Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Joint Application of	)	
	)	
Securus Investment Holdings, LLC, Transferor	)	WC Docket 17-126
Securus Technologies, Inc., Licensee	)	
T-NETIX, Inc., Licensee	)	ITC-T/C-20170511-00094
T-NETIX Telecommunications Services, Inc.,	)	ITC-T/C-20170511-00095
Licensee, (collectively "Licensees" or "STI")	)	
	)	
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	)	

OPPOSITION TO PETITION TO DENY BY THE WRIGHT PETITIONERS; CITIZENS 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.; AND FREE PRESS

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Dated: June 26, 2017

EXECUTIVE SUMMARY

In the Petition To Deny ("Petition"), Petitioners assert that Securus Technologies, Inc. violated Federal Communications Commission ("FCC" or "Commission") rules, policies, and procedures, along with breaking commitments made to the agency. They argue that STI fails to possess the character required to hold an FCC license, and that the captioned Joint Application should be denied or delayed. For all the reasons herein, the FCC should promptly dismiss and/or deny the Petition and grant the captioned Joint Application.

At the start, it is ironic that Petitioners rail about STI flouting the rules while they blithely ignore the comment deadlines. They provide no "good cause" to give them the "leave" they seek. Also, Petitioners' filing does not meet the standard for a petition to deny, which requires petitioners present "specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with the public interest, convenience, and necessity."

As for the "merits," the Petition is frivolous at best, and is a last-minute attempt to introduce unwarranted delay into a proceeding that otherwise qualifies for the FCC's streamlined application process. It is a "strike pleading" without substantive merit, designed to hold up a legitimate transaction.

Petitioners argue that STI's per-minute charges for *intrastate* rates violate per-call or flat-rate charge rules, ignoring the position of a majority of the FCC and of the US Court of Appeals for the DC Circuit, which held that at this juncture the FCC cannot dictate intrastate

rate practices for inmate calling service ("ICS") providers. STI is and has been in full compliance with the applicable requirements ever since they went into effect in 2016. Nowhere in the rules is there a requirement that all per-minute charges be equal.

Petitioners further assert they are entitled to relief because STI violated commitments made in 2013 regarding rates, terms, or conditions of service in conjunction with a similar transaction approved by the FCC. There was no "condition" of that approval requiring STI to retain existing rates in 2013 for the duration of the approved ownership.

Finally, Petitioners claim that STI has "a long history of abusing FCC rules, policies and procedures." In the first two cases Petitioner references, the FCC cleared up misinterpretations of the 2015 ICS ruling. In the third, STI sought leave to file a pleading in one instance; it was denied and STI was warned. In another, involving an ex parte filing, STI acted in good faith relying on an exception in the rules, and the information STI submitted was ultimately associated with the proceeding.

These "commitments" and other alleged "violations of FCC rules, policies and procedures" are mischaracterizations providing no basis for denial or delay of approval. If the Petitioners have complaints about interstate rates and practices of STI, they have other appropriate vehicles for bringing them to the attention of the FCC. These incidents, along with STI's overall compliance record, do not justify denying or delaying the Joint Application.

In light of the foregoing, the Petition should be promptly dismissed or denied and the Joint Application should be granted forthwith.

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Securus Investment Holdings, LLC; Securus Technologies, Inc.; T-NETIX, Inc.; T-NETIX Telecommunications Services, Inc.; and SCRS Acquisition Corporation (collectively, "Applicants"), acting through counsel and in accordance with Section 1.45 of the FCC's rules,[1] hereby oppose the Petition To Deny By The Wright Petitioners; Citizens United For Rehabilitation Of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center

[1] 47 C.F.R. § 1.45.

For Media Justice; Working Narratives; United Church Of Christ, OC Inc.; and Free Press[2] (collectively, "Petitioners"). Applicants respectfully request that the Commission's Wireline Competition Bureau ("WCB") immediately dismiss or deny the Petition and grant the Joint Application forthwith.

The Petition should be dismissed as unjustifiably out of time and thus procedurally infirm. Alternatively, the Petition should be denied on the merits, as it relies on arguments about *intrastate* rate matters that are outside the Commission's jurisdiction, mischaracterizes commitments about such rates, and offers inaccurate assertions about "public admonishments [of STI] for violating other Commission rules, policies, and procedures." The Petition does not even purport to raise any transaction-specific issues. Petitioners' claims amount to nothing more than an impermissible, frivolous attempt to prolong or indefinitely delay the transaction

[2] *Petition To Deny 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., and Free Press*, dated June 16, 2017, WC Docket 17-126; ITC-T/C-20170511-00094; ITC-T/C-20170511-00095 ("Petition").

underlying the Joint Application.[3] Most importantly, Petitioners ignore fundamental rulings about the jurisdiction of the Commission over *intrastate* ICS rate matters.[4]

I. BACKGROUND.

On May 11, 2017, the Applicants requested approval, on an expedited basis, of the indirect transfer of control of STI's domestic and international Section 214 authority through a transaction involving its current controlling entity, ABRY Partners VII, L.P. ("Transaction").[5] As a result of the Transaction, STI will become an indirect, wholly-owned subsidiary of SCRS Acquisition Corporation ("SCRS").

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[3] *See Commission Taking Tough Measures Against Frivolous Pleadings,* Public Notice, 11 FCC Rcd 3030 (1996)("A pleading may be deemed frivolous under 47 C.F.R. § 1.52 if there is no 'good ground to support it' or it is 'interposed for delay."); *Applications of White Park B'estg., Inc.,* Memorandum Opinion and Order, 24 FCC Rcd 3549, 3569 ¶ 31 (Media Bur. 2009) ("The crucial consideration in determining whether any pleading is in the nature of a strike petition is whether it was filed for the primary purpose of delay. In making such a determination, the Commission considers a number of factors, including the absence of any reasonable basis for the allegations raised in the pleadings.").

[4] *Global Tel*Link v. F.C.C.*, No. 15-1461, Slip Op. , June 13, 2017 ("DC Circuit Decision"); *see also*, Letter, dated January 1, 2017, from David M. Gossett, Deputy General Counsel, Federal Communications Commission, to Mark J. Langer, Clerk, United States Court of Appeals for the District of Columbia Circuit, Re: *Global *Tel Link, et al.*, No. 15-1461 & consolidated cases ("Gossett Letter").

[5] *Joint Application of Securus Investment Holdings, LLC, Transferor; Securus Technologies, Inc., Licensee; T-NETIX, Inc., Licensee; T-NETIX Telecommunications Services, Inc., Licensee; 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*, WC Docket 17-126 (filed May 11, 2017), ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed May 11, 2017).

SCRS is a holding company with no operations. SCRS is owned by Platinum Equity, LLC, which is ultimately operated by the Gores Trust. In connection with this proposed indirect transfer of control, the Applicants have provided the Commission with all information required by the application procedures and Part 63 of the rules.

Following consummation of the proposed Transaction, entities within STI will remain separately certificated and will continue to provide ICS as they do now. There will be no further transfer of STI's assets used in the provision of the services or transfer or assignment of their authorizations. Moreover, the existing senior management and key personnel of STI will continue in their present positions, and there are no anticipated employee layoffs or terminations.

The Transaction will also be seamless and transparent to STI's customers who will receive uninterrupted service. There will be no immediate changes in the terms and conditions of the services provided by STI. STI will continue to market, brand, and bill its services as it has been.

The proposed Transaction will serve the public interest in a number of ways, including by ensuring that STI has the ability to continue to serve the public, allowing the Applicants to retain existing experienced operational management personnel, and enhancing STI's financial capabilities. Consummation of the proposed Transaction will help STI to continue to provide services to ICS subscribers and to potentially expand or enhance those services at new facilities.

II. THE PETITION IS BASED ON NUMEROUS INCORRECT ASSERTIONS.

The Petition is based on the following unfounded assertions:

- First, that STI has violated Sections 64.6080 and 64.6090 of the Commission's rules against "per-call connection fees" and "flat rate fees" in its intrastate rate structures. Petition at 10.
- Second, that STI changed its intrastate rate structure, despite a commitment made in 2013, in connection with a prior transfer of control of STI, that there would be "no changes in rates, terms, or conditions of service as a result of the [2013] transaction[.]"[6] Petition at 11.
- Third, that STI was the subject of certain other "repudiations" for violating "commission rules, policies and procedures" relating to interstate commissions, mandatory fees, and impermissible procedural filings. Petition at 12-13.
- Therefore, Petitioners contend that STI lacks the character qualifications to hold a Commission authorization, and that, since it "abuses" its position as a monopoly provider of service to charge high intrastate rates, the Commission must deny the Joint Application or delay action pending an investigation. Petition at 14.

As clearly demonstrated below, none of these allegations in any way warrant the denial or delay of Commission action to grant the Joint Application.

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[6] *Applications Granted for the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, Inc.*, Public Notice, DA 13-261, 28 FCC Rcd 5720 (Wireline Compet. Bur. and Int'l. Bur. 2013) (2013 Grant Notice).

III. THE PETITION WAS FILED LATE WITH NO EXPLANATION AS TO WHY, AND THUS IS PROCEDURALLY DEFECTIVE AND RIPE FOR DISMISSAL.

The Petitioners filed their Petition late on June 16, 2017 — three days after the closing of the prescribed comment period for the Joint Application.[7] The Petitioners concede that the filing was out of time and "to the extent necessary" seek "leave" to submit the filing.[8] As "good cause" for the "leave" (*i.e.*, waiver) sought, Petitioners claim that "no harm will be caused by the acceptance of the Petition" because there was still time for the WCB to "remove the Applications from streamlined processing."[9]

Petitioners provide no explanation for their inability to meet the prescribed deadline. Their Petition does not refer to any events that occurred after (or even near) the filing deadline; rather, their Petition focuses on rates charged by STI in 2016 and on alleged rule violations in

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[7] *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, 32 FCC Rcd 4102 (Wireline Compet. Bur. 2017) (setting deadlines for comments and reply comments at June 6 and June 13, respectively).

[8] Petition at 5, n.4.

[9] *Confidential Info. Usage in Bus. Data Servs. Proceedings*, Order and Protective Orders, 30 FCC Rcd 13680, 13682 ¶ 7 (2015)(explaining that:

> Level 3's opposition was not timely filed in accordance with [Section 1.45 of] our rules. . . . Level 3 acknowledges that it failed to meet the ten day deadline and requests a waiver of the rule, arguing that it filed its opposition within 10 days from the date that the motion appeared on the Electronic Comment Filing System. *This argument does not constitute special circumstances that would cause us to find good cause for waiver of our rules*. It is the policy of the Commission that extensions of time shall not be routinely granted. Accordingly, we deny Level 3's waiver request.

2015 and 2016. Clearly the Petitioners could have addressed those same claims in a timely filing.

Petitioners' "good cause" explanation that there was still time before the expiration of the 30-day time period for granting the Joint Application on streamlined processing should not relieve them of their obligation to file within the specified period. Otherwise, the utility and reliability of the streamlined application process and deadlines imposed in support thereof would be meaningless. In other words, if a commenter could file on the 29th day and still be timely, the rule prescribing the 14- and 21-day deadlines for comments would be rendered nugatory.[10] In addition, the information upon which Petitioners rely has long been known to them, and as such, they should have been able to file within the comment period specified by the FCC. Yet, Petitioners have not shown or even attempted to provide an explanation beyond that included in the above-referenced footnote as to why they should qualify for a waiver of the Commission's deadlines set forth in the Public Notice, or of those included in the relevant rule sections.

[10] It is well-established that a petitioner seeking a waiver of a Commission rule must demonstrate "special circumstances" to justify its request, *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1154, 1166 (D.C. Cir. 1990),and that mere neglect or confusion about the applicable deadline does not satisfy that standard. *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, Memorandum Opinion and Order, FCC 16-138, 31 FCC Rcd 12012 ¶ 8 & n.20. Further, Petitioners' allegation that "no harm" would come from granting the requested waiver cannot substitute for a showing of good cause. *Id.* ¶ 14.

The Petitioners, who chastise STI (without any apparent realization of the irony) for allegedly playing fast and loose with the Commission's procedural rules, have not demonstrated "good cause" for waiving the deadline, and therefore their late filing should not be accepted. Petitioners' failure to meet the requisite deadlines renders the filing procedurally defective and ripe for dismissal.

Moreover, the Petition does not meet the prima facie showing required for petitions to deny set forth in Section 63.52(c), which states a petition to deny "shall contain specific allegations of fact sufficient to show . . . that a grant of the application would be *prima facie inconsistent with the public interest, convenience, and necessity*."[11] The "specific allegations of fact" made by Petitioners do not include any allegations whatsoever of transaction-specific harms, and therefore do not present a "*prima facie"* case that granting the Joint Application would be contrary to the public interest, because the only thing that will change as a result of the Transaction is STI's ultimate controlling entity. The same senior management team and key people will remain in place, the transaction will be transparent to consumers, and service terms and conditions will not change as a result of the transaction. Put another way, a change in the ultimate controlling entity of STI has no bearing whatsoever on the specific allegations of fact

[11] 47 C.F.R. §63.52(c).

provided in the Petition, and as a result, those specific allegations of fact do not prove that granting the Joint Application will be contrary to the public interest.[12]

Because Petitioners' specific allegations of fact do not present a prima facie showing that granting the Joint Application will be contrary to the public interest, Petitioners fail to meet the 63.52(c) standard for a petition to deny.

IV. THE PETITION IS A THINLY VEILED ATTEMPT TO HOLD UP THE TRANSACTION, LACKING IN FACTUAL AND LEGAL SUPPORT AND SUBMITTED FOR THE SOLE PURPOSE OF DELAYING THE JOINT APPLICATION.

Proclaiming frustration with what they label the "prison-industrial complex" and trends in "local, state and federal privatization,"[13] Petitioners argue that the Commission must deny the Joint Application and investigate "serious violations of Commission rules, policies,

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[12] Indeed, these factors raise a question as to whether the Petitioners have the requisite standing in this matter. *AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC et al*., Memorandum Opinion And Order, 27 FCC Rcd 16459, 16460-16466 ¶ 16 (2012):

> To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury. In addition, *a petitioner must demonstrate a causal link between the claimed injury and the challenged action: it must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested*. . . . *The [instant] Petition does not explain how Mr. Pangasa might be injured by assignments of spectrum to AT&T, much less how any such injury might be redressed by denying or conditioning the Applications*. We accordingly dismiss the [instant] Petition for lack of party-in-interest standing.

(internal quotations omitted; emphasis supplied).

[13] Petition at i.

and procedures," or alternatively, hold the Joint Application "in abeyance while the Commission conducts [such an]investigation."[14] They effectively admit that their Petition does not have anything to do with the specific Transaction for which approval is sought, but instead is simply part of Petitioners' broader campaign to change correctional policies that they oppose. Petitioners simply want to use STI as a scapegoat for their grievances, real or perceived, against the procurement and other policies of correctional facilities.

Petitioners' draconian request for relief lacks any substantive basis whatsoever. Couched in terms of STI's "character" to hold FCC licenses,[15] the Petition, continuing a tactic previously employed by at least some of the Petitioners, is clearly intended to introduce delay into the proceeding in order to interfere with a transaction that meets the "public interest"

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[14] Petition at ii.

[15] *LightSquared Subsidiary LLC*, Memorandum Opinion and Order And Declaratory Ruling, 30 FCC Rcd 13988, 13993 ¶10 & n.38 (Dec. 4, 2015)(noting that the FCC "look[s] to the Commission's character policy initially developed in the broadcast area as guidance in resolving similar questions in common carrier license assignment proceedings.")(*citing Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, Gen. Docket No. 81-500, 102 FCC 2d 1179, 1190-91 ¶ 23 (1986))(internal quotations omitted)("Character Policy Statement"); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and de facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, 23 FCC Rcd 17444, 17464 ¶ 32 (2008)(citing the Character Policy Statement and explaining that "[w]ith respect to Commission-related conduct, the Commission has stated that all violations of provisions of the Act, or of the Commission's rules or polices, are predictive of an applicant's future truthfulness and reliability, and thus have a bearing on an applicant's character qualifications.")(internal quotations omitted). As mentioned herein, Securus has never been the subject of an enforcement action for violating any portion of the Act or the Commission's rules, policies, or procedures.

standard to be applied under the law. That the primary object of the filing is simply to delay the transaction is also manifested in the Petitioners' failure to meet the prescribed comment deadline on the Application. Most fundamentally, it ignores, perhaps out of another element of their frustration, the current limitation on the Commission's jurisdiction over *intrastate* ICS rates.

A. Petitioners' Assertion That STI's Intrastate Rate Structure Violates The Commission's Rules Ignores Jurisdictional Realities.

Petitioners make no claim that STI's *interstate* ICS rate structure violates any Commission rule. Since the effective date of the now-largely vacated 2015 ICS Order,[16] STI has fully complied with the caps on interstate rates and ancillary fees and related restrictions on interstate and intrastate ICS calling that were not stayed by the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit").

Rather, despite Petitioners' statement that "none of the issues resolved in the instant Petition depend on the *unresolved question* of whether the Commission has the requisite authority under Section 276 to regulate Intrastate rates and fees,"[17] their principal argument rests squarely on how STI structures its rates for *intrastate* ICS calls. Specifically, Petitioners

[16] *Rates for Interstate Inmate Calling Services,* Second Report and Order and Third Notice Of Proposed Rulemaking, 30 FCC Rcd 12763 (2015), *rev'd and remanded in part, Global Tel*Link v. F.C.C.*, No. 15-1461, Slip Op., June 13, 2017 ("2015 ICS Order").

[17] Petition at ii (emphasis supplied). The contention that this question is "unresolved" is no doubt news to the DC Circuit. Again, Petitioners appear oblivious to the fact that they made this baldly false statement about the law in the same pleading in which they accuse STI of misstating the law in communications to its customers.

claim that STI's structuring of its *intrastate* ICS rates, with a higher "first minute" charge, violated prohibitions on "per-call charges" and "flat rate calls."[18]

First, including higher initial per-minute rates on intrastate calls was not a totally new rate structure. As the Commission and the Petitioners are well aware, ICS services are provided based on competitively bid contracts in which the correctional facility has input into rates charged to their inmates. So long as the rate is in compliance with applicable local tariffing and other regulatory requirements, there were instances, prior to the 2015 ICS Order, where higher first-minute rates could have been or were charged.

Second, nowhere do Petitioners point to any provision adopted in that Order which mandates that per-minute charges imposed on ICS calls must be absolutely equal, *i.e*., where there can be no higher charge for a first, or for that matter, a second minute. They cite no rule or statement or interpretation of the rules that they claim STI has violated that mandates such "per-minute equality."[19]

Third, and most fundamentally, Petitioners ground their allegations solely and exclusively on STI *intrastate* call rates and structures, blithely ignoring the DC Circuit

[18] Citing 47 C.F.R. §§64.6080, 64.6090.

[19] Similarly, STI's rate structure does not contravene the prohibition under rule Section 64.6090 on flat-rate calling. Employing a higher charge for the first minute of talk time, with subsequent minutes carrying a lower charge, means that the price of the call increases as talk time increases, which is the very antithesis of flat-rate billing.

Decision.[20] As the Petitioners well know, even prior to that decision, the current Commission told the DC Circuit that it does "not believe that the agency has the authority to cap intrastate rates under Section 276 of the Act."[21] The DC Circuit Decision agreed, stating that the 2015 ICS Order was "legally infirm" in its effort and that the "attempted exercise of authority in the disputed *Order* cannot stand."[22] As of now, *intrastate* ICS rates are outside the FCC's jurisdiction. Therefore STI's *intrastate* ICS rate structures cannot possibly violate FCC rules, and Petitioners' arguments about those rates (even if accurate, which they are not) could not provide a basis for denying or delaying the Joint Application.

Finally, apart from these incurable flaws, Petitioners' argument relies on misleading claims about STI's rate levels. For example, the Petition, which does not explain the exact source of this information, cherry picks an isolated potential intrastate rate plan for toll calls from the Sanilac County Jail that represents less than 1% of the total volume of calls from that facility. In reality, the average revenue per call from that facility is $2.12, a far cry from the

[20] Petitioners simply note that Sections 64.6080 and 64.6090 were "affirmed by the United States Court of Appeals for the District of Columbia Circuit on March 7, 2016" and then were "not addressed in the recent Order, decided on June 13, 2017." Interestingly, the March 7 Order referred to was a stay granted against the FCC's attempt to regulate *intrastate* ICS calling rates; it was not a ruling on the merits and therefore did not "affirm" any FCC rules. Although the rules in question were not stayed, they remained within the scope of the appeal in the case.

[21] Gossett Letter at 1.

[22] DC Circuit Decision at 27, 28. The Chairman of the Commission then noted that the Court had agreed that the "FCC had exceeded its authority when it attempted to impose caps on intrastate calls made by inmates." *Chairman Pai Statement On D.C. Circuit Inmate Calling Decision*, News Release, June 13, 2017, *available at*, http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0613/DOC-345316A1.pdf.

picture that Petitioners attempt to paint. Indeed, STI's nationwide average per-minute rate across all of the over 2000 correctional facilities it currently serves is only $0.18 per minute (i.e., $2.16 for the average 12 minute call), hardly unjust and unreasonable in view of the multiple levels of security checks and precautions which the Commission has long recognized as inherently necessary in the ICS environment. Moreover, Securus collects exactly "0" per minute on over 40 million ICS calls annually as required by correctional facilities and government agencies. Petitioners' misleading and out-of-context citation of little-used intrastate toll rates, which are not even within this Commission's jurisdiction, does nothing to support their unsubstantiated allegations that STI is somehow a scofflaw or otherwise lacks the requisite character to hold a Commission license.

B. STI Never Committed To Freeze Rates In Connection With The 2013 Transaction And The FCC Did Not Impose That As A Condition Of Its Approval.

Petitioners assert that "in making the determination [to grant STI's 2013 indirect transfer of control application], the Commission relied upon a commitment that 'there would be no changes in rates, terms or conditions of service as a result of the transaction.'" Petitioners assert that STI "abandoned" this commitment and this abandonment represents another demonstration of why it is "unqualified to hold [FCC] authorizations."[23]

STI fulfilled the representation made to the Commission in the context of the 2013 transaction. No changes in "rates, terms or conditions of service" were a component of that

[23] Petition at 11.

transaction. Indeed, the rate structure changes that STI alleges violated this commitment occurred more than two years after the transaction closed. A perpetual rate freeze was not part of STI's commitment, nor was it a "condition" of the 2013 approval.[24] There was no commitment that as the regulatory environment dramatically changed both on a state and federal level, STI could not, in accordance with applicable regulatory requirements, adjust the rates, terms and conditions of its ICS. Petitioners' unfounded claim defies business logic and, STI respectfully submits, the realistic expectations of the Commission in connection with such transactions. Petitioners' attempt to characterize STI's statement as a commitment to freeze rates for some unspecified period, perhaps forever, irrespective of an ever-changing regulatory environment, is untenable.

C. Petitioners' Other Allegations Of "Violations" and Monopoly Power Fall Far Short Of Justifying Denial Or Delay Of The Joint Application.

Petitioners point to several additional instances which they claim are evidence of "past serious violations of Commission rules, policies and procedures which call into question whether STI has the requisite character qualifications to hold authorizations issued by the Commission."[25] These claims are meritless. We address each in turn below.

Interstate Site Commissions. First, Petitioners assert STI violated Commission requirements by "repeatedly misrepresent[ing] its ability to pay Interstate site commissions" to

[24] The only "condition" imposed by the Commission in conjunction with that approval related to fulfillment of an agreement relating to procedures for addressing certain inmate-initiated calls to local telephone numbers. 2013 Grant Notice, *supra*, at 5. STI fulfilled that condition.

[25] Petition at ii.

its correctional facilities customers. In support of this claim they cite to an FCC Public Notice issued in 2014.[26]

That Notice, however, does not assert any rule violations by STI. Rather, the Notice reports that based on the FCC's 2013 ICS Order[27] there was a degree of "confusion in the marketplace …over this issue [payment of commissions interstate traffic] and that some providers appear to be continuing to pay commissions from interstate revenues." [28] Communications from a number of ICS providers, including STI, were cited. As is obvious on its face, the Interstate Commission Notice was intended to provide guidance in the face of this confusion, not to "repudiat[e]" STI or any other provider. Any misinterpretation of a newly-adopted rule on the part of STI — in which it was not alone — which the Commission then clarified, does not rise to the level of a rule violation, and Petitioners' attempt to characterize it that way is patently unreasonable.

Mandatory Fees. Petitioners also cite a December 3, 2015 WCB letter providing additional clarification regarding mandatory fees under the terms of the 2015 ICS Order as

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[26] *Wireline Competition Bureau Addresses The Payment Of Site Commissions For Interstate Inmate Calling Services*, Public Notice, DA 14-1206, 29 FCC Rcd 10043 ("Interstate Commission Notice").

[27] *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013), *pets. for stay granted in part sub. nom. Securus Techs. v FCC*, No. 13-01280 (D.C. Cir. Jan. 13, 2014); *pets. for review pending sub nom. Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

[28] Interstate Commission Notice at 2 & n.7.

evidence of "repudiation" of STI.[29] Again, the DelNero Letter does not mention any rule violation. Although the Bureau articulated its "legal authority under sections 201 and 276" of the Communications Act, the Letter itself, in language preceding that quoted by the Petitioners, states that it "is only meant to correct some of the misconceptions that might have been created by" a letter STI had sent to some of its customers interpreting the 2015 ICS Order restrictions on mandatory fees.[30] To characterize the DelNero letter as evidence of a rule violation is a total exaggeration.

Impermissible Filings. Petitioners argue that denial or delay of the Joint Application is justified by certain STI filings with the Commission either not contemplated or not permitted by the Commission's rules.[31] In one instance the Commission denied an STI motion for leave to file a reply pleading and warned STI about the potential consequences of continued attempts to "circumvent" the agency's procedural rules.[32] In an earlier instance, after consulting FCC staff, STI filed an ex parte letter during the Sunshine Notice period, which disclosed that death

[29] Letter from Matthew S. DelNero, Chief, Wireline Competition Bureau, Federal Communications Commission, to Robert Pickens, President, Securus Technologies, Inc., Re: WC Docket No. 12-375, *Rates for Interstate Calling Services*, DA 15-1382, 30 FCC Rcd 13666 (2015) ("DelNero Letter").

[30] It is interesting that in 2016, in response to a Petition For Reconsideration of the 2105 ICS Order, the Commission did "clarify" the definition of mandatory fees to clear up any ambiguities that apparently existed. *See Rates for Interstate Inmate Calling Services*, Order On Reconsideration, 31 FCC Rcd 9300, 9318 ¶¶31-33 (2016).

[31] Petition at 13, n.24.

[32] *Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, 31 FCC Rcd 261 ¶1, n.3 (2016).

threats had been made against STI's CEO.[33] STI, in good faith, believed that the communications were subject to an exception in the ex parte rules "which permits communications when the presentation directly relates to an emergency in which the safety of life is endangered."[34] When FCC staff notified STI that it thought the filing violated the ex parte rules, STI filed an explanation, along with the Declaration of its CEO.[35] Although Petitioners' counsel moved to strike the submissions and sought sanctions for rule violations against STI, the Commission took no such action. Instead, pursuant to the Commission's rules, the materials relating to "menacing comments made against the filers on third party web sites" were associated with the record.[36] Again, under these circumstances, which were taken very seriously by law enforcement,[37] there is no basis for denying or delaying action on the Joint Application on the basis of lack of character to hold Commission licenses. At most, this was a case of good-faith misinterpretation of the rules by STI, not an intentional violation.[38]

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[33] Petition at 13, n.4. A similar ex parte was filed concerning threats made against the CEO of Global Tel*Link. *See Securus Technologies, Inc. Response To Notice Of Apparent Ex Parte Violation And Motion To Strike Ex Parte Presentations*, WC Docket No. 12-375, November 3, 2015, at 2. ("STI Response").

[34] 47 C.F.R. §1.1204(a)(3). *See* STI Response at 3.

[35] STI Response.

[36] *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, WC Docket 12-375, DA 15-1341, 30 FCC Rcd 13424, 13425 (OGC, 2015).

[37] STI Response at 2.

[38] *Centel Corporation, Transferor, and Sprint Corporation, Transferee*, Memorandum Opinion and Order, FCC 93-397, 8 FCC Rcd 6162, 6163-6164 ¶¶ 8, 14 (1993)("Sprint")(finding in the context of a Petition to Deny an application for transfer of control that: (continued)

Viability of the Company. Presumably as some form of arguable "misrepresentation" to the Commission, Petitioners argue that the Joint Application should be denied because STI "submitted a fact sheet to the Commission asserting that 'the rates and rules in the [Commission's] Fact Sheet [concerning its ICS rates proposal]' could be 'a business ending event' for the company," even though "Securus was nowhere close to going out of business on

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> Sprint's failure to serve the January 15 response to AMC's supplemental pleading violated section 1.1208 [of the ex parte rules]. *Nevertheless, it appears that this violation was inadvertent* . . . . In addition . . . no prejudice resulted from this unintentional violation of the rules. Sprint's failure to serve copies of the information requested by the staff regarding cross-block cellular interests also violated section 1.1208. Again, we are persuaded that *the failure to serve was apparently unintentional*. . . . AMC has *not subsequently alleged that this particular information raised any issues regarding the [application] grant*. . . .

The Sprint case is squarely in line with the circumstances at issue here. In allowing the application grants to stand, the Commission went on to state that:

> Finally, we also do not believe this violation, even when combined with the other violations discussed above, *raises a substantial and material question of fact regarding Sprint's qualifications to be a licensee. Two of the violations, involving the January 15 letters, appear to have been inadvertent. . . . Accordingly, we do not believe the ex parte violations are disqualifying*. . . . We also find no substantial and material questions of fact regarding Sprint's candor on this issue. Sprint responded to all the questions raised regarding ex parte violations — indeed, it is Sprint's responses that led us to conclude that it violated the rules. *We do, however, strongly admonish Sprint to comply with the ex parte rules more carefully in the future. Should future violations by Sprint come to our attention, we will take appropriate enforcement action*. We further caution that where uncertainty exists concerning the ex parte rules' applicability, parties should seek guidance from the Commission.

October 7, 2015." The fact sheet Petitioners reference was a projection based on the likely outcome of the dramatically reduced rates that would apply to all ICS calls, both intrastate and interstate, if the 2015 rate caps had taken effect. The consolidated financial statements that Petitioners site in support of evidence of misrepresentation are just that — consolidated — and include information relating to businesses beyond STI's ICS business. Moreover, citation to revenues and assets tells nothing about other obligations of the company that would be affected by reduced revenue streams. It is telling that Petitioners repeatedly cite the amounts of STI's gross revenues and assets, but never mention the net income figures shown on the same financial statements, which reveal that STI *lost* money during some of the periods in question. Their argument is a simplistic mathematical red herring that says nothing about the real impact STI was projecting if the proposed below-cost rate caps had taken effect for all ICS provided by STI.

Monopoly Control. In addition, Petitioners recycle their claim from 2013 that STI seeks "to obtain monopoly control." STI reiterates the arguments made at that time. Petitioners' misplaced assertions of "monopoly" suggest that the proposed transaction will affect the structure of the inmate telecommunications market." It will not. The Applicants do not control the federal, state, or local correctional facility contracting process. They compete for business along with others for contracts to serve confinement facilities. As the Commission well knows, the single provider model for correctional facilities has existed for decades and has been recognized by the Commission for many years. The reality is that

nothing in this Transaction will change the contracting process applicable to the entire industry. In addition, the Transaction is not a merger of competing firms, and thus will not change the competitive structure of the applicable market. SCRS and its parent entities do not own or control any other provider of inmate calling services, so its acquisition of STI will not have any effect on the level of competition.

V. THERE SHOULD BE NO DELAY IN PROCESSING THE JOINT APPLICATION.

The Joint Application demonstrates in its filings that the Transaction complies with the Communications Act of 1934, as amended, and the Commission's rules. The proposed Transaction will be completely transparent to the end user. There will be no changes in rates, terms, or conditions of STI services as part of, or as a result of, this Transaction. The management and relevant contact information for STI will remain the same. The Transaction poses no potential for competitive harm because the same number of competitors in the ICS market will remain after completion of the Transaction.

The FCC has made it a policy to support the free market and reasonable business expectations.[39] The Commission has previously found that enhanced financial resources that would ensure the long-term viability of a competitive service provider is a public interest

[39] *See, e.g., Iridium Holdings LLC and Iridium Carrier Holdings LLC, Transferors and GHL Acquisition Corp., Transferee, Application for Consent to Transfer Control of Iridium Carrier Services LLC, Indium Sate/lite LLC, and Iridium Constellation LLC,* Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Red 10725, 10734 ¶ 21 (2009).

benefit.[40] The Applicants will have access to substantial financial resources that will allow financing of continued service to STI's customers and potentially to enhance or expand services.

The FCC previously approved analogous parent-level transactions involving this same company, concluding that it was in the public interest.[41] Those applications contained comparable information as what was provided in the current filings. In addition, the showing made in the Joint Application is consistent with applications granted for parent-level transfers of control of other inmate telephone service providers.[42] Delay of this proceeding would harm the Applicants. Delay could threaten the completion of the transaction by (i) impacting the availability of capital; (ii) increasing the cost of capital; and (iii) resulting in daily penalties for each day the closing is delayed; and, in addition, it could possibly, (iv) lead to termination of the merger agreement or termination of the lenders' financing for the transaction. That, among other reasons, is exactly why the Applicants filed for expedited processing. In addition, if the

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[40] *See, e.g., id.* at 10736 ¶ 26; *see also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum Opinion and Order*, 13 FCC Red 18025, 18030-31 ¶ 9 (1998).

[41] *Applications Granted for the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, LLC*, Public Notice, WC Docket No. 13-79, DA 13-961 (Apr. 29, 2013); *Notice of Domestic Section 214 Authorizations Granted*, WC Docket Nos. 11-68, 11-70, Public Notice, 26 FCC Red 7617 (Wire. Comp. Bur. 2011); *see also International Authorizations Granted*, Public Notice, 26 FCC Red 6891, 6893-6894 (Intl. Bur. 2011).

[42] *See Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 11-184, Public Notice, 26 FCC Red 16410 (Wireline Compet. Bur. 2011).

Bureau does not expeditiously approve this simple filing for a transfer of control between equity partners, it will have a chilling effect on banks providing funding and private equity firms providing capital to this business sector.

VI. CONCLUSION

For all the forgoing reasons, the Petition should be found procedurally defective and substantively without merit. It should be immediately dismissed or denied and the Joint Application should be expeditiously granted.

Respectfully submitted,

SECURUS INVESTMENT HOLDINGS, LLC; SECURUS TECHNOLOGIES, INC.; T-NETIX, INC.; T-NETIX TELECOMMUNICATIONS; AND SCRS ACQUISITION CORPORATION

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Dated: June 26, 2017

DECLARATION OF DENNIS J. REINHOLD

I, Dennis J. Reinhold, hereby declare under penalty of perjury

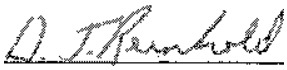
1. I am the Vice President, General Counsel and Secretary of Securus Investments Holdings, LLC and Connect Acquisition Corp. and its direct and indirect subsidiaries, including Securus Technologies, Inc. (collectively, "Securus Entities");

2. I have read the attached Opposition to the Petition to Deny By The Wright Petitioners; Citizens United For Rehabilitation Of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center For Media Justice; Working Narratives; United Church Of Christ, Inc.; And Free Press;

3. This declaration is submitted in support of the foregoing Opposition; and

4. The allegations of fact contained in the Opposition are true to the best of my knowledge and belief.

Dated: June 26, 2013



Dennis T. Reinhold

CERTIFICATE OF SERVICE

I, Koyulyn K. Miller, certify on this 26th day of June, 2017, a copy of the foregoing "**Opposition to the Petition To Deny By The Wright Petitioners; Citizens 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.; and Free Press**" has been served via U.S. Mail and/or via Electronic Mail (as indicated below) to the following:

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