Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of the Joint Application of	]	
	]	WC Docket 17-126
Securus Investment Holdings, LLC, Transferor,	]	
Securus Technologies, Inc., Licensee,	]	ITC-T/C-20170511-00094
T-NETIX, Inc., Licensee,	]	ITC-T/C-20170511-00095
T-NETIX Telecommunications Services, Inc., Licensee,	]	
(collectively, the "Licensees" or "Securus")	]	
	]	
and	]	
	]	
SCRS Acquisition Corporation, Transferee,	]	
	]	
For Grant of Authority Pursuant to Section 214 of the	]	
Communications Act of 1934, as amended, and Sections	]	
63.04 and 63.24 of the Commission's Rules to Transfer	]	
Indirect Ownership and Control of Licensees to SCRS	]	
Acquisition Corporation	]	

REPLY TO OPPOSITION

BY

THE WRIGHT PETITIONERS
CITIZEN UNITED FOR REHABILITATION OF ERRANTS
PRISON POLICY INITIATIVE
HUMAN RIGHTS DEFENSE CENTER
THE CENTER FOR MEDIA JUSTICE
WORKING NARRATIVES
UNITED CHURCH OF CHRIST, OC INC.
FREE PRESS

Lee G. Petro
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857
Counsel to The Wright Petitioners

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INTRODUCTION

The Petitioners submitted the Petition to Deny in light of Securus' violations of Section 64.6080 and Section 64.6090 of the Commission's rules. In particular, the Petitioners noted that when the Commission prohibited per-call connection charges and flat-rate fees in 2016, Securus simply rebranded their charges as "first-minute" rates, and continued on charging inmates and their families unjust, unreasonable and unfair ICS rates.

Securus' Opposition to the Petition to Deny raised more concerns than it answered. As shown herein, Securus' reading of the Commission's rules relating to the processing of domestic and international Section 214 transfer of control applications is completely inaccurate, and Securus' spiking of the football with respect to the non-final *GTL Decision* is vastly premature.

What remains is Securus' assertion that the Petitioners "cherry-picked" an "isolated" rate to substantiate the Petition to Deny. This assertion ignores the overwhelming amount of information provided in the Petition establishing that Securus' practice of charging exceptionally high first-minute rates is wide-spread. To address Securus' argument that the rates charged at Sanilac County Jail were cherry-picked and isolated, the Petitioners reviewed, and are providing herein, the actual call volume information obtained through the Michigan Freedom of Information Act for Sanilac County Jail, and other facilities in Michigan to demonstrate that the Petitioners' information was not of an isolated county, and that Sanilac County Jail is not an outlier.

In light of this information that completely rebuts the unfounded assertions in Securus' Opposition, the Commission must deny the Applications, and immediately launch an investigation into these serious violations of Commission rules, policies and procedures. At the very least, the Applications must be held in abeyance while the Commission conducts its investigation.

TABLE OF CONTENTS

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The Wright Petitioners, Citizens United for Rehabilitation of Errants, Prison Policy Initiative, The Human Rights Defense Center, The Center for Media Justice, Working Narratives, The United Church of Christ, OC Inc., and Free Press (collectively, the "Petitioners"), hereby submit this Reply to the Opposition filed by Securus Investment Holdings, LLC, Securus Technologies, Inc., T-NETIX, Inc., T-NETIX Telecommunications, and SCRS Acquisition Corporation (collectively, "Securus"), on June 26, 2017 (the "Opposition").

Securus' Opposition attempted to address the issues raised by the Petitioners in their Petition to Deny, filed June 16, 2017 (the "Petition"), regarding the above-referenced applications (collectively, the "Joint Application") to transfer control of

the above-referenced Section 214 Authorizations (the "Authorizations") from Securus Investment Holdings, LLC, to SCRS Acquisition Corporation.[1]

The Petitioners conclusively demonstrated in their Petition that after the Commission adopted rules to prohibit per-call connection fees and flat-rate charges, Securus simply renamed its connection fees as "first-minute rates" and began charging even higher rates. The Petitioners also noted in the Petition that Securus had been cited repeatedly for violating the Commission's rules, procedures and policies, leading to three public rebukes by the Commission. The Petitioners concluded that the combined effect of these rule violations, both the clear violations of Section 64.6080 and Section 64.6090[2], along with Securus' repeated abuse of Commission rules and policies, raise serious concerns whether Securus has the requisite qualifications to hold Commission authorizations.

Securus' Opposition did nothing to undermine these concerns. Instead, Securus argued that the Petition was filed late, which it was not, and that the recent appellate decision reviewing the Commission's *Second Report and Order* in WC Docket 12-375 absolved Securus of its past violations, which it does not.[3]

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[1] *See Domestic Section 214 Application Filed For The Transfer Of Control Of Securus Technologies, Inc., T-NETIX, Inc., and T-NETIX Telecommunications Services, Inc., To SCRS Acquisition Corporation* Public Notice, DA 17-500 (May 23, 2017) (*"Domestic 214 PN*"); *See Streamlined International Applications Accepted for Filing*, Rpt. No. TEL-018515 (rel. June 2, 2017) ("*International 214 PN*").

[2] *See* 47 C.F.R. § 64.6080 (2017) ("No Provider shall impose a Per-Call or Per-Connection Charge on a Consumer."). 47 C.F.R. § 64.6090 (2017) ("No Provider shall offer Flat-Rate Calling for Inmate Calling Services.")

[3] *See Rates for Interstate Inmate Calling Services*, Second Report and Order, 30 FCC Rcd 12,763 (Nov. 5, 2015) (the "*Second Report and Order*"). *See also Global Tel*Link v. F.C.C.*, (D.C. Cir. No. 15-1461), Slip Op., June 13, 2017 (the "*GTL Decision*").

Instead, in light of Securus' inability to provide any legally sustainable justification for its past rule violations, the Joint Application must be dismissed. Securus is in violation of Section 64.6080 and Section 64.6090 of the Commission's rules, and has a long history of abusing Commission rules, policies and procedures.

As such, Commission approval of the transfer of control of the Authorizations from Securus Investment Holdings, LLC, to SCRS Acquisition Corporation would not be in the public interest, convenience and necessity. In the alternative, the Commission should hold the Applications in abeyance until such time that the Commission completes an inquiry of Securus' wide-scale violation of the Commission's proscription against per-connection and flat-rate charges.

DISCUSSION

Securus' Opposition asserted that the Petition should be dismissed for being submitted "out of time." Turning to the merits, Securus argued that it should be absolved of violating Sections 64.6080 and 64.6090 for the past year because a recent, non-final appellate decision remanded the Commission's rate caps for intrastate calls. Finally, Securus attempted to minimize its past violations of Commission rules and procedures, and continued to misstate the record.

A. <u>The Petition To Deny Was Timely Filed</u>.

Securus first alleged that the "Petitioners filed their Petition late on June 16, 2017 – three days after the closing of the prescribed comment period for the Joint Application."[4] While it is not clear whether Securus was arguing that the Petition

[4] *See Opposition*, pg. 6.

was filed too late in the day on June 16th, or just that the Petition was filed three days too late, neither assertion is correct.

First, the Petition was filed in the International Bureau Filing System ("IBFS") database at 3:59:16 p.m. on June 16, 2017. A copy of the IBFS filing receipt was provided as an attachment to the service copy of the Petition. Securus did not cite any Commission rule, policy or procedure that requires the submission of a Petition to Deny in IBFS to be at some particular point earlier in the day (i.e., earlier than 3:59:16 p.m.), and undersigned counsel is unware of one as well. Thus, Securus' vague reference to an unspecified Commission rule, policy or procedure that would lead to the automatic dismissal of the Petition for being filed "late on June 16, 2017" is incorrect, and must be rejected.

Moreover, Securus' other possible assertion, namely that the Petition was filed three days late, is also inaccurate. Section 63.20(d) of the Commission's rules establishes the time period for submitting a petition to deny regarding an International Section 214 transfer of control application. In particular, Section 63.20(d) provides that "[a]ny interested party may file a petition to deny an application within the time period specified in the public notice listing an application as accepted for filing."[5]

The Petition clearly listed the International Section 214 transfer of control applications in the caption, and cited the public notice accepting the International

[5] *Id.*

Section 214 Application for streamlined processing.[6] Further, the Commission has long recognized that parties may submit a petition to deny within fourteen (14) days after the public notice announcing the acceptance of an International Section 214 application pursuant to Section 63.20(c) and (d).[7] The *International 214 PN* specified no other time period for comments or petitions to deny.

When the Commission established the streamlined processing rules for Domestic Section 214 transfer of control applications in 2002, it noted that a separate filing period for submitting petitions to deny against International Section 214 already existed.[8] In that order, the Commission urged both the International Bureau and then-Common Carrier Bureau to coordinate their processing of joint domestic and international 214 transfer of control applications, noting that "in several instances…the affected bureaus have issued joint public notices…and the bureaus have issued joint decisions disposing of applications relating to the same transaction."[9] In fact, the Commission expressed its expectation that:

> these bureaus will continue to coordinate among themselves and with other bureaus to ensure that the Commission's review related to the transfer applications is consistent, efficient, and transparent.[10]

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6 *See Petition*, pg. 1, nt. 1 ("*See Streamlined International Applications Accepted for Filing*, Rpt. No. TEL-018515 (rel. June 2, 2017)").

7 *See 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909, 4919-4920 (1999).

8 *See Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd. 5517, 5524 (2002).

9 *Id.*, 17 FCC Rcd. at 5524-5525.

10 *Id.*, 17 FCC Rcd. at 5525. This expectation was fulfilled by the International Bureau's removal of the captioned International Section 214 Applications from streamlined processing on June 30, 2017. *See Streamlined International Applications Accepted for Filing*, TEL-01855S, June 30, 2017, pg. 3 (removing Securus' and T-NETIX's International

Yet, the Commission noted that the Commission could not grant a Joint Application before the Commission had "fulfill[ed] its statutorily imposed duty to determine whether the transaction serves the public interest, notwithstanding the legitimate desire of applicants to obtain the most expedited review possible."[11]

Whatever deadlines may have been suggested in the *Domestic 214 PN* for comments on the Domestic Section 214 Applications related to this transaction, nothing in the *Domestic 214 PN* changed the timeline for the International Bureau to review the International Section 214 Applications. In fact, the *Domestic 214 PN* expressly stipulated, in footnote 1, that:

> Applicants state that they are also filing applications for the transfer of authorizations associated with international and wireless services. Any action on this domestic Section 214 application is without prejudice to Commission action on other related, pending applications.[12]

Therefore, it is clear that Securus was simply wrong that the Petition was filed too late in the day on June 16, 2017. Moreover, the Petition was timely filed pursuant to Section 63.20(d) of the Commission's rules. In light of the Commission's expectation that the International Bureau will coordinate with the Wireline Bureau

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Section 214 Applications "from streamlined processing pursuant to Section 63.12(c)(3) of the Commission's rules."). That action mirrored the Wireline Competition Bureau's action on June 19, 2017, to remove the captioned Domestic Section 214 Application from streamlined processing. *See Notice of Removal of Domestic Section 214 Application From Streamlined Treatment*, Public Notice, DA 17-594 (June 19, 2017).

[11] *Id.*, 17 FCC Rcd. at 5529. (noting also that the then-Common Carrier, now Wireline Competition, Bureau "does not have the authority to act on any applications which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."). *Id.*, 17 FCC Rcd at 5540, nt. 106.

[12] *See Domestic 214 PN*, pg. 1, nt. 1.

in reviewing the Joint Application, no harm will result from a full consideration of the substantial and material issues presented in the Petition.

Even if the full Commission eventually grants the Applications,[13] the Petitioners have presented (i) "public interest concerns that require further Commission review" pursuant to Section 63.03(c)(iv), and (ii) "specific allegations of fact…that a grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity" pursuant to Section 63.20(d), and the Petition must not be dismissed at this time merely on procedural grounds.

B. Securus Can Find No Refuge for Rule Violations In Recent Court Decision.

With Securus' insufficient procedural arguments put to rest, similar deficiencies can be found in Securus' reliance on the recent court of appeals decision relating to the *Second Report and Order*. Securus asserted that the Petitioners made a "baldly false statement about the law" in the Petition where it characterized the Commission's regulatory authority over intrastate ICS as "unresolved."[14] Securus went so far as to argue that, "[a]s of now, *intrastate* ICS rates are outside the FCC's jurisdiction" and "[t]herefore [Securus]'s *intrastate* ICS rate structures cannot possibly violate FCC rules."[15] Of course, that is not correct.

First, Securus assertion ignores the existence of the Federal Rules of Appellate Procedure. In particular, Rule 40 provides forty-five (45) days from the

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13 *See* 47 C.F.R. § 0.291(a)(2) (2017) and 47 C.F.R. § 0.261(b)(i)-(iii) (2017).

14 *See Opposition*, pg. 11, nt. 17.

15 *Id.*, pg. 13.

issuance of the *GTL Decision* for a petition for panel rehearing to be submitted.[16] Only after that 45-day period expires, with no petition for rehearing being filed, will the court's mandate be issued.

Specifically, Rule 41(b) of the Federal Rules of Appellate Procedure states that "[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires."[17] Equally as important as the timing of the issuance of the mandate is the fact that a "timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion."[18]

Thus, while Securus chided the Petitioners for making "baldly false" statements, Securus' reliance on a non-final court decision ignored federal appellate procedure, and, "[a]s of now, the *intrastate* ICS rates" are most certainly ***not*** "outside the FCC's jurisdiction."[19]

Moreover, the *GTL Decision*, on which Securus hangs its hat, did not address whether the categorical prohibition of per-connection or flat-fee charges violated Section 276 of the Communications Act. Instead, the *GTL* decision found that the Commission did not have the authority to "cap intrastate rates based on a 'just, reasonable and fair' test that is not enunciated in the statute."[20]

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16 F.R. App. P. 40.

17 F.R. App. P. 41.

18 F.R. App. P. 41(d).

19 *See Opposition*, pg. 13.

20 *See GTL Decision*, slip op. at 27.

Further, while the *GTL Decision* also vacated the intrastate Ancillary Fee caps,[21] Section 64.6080 and Section 64.6090 do not establish ancillary fee caps. These two rules simply prohibit certain practices by ICS providers. In fact, the *GTL Decision* was silent with respect to Section 64.6080 and Section 64.6090, and Securus' "baldly false statement about the law" must be rejected.[22]

In light of the fact that the GTL Decision did not magically become effective immediately upon issuance on June 13, 2017, and in light of the non-final nature of that decision at present, that panel decision does not absolve Securus of its rule violations from June 20, 2016 to June 13, 2017. As noted in the Petition, both the Commission and the United States Court of Appeals for the District of Columbia declined to stay the effectiveness of Section 64.6080 and 64.6090, and the rules went into effect for prisons on March 17, 2016, and June 20, 2016, for jails.[23]

Again, the *GTL Decision* is most decidedly ***not*** final, and future appellate decisions may affirm the Commission's actions taken in the *Second Report and Order*.[24] To the extent that Securus chose to gamble by violating Sections 64.6080 and 64.6090 for more than a year, it must also be prepared to answer for these violations when the Commission reviews the parties' character qualifications prior to authorizing the transfer of control of Securus' Section 214 Authorizations. In fact,

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[21] *See GTL Decision*, at pg. 33 ("we likewise hold that the FCC had no authority to impose ancillary fee **caps** with respect to *intrastate* calls.")(emphasis added).

[22] *See Opposition*, pg. 11.

[23] *See Petition*, pg. 7.

[24] *See GTL Decision*, Dissenting Opinion of Pillard, Circuit Judge, pg. 2 ("The majority offers one plausible reading of section 276, but it is assuredly not the only one…We should uphold the rule that is on the books and leave to the agency to decide whether and how to change it.").

Securus touted that "[t]he management and relevant contact information for STI will remain the same" after Platinum assumes control.[25]

Petitioners respectfully submit that it is the current management of Securus that continues to violate Section 64.6080 and Section 64.6090 of the Commission's rules, and thus, their continued role in a Platinum-owned Securus will only perpetuate these rule violations. However, regardless of who manages Securus in the near future, the fact remains that, until a Rule 41 mandate is issued, Section 64.6080 and Section 64.6090 remain in effect, and Securus remains in violation.

C. Petition To Deny Raised Substantial And Material Allegations That Securus Has Violated Section 64.6080 and Section 64.6090 of the Commission's Rules.

With Securus-induced fog of procedural misstatements swept away, and Securus' overeager assertions of the *GTL Decision*'s finality resolved, Securus' attempt to explain why it was justified in charging between $5 and $8 for the first minute of calls, and substantially less for each subsequent minute, is the very essence of weak tea served cold.

i. Sanilac County Is Not An Isolated Example.

First, Securus asserted that the Petition "cherry picks an isolated potential intrastate rate plan" when it noted that Securus charges $8.20 for the first minute of an intrastate call from Sanilac County Jail.[26] Of course, that assertion is simply wrong.

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[25] *See Opposition*, pg. 21. *See also Joint Application*, pg. 12.

[26] *See Opposition*, pg. 13.

The Petitioners included fourteen (14) examples of the intrastate rates charged by Securus in the body of the Petition, and attached a table listing more than 100 counties across the country where the first minute of an intrastate ICS call costs more than $5.00.[27] Moreover, the Petition included a comparison of the local and interstate rates charged by Securus in September 2013, as compared to what it was charging in June 2017, and also provided the side-by-side Securus rate calculator results.[28] Notably, Securus did not contest the accuracy of the rates.

Instead, Securus argued that only "1%" of the ICS calls from Sanilac County Jail are "intrastate toll calls", and that "the average revenue per call from that facility is $2.12," but failed to provide any evidence to support either of these assertions.[29] Moreover, Securus failed to note that an intrastate ICS call from Sanilac County Jail to the Palace of Auburn Hills, just 54.3 miles distant, also costs $8.20 for the first minute, and $.01 for each additional minute under its AdvanceConnect, Direct Bill and Traditional Collect rate programs.[30]

Because Securus focused so tightly on the Petition's reference to the volume of calls using the "little-used intrastate toll rates" from Sanilac County in its Opposition,[31] but did not provide any evidence to support its assertions, undersigned counsel reviewed Securus' monthly commission reports previously

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27 *See Petition*, Exhibit D.

28 *See Petition*, Exhibit C-1, Exhibit C-2, Exhibit C-3.

29 *See Opposition*, pg. 13.

30 *See* Exhibit A.

31 *See Opposition*, pg. 14.

requested from Sanilac County pursuant to the Michigan Freedom of Information Act. Copies of those reports are attached hereto as Exhibit B.

Furthermore, because the ICS providers have been arguing for years that the vast majority of their call volume was intrastate in nature, it seemed odd that Securus so vehemently asserted in its Opposition that the intrastate ICS call volume was so low at Sanilac County. Because Securus failed to provide any evidence to support the "1%" and "cherry-pick" assertions it made in the Opposition, undersigned counsel attempted to verify those assertions by comparing the call volume metrics from Sanilac County Jail to the same metrics from other Michigan jails for which monthly commission reports were also obtained through separate FOIA requests. Copies of those reports are attached hereto as Exhibit C.

The remarkable thing that became apparent from reviewing Sanilac County's monthly commission reports, and those of other Securus facilities in Michigan by comparison, was that the mix of call volumes at Securus jails in Michigan changed significantly from 2014 to 2016. In fact, as reflected in Exhibit D, it would appear that the only type ICS call for which its associated volume increased were for interstate ICS calls.

As such, Securus' CEO Richard A. ("Rick") Smith was correct when he stated on October 27, 2015, that "[t]he above 70% increase [in interstate call volume] quoted by Commissioner Clyburn is not based in reality."[32]

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[32] *Press Release of Securus Technologies, Inc.*, Statement of Richard A. ("Rick") Smith, Oct. 27, 2015 (https://tinyurl.com/ycmhqk3r).

In fact, the 70% increase in interstate ICS call volume at the five correctional facilities serviced by Securus was substantially understated by Commission Clyburn. As reflected in Exhibit D, and provided below, the increase in interstate call volumes in those Michigan counties were significantly higher than 70%:

County	Interstate ICS Call Volume Increase January 2014 to December 2016
Sanilac County	2,848.99% (1,439 minutes to 40,997 minutes)
Ottawa County	5,947.36% (397 minutes to 23,611 minutes)
Kent County	4,137.95% (1,062 minutes to 43,945 minutes)
Iosco County	11,768.66% (67 minutes to 7,885 minutes)
Alpena County	199,433.33% (3 Minutes to 5,983 minutes)

This information leads to the obvious conclusion that either (i) call volumes substantially increased for interstate ICS calls once the interim interstate rate cap went into effect in 2014, or (ii) Securus has been erroneous classifying certain intrastate ICS calls as interstate.

Thus, while Securus' statement in the Opposition that the intrastate toll call volume in Sanilac County was very low appears to be accurate, that result contrasts significantly with those facilities served by ICSolutions and Global Tel*Link, who saw their various intrastate ICS call volumes rise, and interstate ICS call volume remain the same. As shown in Exhibit E, Oakland County, Mecosta County and Livingston County have seen increased IntraLATA ICS call volumes, while

interstate ICS call volumes remained largely the same from January 2014 to December 2016.

The major difference between Securus facilities on one hand, and those served by GTL and ICSolutions on the other, appear to be tied to rate information that the Petitioners have previously provided to the Commission which was included in the Petition.

Specifically, while GTL and Securus had largely conformed their ICS rates to match the FCC-mandated interstate ICS caps, Securus continued to charge the widely-divergent rates for intrastate ICS calls:[33]

Facility	ICS Provider	1st Min. Charge($)	Add. Min. Charge($)	15 Min. Rate($)
Sanilac County Jail	Securus	8.20	0.01	8.34
Ottawa County Jail	Securus	5.39	1.19	22.05
Kent County	Securus	4.64	0.69	14.30
Iosco County Sheriff	Securus	4.45	0.45	10.75
Alpena County Jail	Securus	5.26	0.84	17.02
Oakland County Sheriff	ICSolutions	0.25	0.25	3.75
Mecosta County	ICSolutions	0.21	0.21	3.15
Livingston County	ICSolutions	0.21	0.21	3.15

It is impossible to determine the veracity of Securus' statement that the $8.20/$0.01 rate only applied to "less than 1% of the total call volume" at Sanilac County because Securus did not provide any evidence in the Opposition to support that claim (i.e., time period).[34] The Petitioners have attempted to determine whether that assertion is correct by reviewing the Monthly Commission Reports, and the reports are provided herein as Exhibit B.

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[33] *See ICS Advocates*, Supplement, WC Dkt. 12-375, filed Jan. 24, 2017.

[34] The three-year average of InterLata ICS Minutes at Sanilac County Jail is actually 6.23% of all ICS minutes at Sanilac County Jail. *See* Exhibit B.

In any event, the Petitioners have demonstrated that Sanilac County was not "cherry-picked" by providing the Monthly Commission Reports for eight counties of various sizes within in Michigan.[35] Therefore, based on this information provided in response to the Opposition, it is clear that Sanilac County is not an outlier.[36]

ii. Securus Justification for $5-$8 First Minute Rates Demonstrate Intent to Violate Section 64.6080 and Section 64.6090.

With the issue resolved that the intrastate ICS Sanilac County Jail rates cited in the Petition were not "isolated" or "cherry picked," but in fact, represented a wide-spread issue associated with correctional facilities serviced by Securus, it is important to note that Securus' justification for charging $5-$8 for first-minute rates actually confirmed the Petitioners' concerns expressed in the Petition. Essentially, Securus argued that, in the absence of intrastate ICS rate caps, it can structure its rates for intrastate ICS calls in any manner it wishes.[37]

While Securus asserted that the Petitioners failed to "point to any provision adopted" in the *Second Report and Order* "that mandates that per-minute charges imposed on ICS calls must be absolutely equal", Securus ignores the very obvious fact that the Commission did not need to adopt such a rule because the individual per-minute rates were capped.[38]

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35 *See Opposition*, pg. 13.

36 *See* 47 C.F.R. § 1.45(c) (2017).

37 *See Opposition*, pg. 12.

38 *See Opposition*, pg. 12. *See Second Report and Order*, 30 FCC Rcd 12,763, 12,811.

Thus, even though there may have been a prior industry practice of charging high first-minute rates,[39] and while it is correct that Securus or another ICS provider could have charged more for the first minute of an ICS call after the rate caps adopted in the *Second Report and Order* went into effect, the amount for the 2nd and any subsequent minute would never have been more than 22 cents.

But, even though the Commission capped the ICS rates at 22 cents or lower, as the Petitioners noted in the Petition,[40] the Commission simultaneously took an additional step to prohibit per-call or per-connection charges, finding the ICS providers' practice of imposing rate charges for ICS calls which did not depend on the duration of the ICS call as "not comport[ing] with [their] requirement to make ICS rates just, reasonable and fair."[41]

As such, Securus' reliance on the absence of a rule prohibiting widely-divergent first minute rates ignores the fact that the difference between the first minute and any subsequent minutes would never be more than 22 cents, whereas the difference in Sanilac County is $8.19. Securus' jurisdictional argument justifying its widely-divergent rates was dispatched above and requires no further explanation.[42]

Finally, Securus' half-hearted argument that the charge of $0.01 per each additional minute means that Sanilac County's rates do not violate Section 64.6090

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39 *See Opposition*, pg. 12.

40 *See Petition*, pg. 6

41 *Id.* (*citing Second Report and Order*, 30 FCC Rcd at 12,811).

42 *See Opposition*, pg. 12-13 (asserting that the Petitioners "blithely" ignored the *GTL Decision*).

must be rejected.[43] Securus would have the Commission find that a 0.12% increase between the first minute and subsequent minutes ($8.20 + $0.01) is equivalent to a 200% increase ($0.22 + $0.22 = $0.44) under the rate caps adopted in the *Second Report and Order*. Exhibit D to the Petition provided rates obtained from Securus' rate calculator showing that there were 25 correctional facilities where Securus' 2nd minute rate ranged from $0.00(!) to $0.03.

To address Securus' assertion in the Opposition that "the price of the call increases as talk time increases,"[44] Exhibit F attached hereto incorporates the rates information from Exhibit D previously provided in the Petition, with an additional column reflecting the percentage of the 2nd minute rate as compared to the 1st minute rate.

Astoundingly, Sanilac County is not alone, and was most certainly not "cherry-picked." Instead, as shown in Exhibit F:

- 23 correctional facilities – in addition to Sanilac County – serviced by Securus where the rate by which the intrastate ICS call also increases by less than 1%.
- 47 correctional facilities serviced by Securus where the rate by which the intrastate ICS call increases is less than 5%,
- More than 200 correctional facilities serviced by Securus where the rate by which the intrastate ICS call for the 2nd minute by less than 10% of the first minute.

Section 64.6090 was adopted by the Commission to block the very practice Securus justify in its Opposition, namely the fact that the 2nd and subsequent minutes in a significant number of correctional facilities are equivalent to mere

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[43] *See Opposition*, pg. 12.

[44] *See Opposition*, pg. 12, nt. 19.

rounding errors compared to the 1st minute connection charge rates imposed by Securus. As such, the Petitioners provided far more than just an "isolated" and "cherry-picked" example in their Petition. Instead, the Petitioners have provided conclusive evidence that Securus has been in violation of Section 64.6080 and Section 64.6090.

Finally, while the Petitioners never labeled Securus "a scofflaw,"[45] the ongoing violation of Section 64.6080 and Section 64.6090, and the Opposition's full-throated support of the practice, does raise substantial and material questions whether Securus' has the requisite character qualifications to warrant the grant of the Applications. This is especially warranted in light of Securus' promise that the "management and relevant contact information for STI will remain the same."[46]

D. Securus' Past Violations and Abuse Of The Commission's Rules, Policies and Procedures Serve As Independent Basis For Denial of Applications.

The Petitioners also included examples of past misstatements by Securus to the Commission, Securus' customers, and the public. While Securus attempts to explain these examples away as "misunderstandings" or "misconceptions", it cannot argue with the fact that the Commission has been forced on several occasions to issue specific orders, and provide further direction to the public, in response to Securus' actions.[47]

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45 *See Opposition*, pg. 14.

46 *See Opposition*, pg. 21.

47 *See Opposition*, pgs. 16-18. *See Wireline Competition Bureau Addresses The Payment of Site Commissions For Interstate Inmate Calling Services*, Public Notice, 29 FCC Rcd 10,043, nt. 7 (WCB 2014). *See also Notice of Prohibited Presentations in the Matter of*

Moreover, the Petitioners provided examples of the language incorporated into all agreements starting in 2014 that specifically carved out revenue earned from interstate ICS calls from the calculation of site commissions.[48] Nothing in Securus' Opposition undermined the relevancy of the affirmative actions that the Commission deemed it necessary to take in order to protect the integrity of its rules, policies and procedures.

However, one such explanation provided by Securus in the Opposition warrants a brief response. Securus argues that the Petitioners provided a "simplistic mathematical red herring"[49] when discussing the financial status of Securus prior to the adoption of the *Second Report and Order*.[50] Taking issue with the Petitioners' reference to Securus' gross revenues and assets, the Opposition asserts that "the net income figures shown on the same financial

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Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al., Public Notice, 30 FCC Rcd 13,424, 13,425 (OGC, Nov. 20, 2015) ("the reliance on § 1.1204(a) is misplaced, as the violative portion of the communications was not directly related to the putative emergency."). *See also Letter to Robert Pickens, President, Securus Technologies, Inc.*, 30 FCC Rcd 13,666 (Dec. 3, 2015) ("If we observe or are made aware of evidence of price gouging or other harmful behavior through, but not limited to, increased rates, ancillary service charges, and/or site commissions, we will not hesitate to take appropriate remedial action up to and including enforcement action pursuant to our legal authority under sections 201 and 276 or referral to another appropriate agency."). *See Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, 31 FCC Rcd 261, nt. 3 (WCB 2016) ("**We note, however, that this is not the first time that Securus, in particular, has attempted to make filings that are not permitted by the Commission's rules. We admonish Securus that repeated and willful attempts to circumvent the Commission's procedural rules will not be tolerated and may result in sanctions.**") (emphasis added).

48 *See Petition*, Exhibit E.

49 *See Opposition*, pg. 20.

50 *See Petition*, pg. 12, Exhibit F.

statements…reveal that [Securus] *lost* money during some of the periods in question."[51]

First, it important to note that Securus, as owned by ABRY Partners, has not posted a net income loss since FY 2013, when ABRY purchased Securus in the middle of the year. Instead, Securus posted Net Income gains of $5,506,000, $3,618,000 and $8,290,000 in FY Years 2014-2016.

Second, and certainly more important for this discussion, is that Petitioners' focus on Securus' "gross revenues and assets" was intentional because so much of Securus' gross revenue comes directly from inmates and their families. Apparently, this revenue funded nearly $435,000,000 of business acquisitions[52] and $300,000,000 in long-term debt borrowing[53] during ABRY's ownership. The business acquisitions were funded by the positive cash flow referenced by the Petitioners, which, again, came directly from inmates and their families.

The fact that ABRY was able to leverage its $1,709,866,000 in total revenue earned from inmates and their families to go on $435,000,000 shopping spree is particularly relevant to the Petitioners' assertion that Securus was nowhere near a business ending event in October 2015.[54]

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51 *See Opposition*, pg. 20.

52 *See Petition*, Exhibit F, Consolidated Statements of Cash Flows, Business Acquisitions, Net of Cash Acquired (FY2015-$286,819,000) (FY2014-$19,685,000) (FY2013-$126,665,000).

53 *See Petition*, Exhibit F, Consolidated Statements of Cash Flows, Long-Term Debt Borrowings, Net of Issuance Costs (FY2015-197,141,000) (FY2014-$14,775,000) (FY2013-$81,819,000).

54 *See Petition*, pg. 12.

The fact that ABRY now intends to flip Securus to Platinum Equity for $1.5 billion based on the increase in Securus' value directly resulting from this spending spree – which was funded by inmates and their families – **most certainly is not** a "simplistic mathematical red herring" for those who merely wish to remain in contact with their loved ones. Because Securus has earned the revenue through its violations of Section 64.6080 and 64.6090 of the Commission's rules, the Commission must closely examine whether the Joint Application should be granted.

CONCLUSION

The Commission requires licensees to comply with the Communications Act of 1934, as amended, and with the Commission's rules, policies and procedures. As shown in the Petition, and reaffirmed in this Reply, Securus has flouted Section 64.6080 and Section 64.6090 of the Commission's rules by simply renaming its existing "per-call connection fee" and "flat-rate charges" as a "first-minute fee."

Not only did Securus shift its high ICS rates from Interstate to Intrastate service, it actually took the additional step to increase Intrastate rates. Moreover, families of inmates in over 200 correctional facilities now pay widely-divergent 1st and 2nd minute rates in light of Securus' violations of Section 64.6080 and 64.6090 of the Commission's rules.

Nothing in Securus' Opposition changed these facts. Instead, Securus' Opposition actually *helped* highlight the fact that the interim interstate ICS rates resulted in significant growth in interstate ICS calls, the revenue from which Securus refuses to pay site commissions.

In light of the ongoing violations of Section 64.6080 and Section 64.6090 of the Commission's rules, coupled with Securus' serial violations of other rules and policies that led to its repeated admonishment, the Commission must deny the Applications and immediately initiate a proceeding to investigate these violations. At the very least, the Commission must hold the Applications in abeyance until the Commission's investigation has been completed.

Respectfully submitted,

THE WRIGHT PETITIONERS
CITIZEN UNITED FOR
REHABILITATION OF ERRANTS
PRISON POLICY INITIATIVE
HUMAN RIGHTS DEFENSE CENTER
THE CENTER FOR MEDIA JUSTICE
WORKING NARRATIVES
UNITED CHURCH OF CHRIST, OC INC.
FREE PRESS

By: 

Lee G. Petro
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

Counsel to The Wright Petitioners

July 3, 2017

DECLARATION

I, Lee G. Petro, Counsel for the Wright Petitioners, do hereby declare, on this 3rd day of July, 2017, and under penalty of perjury:

1. I have read the foregoing Reply, to which this Declaration will be attached; and

2. The allegations of fact contained in the Reply are true to the best of personal knowledge and belief.

By: 

Lee G. Petro
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

Counsel to The Wright Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2017, a true copy of this Reply to Opposition was electronically served upon the following:

Tracey Wilson, Competition Policy Division,
Wireline Competition Bureau,
tracey.wilson@fcc.gov

Jodie May, Competition Policy Division,
Wireline Competition Bureau,
jodie.may@fcc.gov

Jim Bird, Office of General Counsel,
jim.bird@fcc.gov

David Krech, International Bureau,
david.krech@fcc.gov

Sumita Mukhoty, International Bureau,
sumita.mukhoty@fcc.gov

Paul C. Besozzi
Peter M. Bean
Squire Patton Boggs (US) LLP
2550 M Street, N.W.
Washington, DC 20037
paul.besozzi@squirepb.com
peter.bean@squirepb.com
Counsel for Transferor and Licensees

William B. Wilhelm, Jr.
Brett P. Ferenchak
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20005-2541
william.wilhelm@morganlewis.com
brett.ferenchak@morganlewis.com
Counsel for the Transferee

By: *Lee G. Petro*
Lee G. Petro
Drinker Biddle & Reath LLP
1500 K Street N.W., Suite 1100
Washington, DC 20005-1209
Lee.Petro@dbr.com
(202) 842-8800
(202) 842-8465 (fax)