



July 16, 2018

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th St S.W., Room TW-A325
Washington, D.C. 20554

Re: Comment for WC Docket No. 18-193, Application for Transfer of Control of Inmate Calling Solutions to Securus Technologies, Inc.

Dear Commissioners and Staff,

The Corrections Accountability Project respectfully submits this comment to the Commission in response to the request for public comments regarding the joint application to transfer control of Inmate Calling Solutions (ICS) from TKC Holdings to Securus Technologies. We write to provide information about why this transaction will reduce competition and harm consumers of correctional telephone services. We urge the Commission to reject this application and to protect access to communication for people behind bars and their support networks.

The Corrections Accountability Project, a project of the Urban Justice Center, is a non-profit criminal justice organization dedicated to eliminating the influence of commercial interests in the criminal legal system. In part, we work to expose the harms caused by the commercialization of justice and to educate the public about those who profit from the prison industrial complex. As part of our advocacy, we recently released an article titled *Will the FCC Finally Stop a Prison Telecom Merger?* and published an accompanying commentary piece with *The Marshall Project, This Call May Be Monopolized and Recorded*.¹ This comment is a version of the first article that has been edited to emphasize the issues before the Commission.

Comments

The Commission should reject the application to transfer control. This transaction raises serious antitrust concerns and will harm both the market and consumers. It will significantly decrease competition in the correctional telecom industry and give Securus control over many of its supposed competitors. This decreased competition will end competitive bidding for contracts and give Securus an advantage in contract negotiations, resulting in higher costs for people behind bars to maintain connections with their support networks. For all these reasons, this merger will not serve the public interest and we urge you to reject it.

The Application omits crucial information about the previous relationship between Securus and ICS and the impact of the deal on

This transaction will give Securus unprecedented control of the correctional telephone market, which will hurt competition and, in turn, public interest.

competition. The deal is part of a larger campaign by Securus to remove its competition through acquisitions and the threat of litigation, raising serious antitrust concerns that should prevent approval.

After the deal is finalized, as much as 90% of the correctional telecom market will be split between two companies, Securus and Global Tel Link (GTL). Until now, GTL has led the \$1.2 billion industry.ⁱⁱ However, when the ICS deal closes, Securus will become the nation's largest correctional telecom provider as measured by revenue, contracts, or facilities and be positioned for dangerous organic growth.ⁱⁱⁱ

This purchase is one of many recent acquisitions for Securus, which has spent almost \$600 million since 2012 swallowing up its smaller competitors.^{iv} But, the ICS deal is alarming because the two companies previously had a competitive, even acrimonious relationship.^v

Before the deal, Securus and ICS had grown into direct competitors and bitter rivals. Under The Keefe Group, its current parent company, ICS had won a number of contracts out from under Securus, sparking an escalating war of words.^{vi} Despite the losses, Securus' then-CEO Rick Smith publicly mocked ICS in 2016, declaring that it "should be scared to death" of Securus' recent technology investments.^{vii}

But rather than fight the threatened battle, Securus decided to outright purchase its competitor and whatever patent technology it owned.

For years, Securus has used aggressive tactics to hoard intellectual property in the industry.^{viii} The company controls hundreds of patents^{ix}—more than the rest of the industry put together—and has embraced its reputation as a frequent patent litigator and troll.^x Securus has used the threat of litigation to compel smaller companies to sign expensive, bilateral licensing agreements under the stated notion of creating "patent peace."^{xi}

Correctional telecom companies that do not want to engage in a patent-sharing partnership can expect to be inundated with patent infringement lawsuits. In fact, Securus is remarkably open about its partnership strategy, promising to "outspend and out-patent" any company that does not sign on to partner with it.^{xii} These threats have paid off: Securus has established "patent peace" with nearly

Securus will become the largest player in a clear duopoly and take control of the market.

Securus has spent millions buying out its competition, but previous targets have not threatened Securus as significantly as ICS.

For years, Securus has been bullying smaller competitors into expensive licensing deals under threat of litigation, making nearly all of them dependent on Securus.

all its competitors, or at least those without the capital necessary to challenge them in court, like GTL.

Securus and GTL had several licensing agreements in place for years, until their relationship soured, in 2013, when GTL chose not to renew the agreements.^{xiii} Securus then embarked on a protracted and costly campaign against GTL's patent portfolio, filing numerous legal challenges against its rival, which responded with its own lawsuits.^{xiv} By the time the two companies reached a confidential settlement in 2017, they had spent an estimated \$40 million in combined legal fees and Securus had lost the rights to key patents for call-monitoring technology.^{xv}

Having finished second-best in the direct challenge, Securus was faced with a dilemma: it could either pay GTL for the use of its technology or it could find alternative technology at a less powerful competitor. ICS, which offers call-monitoring technology similar to that for which Securus lost its patent, presented one option.^{xvi} But like GTL, ICS was less vulnerable to Securus' usual intimidation with the financial backing of The Keefe Group, which has annual revenues of over \$800 million.^{xvii}

Smith's hostile statements about ICS suggest that it too had not succumbed to Securus' "patent peace" bullying and had refused to sign a licensing deal. So, instead of risking another expensive court battle, Securus appears to have chosen to buy out the competitor. In doing so, the company mitigated against future losses to GTL or ICS while strengthening its dominance in the market.

These gains come at the expense of meaningful competition in the market. If the deal is approved, forty-seven state prison systems will now contract with a telephone provider that is owned by one of just three national companies: Securus, GTL, or CenturyLink.^{xviii} But, this statistic actually understates Securus' degree of control.

The Commission must consider the effect of Securus' partnerships when evaluating whether this deal will preserve competition. Although Securus' claims that there are "a number of other competing providers... [and thus] approval of this Application will not foreclose the opportunity for continued competitive bidding," this statement omits two key details: these providers are in many cases neither competitive nor independent. Other companies control just a fraction of the market for correctional telecom contracts and cannot truly compete with larger rivals like Securus. But, even where they are competitive, Securus now has a stake in the businesses of many of those providers too.

This transaction removes one of the only competitors with technology that Securus needed to compete.

Outside of the controlling duopoly, almost all the smaller competitors are dependent on partnerships with Securus, including now the third-largest provider, CenturyLink.

In fact, CenturyLink, the only remaining significant national competitor outside the leading duopoly, has contracted with ICS for over ten years^{xix} and recently developed an exclusive partnership with ICS for correctional telecom services.^{xx} Many of the remaining regional providers, like NCIC and Paytel, are also dependent on Securus for technology thanks to its “patent peace” partnerships.^{xxi}

And this is not just true in traditional telephone services, but also in their expanding portfolio of non-traditional technology services. For example, in 2015, the Securus spent an estimated \$250 million to acquire JPay,^{xxii} which has hundreds of contracts for money transfer services and generates millions in profits by collecting a fee each time someone sends money to an incarcerated person.^{xxiii} When officials allow multiple players to assist with money transfers in their facilities, users often have only the illusion of choice because Securus also has a partnership with one of JPay’s primary competitors, MoneyGram.^{xxiv}

Between its acquisitions, licensing agreements, and partnerships, Securus now has an unprecedented level of control over the market, shifting the balance of the industry in its favor. GTL, despite its similarly large market share, cannot match Securus’ control after considering its partnerships and licensing agreements. Layer on top of that their growing suite of products and services that allows them to bundle contracts, and their dominance becomes obvious.

Securus’ control gives the company both substantial advantages in contract bidding and significant bargaining power in contract negotiations. This increased control will increase Securus’ ability to exploit its incarcerated consumers and their support networks.

With this expanded power, Securus will be free to deepen its exploitative practices. In regions where Securus has already squeezed out the competition, it can raise prices when extending or renewing contracts. Without a large field of companies to make counteroffers, facilities will not have the option of negotiating for better terms. And while officials sign the contracts, these increased costs will fall squarely on Securus’ incarcerated customers and their loved ones, who have no voice in the contract selection or negotiations.

In new markets, Securus’ control gives it a different advantage: it can make riskier bids. When it has a stake in multiple bids for the same contract, Securus takes less risk in presenting higher rates and fees and more favorable terms for the company. If Securus loses

Securus is taking similar monopolistic actions in multiple markets.

This transaction will lead to fewer options for correctional facilities and higher costs for the end consumers, those calling incarcerated loved ones, whose options are already inherently limited.

the bid, it can still benefit if it has a relationship with the winning contractor. For Securus, it will become a win-win situation.

The proposed transfer of control does not serve the public interest. This deal will give Securus an unprecedented degree of control over the market and its direct competitors, significantly removing competition in the industry. This increased control will lead to fewer options for facilities and higher rates for the end consumers, those with incarcerated loved ones.

For the reasons stated above, the Commission should reject this Application.

Sincerely,



Bianca Tylek
Director, Corrections Accountability Project

SOURCES:

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ⁱⁱ Timothy Williams, *The High Cost of Calling the Imprisoned*, N.Y. Times (Mar. 30, 2015), <https://nyti.ms/1F8OJ4j>.

ⁱⁱⁱ See ICSolutions, *Rates*, <https://icsonline.icsolutions.com/rates>; Global Tel Link, *GTL Leadership by the Numbers*, http://www.gtl.net/about-us/gtl_by_the_numbers; Securus Techs., *Facilities We Serve*, <https://securustech.net/facilities-we-serve>.

^{iv} Eric Markowitz, *Amid Death Threats, An Embattled Prison Phone Company CEO Speaks Out*, The IB Times, (Jan. 26, 2016), <http://www.ibtimes.com/amid-death-threats-embattled-prison-phone-company-ceo-speaks-out-2276551>.

^v *The Prison Industrial Complex: Mapping Private Sector Players*, Report, Corrections Accountability Project, April 2018, <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5ade0281f950b7ab293c86a6/1524499083424/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+%28April+2018%29.pdf#page=63>.

^{vi} See, e.g., Proceedings of the Board of Commissioners, Calhoun County (Aug. 21, 2014), http://www.calhouncountymi.gov/assets/1/7/140821_BOC_Minutes.pdf#page=9; Comments and Video File from Securus Techs. re: Transfer of Control of Inmate Calling Solutions to TKC Holdings, Inc. (Jul. 1, 2016), <https://ecfsapi.fcc.gov/file/10720068300134/16071502-1.pdf>.

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- ^x Jessica Karmasek, *Inmate technology company continues to challenge competitor's patent portfolio, files 10 new petitions with PTAB*, Legal NewsLine (May 19, 2015), <https://legalnewsline.com/stories/510550763-inmate-technology-company-continues-to-challenge-competitor-s-patent-portfolio-files-10-new-petitions-with-ptab>.
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- ^{xii} *Id.*
- ^{xiii} *Securus Technologies Sues Global Tel*Link For Patent Infringement, Prison Cell Phones* (Aug. 3, 2013), <https://prisoncellphones.com/blog/2013/08/03/securus-technologies-sues-global-tellink-for-patent-infringement/>.
- ^{xiv} *Id.*
- ^{xv} Press Release, Securus Techs., *Securus Technologies Continues to Highlight Integrity Concerns Associated with Competitor* (Mar. 23, 2017), <https://www.prnewswire.com/news-releases/securus-technologies-continues-to-highlight-integrity-concerns-associated-with-competitor-300428848.html>; Steven Trader, *Prison Phone Rivals Reach Confidential Deal In IP Row*, Law360 (Dec. 5, 2017), <https://www.law360.com/articles/991374/prison-phone-rivals-reach-confidential-deal-in-ip-row>.
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- ^{xviii} Drew Kukorowski, *The price to call home: state-sanctioned monopolization in the prison phone industry*, Prison Policy Initiative (Sept. 11, 2012).
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- ^{xxii} See *The Prison Industrial Complex* *supra* note 5.
- ^{xxiii} Dina Gusovsky, *The big business of selling apps to prison inmates*, CNBC (Oct. 1, 2014), <https://www.cnn.com/2014/10/01/the-big-business-of-selling-apps-to-prison-inmates.html>; Daniel Wagner, *Prison bankers cash in on captive customers*, Center for Public Integrity (Sept. 30, 2014), <https://www.publicintegrity.org/2014/09/30/15761/prison-bankers-cash-captive-customers>.
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