

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Emergency Request for Waiver by)	WC Docket No. _____
Securus Technologies, LLC)	
)	
Petition of Network Communications)	WC Docket No. 19-232
International Corporation for Forbearance)	
Pursuant to 47 U.S.C. § 160(c) from 47)	
U.S.C. § 254(d) and 47 C.F.R. § 54.706(a))	

**EMERGENCY REQUEST FOR WAIVER BY
SECURUS TECHNOLOGIES, LLC**

Pursuant to Section 1.3 of the Commission’s rules, Securus Technologies, LLC (“Securus”), by its undersigned counsel, respectfully requests that the Commission (1) immediately waive the obligation of inmate calling service (“ICS”) providers to contribute to the federal universal service fund (“USF”) with respect to their interstate and international ICS revenues,¹ and (2) expeditiously grant the Petition for Forbearance filed by Network Communications International Corporation in WC Docket No. 19-232 (the “NCIC Petition”) in order to extend such relief to ICS users on a permanent basis.²

I. INTRODUCTION AND BACKGROUND

Securus provides phone, messaging, and video call technologies to inmates, public safety, law enforcement, and correction agencies across North America. ICS providers, like other telecommunications providers, currently are required to contribute approximately 19.6% of their

¹ See 47 C.F.R § 54.706.

² Petition for Forbearance of Network Communications International Corporation, WC Docket No. 19-232 (filed Aug. 9, 2019) (“NCIC Petition”).

gross interstate and international end user revenues from telecommunications services to the USF.³ The Commission's rules governing interstate and international ICS expressly permit providers to pass these contribution costs through to end users,⁴ although (like other providers) they are prohibited from imposing a surcharge that exceeds their actual contribution cost.⁵ As a practical matter, ICS providers (including Securus) generally pass through their USF contribution costs, on a dollar-for-dollar basis, in the form of Authorized Fees added to the base rate for interstate and international calls.

The novel coronavirus ("COVID-19") presents a need for the Commission to take urgent action to provide any and all financial relief for ICS users that it can. As Americans seek to combat the spread of COVID-19, Securus agrees with former Commissioner Mignon Clyburn that "[a] population that's not being recognized is those who are incarcerated."⁶ The COVID-19 pandemic rapidly spreading across North America and the rest of the world has affected inmates, law enforcement, and correction agencies, just as it has the rest of the population. Securus understands that many county, state and federal corrections facilities have suspended the ability for inmates to receive in-person visitation in an effort to prevent the introduction to and spread of COVID-19 within jails and prisons.⁷ Although these efforts are critically important to protect the health and

³ See *Proposed Second Quarter 2020 Universal Service Contribution Factor*, Public Notice, DA 20-263 (rel. Mar. 13, 2020).

⁴ 47 C.F.R. §§ 64.6000(b), 64.6070(a).

⁵ 47 C.F.R. § 54.712.

⁶ Howard Buskirk, Jonathan Make, and Jimm Phillips, *Pai Extracts Broadband Pledge from ISPs During COVID-19; Critics Want More*, Communications Daily (Mar. 16, 2020).

⁷ See, e.g., Kevin Johnson, *Prisons Restrict Inmates, Staffers' Movements as They Try to Keep Coronavirus Out*, USA TODAY (Mar. 17, 2020), <https://www.usatoday.com/story/news/politics/2020/03/17/prisons-locking-down-keep-coronavirus-out/5058388002/>; Jason Hanna, *Federal and Most State Prisons are Banning Visits to Protect Inmates from Coronavirus*, CNN (Mar. 14, 2020), <https://www.cnn.com/2020/03/14/health/prisons-coronavirus-visitations-banned/index.html>; K. Query, *Inmate Visitation to Cease Across Oklahoma Prisons for COVID-19 Concerns*, KFOR-TV (Mar. 13, 2020), <https://kfor.com/health/coronavirus/inmate-visitation-to-cease-across-oklahoma-prisons-for-covid-19->

safety of inmates, they harm the ability for inmates, and their friends, families, and attorneys to build and maintain critically important relationships.⁸ While in-person visitation is limited or prohibited, many inmates and their friends and families – many of whom are low-income and/or may be experiencing increased financial pressures due to lost income caused by COVID-19 – will increasingly rely on ICS as a means of communications. Limits to in-person visitation should be “compensate[d] by expanding inmates’ telephone privileges and supplementing them with video links.”⁹ Recognizing the impact that restrictions arising from COVID-19 will have on inmates and the importance of facilitating inmate communications with the outside world, several state Departments of Corrections have launched initiatives to provide free call time to inmates.¹⁰ In

concerns; Michael Balsamo, *Visits Halted in Federal Prisons, Immigration Centers Over Virus*, ASSOCIATED PRESS (Mar. 13, 2020); <https://apnews.com/150b1c38c898a249b97f2828c4367ab5> (reporting that all 122 federal correctional facilities are no longer allowing in-person visitation for at least 30 days); Press Release, Department of Public Safety and Correctional Services, MD State Prison Visits Suspended Immediately, (Mar. 12, 2020), <https://news.maryland.gov/dpscs/wp-content/uploads/sites/4/2020/03/VISITS-CANCELLED-31220.pdf> (suspending visitation immediately in connection with COVID-19).

⁸ See, e.g., *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 14107, 14130, ¶¶ 42-43 (2013) (explaining importance of ICS for reducing recidivism by fostering growth of family support structures).

⁹ Editorial Board, *Officials Must Work Quickly to Help Prevent the Coronavirus in Prisons*, THE WASHINGTON POST (Mar. 17, 2020), https://www.washingtonpost.com/opinions/officials-must-work-quickly-to-help-prevent-the-coronavirus-in-prisons/2020/03/16/054babf6-67b9-11ea-8012-fdc44a41cb4f_story.html.

¹⁰ See, e.g., Press Release, Delaware Department of Correction, Department of Correction Offers Free Inmate Call Time to Facilitate Community Support During Coronavirus Response (Mar. 16, 2020), <https://doc.delaware.gov/assets/documents/newsroom/2020/20press0316.pdf>; Press Release, New Jersey Department of Corrections, New Jersey Department of Corrections Suspends Visitations to State Prisons and Halfway Houses Statewide (Mar. 14, 2020), https://www.state.nj.us/corrections/pdf/PressRelease_PS/200314_PRESS_RELEASE_NJDOC%20SUSPENDS%20VISITATIONS%20TO%20STATE%20PRISONS%20AND%20HALFWAY.pdf (expanding access to “additional phone calls, free-of-charge” while visitation is temporarily suspended to mitigate the spread of COVID-19); Press Release, Georgia Department of Corrections, Georgia Department of Corrections Suspends Visitation Statewide (Mar. 12, 2020), <http://www.dcor.state.ga.us/NewsRoom/PressReleases/georgia-department-corrections-suspends-visitiation-statewide> (announcing visitation restrictions and providing for “one phone call per week, per inmate at no cost”); *Coronavirus in KY: State Prisons Cut Off Visitation, Churches Asked to Cancel Services*, WLKY (Mar. 11, 2020), <https://www.wlky.com/article/watch-wednesday-coronavirus-update->

addition, numerous counties have also launched initiatives to provide free calls to inmates.¹¹ Securus is working collaboratively with its state and county partners in the corrections community to reduce the cost of remote video visitation,¹² and provide free or reduced rate calls, e-mails and other communications.

In order to complement efforts by the private sector and stakeholders at the state and local level to stave off the negative consequences to inmates caused by COVID-19, the Commission should immediately waive ICS providers' USF contribution requirement, to make ICS calls more accessible and affordable for inmates and their friends and families during the outbreak. The removal of this fee will immediately reduce the consumer cost of individual calls. The Commission also should provide permanent relief from USF contributions for ICS users and their friends and families by expeditiously granting the NCIC Petition, subject to Securus' proposed modifications.

II. THE COMMISSION SHOULD IMMEDIATELY WAIVE ICS PROVIDERS' USF CONTRIBUTION OBLIGATION.

The Commission may waive its rules for good cause shown.¹³ Generally, a waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹⁴ Additionally, good cause for a waiver may be shown "in cases

[governor-beshear-covid19/31395217#](#) (announcing the decision to stop outside visitation and stating that inmates will be provided with "a free phone call each week").

¹¹ Kimberly Kindy, Mark Berman and Julie Tate, *Jails and Prisons Suspend Visitation to Keep Coronavirus from Spreading*, THE WASHINGTON POST (Mar. 17, 2020), https://www.washingtonpost.com/national/jails-and-prisons-suspend-visitation-to-keep-coronavirus-from-spreading/2020/03/16/0cae4adc-6789-11ea-abef-020f086a3fab_story.html (discussing of prisons and jails suspending of in-person visitation and providing "free phone calls to family").

¹² See Justin Story, *Warren Jail to Launch Video Visitations*, BOWLING GREEN DAILY NEWS (Mar. 12, 2020), https://www.bgdailynews.com/news/warren-jail-to-launch-video-visitations/article_e76660ae-61c9-56b9-8dde-b58e497754cd.html.

¹³ 47 C.F.R. § 1.3.

¹⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990).

where allowing deviation from a rule requirement would not disserve the rule's underlying purpose and would better serve the public interest than requiring strict compliance."¹⁵ In reviewing a request for a waiver, the Commission considers hardship, equity and effective implementation of policy.¹⁶ Good cause exists to immediately waive the requirement for ICS providers to pay USF contributions.

Although the NCIC Petition presents an important avenue for permanent relief,¹⁷ an immediate waiver granted on an interim basis is in the public interest. The rapid global spread of COVID-19 represents a special circumstance that no one could have anticipated but one in response to which all have had to make adjustments. The unique hardship that incarceration imposes on both inmates and their family members, exacerbated by COVID-19 and the nation's collective response thereto, creates a strong basis for distinguishing between ICS and other telecommunications services. An interim waiver granted on an expedited basis is in the public interest because it will immediately make ICS more accessible and affordable for users of ICS, many of whom are low-income. Failure to take action to make ICS more affordable while in-person visitation is restricted could have drastic implications for facility, inmate and officer safety. For example, "[p]risoners at two dozen institutions in Italy rioted this month after the government, seeking to contain the virus, imposed a countrywide lockdown that curtailed prison visits by relatives and others."¹⁸ Increased access and affordability will encourage robust and sustained communications thereby engendering substantial benefits for the public at large, as well as for the

¹⁵ See *Mobile Satellite Ventures Subsidiary LLC, Memorandum Opinion and Order*, 22 FCC Rcd. 20548, 2055 (IB 2007).

¹⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (holding that the Commission consider hardship, equity, or more effective implementation of overall policy on an individual basis).

¹⁷ NCIC Petition at 3.

¹⁸ Editorial Board, *supra* note 9.

individuals using the service, including reduced recidivism, improved inmate morale, facility safety, and improved functioning of the criminal justice system to the benefit of society as a whole. During this time of increased need, states, counties and ICS providers are each contributing to increase accessibility and affordability of communications. The waiver of the USF contribution requirement as applied to ICS calls will bring additional, immediate relief.

A waiver is also warranted where the state or local government is covering the cost of ICS calls to allow inmates to make free calls while in-person visitation is prohibited. In these circumstances, absent a waiver, the USF contribution costs on a given interstate ICS call will be passed onto the state or local government footing the bill for the inmates' "free" calls. Therefore, USF contributions could be diverting critically needed resources from other COVID-19 response initiatives like the purchase of medical supplies and providing financial relief to local businesses and residents impacted by COVID-19.

The benefits to ICS users and to the general public from an immediate, interim waiver will substantially outweigh the marginal increase in USF contribution burdens for users of other telecommunications services. Therefore, the Commission should immediately grant an interim waiver and take all necessary and appropriate steps to make interstate and international ICS calls more affordable for inmates and their friends and families during the COVID-19 pandemic, including adopting Securus' proposed modifications to the resale exemption certification obligations and Form 499-A instructions, as described in Section III below, to ensure that ICS users ultimately obtain the benefits of a waiver.

III. THE COMMISSION SHOULD EXPEDITIOUSLY GRANT THE NCIC PETITION.

Beyond providing immediate relief for inmates from USF fees assessed on interstate and international ICS calls, Securus renews its support for the NCIC Petition as a mechanism for

making ICS calls more affordable and accessible for users in the longer term. The Commission should expeditiously grant the NCIC Petition subject to Securus' proposed modification to the resale exemption certification obligations and Form 499-A instructions.¹⁹ As Securus previously proposed, the reseller exemption certification language in the Form 499-A instructions should be changed to read as follows:

“... assessable U.S. telecommunications or interconnected Voice over Internet Protocol services or inmate communications services for which the contribution obligation has been waived or forborne.”²⁰

Absent the ability to continue to provide exemption certificates to their wholesale suppliers, ICS providers would most likely continue to pass these fees onto their customers, directly or indirectly. Allowing resellers like Securus to continue to provide exemption certificates to their underlying carriers for services resold to provide ICS will ensure that ICS users reap the benefits of forbearance on a permanent basis.

IV. CONCLUSION

Accordingly, Securus urges the Commission (1) to immediately waive USF contributions as applied to ICS calls at least on an interim-basis, and (2) to expeditiously grant the NCIC Petition

¹⁹ See Comments of Securus Technologies, Inc., WC Docket No. 19-232, at 2-3 (filed Sept. 16, 2019); Reply Comments of Securus Technologies, Inc., WC Docket No. 19-232, at 2 (filed Oct. 1, 2019).

²⁰ FCC Form 499-A Instructions (2019) at 36-39 (instructions for attributing revenues from “contributing resellers”).

to permanently eliminate the unnecessary burden of USF contributions on ICS users, including by modifying the resale certification obligations for ICS providers previously proposed by Securus.

Respectfully submitted,

/s/ _____
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