if it was possible to segregate interstate and intrastate caps for ancillary fees – an issue that will impact this Board’s jurisdiction.⁴

Additionally, the DC Circuit Court vacated, without remanding, the issue of industry-averaged costs, finding such a cost methodology was “not supported by reasoned decisionmaking.”

Again, this implicates the rate structure suggested by NCIC that precipitated the current docket.⁵

In the aftermath of the Court’s decision the FCC Chairman stated in relevant part:

“Looking ahead, I plan to work with my colleagues at the Commission, Congress, and all stakeholders to address the problem of high inmate calling rates in a lawful manner.”⁶

Therefore, it makes no sense for the Board to move forward when jurisdictional issues on ancillary fees, and further analysis of appropriate fee structures remains to be completed by the FCC – particularly when there is no evidence that time is of any essence for such a rulemaking in Iowa.

Finally, as the Board is also aware, Securus has pending a tariff docket seeking withdrawal of its tariff and raising issues about the interplay between ICS tariffs and the Board’s recent revision to its Chapter 22 rules regarding IP-enabled services. In that rulemaking, the Board by rule determined that it would forbear from retail rate regulation of any IP-enabled services. Securus maintains that its ICS are IP-enabled services as defined in the Board’s revised rules, and would therefore be covered by the forbearance. Logically, it makes sense to first

⁴ *Id.*

⁵ *Id.*

⁶ FCC News Release, “Chairman Pai Statement On D.C. Circuit Inmate Calling Decision,” June 13, 2017, *available at*, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0613/DOC-345316A1.pdf

determine whether the Board's retail-rules-and-tariffs regulatory regime continues to apply to Securus *at all* before undertaking a lengthy proceeding as to the details of such a regime.⁷

II. A STATE-LEVEL RULEMAKING ON ICS RATE CAPS IN IOWA IS UNNECESSARY

Even absent the reasons above that this docket is premature, there is simply no evidence that such a docket is *necessary*. A new rule making would be inconsistent with Iowa's deregulation trend, and no one has shown a spike of complaints to justify new regulation. Further, NCIC's proposals are based on flawed methodologies rejected by the DC Circuit Court.

The effort to introduce an entirely new section of administrative rules is contrary to a strong and unmistakable trend toward deregulation of communications services in Iowa, and toward minimizing interventions in the market.⁸ To that end, the Board should see NCIC's efforts here for what they are: an attempt to have the Board implement the Court-rejected FCC rate schedules that would advantage NCIC to the detriment of other ICS providers. If adopted and implemented, NCIC would be advantaged by restricting competitors and correctional facilities from entering contracts that meet the facilities' needs as opposed to being limited only to those features and services that fit within an arbitrary rate cap. That is assuredly not the proper role of the Board.

That is even more clearly not the proper role of the Board when there is no evidence that the current rules and mechanisms aren't working. Securus, who is a significant provider of such services in Iowa, has not seen any increase in complaints regarding its services, and is not aware of any increase in such complaints in Iowa more generally. Certainly neither NCIC in its request for a rulemaking, nor the Board in its Order initiating this docket, cited any such justifying

⁷ Securus will provide a more detailed analysis and argument as to why it, and likely other ICS providers, are not subject to retail regulation by the Board in light of the Chapter 22 revisions in its brief in Docket No. TF-2017-0041, which, per Board order of June 9, 2017, will be due on July 10.

⁸ See generally Board Rule 22.1(6); see also, e.g., Docket Nos. RMU-2015-0002, INU-2016-0001.

factor. The current rulemaking is a solution in search of a problem – but rules, particularly like those proposed by NCIC, are not an efficient solution, either.

As the DC Circuit Court found, weighted-industry-averaging of costs is not rational. This is so because in the ICS industry, one-size – as rules would be – does not fit all. Each correctional facility is different, and has different needs and requests. Differences in inmate population size, inmate call volumes, and call mix (intrastate vs interstate) create different cost structures for facilities that do not lend themselves to a one-size-fits-all solution. Differences in required security, investigative, or fraud prevention features are individually negotiated (often for reasons that have nothing to do with issues under the Board’s purview), and those differences all impact the cost of providing hardware, software, and services. The facilities themselves should not be uniformly constrained in making such decisions based on a “one-size-fits all” rate cap.

Similarly, as the DC Circuit Court found, site commissions are a significant and highly variable cost that were erroneously excluded by the FCC in developing its rate caps⁹ – and again, one that is outside of the Board’s reach as it has no jurisdiction over correctional facilities and their contracts.

The rate caps proposed by NCIC as a basis for the proposed rulemaking were developed by the FCC based on this now-deemed-faulty weighted–average cost calculation methodology. And these rates excluded the costs associated with site commissions. Therefore, the FCC will have to go back to the drawing board to develop a fair basis for developing rates. Thus, the rates proposed by NCIC are totally inappropriate for application in Iowa. The Board would be better served to wait and see what replacement formula the FCC develops.

⁹ *Global Tel*Link* at 7.

In light of the foregoing, rate caps are neither advisable nor warranted at this time when these regulatory issues remain open.

CONCLUSION

There is no evidence of any need for the Board to undertake a rulemaking regarding ICS at this time. In particular, the rate cap rulemaking sought by NCIC is inappropriate. Such a rulemaking is premature in light of the numerous issues yet to be resolved on remand after the DC Circuit Court decision; it is not necessary given the lack of apparent problems under the current regulatory regime; and it is the wrong solution given the nature of ICS where “one-size fits all” caps simply fail to reflect the realities of correctional facility contracts. NCIC has been proposing the implementation of the failed FCC rate caps in other states in an attempt to gain competitive advantage. Such a rulemaking is also premature when Securus has pending a threshold issue of whether it is subject to retail rate rules at all. The Board should determine that no change in its rules is necessary or warranted at this time, and close this docket without further action.

Respectfully submitted this 22nd day of June, 2017.

By: */s/ Bret A. Dublinske*

Bret A. Dublinske, AT0002232
FREDRIKSON & BYRON, P.A.
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Des Moines, IA 50309
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Facsimile: 515.242.8950
Email: bdublinske@fredlaw.com

**ATTORNEYS FOR SECURUS
TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of June, 2017, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
Bret A. Dublinske

EXHIBIT E

MASSACHUSETTS DTC 11-16

August 2, 2016

VIA ELECTRONIC AND OVERNIGHT FILING

Ms. Sara Clark
Secretary
Department of Telecommunications & Cable
Commonwealth of Massachusetts
1000 Washington Street, Suite #820
Boston, Massachusetts 02118

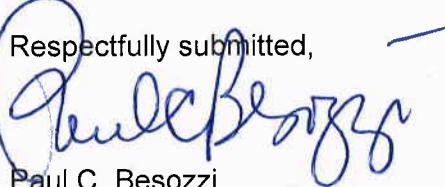
Re: D.T.C. 11-16 - Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls – Notice of Securus Technologies, Inc.

Dear Ms. Clark:

Securus hereby files in this docket a copy of its previous correspondence concerning the withdrawal and cancellation of its Massachusetts Tariff No. 1, effective August 1, 2016.

An extra copy of this letter is enclosed to be stamped "received" or equivalent and returned in the enclosed envelope. A copy is being served on all parties on the Department's service list. Please remove Securus from that list.

Should you have any questions or comments regarding this filing, please contact the undersigned counsel.

Respectfully submitted,


Paul C. Besozzi
Counsel for Securus Technologies, Inc.

cc: James M. Avery
D.T.C. 11-16 Service List

James M. Avery

100 Summer Street
Suite 2250
Boston, MA 02110

617.488.8125 voice
617.824.2020 fax
javery@pierceatwood.com
www.pierceatwood.com

Admitted in: MA

July 1, 2016

HAND DELIVER and EMAIL

Sara Clark, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118

Re: Securus Technologies, Inc.

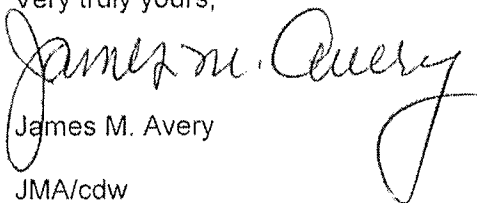
Dear Ms. Clark:

Pursuant to my informational letter dated June 28, 2016 to Sandra Callahan Merrick, General Counsel, enclosed please find a notice from Securus Technologies, Inc. withdrawing and cancelling M.D.T.C. Tariff No. 1.

Please contact me if you have any questions with respect to this matter.

Thank you for your consideration.

Very truly yours,


James M. Avery

JMA/cdw
Enclosure

cc: Sandra Callahan Merrick, General Counsel (via hand delivery and email)
Curtis L. Hopfinger, Director, Regulatory & Government Affairs (email)
Paul C. Besozzi, Esq. (email)



July 1, 2016

VIA HAND DELIVERY

Sara Clark, Secretary
Department of Telecommunications and Cable
Commonwealth of Massachusetts
1000 Washington Street, Suite #820
Boston, Massachusetts 02118

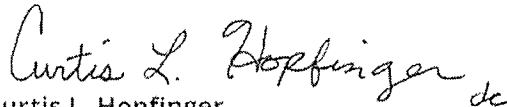
Re: Notification of Withdrawal and Cancellation of M.D.T.C. Tariff No. 1 - Securus Technologies, Inc.

Dear Ms. Clark:

Securus Technologies, Inc. ("Securus") provides inmate calling services ("ICS") in the Commonwealth of Massachusetts pursuant to its M.D.T.C. Tariff No. 1 ("MDTC Tariff").

As Securus recently notified the Department of Telecommunications and Cable ("Department"), Securus's current ICS services are IP-Enabled services as defined in Subsection (a) of Section 6A Mass. Gen. Laws c. 25C. Therefore, the limitations in Subsection (b) of Section 6A are applicable to the rates, terms and conditions of Securus's ongoing ICS service. Consistent with those provisions and its June 28 notification, Securus hereby withdraws and cancels the MDTC Tariff effective August 1, 2016.

Respectfully Submitted,


Curtis L. Hopfinger
Director, Regulatory and Government Affairs

James M. Avery

100 Summer Street
Suite 2250
Boston, MA 02110

617.488.8125 voice
617.824.2020 fax
javery@pierceatwood.com
www.pierceatwood.com

Admitted in: MA

June 28, 2016

HAND DELIVER and EMAIL

Sandra Callahan Merrick, General Counsel
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118

Re: Securus Technologies, Inc.

Dear Ms. Merrick:

Consistent with our discussion of Friday, June 24, 2016, this letter sets forth the position of Securus Technologies, Inc. ("Securus" or the "Company") concerning the application of Mass. Gen. Laws c. 25C, § 6A (2016) ("Section 6A") to the Company's Internet Protocol-based inmate calling services provided in the Commonwealth of Massachusetts.

As you know, Subsection (b) of Section 6A (emphasis added) provides guidance with respect to the jurisdiction of the Massachusetts Department of Telecommunications and Cable ("Department" or "DTC"):

Except as set forth in subsections (c) to (f), inclusive, and notwithstanding any other general or special law to the contrary, no department, agency, commission or political subdivision of the commonwealth, shall enact, adopt or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order or other provision having the force or effect of law that regulates or has the effect of regulating, the entry, rates, terms or conditions of VoIP Service or IP enabled service.

Subsection (a) of Section 6A defines an "IP-enabled service" as follows:

[S]ervice, capability, functionality, or application provided using Internet Protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet Protocol format or any successor format, regardless of technology; provided, however, that no service included within the definition of "Voice over Internet Protocol service" shall be included within this definition.

Sandra Callahan Merrick, General Counsel
Department of Telecommunications and Cable
June 28, 2016
Page

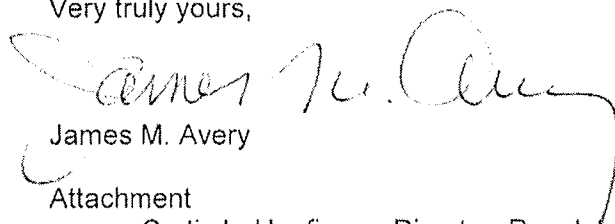
Securus's inmate calling services fall squarely within the definition of an "IP-enabled service." Specifically, Securus uses session initiation protocol ("SIP") - an Internet protocol format - to send inmate-initiated communications services through the entire course of the call until delivered to the terminating landline or wireless carrier. For your convenience, I have attached hereto a diagram that provides a full description of the Securus system's call flows using SIP to send these communications.

In light of the foregoing restrictions on the Department's jurisdiction over the rates, terms, and conditions of IP-enabled services like Securus's, the Company intends to withdraw its M.D.T.C. Tariff No. 1 (currently on file with the DTC) effective August 1, 2016.

Please feel free to contact me with any questions related to this matter.

Thank you for your consideration.

Very truly yours,



James M. Avery

Attachment

cc: Curtis L. Hopfinger, Director, Regulatory & Government Affairs
Paul C. Besozzi, Esq.



SECURUS
TECHNOLOGIES

SCP Centralized System – Path of Inmate Call

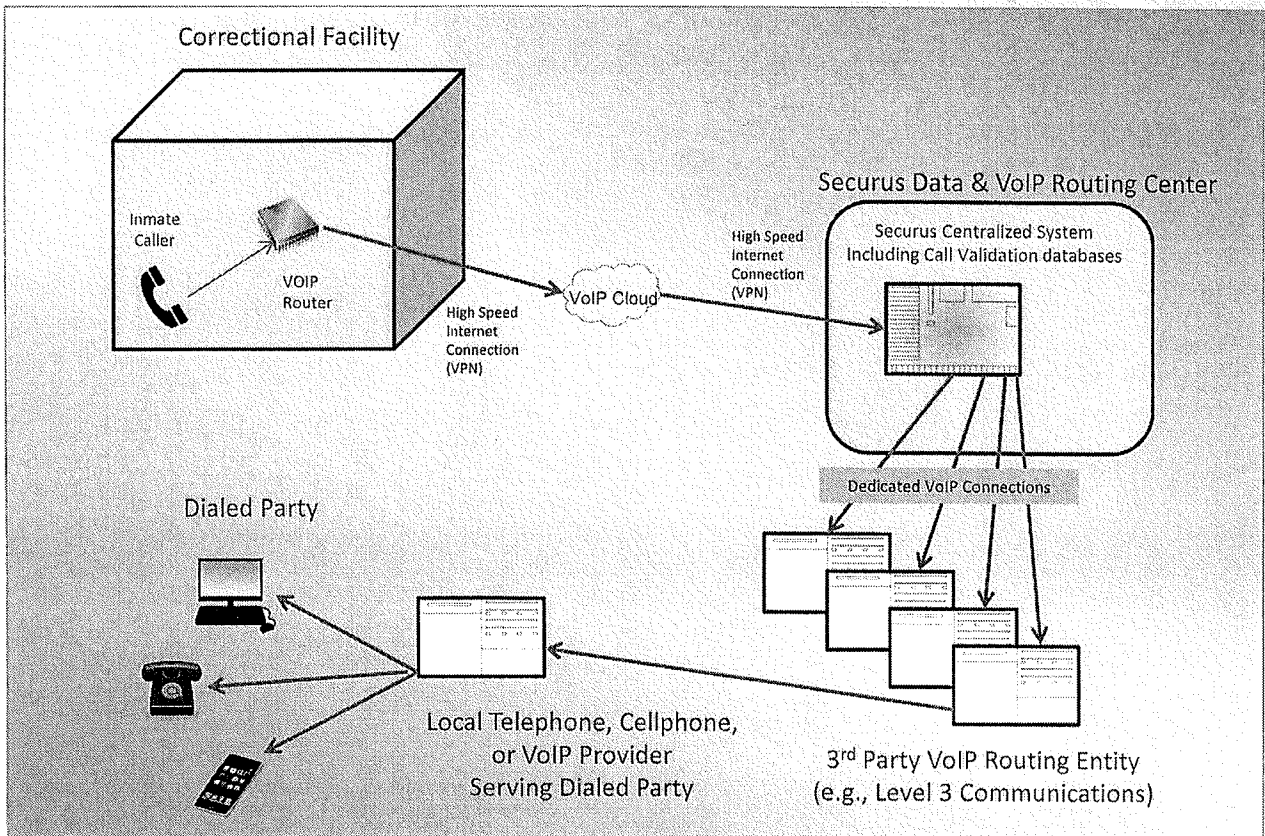


EXHIBIT F

**SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION**

DOCKET NO. MER.L-143-17

MORGAN, LEWIS & BOCKIUS LLP
(Pennsylvania Limited Liability Partnership)
Joshua M. Bobeck (NJ ID No. 026291992)
2020 K St., NW
Washington, DC 20006
+1.202.373.6000
Attorneys for Plaintiff
Securus Technologies Inc.

FILED

JAN 18 2017

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION**

Securus Technologies, Inc.,

Plaintiff,

v.

Christopher Christie, Governor of New Jersey, in his official capacity; Christopher S. Porrino, Attorney General of New Jersey, in his official capacity; Gary M. Lanigan, Commissioner of the New Jersey Department of Corrections, in his official capacity; Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, in her official capacity;

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY**

DOCKET NO. MER-L-143-17

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION

1. Plaintiff Securus Technologies, Inc. provides telecommunications services to correctional institutions across New Jersey. Securus installs safe and secured telephone equipment for use by inmates within these institutions, designs and licenses proprietary software, and maintains telecommunications contracts enabling correctional institutions to secure and monitor inmate calls. These calling systems in turn enable inmates and their families to remain in contact, preserving relationships, maintaining inmates' social support, and ultimately encouraging inmates' rehabilitation and transition to life following incarceration.

2. Securus makes significant investments to make these services available. Securus recoups these investments and its operating costs through the rates it charges to users of its telephone services.

3. Recently, the State of New Jersey has acted to forbid Securus from recouping its costs and from charging a break-even, let alone reasonable, rate for its services. The recently enacted Rate Control Law directs the State's Treasurer and county officials, along with private correctional facilities in the State, to pay no more than 11¢ per minute for domestic telephone service (and 25¢ for international service). N.J. P.L. 2016, c. 37, C.30:4-8.12 2.a, 2.b. (2016). The Rate Control Law also prohibits Securus from recouping its costs by imposing additional fees or charges on inmates and call recipients.

4. New Jersey Supreme Court and United States Supreme Court precedents recognize that the Rate Control Law is an unconstitutional taking of private property. By limiting Securus's ability to recoup costs incurred in part for the State's benefit, the State has effectively appropriated those investments. This taking offends the Takings Clause of the United States Constitution, and further deprives Securus of property without due process of law.

5. The 11¢-per-minute rate cap, together with the prohibition on other surcharges, is a confiscatory rate. Defendants Christopher Christie, Governor of New Jersey; Christopher S. Porrino, Attorney General of New Jersey; Gary M. Lanigan, Commissioner of the New Jersey Department of Corrections; and Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, must be enjoined from enforcing the Rate Control Law against Securus and prisons seeking to contract with Securus.

THE PARTIES

6. Plaintiff Securus Technologies, Inc. is a Texas corporation with its principal place of business located in Dallas, Texas.

7. Defendant Christopher Christie is the Governor of New Jersey, sued here in his official capacity.

8. Christopher S. Porrino is the Attorney General of New Jersey, sued here in his official capacity.

9. Defendant Gary M. Lanigan is the Commissioner of the New Jersey Department of Corrections, sued here in his official capacity.

10. Defendant Elizabeth Connolly is the Commissioner of the New Jersey Department of Human Services, sued here in her official capacity.

FACTUAL BACKGROUND

11. Securus Technologies is a nationwide provider of safe telecommunications systems for use within correctional facilities. These include the full panoply of audio and visual communications systems for inmates, along with corresponding technologies enabling agencies to monitor correctional institutions and the communications made from within those institutions.

12. Telephone communications are one of Securus' largest product lines for correctional institutions. Securus provides end-to-end telecommunications systems for federal, state, and local correctional institutions. Securus installs secure telephone facilities—telephones which can withstand inmates' attempts to damage them or misuse them. Securus develops and maintains software that enables institutions to monitor inmates' calls. And Securus secures the telecommunications bandwidth and related licenses required to carry calls.

13. Securus has made and continues to make substantial up-front investments to enable it to engage in the business of providing telecommunications services to jails and prisons. This includes both facility-specific costs and enterprise-wide costs. The facility-specific costs include costs to physically install and secure the telephones and related equipment, including safeguards in the telephones' physical components; installation of a sophisticated Internet

Protocol (“IP”) Enabled data network necessary for the operation of these phones and customized for the facility’s specific population and needs—including personal identification numbers specific to that institution’s inmates and security protocols specific to that institution’s regulations; extensive training for the institution’s corrections officers on the operation and monitoring of the telephone systems; and miscellaneous engineering-related costs that, by necessity, cannot be transferred for use at another institution. Taken together, Securus typically expends between two and four months of concerted effort to install a telecommunications system and to bring it online—incurring significant costs in labor and materials. The enterprise-wide costs include customized software systems and protocols to enable call processing, call monitoring, multiple billing methods, specialized alert services, and integration with existing facility systems. Securus has made substantial investments in developing, upgrading, and maintaining these systems, which are essential to its ability to offer inmate telephone services that meet the specialized needs of correctional facilities. The costs of these systems can be recovered only through charges for Securus’ calling services.

14. Securus incurs costs before providing telecommunications services to a correctional institution, recouping these sunk costs through its calling pricing structure. A typical pricing structure for inmate-initiated calls includes per-minute of use charges that can vary by type of call and by individual facility contract.

15. Securus passes along certain mandatory federal and state calling charges as part of its telecommunications plans, including sales taxes, state and federal Universal Service Fund fees, and, where applicable, other similar fees and charges. .

16. Securus also typically pays a commission to the government agency or other entity running a correctional facility based on the gross revenue an installed telephone system generates.

17. Securus currently provides inmate calling services in New Jersey under contracts with the Cape May County Correctional Center and the Passaic County Jail. In both cases, Securus imposes per-minute charges on all in-state calls, which are collected from either the inmate placing or the party receiving the call. Securus originally paid a significant commission under both contracts, as well, paying over two-thirds of gross calling revenue as commission under the Cape May County agreement, and over half of gross calling revenue as commission under the Passaic County agreement. However, both of these contracts have subsequently been amended to eliminate the payment of commissions to the County governments.

18. The Rate Control Law sets per-minute calling rates below what Securus requires to break even. Securus estimates that it costs an average of 33 cents per minute to install and maintain secure communications equipment in a New Jersey institution and provide calling services, even excluding the payment of site commissions. Many institution-specific variables affect this bottom-line cost, including the size of the institution, type of institution (longer term prison or shorter term jail), and its particular security parameters. For example, providing service to county jails is typically much more expensive on a per-minute basis than providing service to State prisons, because of their smaller populations, greater inmate turnover, and lower calling volumes due to generally short inmate stays. Securus recoups its investments and defrays operating costs by charging per-minute call rates greater than this estimated minimum.

19. The Rate Control Law, however, prohibits higher first minute rates—charged to an inmate, the call's recipient, or otherwise—and caps per-minute rates at 11¢ per minute for

domestic calls, regardless of the type of facility or the cost of serving it. The Rate Control Law also prohibits institutions from charging or collecting commissions on calls. The Rate Control Law is silent as to whether the 11 cent ceiling includes pass-through charges such as taxes, Universal Service Fund contributions, and other items described in paragraph 15 above.

20. The Rate Control Law also caps per-minute rates for international calls at the lesser of 25¢ per minute or rates set by the Federal Communications Commission. As of this Complaint, the FCC has not prescribed a maximum per-minute rate, leaving the international-call price control at 25¢ per minute.

21. International calls from correctional facilities are rare. These calls do not offset losses on domestic calls; further, the cost to complete international calls is significantly larger than the cost to complete a domestic call—due to, for example, charges imposed by foreign carriers for terminating these international calls.

22. The Rate Control Law lacks a hardship provision for defraying or otherwise relieving Securus's costs. The Rate Control Law makes no allowance for the possibility that Securus and other vendors cannot maintain calling services in New Jersey prisons without operating at a loss.

23. In addition to capping rates at below-cost levels, the Rate Control Law requires institutions to provide telecommunications services for inmates. The Rate Control Law obligates prisons and jails to seek, and ultimately to secure, inmate telephone calling for 11¢ per minute, regardless of a particular facility's population or other cost characteristics.

24. Securus cannot provide calling services in many New Jersey facilities at the maximum rate permitted by the Rate Control Law without incurring significant and ongoing losses.

And without commissions, county jails likely cannot afford the additional costs associated with providing calling services, either.

25. Because of the Rate Control Law, Securus may even be unable to renew its existing contracts with correctional institutions. The Rate Control Law forbids paying the rates that Securus must charge to break even on its up-front and ongoing investments.

26. Securus has incurred substantial up-front costs to enable it to offer inmate calling services in the State of New Jersey. Having already incurred those costs, the State has put to Securus the option of writing them off or accepting a rate so low as to run at an operating loss—effectively confiscating Securus’ initial and ongoing investments within New Jersey.

FIRST COUNT

(Takings and Due Process Clauses of the United States Constitution)

27. The Takings Clause of the United States Constitution, as incorporated against the States by the Fourteenth Amendment’s Due Process Clause, prohibits States from taking private property for public use without just compensation. It prohibits not only physical seizures or appropriations of private property, but price regulations that have the same result: a State may not set prices or reimbursement rates for services so low that they amount to confiscatory rates. *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 310 (1989).

28. Rate regulation violates the Takings and Due Process Clauses when rates fall below “a fair rate of return given the risks under a particular rate setting system and . . . the amount of capital upon which the investors are entitled to that return.” *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). As the New Jersey Supreme Court has explained, if a State limits the amount that property owners may charge in the use of their property, the Takings Clause obligates that State to establish rates that “permit an economically efficient operator to obtain a ‘just

and reasonable return' on his investment." *Hutton Park Gardens v. Town Council of W. Orange*, 68 N.J. 543, 570 (1975).

29. Section 2 of the Rate Control Law—imposing an 11¢ cap on rates—precludes a “just and reasonable return” in all cases. On information and belief, no similarly situated, economically efficient national telecommunications provider could provide calling services at all facilities in New Jersey at this rate, while also shouldering the costs of installing and setting up calling services within a penal institution, without suffering significant and ongoing losses on its investment.

30. In addition, the Rate Control Law precludes Securus in particular from continuing to provide services at anything other than an operating loss, and effectively confiscates Securus’s initial investments in correctional institutions within the State. At bottom, the State’s 11¢ rate is arbitrary, divorced from the actual costs required to maintain a secure correctional telecommunications network.

31. The Rate Control Law does not provide for an administrative remedy for seeking compensation; it has already gone into effect, and will affect any new or renewed contract for telephone services. Seeking compensation from the State is therefore futile.

32. Without injunctive relief, Securus will suffer irreparable harm. Once discontinued, business relationships will be difficult to re-institute. And, once lost, its investments in various institutions cannot be recovered—either from correctional institutions or the State. No adequate remedy at law exists for either of these harms, which are imminent.

SECOND COUNT

(Takings Clause of the New Jersey Constitution)

33. Analogously, the Takings Clause of the New Jersey Constitution requires the State to pay “just compensation” when taking private property for public use. N.J. Const. Art. III, sec. VI. And again, this demand runs not only to physical takings, but also to price controls that prevent “an economically efficient operator” of property from “obtain[ing] a ‘just and reasonable return’ on his investment.” *Hutton Park Gardens v. Town Council of W. Orange*, 68 N.J. 543, 570 (N.J. 1975).

34. Independent of its constitutional infirmity under the federal Takings and Due Process Clauses, Section 2 of the Rate Control Law prohibits an economically efficient operator—here, Securus—from earning a just and reasonable return on its investments under the New Jersey Constitution. Neither Securus nor any similarly situated operator of secured telecommunications services could service or renew contracts under the terms mandated by the Rate Control Law without operating at a loss.

35. No State law remedy otherwise relieves Securus of this deprivation. The Rate Control Law does not provide for a hardship exception or any other avenue of reimbursement; rather than providing just compensation, the law—by design—provides Securus no compensation at all. That denial necessarily violates the New Jersey Constitution’s Takings Clause.

PRAYER FOR RELIEF

Securus prays for relief as follows:

A. A declaration that Section 2 of New Jersey Public Law 2016, c.037, S1880 3R, as codified at C.30:4-8.12, violates the United States Constitution’s Takings and Due Process Clauses, on its face and as applied to Securus,

B. A declaration that Section 2 violates the New Jersey Constitution's Takings Clause, on its face and as applied to Securus,

C. An injunction permanently enjoining the State and its agents from enforcing Section 2, promulgating administrative regulations based on that Section, or enforcing any regulations based on that Section,

D. An award of attorneys' fees, costs, and expenses incurred in this action pursuant to both 42 U.S.C. § 1988 and State law, and

E. Any further legal or equitable relief that this Court deems just and proper.

RULE 4:5-1 CERTIFICATION

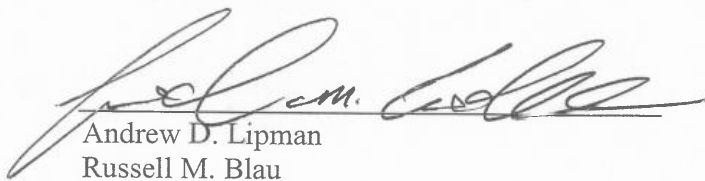
Pursuant to Rule 4:5-1, the undersigned certifies to the best of his knowledge that this matter is not the subject of any other action pending in any Court or any arbitration proceeding; and that no other action or arbitration proceeding is presently contemplated by the Plaintiff, and that Plaintiff does not presently know of any other parties who should be joined in this action.

RULE 1:38-7(C) CERTIFICATION

Pursuant to Rule 1:38-7(c), the undersigned certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Respectfully submitted,



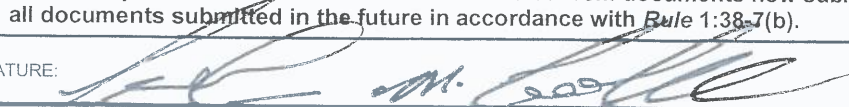
MORGAN, LEWIS & BOCKIUS LLP
Attorneys for Plaintiff
Securus Technologies Inc.

Handwritten signatures of Andrew D. Lipman, Russell M. Blau, and Joshua M. Bobeck. The signatures are written in black ink and are positioned above their respective names.

Andrew D. Lipman
Russell M. Blau
Joshua M. Bobeck (NJ ID No. 026291992)

Dated: January 17, 2017

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS) Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:		
	ATTORNEY / PRO SE NAME Joshua M. Bobeck		TELEPHONE NUMBER (202) 373-6000	COUNTY OF VENUE Mercer	
	FIRM NAME (if applicable) Morgan Lewis & Bockius, LLP		DOCKET NUMBER (when available) MER-L-143-17		
	OFFICE ADDRESS 2020 K St., NW Washington, DC 20006		DOCUMENT TYPE Complaint		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) Securus Technologies, Inc.,		CAPTION Securus Technologies, Inc., Plaintiff, v. Christopher Christie, Governor of New Jersey, in his official capacity; Christopher S. Porrino, et. al.			
CASE TYPE NUMBER (See reverse side for listing) 999 (Takings)	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.			
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS			
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input checked="" type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS			
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION					
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="font-size: 2em; color: red; font-weight: bold;">COPY</div> <div style="text-align: right;"> <div style="border: 1px solid blue; padding: 5px; color: blue; font-weight: bold;">FILED</div> <div style="color: red; font-weight: bold;">JAN 18 2017</div> <div style="color: blue; font-weight: bold;">SUPERIOR COURT OF NJ MERCER VICINAGE CIVIL DIVISION</div> </div> </div>					
	DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
	WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
ATTORNEY SIGNATURE: 					

MERCER COUNTY COURTHOUSE
CIVIL CASE MANAGEMENT OFFICE
175 SOUTH BROAD ST P O BOX 8068
TRENTON NJ 08650-0068

COURT TELEPHONE NO. (609) 571-4490
COURT HOURS 8:30 AM - 4:30 PM

TRACK ASSIGNMENT NOTICE

DATE: JANUARY 24, 2017
RE: SECURUS TECHNOLOGIES INC VS CHRISTIE
DOCKET: MER L -000143 17

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON KAY WALCOTT-HENDERSON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 030
AT: (609) 571-4454.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE
WITH R.4:5A-2.

ATTENTION:

ATT: JOSHUA M. BOBECK
MORGAN LEWIS & BOCKIUS LLP
502 CARNEGIE CENTER
PRINCETON NJ 08540-6289

JUWTOUZ

MORGAN, LEWIS & BOCKIUS LLP
(Pennsylvania Limited Liability Partnership)
Joshua M. Bobeck (NJ ID No. 026291992)
joshua.bobeck@morganlewis.com
2020 K St., NW
Washington, DC 20006
+1.202.373.6000
Attorneys for Plaintiff
Securus Technologies Inc.

Securus Technologies, Inc.,

Plaintiff,

v.

Christopher Christie, Governor of New Jersey, in his official capacity; Christopher S. Porrino, Attorney General of New Jersey, in his official capacity; Gary M. Lanigan, Commissioner of the New Jersey Department of Corrections, in his official capacity; Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, in her official capacity;

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY**

DOCKET NO. MER L-000143-17

CIVIL ACTION SUMMONS

From The State of New Jersey

To The Defendant Named Above: **Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, in her official capacity**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must

also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf

/s/ Michelle S. Smith
Michelle M. Smith, Esq.
Clerk of the Superior Court

Dated: January 30, 2017

Name(s) of Defendants to be served:

Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, in her official capacity;

Address: 25 Market Street
PO Box 112
Trenton, NJ 08625

FILED

JUN 28 2017

SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Defendants,
Christopher Christie, Governor of NJ
Christopher S. Porrino, Attorney General of NJ
Gary M. Lanigan, Commissioner of the NJ Dept.
of Corrections
Elizabeth Connolly, Commissioner of the NJ
Dept. of Human Services

By: Patricia A. Krogman (013962005)
Chanel Van Dyke (165022015)
Deputy Attorneys General
Patricia.Krogman@dol.lps.state.nj.us
Chanel.VanDyke@dol.lps.state.nj.us
973-648-3441

SECURUS TECHNOLOGIES, INC.,

Plaintiff,

v.

CHRISTOPHER CHRISTIE, GOVERNOR OF
NEW JERSEY, IN HIS OFFICIAL
CAPACITY; CHRISTOPHER S. PORRINO,
ATTORNEY GENERAL OF NEW JERSEY,
IN HIS OFFICIAL CAPACITY; GARY M.
LANIGAN, COMMISSIONER OF THE NEW
JERSEY DEPARTMENT OF CORRECTIONS,
IN HIS OFFICIAL CAPACITY;
ELIZABETH CONNOLLY, COMMISSIONER
OF THE NEW JERSEY DEPARTMENT OF
HUMAN SERVICES, IN HER OFFICIAL
CAPACITY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MERCER COUNTY

Docket No. MER-L-143-17

CIVIL ACTION

ORDER

THIS MATTER, having come before the court by counsel for
Defendants, Christopher Christie, Governor of New Jersey,
Christopher S. Porrino, Attorney General of New Jersey, Gary M.

Lanigan, Commissioner of the New Jersey Department of Corrections, and Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services, on notice to counsel for Plaintiff, Joshua M. Bobeck of Morgan, Lewis & Bockius, LLP, for an order dismissing Plaintiffs' Complaint, and the court having reviewed the moving papers and considered the arguments of counsel, if any, and for good cause having been shown:

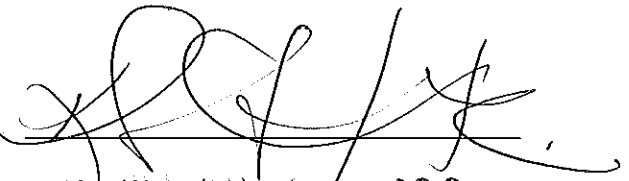
It is on this 28th day of June, 2017:

ORDERED that defendants' motion be, and hereby is, GRANTED;

for failure to plead facts establishing an actual controversy.

ORDERED that Plaintiffs' Complaint, be, and hereby is, DISIMISSED; and it is further;

ORDERED, that a copy of this Order be served on all counsel of record within seven (7) days of receipt by movant's counsel.

By: 
Kay Walcott-Henderson, J.S.C.

Opposed

Unopposed

On this date, pursuant to R. 1:6-2
The court's statement of reasons
have been set forth on the record.



P.O. Box 32159
Newark, NJ 07102

Tel: 973-854-1714
Fax: 973-642-6523

ashalom@aclu-nj.org
www.aclu-nj.org

June 7, 2017

Honorable Kay Walcott-Henderson, J.S.C.
Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street
Trenton, New Jersey 08608

**Re: Securus Technologies, Inc. v. Christopher Christie,
Governor of New Jersey, et al.
Docket No.: MER-L-143-17**

Dear Judge Walcott-Henderson:

Please accept this proposed *amici curiae* letter brief in lieu of a more formal brief from proposed *amici* the American Civil Liberties Union of New Jersey (ACLU-NJ); The Immigrant Rights Clinic (IRC) of Washington Square Legal Services, Inc.; New Jersey Advocates for Immigrant Detainees (NJAID); First Friends of New Jersey and New York (First Friends); and the Prison Policy Initiative (PPI). The law at issue, the Rate Control Law (RCL), does not implicate Plaintiff's legal rights. Additionally, the Legislature acted within its authority when it restricted usurious or inflated phone rates that reduce inmates' connections with the outside world. *Amici* opposes Plaintiff Securus' request for injunctive and declaratory relief and supports the State's motion to dismiss Securus' complaint in this matter.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

For purposes of this brief, *Amici* adopts the Statement of Facts and Procedural History set forth by the State.

ARGUMENT

- I. THE STATE MAY PROTECT THE PUBLIC INTEREST BY PREVENTING USURIOUS OR INFLATED PHONE RATES THAT REDUCE INMATES' CONTACT WITH THE OUTSIDE WORLD.

The Legislature has a right to regulate business within the state unless it is otherwise beyond the bounds of its authority. *See, e.g., Manigault v. Springs*, 199 U.S. 473, 480 (1905) (declaring "[i]t is settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected"); *see also, Lane Distributors, Inc. v. Tilton*, 7 N.J. 349, 362 (1951)(explaining that the regulation of private

enterprise by a public authority is valid "when done in the exercise of the police power of the state"). In this case, the Legislature used its authority to ensure that the profit motives of facilities and vendors do not grossly burden prisoners' contact with the outside world.

It is well established that regular contact between offenders and their families benefits offenders, families and the public. See, e.g., Linda G. Bell and Connie S. Cromwell, *Evaluation of a Family Wellness Course for Persons in Prison*, 45, 46 (2015) (noting numerous studies collectively finding that family contact can mitigate the negative impact of parental incarceration on children, increase the likelihood of post-incarceration family reunification, improve the mental health of ex-offenders and their families, and reduce recidivism). Yet, for decades, families across the country and within New Jersey had been forced to pay exorbitant and frequently prohibitive phone costs in order to stay connected to their incarcerated loved ones. See, e.g., Drew Kukorowski, Peter Wagner & Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, PRISON POLICY INITIATIVE, May 2013, at 2, available at: https://static.prisonpolicy.org/phones/please_deposit.pdf (illustrating that a 15-minute call from prison or jail frequently "cost[s] more than \$17 – a disturbing anomaly in the era of unlimited long-distance plans for only \$52.99 a month.");

Comment on Prison Phone and Video Rates by New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic, Public Notice #342689, at 3, available at: <https://www.fcc.gov/file/11928/download> (charting Passaic County's June 2016 phone rates as \$2.55 for the first minute and \$0.25 cents for each additional minute - amounting to \$6.05 for a brief 15-minute call).

Moreover, these excessive rates stem from non-service based charges, such as facility commissions. See Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14110 ¶ 3 (2013) ("2013 ICS Order") ("A significant factor driving these excessive rates is the widespread use of site commission payments - fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service"), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-113A1_Rcd.pdf; see also John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 PRISON LEGAL NEWS 1, 3 (2011) (finding that in 2008 "[p]rison phone service kickbacks average 42% nationwide among states that accept commissions, and in some cases reach 60% or more), available at <https://www.prisonlegalnews.org/media/publications/revise%20nat>

[ionwide%20pln%20survey%20examines%20prison%20phone%20contracts%20C%20kickbacks.pdf](#).

Since 2012, the FCC has implemented several reforms to ensure that prison phone rates are fair, just, and reasonable. See, e.g., Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012); Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) ("2013 ICS Order"); Rates for Interstate Calling Services, 30 FCC Rcd 12763 (2015) ("2015 Order"); Rates for Interstate Inmate Calling Services, FCC 16-102 (2016) ("2016 Order"). In so doing, it has recognized that "[m]aintaining contact with family and friends during incarceration not only helps the inmate, but it is beneficial to our society as a whole." *In re Rates for Interstate Inmate Calling Services, Notice of Proposed Rulemaking*, 27 FCC Rcd 16629, 16660 (statement of Comm'r Clyburn).

In 2016, New Jersey joined the national movement for phone justice and enacted the RCL. The landmark law forbids facilities from entering contracts with vendors whose rates exceed 11 cents per minute for domestic calls or 25 cents per minute for international calls. *N.J.S.A. 30:4-8.12(a)*; *N.J.S.A. 30:4-8.12(c)*. It also precludes facilities from receiving commissions or surcharges for telephone usage by inmates. *N.J.S.A. 30:4-8.12(b)*. In so doing, New Jersey took a critical step in ending grossly exploitative inmate telephone rates.

In short, New Jersey had the authority and moral impetus to prevent companies and correctional facilities from taking advantage of our most vulnerable populations.

II. THE RCL HAS NOT DEPRIVED SECURUS OF ITS PROPERTY INTEREST.

Before the RCL was enacted, Securus entered into contracts to provide exclusive inmate calling services to Cape May County and Passaic County Jails. Defendant's Exhibit A [Def.'s Ex. A]; Defendant's Exhibit B [Def.'s Ex. B]. Each contract promised both Securus and the counties it served excessive profits at the expense of some of New Jersey's poorest and most vulnerable residents. The Cape May Contract is due to expire in March of 2018. Def's Ex. A. The Passaic contract expired, renewed and - since the enactment of RCL - has been extended to a month-to-month contract that caps phone rates and eliminates facility commissions. Def's Ex. B.

In the years since Securus signed those initial contracts, New Jersey - like some other States around the nation - has stopped companies from imposing exorbitant phone charges in exchange for facility kickbacks. N.J. P.L. 2016, c. 37, S1880 3R, as codified at C. 30:4-8.11 to -8.14. Critically, however, the RCL applies only to contracts entered into *after* its enactment. *Id.* As such, RCL has not impacted the Cape May Contract whatsoever.

Furthermore, Securus cannot claim that RCL amounts to a property taking of its extended Passaic contract because no property interest exists in *future* contracts. When the government prevents a private company from exploiting people that the company has no contractual right to exploit, the government does not exact a taking, it merely creates good public policy. *Lichter v. United States*, 334 U.S. 742, 787 (1948) (finding that Renegotiation Act which provided for recovery by the Government of "excessive profits" realized by subcontractors producing war-related products did not amount to a taking under the Fifth Amendment). Critically, where government regulations are limited to future contracts, as here, claims that the government has engaged in a taking fail. *Id.* at 788. Thus, new agreements between Securus and Passaic County that occurred after passage of the law (and thereby necessarily incorporated the law's restrictions), do not amount to a taking.

For years, both Securus and counties around New Jersey have made hundreds of thousands of dollars by exploiting New Jersey's most vulnerable residents. Securus hoped to continue to profit richly even after the contracts it signed had expired. The dashing of that hope does not amount to a taking. Because there was no taking, the complaint must be dismissed.

CONCLUSION

For all the foregoing reasons, the State's motion to dismiss should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Iris Bromberg', written over a horizontal line.

Iris Bromberg (ID # 067272013)
Alexander Shalom (ID # 021162004)
Edward Barocas
Jeanne LoCicero
AMERICAN CIVIL LIBERTIES UNION OF
NEW JERSEY FOUNDATION
Counsel for *Amici*



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
PO Box 45029
Newark, NJ 07101

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER S. PORRINO
Attorney General

MICHELLE MILLER
Acting Director

May 10, 2017

Honorable Kay Walcott-Henderson, J.S.C.
Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street
Trenton, New Jersey 08608

Re: Securus Technologies, Inc. v. Christopher
Christie, Governor of New Jersey, et al.
Docket No.: MER-L-143-17

Dear Judge Walcott-Henderson:

This Office represents Defendants Christopher Christie, Governor of New Jersey, Christopher S. Porrino, Attorney General of New Jersey, Gary M. Lanigan, Commissioner of the New Jersey Department of Corrections, and Elizabeth Connolly, Commissioner of the New Jersey Department of Human Services in the above-referenced matter. Please accept this letter brief in lieu of a formal brief in support of Defendants' Motion to Dismiss Plaintiff Securus' Complaint in this matter.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

New Jersey's Rate Control Law ("RCL"), found at N.J.S.A. 30:4-8.12, enacted on August 31, 2016, operates to ensure

affordable telephone service for inmates in State and County correctional institutions. Subsection (a) of the RCL provides:

[T]he State Treasurer or appropriate person on behalf of the county or private correctional facility shall contract with the qualified vendor whose rate shall not exceed 11 cents per minute for domestic debit, pre-paid, and collect calls and who does not bill to any party any service charge or additional fee exceeding the per minute rate, including, but not limited to, any per call surcharge, account set up fee, bill statement fee, monthly account maintenance charge, or refund fee.

[N.J.S.A. 30:4-8.12(a)].

As set forth above, the RCL prohibits State and county entities from contracting with any telephone service provider that bills in excess of eleven cents per minute for domestic calls. Ibid.

Subsection (a) of the RCL also provides that contracts for inmate calling services ("ICS") are subject to public bidding - specifically, "the procurement provisions set forth in [...] chapter 11 of Title 40A of the New Jersey Statutes". N.J.S.A. 30:4-8.12(a). Title 40A, in turn, limits contracts subject to public bidding to terms not exceeding five years. N.J.S.A. 40A:11-4.2; N.J.S.A. 40A:11-15(8) (limiting the maximum duration of public contracts for telecommunications services to five years).

To further ensure affordable telephone service for inmates, subsection (b) of the law provides in pertinent part: "[a]

State, county, or private correctional facility shall not accept or receive a commission or impose a surcharge for telephone usage by inmates in addition to the charges imposed by the telephone service provider." N.J.S.A. 30:4-8.12(b). Thus, subsection (b) prohibits correctional facilities from requiring their providers to pay site commissions. Subsection (b) thereby acts to offset any financial detriment caused to providers by the rate ceiling in subsection (a). N.J.S.A. 30:4-8.12(b).

Importantly, the RCL also provides that: "section 2 shall apply to any new or renewal contract for inmate telephone services in effect on or after the date of enactment." N.J. P.L. 2016, c. 37, S1880 3R, as codified at C. 30:4-8.11 to - 8.14. Because the RCL was enacted on August 31, 2016, ICS contracts entered into on or after that date must comply with Section 2's eleven cent rate cap. Existing contracts remain exempt, allowing the providers to continue to charge the rates agreed upon at the contract's inception.

Plaintiff Securus, an ICS provider, filed the Complaint in this matter on January 18, 2017. Securus seeks a declaration that the RCL violates the Takings and Due Process Clauses of the United States Constitution and the Takings Clause of the New Jersey Constitution, as well as an injunction to enjoin the State from enforcing the RCL. Compl. ¶¶ A-C. In its Complaint, Securus explains that it incurs significant costs to install and

operate telecommunications systems in jails and that it must charge, on average, at least thirty-three cents per minute - three times the RCL cap - only to break even. Id. at ¶ 18. Securus also claims that the RCL prohibits similarly-situated vendors from providing ICS in New Jersey prisons without operating at a loss. Id. at ¶ 22.

Securus also represents that it currently holds two contracts for the provision of ICS in the State of New Jersey: the first with Cape May County, to provide ICS to the Cape May County Correctional Center; and the second with Passaic County, to provide ICS to the Passaic County Jail. Id. at ¶ 17.¹

A. The Cape May County Contract

On March 26, 2013, Cape May's Board of Chosen Freeholders ("Cape May Board") adopted Resolution No. 235-13 awarding a competitive contract to Securus "to furnish, deliver, install and maintain one (1) new inmate telephone system and jail

¹ It is proper for this Court to consider the documents referred to in the Complaint as well as public documents, including Passaic County's Notice to Bidders and Bid Tally Sheet (both available on Passaic County's public website at <http://www.passaiccountynj.org/bids.aspx?bidID=1382&PRINT=YES>), in the context of this Motion to Dismiss without converting it to a summary judgment motion. Banco Popular N. Am. V. Gandi, 184 N.J. 161, 183 (2005); Myska v. New Jersey Mfrs. Ins., 440 N.J. Super. 458, 482 (App. Div.), app. dismissed 224 N.J. 523 (2015); NJ Sports v. Bostick Promotions, 405 N.J. Super. 173, 178 (Ch. Div. 2007); Teamsters Local 97 v. New Jersey, 434 N.J. Super. 393, 412 (App. Div. 2014).

management system at the Cape May County Correctional Center" ("Cape May Contract"). Ex. A.² The Cape May Contract provides for a five-year term from March 2013 to March 2018. Ibid. Because the Cape May Contract commenced its five-year term prior to August 31, 2016, the RCL does not impact it.

The Cape May Contract has been amended twice to comply with federal law. Ibid. On March 11, 2014, the Cape May Board adopted Resolution 168-14 to comply with new rate caps and the elimination of surcharges for interstate calls mandated by the Federal Communications Commission ("FCC"). Ibid. Then, on February 23, 2016, the Cape May Board adopted Resolution 173-16 to comply with another FCC order regulating "call rates of 22 cents per minute for all call types" and prohibiting the payment of site commissions on revenues earned. Ibid.

B. The Passaic County Contract

On April 24, 2010, the Passaic County Board of Chosen Freeholders ("Passaic County Board") adopted Resolution R-10-270 awarding Securus a contract with Passaic County following a competitive bidding process. Ex. B. The original contract is dated May 25, 2010. ("Passaic County Contract") Ibid. The original term of the Passaic County Contract ran from April 1, 2010 to March 31, 2013 with a one-year option to renew at the

² "Ex. A" refers to Exhibit A to the Certification of Patricia A. Krogman filed in support of this Motion.

option of the County. Ibid. The Passaic County Contract has been amended several times, most recently on December 13, 2016, when the Passaic County Board adopted Resolution R-16-1024 authorizing an additional extension, on a month-to-month basis, capping Securus' per minute rate at eleven cents and eliminating site commissions to comply with the RCL until such time as Passaic County issues a new Request for Proposals ("RFP") and recommends a new award of contract. Ibid.

On February 15, 2017, the Passaic County Board issued RFP-17-005 soliciting bidders on its renewal ICS contract for the Passaic County Jail. Ex. C. In response, Securus submitted one of the five bids that Passaic County received prior to April 5, 2017. Ex. D. However, the Passaic County Procurement Center rejected Securus' bid based on its failure to submit a proper stockholder disclosure statement. Ibid.; see also N.J.S.A. 40A:11-23.2(c). Passaic County is still reviewing the bid submissions and has not yet awarded a new contract. Ibid.

LEGAL ARGUMENT

Standard of Review

To determine whether a complaint should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2(e), a court's "inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs.

Corp., 116 N.J. 739, 746 (1989). The court should "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. The court must give plaintiffs every reasonable inference of fact and "accept as true the facts alleged in the complaint." Darakjian v. Hanna, 366 N.J. Super. 238, 242 (App. Div. 2004); see Printing Mart, supra, 116 N.J. at 746.

Nevertheless, "the essential facts supporting plaintiff's cause of action must be presented in order for the claim to survive; conclusory allegations are insufficient in that regard." Scheidt v. DRS Tech., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012) (emphasis added). "The motion may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiffs' claim must be apparent from the complaint itself." Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003).

Although state courts in New Jersey are not beholden to the jurisdictional limits placed on federal courts by virtue of Article III's case and controversy requirement, New Jersey courts have nonetheless preserved the requirement that plaintiffs must sufficiently establish the existence of a

"justiciable controversy" even outside the declaratory context. O'Shea v. N.J. Schools Construction Corp., 388 N.J. Super. 312, 317-18. (App. Div. 2006). Thus, for a complaint to state a claim for relief, a plaintiff must include factual allegations giving rise to a justiciable claim. Ibid. More specifically, the factual allegations, taken together, must establish that plaintiff holds a "claim of right" predicated on plaintiff's "legal rights," which have been affirmatively denied by defendant. Id. at 317. Justiciability connotes self-imposed, judicially-constructed jurisdictional limitations on matters appropriate for judicial review. See N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411 (App. Div. 1997). It requires courts to inquire into whether the duty, breach, and right asserted can be judicially identified, determined, and molded. See Gilbert v. Gladden, 87 N.J. 275, 281 (1981).

Mootness and ripeness are aspects of justiciability concerned with ensuring that judicial review is only granted to those plaintiffs threatened with immediate harm. See N.J. Tpke Auth. v. Parsons, 3 N.J. 235, 241 (1949); Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010); Jackson v. Dept. of Corrections, 335 N.J. Super. 227, 231 (App. Div. 2000). Both a mootness defense and a ripeness defense may be treated as a "failure to state a claim" defense under Rule 4:6-2(e). Teamsters Local 97, supra, 434 N.J. Super. at 393; Rezem Family

Associates, LP v. Borough of Millstone, 423 N.J. Super. 103
(App. Div. 2011).

POINT I

THE COMPLAINT MUST BE DISMISSED BECAUSE
SECURUS FAILS TO PRESENT AN "ACTUAL
CONTROVERSY" AS REQUIRED UNDER THE
DECLARATORY JUDGMENT ACT.

In its Complaint, Securus seeks a declaration that the RCL violates the United States Constitution's Takings and Due Process Clauses, as well as the New Jersey Constitution's Takings Clause, both on its face and as applied to Securus. Compl. ¶¶ A, B. As such, the relief sought by Securus implicates the New Jersey Declaratory Judgment Act ("DJA"). N.J.S.A. 2A:16-50 to -62.

To state a claim for declaratory relief under the DJA, a plaintiff must plead factual allegations sufficient to establish the existence of an "actual controversy." N.J.S.A. 2A:16-61. "The court may refuse to render or enter a declaratory judgment, when, if rendered or entered, it would not terminate the uncertainty or controversy giving rise to the proceeding." Ibid.; see also Parsons, supra, 3 N.J. 235 (circumscribing remedies provided by the DJA based on "the salutary qualification that the jurisdiction of the courts may not be invoked in the absence of an actual controversy"). Our Supreme Court has clarified that the "actual controversy" requirement

precludes courts from rendering advisory opinions, functioning in the abstract, deciding moot cases, or deciding issues other than "concrete contested issues conclusively affecting adversary parties in interest." Id. at 240. As a consequence, where a plaintiff fails to plead facts establishing the existence of an "actual controversy," the plaintiff is not entitled to declaratory relief, and the complaint must be dismissed. The DJA is designed to provide a remedy for the adjudication of the legal rights of the parties. Likewise, "where there has been no . . . invasion of the claimed right," the DJA is not available. Ibid.

Here, Securus is invoking the DJA to secure judicial adjudication regarding its purported interests in the Cape May and Passaic County Contracts. But Securus does not have a legal right to a continued contract with Passaic County - the contract is subject to public bidding, and that process has commenced. The current contract is only in effect until a new provider is secured, and that process is underway. To the extent Securus claims it has been harmed because its extended contract is subject to the RCL, Securus itself chose to continue to provide the services at the eleven cent rate. Securus is free to bid for the new Passaic County contract or to pass, but is not legally entitled to continue to provide ICS to Passaic County after the expiration of its current contract.

Moreover, Securus' contract with Cape May County continues in effect until 2018, and will remain unaffected by the RCL. By its terms, the RCL only applies to new or renewal contracts. As a result, Securus is legally entitled to continue to charge the original rate for ICS in Cape May County. The RCL is not retroactive.

Because Securus has failed to plead factual allegations establishing any legal right with respect to the Passaic County Contract or establishing an invasion of its claimed right with respect to the Cape May County Contract, the DJA is not available and the Complaint must be dismissed.

POINT II

THE COMPLAINT MUST BE DISMISSED BECAUSE SECURUS' CLAIM IS NOT RIPE FOR ADJUDICATION.

A. Ripeness Generally

This Court should dismiss the Complaint until such time as Securus can and has pled issues that have ripened into causes of action.

Ripeness is a justiciability doctrine that requires the court to make the threshold determination of whether a case is ripe for judicial review and thereby avoid rendering a premature decision. Nat'l Park Hospitality Ass'n v. Department of Interior, 538 U.S. 803, 808, 123 S. Ct. 2026, 155 L. Ed. 2d 1017 (2003). New Jersey courts analyze ripeness pursuant to a two-

pronged analysis: (1) the fitness prong; and (2) the hardship prong. Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells, 204 N.J. 79, 99 (2010); Empire Trust Co. v. Board of Commerce and Navigation, 124 N.J.L. 406, 411 (1940); Hovnanian Companies of North Cent. Jersey, Inc. v. New Jersey Dept. of Environmental Protection, 379 N.J. Super. 1, 9-10 (App. Div. 2005).

In Menendez, supra, 204 N.J. at 99, the New Jersey Supreme Court analyzed the fitness prong of the ripeness test by drawing a distinction between legal and factual issues. The Court framed the issue in Menendez as: whether, under the Uniform Recall Election Law ("UREL"), N.J.S.A. 19:27A-1 to 19:27A-18, the notice of intention that the recall committee had submitted with the Secretary in support of its recall petition complied with the provisions of N.J.S.A. 19:27A-6. Menendez, supra, 204 N.J. at 88; N.J.S.A. 19:27A-7(a). The Court characterized this issue as "purely legal" and reversed the Appellate Division's decision to dismiss the complaint on ripeness grounds pending further factual development of the record. Menendez, supra, 204 N.J. at 94. The Court explained that legal issues of statutory or regulatory interpretation, as opposed to fact-based issues, are generally fit for judicial review because they are unlikely to benefit from the development of additional facts. Menendez, supra, 204 N.J. at 99.

In contrast to the "purely legal" issue in Menendez, the issue here is fact-based: whether the RCL constitutes an unconstitutional taking that deprives Securus and other ICS providers of their property without due process of law by imposing rate caps below what providers must charge to recoup a reasonable return. For this issue to be ripe for review, the Complaint would have to allege facts sufficient to allow a court to determine whether the RCL precludes Securus and similarly-situated ICS providers from recouping their initial investments and from recovering their operating costs plus a reasonable return. In contrast to the "purely legal" issue in Menendez, this is an issue that would benefit from the development of additional facts. Accordingly, this Court should dismiss the Complaint.

Menendez is also distinguishable with respect to the hardship prong of its ripeness analysis. Here, Securus has made no "sufficient showing of harm" analogous to the showing made in Menendez. Menendez, supra, 204 N.J. at 100. In Menendez, the New Jersey Supreme Court observed that by invoking the ripeness doctrine as a means to abstain from declaring the UREL "manifestly unconstitutional," albeit acknowledging the possibility of such a declaration in the future, the Appellate Division's decision incidentally allowed the recall process to move forward. The Court observed that absent its decision to

reverse this incidental effect, Senator Menendez would be statutorily obligated to oversee the establishment of a recall defense committee, which would consequentially detract from his congressional responsibilities and harm the public. Menendez, supra, 204 N.J. at 100. Further, a subsequent decision by the Court that the process was "manifestly unconstitutional" after having allowed that very same process to proceed would undermine public confidence in the electoral process. Ibid. Thus, the Court found that Senator Menendez had demonstrated harm sufficient to satisfy the hardship prong. Ibid.

Here, Securus has failed to show that the RCL has forced it to redirect resources away from its provision of ICS in New Jersey to the detriment of Passaic and Cape May Counties. Also, Securus has failed to allege facts showing that a substantial public interest will be threatened in the event that this Court declines to immediately invalidate the RCL. Rather, the public interest favors upholding the constitutionality of the RCL: the RCL benefits New Jersey taxpayers by requiring lower prices on public contracts for ICS, both through the rate cap and elimination of site commissions, and strengthens the ties between inmate populations and their families and local communities by ensuring affordable means of communication.

Therefore, because the Complaint omits factual allegations sufficient to satisfy either the fitness prong or the hardship

prong, the facts alleged on the face of the Complaint have yet to ripen into a claim upon which relief can be granted.

B. Ripeness With Respect to the Cape May County Contract

Securus' Complaint should be dismissed because it fails to allege facts satisfying either the fitness or the hardship prong of New Jersey's two-pronged ripeness test specifically with respect to its Cape May County Contract.

Securus is contractually entitled to set the same rates as it set prior to the RCL's effective date under its contract with Cape May County. Regardless of whether this Court does or does not enjoin operation of the RCL, any threat posed to Plaintiff would not even arise until the Cape May County Contract expires on March 26, 2018. See Ex. A. Even then, the threat would remain too premature for judicial adjudication. Upon the expiration of the Cape May Contract in 2018, Plaintiff will have provided ICS to Cape May County for the maximum duration allowed by N.J.S.A. 40A:11-4.2 and -15(8) before the County must re-bid the contract pursuant to the public bidding requirement. The RCL in no way limits the ability of Securus to participate in that process by submitting a bid proposal. If, as Securus contends, the net effect of the rate ceiling set under the RCL is to impair the ability of Securus and similarly-situated telecommunication providers from recovering a reasonable return on their investments, then Securus would be able to present a

court with factual allegations tending to establish the real and immediate harm threatened by enforcement of the RCL at that time. In contrast, the Complaint here fails to plead factual allegations sufficient to establish the existence of a justiciable controversy ripe for judicial adjudication. Even if this Court were to permit Plaintiff leave to amend the Complaint, the facts Securus would need to plead in its amended Complaint to survive a motion to dismiss have yet to come to fruition.

Therefore, this Court should dismiss the Complaint because the factual allegations therein rest on purported rights that can only be characterized as "future, contingent, and uncertain" and purported claims that are not ripe for judicial review. See Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 302 (App. Div. 2005); see also Nat'l Park Hospitality Ass'n v. DOI, 538 U.S. 803, 808, 123 S. Ct. 2026, 155 L. Ed. 2d 1017 (2003).

POINT III

PLAINTIFF'S CLAIMS BASED ON THE PASSAIC COUNTY CONTRACT SHOULD BE DISMISSED AS MOOT BECAUSE SECURUS HAS RE-BID ON THE CONTRACT BUT ITS BID WAS REJECTED FOR REASONS UNRELATED TO THE RCL.

A court should decline to exercise judicial power on mootness grounds where plaintiff fails to sufficiently allege an immediate threat of harm. Comando v. Nugiel, 436 N.J. Super. 203, 219 (App. Div. 2014). An issue is moot where the original

issue has been resolved, and as a result, the decision sought, when rendered, can have no practical effect on the existing controversy. Ibid.

In its Complaint, Securus contends that the RCL operates to effectively confiscate its initial and ongoing investments under its existing contracts with Cape May and Passaic County and that Securus "may even be unable to renew" these contracts because "[t]he [RCL] forbids paying the rates that Securus must charge to break even on its upfront and ongoing investments." Compl. ¶

25. Securus raises several allegations directed at the inability of vendors similarly situated to Securus to provide ICS within the confines of the RCL's rate structure without operating at a loss. Id. at ¶ 22

A decision enjoining the RCL can have no practical effect on Securus' current contract with Passaic County because Securus has agreed to charge a rate consistent with the RCL on a temporary basis, until the public bidding process in Passaic County concludes, which is imminent. Regardless of whether the RCL operates to prevent Securus from recovering a reasonable return on its upfront investments, Passaic County already issued its RFP, Securus already submitted one of the five proposals responding thereto, and Passaic County already rejected Securus's bid for reasons unrelated to rate considerations. Ex. D (rejecting Securus' bid based on Securus' failure to submit a

proper stockholder disclosure statement as required by N.J.S.A. 40A:11-23.2(c)). Therefore, insofar as the Complaint alleges that the RCL impairs both Securus' existing contract with Passaic County, as well as Securus' ability to renew that contract, the issue is moot. As applied to Securus, "the part[y] who initiated the litigation," judicial interference to enjoin the RCL's application to the Passaic County Contract "can have no practical effect on the existing controversy." See Comando, supra, 436 N.J. Super. at 219 (quoting DeVesa v. Dorsey, 134 N.J. 420, 428 (1993) (Pollock, J., concurring)). Passaic County's RFP results reveal that the threatened harm underlying Securus' request for declaratory relief has already materialized at the hands of a statute wholly unrelated to the RCL, the allegedly unconstitutional statute giving rise to the allegations in Plaintiff's Complaint.

Although the lack of finality to RFP 17-005 renders this matter unfit for judicial review, Passaic County's rejection of Securus' bid warrants dismissal of the Complaint not for its premature assertion of claims but for its assertion of moot claims. By rejecting Securus' bid on grounds other than rate considerations, Passaic County eliminated the one set of facts on which Securus may have eventually relied to state a claim upon which relief could have been granted: Passaic County awarded the renewal contract pursuant to RFP-17-005 to Securus

as the successful bidder. Thus, there is no remaining set of facts that would warrant further proceedings in this matter either now or in the foreseeable future.

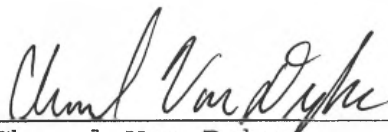
Therefore, the Complaint should be dismissed as moot because Securus can neither establish an immediate threat of harm to its interests under its Cape May County Contract nor an immediate threat of harm to any purported interest under its Passaic County Contract.

CONCLUSION

For the foregoing reasons, Defendants respectfully request dismissal of the Complaint.

Respectfully submitted,

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