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

In the Matter of:	**)**	
	)	**WC Docket No. 12-375**
Rates For Interstate Inmate	**)**	
Calling Services	**)**	

OPPOSITION TO PETITION FOR PARTIAL STAY

The Wright Petitioners hereby submit this Opposition to the *Petition For Partial Stay of Order on Reconsideration Pending Review*, filed by Securus Technologies, Inc. (the "Petition").[1] The Petition requests that the FCC stay the effectiveness of changes made to the Inmate Calling Service ("ICS") rates contained in the Order on Reconsideration adopted on August 2, 2016, and released on August 9, 2016, in the above-captioned proceeding.[2]

Securus' Petition must be denied. Securus is simply wrong that (i) it will likely prevail in a future judicial review of the new ICS rate caps; (ii) it will suffer irreparable harm from the implementation of new ICS rates; (iii) other interested parties will not be substantially harmed if the stay is granted; and (iv) the public interest favors granting a stay.[3] Instead, as discussed below, the new ICS rates will fully compensate Securus for its costs associated with providing ICS to the public. Moreover, the new ICS rate caps are necessary to force Securus and other ICS providers to cease their new practice of raising intrastate rates to "make them whole" in light of the cap on ancillary ICS fees that went into effect on June 20, 2016. In light of the Commission's goal to protect consumers from unjust, unreasonable and unfair ICS rates and fees, the Petition must be denied.

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[1] The Petition was filed on August 25, 2016. Pursuant to Section 1.45(d) of the FCC's rules, this Opposition is filed within 7 days of the submission. *See* 47 C.F.R. § 1.45(d) (2015).

[2] *Rates for Interstate Inmate Calling Services*, Order on Reconsideration, FCC 16-102, rel. Aug. 9, 2016 (the "Recon Order"). The Recon Order has yet to be published in the Federal Register.

[3] *Petition*, pg. i-ii (citing *Virginia Petroleum Jobbers Association*, 259 F.2d 921 (D.C. Cir. 1958)).

First, Securus is incorrect that its appeal of the Recon Order is likely to be successful.[4] In particular, Securus argues that "there is every reason to expect that the Court of Appeals will stay" the Recon Order, and that the Commission should grant its Petition to avoid "this theatre of the absurd yet again."[5] Securus bases its argument on the "significant jurisdictional challenges" that remain before the United States Court of Appeals for the District of Columbia, which Securus characterizes as "well received."[6] Of course, Securus ignores the fact that the court permitted a cap on ancillary ICS fees to go into effect for both interstate and intrastate ICS customers. Presumably, if Securus' jurisdictional challenge was well-received, the court would not have permitted ancillary ICS fee caps to go into effect for intrastate ICS customers, especially when one considers that the vast majority of ICS calls are intrastate in nature.

Previously, the Wright Petitioners submitted several detailed reviews of Securus' 2014 Cost Study submissions, which highlighted the substantial deficiencies that directly led to Securus overstating its costs to provide ICS.[7] The Commission also noted these problems associated with the ICS providers' cost studies, but decided to consider the providers' studies "at face value."[8] Then, on July 29, 2016, the Wright Petitioners provided an updated cost analysis for each ICS provider that submitted a cost study in 2014.[9] The analysis applied the new ICS rate caps adopted in the Recon Order to the providers' costs specified in their 2014 cost studies

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4 *Petition*, at 4-5.

5 *Petition*, at 5.

6 *Petition*, at 4.

7 *See Wright Petitioners Ex Parte Presentation*, dated Sept. 17, 2014. *See also Wright Petitioners Ex Parte Presentation*, dated Aug. 14, 2015. *See also Wright Petitioners Ex Parte Presentation*, dated August 28, 2015. Thus, Securus' assertion that its "July 2014 Mandatory Data Collection submissions…have never been refuted or discredited" is simply wrong. *Petition*, at i.

8 *See Second Report and Order*, 30 FCC Rcd at 12,790 ("We take the data at face value, even though the analysis shows that there is significant evidence—both from our own analysis and commenters' critiques—suggesting that the reported costs are overstated.").

9 *See Wright Petitioners Ex Parte Submission*, dated July 29, 2016.

and showed that the seven largest ICS providers would have all of their costs covered by a significant margin.[10] Thus, even if one ignores the substantial deficiencies associated with Securus' July 2014 Mandatory Data Collection, the new ICS rate caps will provide full recovery for its costs, and leave sufficient headroom if Securus desires to pay site commissions to help cover the costs incurred by correctional facilities to make ICS available.

Which gets us to the elephant in the room. The *quid pro quo* for accepting lower rates and caps on ancillary ICS fees in the 2014 Joint Provider Proposal was the adoption of rules that would cap or eliminate site commissions.[11] However, in the *Second Report and Order*, the Commission correctly chose not to ban the payment site commissions so that the parties could negotiate the terms of these private contracts if they so desired.

Now, because the Commission would not extract Securus from the obligation to pay site commissions – an obligation that is voluntarily accepted every time Securus decides to respond to a correctional facility's request for proposal – it seeks a stay of the new ICS rate caps. Securus claims that the Commission "ignore[d] market reality" by not banning site commissions.[12] However, the Commission correctly determined that there was no reason to wade into the private negotiations between two sophisticated entities when its statutory authority requires it only to ensure that the American public is protected from unjust, unreasonable and unfair ICS rates and ancillary fees.

As discussed below, even as Securus was complaining about the so-called "market reality" of site commissions before the Commission, it was defending its hard-fought "right" to pay almost $20 million in guaranteed funds to secure the contract to serve the Georgia

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[10] *Id.*, Exhibit A.

[11] *Joint Provider Proposal*, filed Sept. 15, 2014.

[12] *Petition*, pg. 10.

Department of Corrections. Thus, Securus' efforts to have the Recon Order overturned is not likely, especially when one fully considers the ICS providers' ongoing "theatre of the absurd."

Next, Securus failed to provide sufficient evidence that it will suffer irreparable harm.[13] Securus claimed that it has ongoing Minimum Annual Guarantee ("MAG") payment obligations and that the cost of implementing the new ICS rate caps will be costly. However, the Petition lacked **any** evidence that the impact of the new ICS rates will be irreparable. Instead, Securus simply provided self-serving Declarations from its Chief Executive Officer and Chief Financial Officer, with **zero** supporting evidence, to argue that Securus will generate less revenue.[14]

As with its prior two Petitions for Partial Stay that were denied by the Commission,[15] Securus' main argument that it will suffer irreparable harm is based solely on the assertion that the adoption of new ICS rate caps will cause it to generate less revenue, which will impact its net income.[16] Securus forgets that the whole point of this proceeding was to eliminate the monopoly profits earned by ICS providers, and to protect ICS customers from unjust, unreasonable and unfair rates and ancillary fees.[17]

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[13] *See Connect America Fund*, 27 FCC Rcd 7158, 7160 (2012)("To warrant injunctive relief, an injury must be 'both certain and great; it must be actual and not theoretical. Petitioners must provide 'proof indicating that the [they allege] is certain to occur in the near future.'"). *See also Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("Bare allegations of what is likely to occur" are not sufficient.").

[14] To the extent that the Commission needs additional financial information regarding Securus, attached as Appendix A are FY 2014 and FY 2015 consolidated balance sheets, statements of operations and statements of cash flows for Securus Holdings, Inc., which were obtained through a FIOA request sent to the Alabama Public Service Commission. After a cursory review, there seem to be several inconsistencies between these reports and the information provided by Securus in the Petition.

[15] *See Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, 31 FCC Rcd 261 (2016) ("*2016 Stay Order*"); *See also Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions and Petition to Hold In Abeyance, 28 FCC Rcd 15,927 (2013)("*2013 Stay Order*").

[16] *Petition*, pg. 11-12 (*citing* Affidavit of Geoffrey M. Boyd, CFO, and Affidavit of Richard A. Smith, CEO).

[17] As noted by Praeses, the courts have previously found that regulatory changes that would have the effect of eliminating a business model are permissible and not a regulatory taking. *See Praeses Ex*

Simply put, a petitioner seeking the stay of an order ending monopoly ICS rates cannot point to the loss of its ill-gotten monopoly ICS profits as its justification for the stay without invoking the *Chutzpah Doctrine*.[18] Requiring Securus to charge just, reasonable and fair ICS rates fits squarely within the FCC's statutory authority and is not an irreparable harm. While it is reasonable to question whether Securus will earn as much revenue under the new ICS rates than it has in the past,[19] the extraordinary relief of staying the Recon Order to preserve Securus' monopoly profits must be rejected.

Moreover, to the extent that Securus relies on its MAG obligations as a justification to stay the new ICS rate caps, it only has itself to blame. As noted above, it would appear that Securus' ultimate goal is to have the Commission give it (and other ICS providers) the

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Parte Submission, Oct. 13, 2015, pg. 5 (*citing See, e.g., Huntleigh USA Corp v. United States*, 525 F.3d 1370 (Fed. Cir. 2008) (regulation eliminating private contractors' ability to provide airport screenings not a taking); *cf. Air Pegasus of D.C., Inc. v. United States*, 424 F.3d 1206 (Fed. Cir. 2005) (new regulations of air traffic destroying a company's business model not a taking).

[18] The *Chutzpah Doctrine* was previously defined by Commissioner Pai as "a child who has murdered his parents throwing himself on the mercy of the court because he is an orphan," *See Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Dissent of Commissioner Ajit Pai, 29 FCC Rcd 4371, 4589 (2014) (*citing Marks v. Commissioner*, 947 F.2d 983, 986 (D.C. Cir. 1991) (fugitives from criminal prosecution argued that inadequate efforts were made to notify them of tax delinquency); *Harbor Ins. Co. v. Schnabel Found. Co.*, 946 F.2d 930, 937 & n.5 (D.C. Cir. 1991) (subcontractor asserted contractor was negligent for relying on subcontractor's advice).

[19] Inexplicably, Securus continues to ignore the verifiable increase in call volume (and ICS revenue) that resulted from the adoption of the interstate ICS rate caps. *See 2016 Stay Order*, 31 FCC Rcd at 291. For example, Praeses has indicated that call volumes have increased by 76% since the adoption of the rate caps. *See Praeses Ex Parte Submission*, Oct. 13, 2015, pg. 2 ("Interstate ICS call volume is now approximately 76 percent higher than before the effective date of the 2013 ICS Order and overall interstate ICS revenue has increased approximately 12 percent. Praeses expects that this same trend will affect intrastate ICS call volume and revenue once the Commission's proposed new intrastate rate caps take effect, thereby substantially mitigating the loss of intrastate ICS revenue that will occur as a result of the lower intrastate ICS rates."). *See also Petitioners' Ex Parte Submission*, dated July 18, 2013 ("the recent statements of CenturyLink, GTL and Securus demonstrate that a lower ICS rate will lead to higher call volumes, and a commission of 50% or more can still be paid to the correctional authority. Each tout their low rate/high commission rate proposals as delivering higher call volumes and higher revenues for the Florida DOC. Their blended 15-minute rate was less than $0.10 per minute, and each proposed to pay an annual commission in excess of 46%.").

justification to cease paying site commissions and MAGs to correctional facilities. Securus stopped paying site commissions on interstate call revenue, and now Securus wants the Commission to play the role of the "bad cop" and ban site commissions and MAGs.

While Securus makes this argument to the Commission, it makes quite a different argument in Georgia. Specifically, just **14 days** before Securus filed the Petition for Partial Stay of the new ICS rate caps, it submitted a "Response" before the Department of Administrative Services, State of Georgia, wherein it opposed attempts by Global Tel*Link and CenturyLink to block the award of a contract that would require Securus to make guaranteed payments of $19.6 million over four years.[20]

Presumably, if Securus was truly concerned about the "tremendous, unrecoverable losses"[21] created by its existing MAG obligations on **August 25, 2016**, it would have also been equally concerned when it filed the GA Response two weeks earlier on **August 11, 2016**.

In fact, if Securus was truly concerned about the impact of MAGs on its bottom line, it could have simply walked away from its offer during the Georgia proceeding.[22] Instead, it touted that:

> the taxpayers of Georgia will receive more revenue over the four-year life of the Contract from Securus than from any other offeror – a guaranteed $19,600,000, compared to no more than $12,750,000 from the next best offeror.[23]

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[20] *See* Appendix B ("Georgia Response"). Securus was willing to pay site commissions of 59.6%, with a minimum monthly guarantee of $325,000, and a financial incentive payment of $4,000,000, despite the fact that it would be prevented from charging more than $0.13 per minute for collect calls and $0.11 per minute for prepaid and debit calls. *See* Appendix C ("Securus Georgia BAFO"). Again, the Georgia Response was filed fourteen days before the Petition for Partial Stay was filed with the Commission.

[21] *See Petition*, Boyd Affidavit, ¶ 4.

[22] The Georgia Response was filed to address appeals filed by Global Tel*Link and CenturyLink. Copies of those Appeals are attached hereto as Appendix D and Appendix E. The complete record of the proceeding can be found at: http://ssl.doas.state.ga.us/PRSapp/PublicBidNotice?bid_op=164670046700-GDC0000669.

Securus' restatement of its willingness to pay Georgia site commissions of 59.5%, a financial incentive payment of $4,000,000, and minimum guaranteed payment of $19,600,000 on August 11, 2016, completely eviscerates Securus' demand presented on August 25, 2016, that the Commission grant a stay due to the "tremendous, unrecoverable loses" arising from its "obligations to pay Minimum Annual Guarantees."[24]

Third, Securus is simply wrong in concluding that third parties will not be harmed by the grant of the Petition.[25] Any delay in the effectiveness of the Recon Order would delay immediate relief to millions of ICS customers currently being charged excessive ICS intrastate rates, who have seen those rates *increase* due to the actions of Securus and other ICS providers.

In fact, the Wright Petitioners has previously submitted copies of recently-adopted amendments to existing ICS contracts to ensure that both the ICS provider and the correctional facility "remain whole."[26] In addition to this information, the Wright Petitioners provided information relating to the increase in intrastate ICS rates for Securus customers in California, Missouri, Pennsylvania and Tennessee after the cap on ancillary ICS fees went into effect on June 20, 2016.[27] Finally, Securus continues to charge outrageous fees for its Pay Now™ service offered through its subsidiary, 1Tel!. Specifically, Securus' subsidiary charges $14.99 for ICS calls originating from their facilities, with $1.80 for the cost of the call, and $13.19 as a "Transaction Fee," and "there are no credits for disconnected calls or unused minutes."[28]

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[23] *Georgia Response*, pg. 7

[24] *Petition*, Affidavit of Geoff Boyd, ¶¶4-6.

[25] *Petition*, at 12.

[26] *See Opposition to GTL's Petition for Waiver*, filed June 17, 2016, Appendix B and Appendix C. *See also Wright Petitioners Ex Parte Presentation*, dated July 29, 2016, Exhibit B.

[27] *Wright Petitioners Ex Parte Submission*, dated July 29, 2016, Exhibit C.

[28] *See* Appendix F.

Apparently, this is "the continuation of the status quo"[29] that Securus seeks to maintain. It is obvious that Securus' Petition seeks additional time so that it may continue charging unjust, unreasonable and unfair intrastate rates and outrageous single-call fees to its customers as a replacement for the revenue they lost when the Commission's cap on ancillary ICS fees when into effect. Coupled with the increase in intrastate rates outlined previously, there will be substantial harm to third-parties if the new ICS rate caps are not imposed as soon as possible.

Finally, the Petitioners and other parties have provided irrefutable evidence that reform of all ICS rates is critical, and that there will be overwhelmingly positive public interest benefits arising from the FCC's implementation of a uniform ICS rate cap on intrastate and interstate calls. Any delay in the effectiveness of the Recon Order would be, in fact, counter to the public interest.

In particular, the Petitioners have introduced comprehensive evidence that increased contact between inmates and their families and loved ones will reduce recidivism rates, which will decrease the cost of incarceration. In fact, it was shown that just a 1% decrease in the recidivism rate would result in savings of more than 250 million dollars for state, county and local jurisdictions.

Also, the Petitioners have provided previous statements from Securus, GTL and CenturyLink in response to a Request for Proposal asserting that the reduction in rates and fees would lead to increased call volume, increased revenues for ICS providers, and, in turn, increased commissions paid to the correctional facilities that receive site commissions.

In sum, Securus has utterly failed to establish that its pecuniary interest in getting out of its voluntary obligations to pay site commissions and MAGs, and its avoidance of additional

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[29] *Petition*, pg. 12.

legal costs for "yet another trip to the D.C. Circuit," outweighs the enormous public interest harms associated with any further delay in the effectiveness of the new ICS rate caps adopted in the Recon Order. Indeed, the record in this proceeding overwhelmingly demonstrates the significant and adverse effects caused by the unjust, unreasonable and unfair ICS rates and fees.

Thus, the Petition has (i) failed to establish that an appeal of the Order on Reconsideration would be successful on the merits; (ii) failed to provide **any** evidence that it will suffer irreparable harm; (iii) failed to show the lack of harm to third parties (in fact, great harm will be caused from a delay in the effectiveness of the lower rates for all ICS calls); and (iv) failed to show any public interest benefit from granting a stay.

Therefore, Petitioners oppose Securus' Petition for Partial Stay, and respectfully request that the Commission adopt an order denying the request as legally unsustainable.

Respectfully submitted,

THE WRIGHT PETITIONERS

By: _____

Lee G. Petro
DRINKER BIDDLE & REATH LLP
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Its Counsel

September 1, 2016

APPENDIX A

DrinkerBiddle&Reath LLP

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Established 1849

March 22, 2016

By PDF to Darrell.Baker@psc.alabama.gov

Darrell Baker, Director
Utility Service Division Alabama
Public Service Commission
PO Box 304260
Montgomery, AL 36130-4260

Re: Public Records Request

Dear Mr. Baker:

This letter is a formal request for records under the Code of Alabama, §§ 36-12-40 and 36-12-41. I am sending this request to you in your capacity as the records custodian in the Telecommunications Division of the Alabama Public Service Commission ("APSC"). If, however, you are not a records custodian, please forward this letter to the appropriate person and advise me accordingly by phone or e-mail.

I request copies of the annual financial reports (that is, Annual Reports to Shareholders and Form 10-Ks filed with the Securities and Exchange Commission, or financial statements— including balance sheets and income statements—as the case may be) for the year 2015 by or on behalf of the companies listed below;

The request applies to the following companies, along with their wholly-owned subsidiaries and parent entities, along with any submissions supplied by third-parties on the behalf of the company:

1. ATN, Inc., d/b/a AmTel
2. City Tele Coin, Inc.
3. Combined Public Communications
4. Consolidated Telecom, Inc.
5. DSI-ITI, LLC
6. Embarq Payphone Services, Inc.
7. Global Tel*Link
8. Infinity Networks, Inc.
9. Inmate Calling Solutions d/b/a ICSolutions
10. Legacy Long Distance International, Inc.
11. Network Communications International Corp. d/b/a 1800Call4Less

12. Pay Tel Communications, Inc.
13. Securus Technologies, Inc. (f/k/a Evercom Systems, Inc.)
14. Talton Communications, Inc.
15. Telmate, LLC
16. Value-Added Communications, Inc.

PDF or other electronic or scanned copies of the subject records delivered to me by email or on disk are preferable, but printed copies are acceptable if electronic copies do not exist. Please note that I do *not* need certified copies of the records.

I recognize that you may charge reasonable fees for the copies. Please provide me, by phone or e-mail, with the cost for the requested copies, and instructions for payment. If you are producing printed copies of the records, I will be happy to provide my FedEx billing information to facilitate shipping the records to me at the above address.

I would appreciate your expediting this request and complying with it at your earliest opportunity. If you have any questions or require any additional information, please do not hesitate to contact me by phone or e-mail.

Respectfully submitted,

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

From: Baker, Darrell <Darrell.Baker@psc.alabama.gov>
Sent: Friday, June 03, 2016 11:11 AM
To: Petro, Lee G.
Cc: Jones, Tom
Subject: Response to FOIA
Attachments: Combined Public Communications, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Crown Correctional Telephone, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; GTL Holdings.pdf; Infinity Networks, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Inmate Calling Solutions 2015.pdf; Lattice Incorporated - AL Annual Financial Statements - INMATE - for the year ending December 31, 2015.pdf; Network Comm. & International Calling Serv..PDF; Network Communications International Corp_ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Pay Tel Communications_AL Annual Financial Statements -INMATE - YE- 12-31-15.pdf; Securus 2015 Annual Report.pdf; Telmate Financial Statement 2015.pdf; AL FOIA Request - 2016.pdf; Ally Telecom Group, L.L.C. - AL Inmate Record Retention Annual Report (No Service).pdf; American Phone Systems LLC_ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; American Phone Systems.pdf; City Tele Coin, Inc.PDF; Combined Public Communications Inc _ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; CenturyLink Inc-2015 - 10-K (Full Version).pdf

This should complete the FOIA dated March 22, 2016.

CenturyLink submitted their FCC 10K Report which our legal department said met the criteria. Everything is consolidated with their local exchange company operations.

See attached.

Respectfully,

Darrell A. Baker
Director, Utility Services Division
Phone: (334) 242-2947
Toll Free 1-800-882-3919

SECURUS Technologies

March 28, 2016

VIA ELECTRONIC MAIL: doug.dillard@psc.alabama.gov

Mr. Doug Dillard
Utility Services Division
Alabama Public Service Commission
RSA Union
100 North Union St.
Montgomery, AL 36104

RE: Annual Financial Statements

Dear Mr. Dillard,

Please find enclosed consolidated balance sheets, statements of operations and statements of cash flows for Securus Holdings, Inc., parent company to Securus Technologies, Inc. ("Securus") to comply with the annual reporting requirements in Section 37-1-57 in the Code of Alabama, 1975 and Rule T-22, paragraphs (I) through (K) of the Commission's Telephone Rules. The annual financial statements for Securus for the year ending December 31, 2015 are provided.

Securus sincerely appreciates your attention to this matter. Should you have any questions or concerns regarding the information provided herein, please do not hesitate to contact Debbie Conde, Senior Regulatory Analyst, at (972) 277-0395 or **dconde@securustechnologies.com**.

Respectfully submitted,

Geoffrey Boyd
Chief Financial Officer

Securus Technologies Holdings, Inc. and Subsidiaries

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Consolidated Balance Sheets
December 31, 2015 and 2014
(Dollars in thousands, except per share amounts)

ASSETS	**2015**	2014
Current assets:		
Cash and cash equivalents	**$ 6,202**	$ 2,063
Restricted cash	**7,789**	4,114
Account receivable, net	**33,341**	28,259
Inventory	**4,224**	-
Prepaid expenses	**15,532**	8,870
Current deferred income taxes	**11,292**	9,125
Total current assets	**78,380**	52,431
Property and equipment, net	**68,518**	39,197
Intangibles and other assets, net	**494,167**	390,094
Goodwill	**636,377**	423,130
Total assets	**$ 1,277,442**	$ 904,852

LIABILITIES AND STOCKHOLDER'S EQUITY		
Current liabilities:		
Accounts payable	**$ 19,137**	$ 14,347
Accrued liabilities	**76,611**	32,011
Deferred revenue and customer advances	**25,322**	19,449
Current portion of long-term debt	**6,300**	4,250
Total current liabilities	**127,370**	70,057
Deferred income taxes	**74,684**	67,363
Long-term debt	**774,041**	562,544
Other long-term liabilities	**46,306**	9,779
Total liabilities	**1,022,401**	709,743
Commitments and contingencies		
Stockholder's equity:		
Common stock, $0.01 stated value at December 31, 2015 and 2014; 1,000 shares authorized, issued and outstanding at December 31, 2015 and 2014	**-**	-
Additional paid-in capital	**254,208**	197,794
Retained earnings (accumulated deficit)	**833**	(2,685)
Total stockholder's equity	**255,041**	195,109
Total liabilities and stockholder's equity	**$ 1,277,442**	$ 904,852

See Notes to Consolidated Financial Statements.

Securus Technologies Holdings, Inc. and Subsidiaries

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Consolidated Statements of Operations
Years ended December 31, 2015 and 2014
(Dollars in thousands)

	2015	2014
Revenue:		
Direct call provisioning	**$ 386,898**	$ 347,592
Wholesale services	**27,699**	24,792
E-commerce revenue	**38,566**	-
Offender monitoring systems and services	**25,920**	26,255
Software sales	**5,256**	5,978
Total revenue	**484,339**	404,617
Operating costs and expenses:		
Cost of service	**226,099**	197,885
Selling, general and administrative expenses	**123,054**	97,643
Depreciation and amortization expense	**67,149**	59,668
Transaction expenses	**10,382**	772
Total operating costs and expenses	**426,684**	355,968
Operating income	**57,655**	48,649
Interest and other expenses, net	**(47,785)**	(41,730)
Income before income taxes	**9,870**	6,919
Income tax expense	**6,352**	1,414
Net income	**$ 3,518**	$ 5,505

See Notes to Consolidated Financial Statements.

Securus Technologies Holdings, Inc. and Subsidiaries

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Consolidated Statements of Stockholder's Equity
Years ended December 31, 2015 and 2014
(Dollars in thousands)

	Common Stock		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Stockholder's Equity
	Shares	Amount			
Balance, December 31, 2013	1,000	$ -	$ 195,475	$ (8,190)	$ 187,285
Share-based compensation	-	-	2,319	-	2,319
Forfeitures of incentive units					-
Net income	-	-	-	5,505	5,505
Balance at December 31, 2014	1,000	-	197,794	(2,685)	195,109
Contribution from parent			54,000	-	54,000
Share-based compensation	-	-	2,414	-	2,414
Net income	-	-	-	3,518	3,518
Balance at December 31, 2015	**1,000**	**$ -**	**$ 254,208**	**$ 833**	**$ 255,041**

See Notes to Consolidated Financial Statements.

Securus Technologies Holdings, Inc. and Subsidiaries

CONFIDENTIAL

Consolidated Statements of Cash Flows
Years ended December 31, 2015 and 2014
(Dollars in thousands)

	2015	2014
Cash flows from operating activities:		
Net income	$ 3,518	$ 5,505
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	67,149	59,668
Deferred income taxes	5,300	(56)
Share-based compensation	2,414	2,319
Loss on extinguishment of debt	-	-
Amortization of deferred financing costs and discounts	3,698	2,061
Change in fair value of derivatives	1,700	4,546
Change in fair value of contingent consideration	7,577	-
Other operating activities, net	(335)	(420)
Changes in operating assets and liabilities:		
Restricted cash	4,114	39
Accounts receivable	681	1,507
Prepaid expenses and other current assets	(5,834)	(1,674)
Inventory	(2,987)	-
Intangible and other assets	(4,641)	(294)
Accounts payable	4,237	999
Accrued and other liabilities	7,862	5,464
Net cash provided by operating activities	94,453	79,664
Cash flows from investing activities:		
Purchase of property and equipment	(39,429)	(16,181)
Additions to intangible assets	(26,698)	(32,210)
Business acquisitions, net of cash acquired	(286,819)	(19,685)
Purchase of equity investment	(1,378)	-
Proceeds from sale of assets	202	-
Net cash used in investing activities	(354,122)	(68,076)
Cash flows from financing activities:		
Related party activities, net	-	-
Capital contributions	-	-
Net activity on revolver	17,000	(18,000)
Long-term debt borrowings, net of issuance costs	197,141	14,775
Payments on and repurchases of long-term debt	(4,250)	(4,213)
Contribution from parent	54,000	-
Cash overdraft	(83)	(4,421)
Net cash provided by (used in) financing activities	263,808	(11,859)
Increase (decrease) in cash and cash equivalents	4,139	(271)
Cash and cash equivalents, beginning of year	2,063	2,334
Cash and cash equivalents, end of year	$ 6,202	$ 2,063
Supplemental disclosures:		
Cash paid during the period for:		
Interest	$ 42,762	$ 36,091
Income taxes, net of refunds	$ 1,992	$ 1,293
Noncash investing and financing activities:		
Leasehold improvements	$ 58	$ 509

See Notes to Consolidated Financial Statements.

APPENDIX B

STATE OF GEORGIA
DEPARTMENT OF ADMINISTRATIVE SERVICES

In the Matter of: GLOBAL TEL*LINK CORPORATION, Protestor, vs. DEPARTMENT OF ADMINISTRATIVE SERVICES, Agency.	DOAS FILE NO. eRFP No. 46700-GDC0000669
In the Matter of: TELMATE, LLC Protestor, vs. DEPARTMENT OF ADMINISTRATIVE SERVICES, Agency.	DOAS FILE NO. eRFP No. 46700-GDC0000669
In the Matter of: CENTURYLINK PUBLIC COMMUNICATIONS, INC. Protestor, vs. DEPARTMENT OF ADMINISTRATIVE SERVICES, Agency.	DOAS FILE NO. eRFP No. 46700-GDC0000669

RESPONSE OF SECURUS TECHNOLOGIES, INC. TO THE APPEALS OF DENIAL OF PROTESTS FILED BY GLOBAL TEL*LINK CORPORATION AND CENTURYLINK PUBLIC COMMUNICATIONS, INC.

K&L Gates, LLP and Bruce Brown of Bruce P. Brown Law represent Securus Technologies, Inc. ("Securus") with respect to eRFP No. 46700-GDC0000669 for Inmate Telephone Services (the "RFP") issued by the Department of Administrative Services ("DOAS") for the Georgia Department of Corrections ("GDC").

INTRODUCTION

After conducting a through procurement and RFP evaluation process that lasted a year, the State found that Securus was a responsive and a responsible offeror with the highest scoring proposal by far with respect to the RFP. The State then issued a Notice of Intent to Award ("NOIA") a contract pursuant to the RFP to Securus.

CenturyLink Public Communications, Inc. ("CenturyLink"), Global Tel*Link Corporation ("GTL"), and Telmate, LLC ("Telmate") each filed protests to the NOIA raising various technical arguments with the RFP and RFP process. On July 26, 2016, DOAS Deputy Commissioner Lisa Eason issued a seven-page written decision denying CenturyLink, GTL and Telmate's Protests and concluded the NOIA satisfied the requirements of the law and the RFP. ("Protest Denial;" attached hereto as Exhibit 1). GTL and CenturyLink have now filed appeals of the Protest Denial with DOAS Commissioner Sid Johnson. Telmate has accepted the Protest Denial and has not filed an appeal.

Notably, none of the parties challenged the State's scoring. That is because the results were not even close: Securus received 770 total points (out of a possible 1000 points); CenturyLink received only 594 points; GTL received only 466 total points. See Exhibit 2, March 17, 2016 Scoring Summary; Exhibit 3, Scoring Matrix. As the below chart shows, Securus had the best technical proposal and best financial proposal by far:

OFFEROR	COST SCORE	TECHNICAL SCORE	TOTAL SCORE
Securus	350	420	770
CenturyLink	228	366	594
GTL	155	311	466
Telmate	Disqualified	Disqualified	Disqualified

See Exhibit 2, March 17, 2016 Scoring Summary, Exhibit 3, Scoring Matrix.

Accordingly, it is undisputed that: (i) the taxpayers of Georgia will receive more revenue over the four-year life of the Contract from Securus than from any other offeror - a guaranteed $19,600,000, compared to no more than $12,750,000 from the next best offeror; and (ii) Securus submitted the best technical proposal by far which will immensely improve the public safety in Georgia's prison system by providing Securus' industry-leading state of the art inmate telephone system (as compared to the outdated 15 year old system currently being provided by GTL). Exhibit 4, RFP at § 1.1.

Notwithstanding these benefits to Georgia, GTL, the disappointed incumbent offeror that finished a distant third place, has filed its appeal in an attempt to delay the implementation of the Securus/State contract and continue to make windfall profits to the detriment of Georgia taxpayers from an antiquated contract that should have expired long ago. Such further delay benefits no one except GTL and could compromise security at the State's correctional facilities by subjecting the State to GTL's limited technology. CenturyLink, on the other hand, has filed an appeal raising one issue in an attempt to receive another bite at the apple.

Nothing contained in either appeal warrants such extraordinary relief. Indeed, both appeals are misguided attempts to second-guess the discretion of a State agency to award a public contract after conducting a lengthy and thorough RFP process in accordance with Georgia Law. The Protest Denial was correct and Commissioner Johnson should deny the Appeals because neither GTL nor CenturyLink have demonstrated any violation of Georgia law or the RFP with respect to the NOIA to Securus.

In particular:

- The FCC argument raised by GTL must be rejected because: (1) GTL has waived its FCC argument; (2) GDC acted rationally and within its discretion with respect to dealing with the FCC regulatory environment; (3) GTL's contention that the GDC should re-bid to obtain the highest commission possible has no merit because Securus provided the most advantageous cost proposal under all potential FCC requirements; and (4) the RFP was fairly and competitively bid because GDC treated all offerors fairly, equally and identically with respect to the FCC regulations.

- GTL's Praeses argument must be rejected because: (1) GTL waived its Praeses argument; (2) Praeses' involvement does not violate Georgia's Procurement Manual; and (3) there are no facts in the record showing Praeses tainted the evaluation against GTL.

- GTL's arguments that Securus was not a responsible and responsive offeror have no merit because: (1) GTL's contention that Securus' BAFO is financially infeasible has no merit; (2) GTL's claim that Securus has "Unscrupulous Business Practices" has no merit; and (3) the Deputy Commissioner properly rejected GTL's claims that Securus cannot deliver on its promises.

- CenturyLink's commissions argument is without merit.

DISCUSSION

Under Georgia law, an award pursuant to an RFP is proper if the award is made to "the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals." O.C.G.A. § 50-5-67(a)(7). Ultimately, it is the state's evaluation team that has the "discretion to determine which proposal is most advantageous to the state." Amdahl Corp. v. Georgia Dept. of Administrative Services, 260 Ga. 690, 696 (1990). "Absent some evidence of wrongdoing on the part of the evaluation team or a manifest abuse of discretion," DOAS must

defer to the state's evaluation team. In re: Protest: eRFP-40800-14: Back Office Insurance Licensing System on Behalf of the Georgia Department of Insurance by Deputy Commissioner Lowe, May 9, 2014 ("The purpose of the protest process is to ensure that procurements are carried out in a proper manner by the parties involved in the procurement. It is not to substitute [DOAS's] judgment, or in this case, the judgment of [the protestor], for that of the evaluation team when an unsuccessful bidder feels as though its proposal was not scored high enough.").

As shown below, neither GTL nor CenturyLink have come close to carrying their heavy burden of showing Georgia's award to Securus was in violation of Georgia law or that there was a manifest abuse of discretion or wrongdoing.

A. GTL's FCC Arguments Have No Merit.

GTL argues that DOAS should order a re-bid because of the FCC's attempt to reform the inmate telephone market. GTL contends that the FCC's shifting regulatory environment somehow improperly effected the RFP process and Georgia should conduct a re-bid using the higher calling rates originally provided for in the RFP. See GTL Appeal at 5-13. Deputy Commissioner Eason denied GTL's Protest on this ground because she found that their FCC Argument had no merit. See Exhibit 1, Protest Denial at 2-4.

As shown below, this argument must be rejected because: (1) GTL waived its FCC argument; (2) GDC acted rationally and within its discretion with respect to dealing with the FCC regulatory environment; (3) GTL's contention that the GDC should re-bid to obtain the highest commission possible has no merit because Securus provided the most advantageous cost proposal under all potential FCC requirements; and (4) the RFP was fairly and competitively bid because GDC treated all offerors fairly, equally and identically with respect to the FCC regulations.

1. GTL Has Waived Its FCC Argument.

The Georgia Procurement Manual ("GPM") provides that a supplier must file a protest alleging a "challenge to competitive solicitation process," including a challenge to "specifications or any events or facts arising during the solicitation process" two business days prior to the closing date. GPM §6.5.4; see also GPM §6.5.1 (that "any aggrieved supplier interested in and capable of responding to a competitive solicitation may file a protest with respect to the competitive solicitation process, including but not limited to a challenge to specifications or any events or facts arising during the solicitation process"). If an offeror does not raise any challenge to the specification or events or facts arising during the solicitation process, it waives its right to do so at a later time.

All offerors were well aware that this RFP process took place in the midst of the FCC's twelve-year effort to reform the inmate calling marketplace. GDC, however, decided that it could no longer wait on the final resolution of the FCC's reform attempts. See Exhibit 4, RFP at § 1.1 ("Obtaining new updated technology and equipment is paramount to securing GDC facilities and ensuring public safety. GDC has determined the immediacy of this need outweighs waiting for final resolution of the [FCC's order on inmate telephone system]. GDC acknowledges the fluid nature of the current regulatory environment.").

As such, on April 28, 2015, GDC issued the RFP which requested offerors to submit a proposed "Revenue Share" based on "all Gross Revenue generated by and through the proposed [Inmate Telephone System]." Exhibit 4, RFP at Attachment B, Scope of Services § 19.1. Attachment L of the RFP contained the calling rates that the "Revenue Share percentage" was to be based on. See Exhibit 4, RFP at Attachment L.

To the extent that GTL had an issue with the effect of the FCC's pending actions on this RFP, GTL was required to file a protest at least two business days prior to the RFP submission deadline. See GPM § 6.5.4. GTL never filed a protest prior to the RFP's submission deadline. Instead, GTL submitted a proposal in response to the RFP and did not see fit to complain until it finished a distant third place in a fair and competitive RFP process. Under both Georgia law (see GPM § 6.5.4) and an abundance of authorities in other jurisdictions, protestors may not wait until after they lose the award to challenge the RFP. See, e.g., Blue & Gold Fleet, L.P. v. U.S., 492 F.3d 1308, 1313 (Fed. Cir. 2007) ("Vendors cannot sit on their rights to challenge what the believe is an unfair solicitation, roll the dice and see if they receive award."); CliniComp Int'l Inc. v. U.S., 117 Fed. Cl. 722, 736 (2014) ("[P]rotester [is barred] from raising objection to patent errors or ambiguities in the terms of a solicitation after the closing of bidding if such errors or ambiguities were apparent on the face of the solicitation."); In re: Honeywell, Inc., B-184245, 1975 WL 7837, at *3 (Comp. Gen. Nov. 24, 1975) (dismissing as untimely a protest alleging RFP should have considered decades of government data and information where protester never filed protest prior to the submission deadline and waited until after award to raise the issue). As such, the FCC argument has been waived and, therefore, the Commissioner does not need to address GTL's meritless FCC arguments.

2. GDC Acted Rationally and Within Its Discretion with Respect to the FCC Regulatory Environment.

GTL argues that DOAS failed to "appreciate the [FCC's] shifting regulatory environment" and this somehow improperly effected the RFP process such that Georgia should conduct a re-bid using the higher calling rates originally provided for in the RFP. See GTL Appeal at 5-13. This has no merit.

Georgia's current inmate telephone system provided by GTL was awarded ***fifteen years ago*** and is antiquated. As such, the GDC made clear to all offerors in the RFP that it had an urgent need for securing facilities with a state of the art inmate telephone system and ensuring public safety in light of its outdated inmate telephone contract which outweighed any benefits to awaiting further FCC action:

> Obtaining new updated technology and equipment is paramount to securing GDC facilities and ensuring public safety. GDC has determined the immediacy of this need outweighs waiting for final resolution of the Federal Communications Commission's ("FCC") 2013 Report and Order and Further Notice of Proposed Rulemaking (WC Docket No. 12-375, FC 13-113), Section III(C)(2)(b) ("Site Commission Payment"), including footnote #203. GDC acknowledges the fluid nature of the current regulatory environment. Should a material change in the rules or policies of the FCC applicable to the inmate telephone services occur following the execution of this Contract, GDC will negotiate in good faith an

> amendment to the awarded contract.

Exhibit 4, RFP at § 1.1.

As the Deputy Commissioner concluded, it was entirely reasonable for the GDC to find that its documented urgent need for securing facilities with a state of the art inmate telephone system and ensuring public safety in light of its outdated inmate telephone contract outweighed any benefits to awaiting final resolution of the FCC's reform attempts:

> It is my determination that GDC acted in a reasonable manner when it made the decision to move forward with the procurement process despite the ongoing regulatory action. GDC acknowledged that there were risks with regards to proceeding in the context of uncertainty in the rules and regulations and apparently weighed those risks against the need to secure facilities with a technologically advanced telephone system, ultimately making the determination that obtaining updated technology to protect the public was more important than the financial considerations relating to certainty in the telecommunications regulatory rate environment. I cannot say that GDC's decision to move forward lacked any reasonable basis, as the GDC acted on the rate caps that were provided in the 2015 FCC order which were still being litigated at the time that the Notice of Intent to Award was issued. Furthermore, GDC did so with definitive information regarding the fiscal impact of the 2015 FCC regulation, and GDC was in the best position to assess the fiscal, policy, and legal implications of both rate cap scenarios.

Exhibit 1, Protest Denial at 3.

The Deputy Commissioner also found that GDC acted reasonably by issuing a request for Best and Final Offers ("BAFOs") based on the new lower rates set forth in by the FCC's October 2015 *Second Report and Order and Third Further Notice of Proposed Rulemaking* (the "2015 FCC Order"). See Exhibit 1, Protest Denial at 3; Exhibit 6, Request for BAFOs. GDC made clear it was reserving the right to negotiate based on the changing regulatory environment:

> GDC reserves the right to negotiate the impact of an implemented FCC order on Contractor's BAFO prior to Contract execution. Negotiations may include the change affects of (1) the ITS calling rates and fees permitted to be charged by the Contractor under this Contract; (2) the right of GDC to recover its ITS costs; or (3) the ability of GDC to require Contractor to pay to GDC commissions, fees (including but not limited to a cost reimbursement payment) or other ITS cost recovery mechanisms that enables GDC to fully recover its ITS costs in a manner compliant with the change in the FCC's ITS rules or policies.

Exhibit 6, Request for BAFOs. "[P]ursuant to the RFP and the BAFO, GDC maintained the right to negotiate based on further action taken by the FCC should it be necessary." Exhibit 1, Protest Denial at 3

GDC has a documented and urgent need to award a new contract to secure its facilities. It could take years to resolve the FCC issues. GDC must replace GTL's outdated contract and inmate

telephone calling equipment now to ensure public safety. As the Deputy Commissioner found, there is nothing arbitrary, capricious or improper about the GDC's determination to award a contract with its chosen rates despite any uncertainty with respect to the FCC. See Exhibit 1, Protest Denial at 3. GTL merely disagrees with the GDC's exercise of its discretion. Such disagreement provides no basis to overturn the NOIA.

3. GTL's Contention that the GDC Should Re-Bid to Obtain the Highest Commission Possible Has No Merit Because Securus Was the Highest Scoring Offeror Both Before and After GDC Issued the Request for BAFOs.

Next, GTL argues that DOAS should order a re-bid to incorporate the pre-BAFO higher calling rates that were contained in the original RFP instead of the lower calling rates contained in the request for BAFOs. See GTL Appeal at 8-10. This argument has no merit.

As an initial matter, GDC is not required to obtain the highest commission possible under current FCC rules. The State has the discretion to determine what calling rates it wants, and it exercised this discretion to set lower calling rates in its request for BAFOs, rates that it believes are fair, just and reasonable. Neither the Georgia Code nor the Georgia Procurement Manual contains any "requirement that the state maximize its revenue potential under the procurement." See Exhibit 1, Protest Denial at 3. Rather, GDC is required to award the contract to "the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking consideration price and the evaluation factors set forth in the request for proposals." O.C.G.A. § 50-5-67(a)(7). This is exactly what GDC did. Indeed, GTL does not dispute that: (i) the taxpayers of Georgia will receive more revenue over the four-year life of the Contract from Securus than from any other offeror - a guaranteed $19,600,000, compared to no more than $12,750,000 from the next best offeror; and (ii) Securus submitted the best technical proposal by far which will immensely improve the public safety in Georgia's prison system by immediately providing Securus' industry-leading state of the art inmate telephone system (as compared to the outdated 15 year old system currently being provided by GTL).

In any event, GTL's argument is moot because ***Securus had the highest scores using the RFP's original (higher) calling rates*** and received the highest score overall under both the original RFP requirements and the BAFO requirements.

GTL does not dispute that Securus submitted the best technical proposal by far. In the first round of scoring, Securus received 420 technical points, CenturyLink received 366 technical points and GTL received 311 technical points. See Exhibit 7, August 11, 2015 Scoring Summary. The technical requirements were not changed by the request for BAFOs and these technical scores remained the same in the second round of scoring. See Exhibit 2, March 17, 2016 Scoring Summary; Exhibit 3, Scoring Matrix.

Securus also received the most cost points based on GDC's evaluation of the initial cost proposals, receiving 350 cost points. See Exhibit 7, August 11, 2015 Scoring Summary. GTL was a distant second with 283 cost points and CenturyLink was a distant third with 220 cost points.

As the below chart shows, after the initial round of scoring based on the original RFP requirements (including higher calling rates), Securus was easily the winner, with 770 total points -- ***176 points more than GTL***:

OFFEROR	COST SCORE	TECHNICAL SCORE	TOTAL SCORE
Securus	350	420	770
GTL	283	311	594
CenturyLink	220	366	586

Exhibit 7, August 11, 2015 Scoring Summary.

In sum, as the Deputy Commissioner found, even if GDC were to utilize the rates that GTL requests, the results would be the same, ***Securus would have the highest scoring cost proposal and the highest scoring technical proposal and receive the highest overall score***:

> [N]one of the protest parties have demonstrated that they were prejudiced by the revenue share evaluation, as Securus maintained the highest cost score under the initial cost evaluation which utilized the 2014 FCC rate caps, as well as the BAFO, which utilized the 2015 FCC rate caps, and Securus maintained the highest technical score throughout the competition, as well.

Exhibit 1, Protest Denial at 4. Thus, GTL would not have been the successful offeror if GDC utilized the additional bidding it requests. See, e.g., Amdahl Corp., 260 Ga. at 696 (protester must not only show improper conduct by agency but that it would have been successful had agency acted properly).

4. The RFP was Fairly and Competitively Bid Because GDC Treated All Offerors Fairly, Equally and Identically with Respect to the FCC Regulations.

Finally, GTL argues that the RFP was not competitively bid because "the RFP yielded divergent proposals from the Offerors with different views of the undecided law." GTL Appeal at 12-13. This is not true.

The RFP defined "Gross Revenue" and Attachment L of the RFP requested a "Revenue Share" proposal based on "all Gross Revenue" that included a revenue share percentage, a monthly minimum guarantee and a financial incentive. See Exhibit 4, RFP at Attachment L. Pursuant to its express authority to conduct additional rounds of negotiations after submission and scoring of initial proposals, the State issued a request for BAFOs requesting offerors' best "Revenue Share" proposal in light of the lower calling rates contemplated by the 2015 FCC Order. See Exhibit 6, Request for BAFOs; see also Exhibit 4, RFP at § 6.6; O.C.G.A. § 50-5-67(a)(6) ("Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers.").

All offerors had the opportunity to submit written questions to obtain clarification regarding any requirements. See Exhibit 4, RFP at § 2.1.3. The State issued two different rounds of "RFP Questions & Answers" to clarify various aspects of the RFP, including the "Revenue Share" proposals and how they would be evaluated. See Exhibit 8, RFP Questions & Answers - Round 1; Exhibit 9, RFP Questions & Answers - Round 2.

GTL makes absolutely no showing that any FCC actions have any bearing on the RFP evaluation process. Nor does it show that all offerors were not afforded "fair and equal treatment." O.C.G.A. § 50-5-67(a)(6). Securus, GTL and CenturyLink were all provided the same requirements and given the opportunity to submit a BAFO after the release of the 2015 FCC Order. Securus, GTL and CenturyLink submitted BAFOs without any complaint. Securus won. Securus was the highest scoring offeror and its proposal was the most advantageous - both technically and financially - to the State by far. Nothing in GTL's Appeal even remotely shows that the FCC's actions rendered the RFP process unlawful or provided any offeror an unfair competitive advantage.

B. GTL's Praeses Argument Has Been Waived and Has no Merit.

GTL asserts that the Deputy Commissioner "fail[ed] to adequately address the problems created by Praeses' involvement in the RFP process." GTL Appeal at 13. As shown below, this argument must be rejected because: (1) GTL has waived its Praeses argument; (2) Praeses' involvement did not violate Georgia's Procurement Manual; and (3) there are no facts in the record showing Praeses tainted the evaluation against GTL in anyway.

1. GTL Has Waived its Praeses Argument.

The Deputy Commissioner found that GTL waived its Praeses argument because even though GTL was well aware of Praeses' involvement in the RFP process, GTL never protested prior to the RFP submission deadline:

> As clearly identified in Section 1.1 of the RFP, "GDC has engaged a third party consultant, Praeses, LLC to support this procurement event and the management of its day-to-day operation of the Inmate Telephone Service as provided by the selected supplier."
>
> GTL brings forth numerous contentions regarding Praeses's role in the solicitation process. To the extent that those arguments relate to Praeses's role supporting the procurement, I deem those arguments untimely and ineligible for consideration pursuant to Section 6.5.4 and Section 6.5.6 of the Georgia Procurement Manual. I recognize that the clause used in the RFP was an effort by GDC to put potential offerors on notice prior to the time of award that Praeses was involved in supporting the procurement. Challenges to the competitive solicitation process were required to have been filed two business days prior to the closing date of the solicitation. If GTL believed that Praeses maintained a conflict of interest in supporting the procurement event, GTL was required to file a protest prior to the close of the solicitation so that any possible conflict could be addressed prior to evaluation, negotiations, and release of competitive information rather than wait

> until after a Notice of Intent to Award has been issued identifying another supplier as the apparent successful offeror.

Exhibit 1, Protest Denial at 4-5.

GTL does not dispute that it never timely raised its Praeses argument, but instead resorts to arguing that it could not have "known the extent of Praeses' involvement until it received the documents cited in its Protest." GTL Appeal at 15. This excuse has no merit.

The RFP could not have been any clearer that Praeses would "support this procurement event" and provide "management of its day-to-day operation of the Inmate Telephone Service." Exhibit 4, RFP at §1.1. Further, as GTL admits, GTL had involvement with Praeses prior to the RFP and had even been involved in litigation with Praeses prior to the RFP. GTL Appeal at 14.

If GTL believed that its prior involvement and litigation with Praeses meant that Preases may be biased against it, then it was obligated to raise the issue as soon as it knew Praeses would "support this procurement event," but in any event at least two business days prior to the submission deadline of the RFP (June 9, 2015). See GPM § 6.5.4. Nonetheless, GTL chose to participate in the RFP process and wait until the award to Securus before deciding to raise this alleged "conflict" issue.

GTL has indisputably waived this argument. See, e.g., In re: International Science & Tech. Inst., Inc., B-259648, 1995 WL 13896, at *2 (Comp. Gen. Jan. 12, 1995) (dismissing as untimely a protest regarding consultant's role in procurement where RFP identified consultant's role and protester never filed protest prior to the submission deadline and waited until after award to raise the issue).

2. Praeses' Involvement Did Not Violate Georgia's Procurement Manual.

Even though the Deputy Commissioner found that GTL had waived this argument, she still found that Praeses' involvement in this RFP process did not violate the Georgia Procurement Manual:

> [T]he [Georgia Procurement Manual] clearly contemplates that third party consultants may be involved in a consultative role during the evaluation and negotiation process, and it does not prohibit consultants who assisted with drafting the RFP from serving in a consultative role. No evidence has been provided by GTL indicating that Praeses either scored proposals or conducted the negotiation process.

Exhibit 1, Protest Denial at 4-5. Critically, the Georgia Procurement Manual states as follows:

> Solicitations which have highly technical or complex requirements may require additional support from a third-party consultant to assist in the development of the solicitation. *A third-party consultant* is an individual or company that is paid or unpaid to develop or draft specifications, or requirements for utilization in a solicitation. Third-party consultants may also serve in a consultative role during the evaluation and negotiation process.

****

> In such instance where a third-party consultant is utilized, the Entity must conduct the solicitation process and remain as the decision maker based on the input of the third- party consultant.

GPM at § 3.2.

GTL simply repeats its allegation that Praeses had "prohibited dual roles," as if saying it over and over again will make it so. GTL Appeal at 17. GTL does not even attempt to argue that Praeses or any Praeses employee was involved in any contract negotiations with Securus for the Georgia contract. Moreover, GTL does not even attempt to argue that either Praeses or any Praeses employee, scored proposals. See Exhibit 1, Protest Decision at 5 ("No evidence has been provided by GTL indicating that Praeses either scored proposals or conducted the negotiation process."); Exhibit 10, GDC evaluation kick off meeting power point July 16, 2015; Exhibit 11, Rebid - GDC Inmate Telephone Service RFP Team Roster; Exhibit 3, Scoring Matrix. That is because Praeses did not conduct contract negotiations or score proposals. Only GDC employees evaluated and scored proposals. See id. The evidence shows that Praeses' employees retained a non-evaluating and non-scoring consulting role which is explicitly permitted by the Georgia Procurement Manual. See id.

Praeses' involvement in this RFP did not violate the Georgia Procurement Manual. GTL's naked assertion that Praeses held "prohibited dual roles" in spite of evidence to the contrary, is not a valid basis to overturn the NOIA to Securus.

3. There are no Facts in the Record Showing Praeses Tainted the Evaluation Against GTL.

GTL argues that the Deputy Commissioner erred in rejecting its Praeses argument because: (i) the fact that GTL's scores decreased while Securus' scores rose after a validation meeting is enough to show Praeses tainted the evaluation against GTL; and (ii) Praeses structured the BAFO in a way to ensure GTL lost. See GTL Appeal at 19. None of this is true.

GTL must show "hard facts" to establish there was an improper conflict of interest; GTL's inferences based upon "suspicion and innuendo" are not enough. NikSoft Sys. Corp., B-406179, Feb. 29, 2012, at 6; Turner Constr. Co., Inc. v. U. S., 94 Fed. Cl. 561, 573 (Ct. Cl. 2010). As the Deputy Commissioner found, there is absolutely no evidence showing Praeses tainted the evaluation against GTL and GTL's claims of bias are based on GTL's "own speculation." Exhibit 1, Protest Denial at 6.

GTL has presented no evidence that Praeses influenced the evaluation of the proposals at all - let alone influenced the evaluation against GTL. See Exhibit 1, Protest Decision at 5 ("No evidence has been provided by GTL indicating that Praeses either scored proposals or conducted the negotiation process."); Exhibit 10, GDC evaluation kick off meeting power point July 16, 2015; Exhibit 11, Rebid - GDC Inmate Telephone Service RFP Team Roster; Exhibit 3, Scoring Matrix. Neither Praeses nor any Praeses employee scored proposals. See id. As the Deputy Commissioner reviewed the evaluation documents and found nothing indicating Praeses influenced the evaluation against GTL. See Exhibit 1, Protest Decision at 5.

Moreover, GTL has presented no evidence that Praeses drafted the request for BAFOs, let alone drafted the request for BAFOs in a manner to make GTL lose. All the emails relied upon by GTL show that GDC and DOAS decided what to include in the request for BAFOs and directed Praeses to compile a request for BAFO document in accordance with those directions. In any event, Securus offered the best financial proposal in response to both the RFP and the request for BAFOs. See, e.g., Exhibit 7, August 11, 2015 Scoring Summary; Exhibit 2, March 17, 2016 Scoring Summary. The request for BAFOs and BAFO scoring did not cause GTL to lose. Securus had the highest overall score from start to finish during this RFP process. Praeses could not have used the BAFO process to ensure GTL lost.[1]

In sum, there are no facts in the record, let alone the "hard facts" the law requires, showing Praeses tainted the evaluation process against GTL. The Deputy Commissioner correctly rejected GTL's Praeses argument.

C. GTL's Arguments that Securus Is Not a Responsible and Responsive Offeror Have No Merit.

GTL argues that Securus was not responsible or responsive because: (1) Securus submitted a financially infeasible BAFO; (2) Securus has "unscrupulous business practices"; and (3) Securus cannot deliver on its promises. See GTL Appeal at 20-27. GTL raised these arguments in its Protest and the Deputy Commissioner found that none of them had any merit. See Exhibit 1, Protest Denial at 4-6. In its appeal, GTL simply repeats its prior misstatements, in an attempt to continue to make windfall profits from its antiquated outdated contract. As explained below, the Commissioner should reject GTL's arguments because: (1) GTL's contention that Securus' BAFO is financially infeasible has no merit; (2) GTL's claim that Securus has "Unscrupulous Business Practices" has no merit; and (3) the Deputy Commissioner properly rejected GTL's claims that Securus cannot deliver on its promises.

1. GTL's Contention that Securus' BAFO is Financially Infeasible Has No Merit.

GTL argues that Securus' BAFO was not "financially feasible" because Securus' BAFO "objectively represented it was going to pay more money to the State than it was projected to make off the contract in the first place." GTL Appeal at 21 & 23. GTL's speculative claim that Securus might lose money on this contract provides no basis to overturn the award.

As an initial matter, there is nothing in Securus' BAFO demonstrating Securus would lose money on this contract. See Exhibit 12, Securus' BAFO. As the Deputy Commissioner found, GTL's claim that Securus will lose money is based on GTL's financial model which has no relevance to how Securus will carryout the Georgia contract:

> While GTL cites its own revenue experience in Georgia as the basis for its assertions, I do not find GTL's argument to be compelling because GTL's current

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[1] Notably, despite GTL's claims that Praeses is biased against GTL, GTL just recently won an RFP process in Sarasota County, Florida where Praeses was the County's consultant for the RFP process.

> contract and pricing model is fifteen years old and involves different technical requirements, cost assumptions, as well as a different company's business approach.

Exhibit 1, Protest Denial at 4.

As Securus has previously made clear, most conversions from GTL to Securus result in a 40% increase in call volumes due to Securus' superior customer service, Securus' simplified platform and the elimination of GTL's onerous fees. Also, when calling rates are lowered (as will occur in Georgia when Securus takes over) inmates and their friends and families will increase the amount of phone calls and thus increase revenue. See Exhibit 5, Securus Response to Protests at 12.

In any event, "Securus bears all costs risk in performance of this contract, and Securus will ultimately be responsible for providing services, even if the company performs at a loss." Exhibit 1, Protest Denial at 4; see also Exhibit 13, Securus/GDC Contract at D(3) ("State Entity shall not be liable for any of Contractor's costs for Services pursuant to this Contract …"); K(28) ("In no event shall either party be liable hereunder for loss of profits, loss of goodwill, consequential or punitive damages of any kind regardless of the form or theory of any claim and irrespective of whether such party has been advised of the possibility of such damages.").

After analyzing all the information submitted by Securus (including Securus' cost proposal and Securus' financial information), GDC found Securus was a responsible offeror that had complied with all RFP requirements and had the "appropriate financial, organizational and operation capacity" to carry out this contract. GPM at § 5.6.2.2; see also Exhibit 14, Securus Technical Evaluation; Exhibit 15, Administrative Review Requirements Summary Sheet dated July 7, 2015. That finding is entitled to substantial deference. See, e.g., Inter-Con Sec. Sys., Inc. v. Orr, 574 F. Supp. 250, 254 (D.D.C. 1983) ("particular deference is due a contracting officer's determinations involving the 'responsibility' of a bidder to perform under the contract.").

GTL's speculative claim that Securus might lose money on this contract provides no reason to disturb the deference due to the GDC's finding (which has been upheld by the Deputy Commissioner) that Securus was a responsible offeror. See Exhibit 1, Protest Denial at 4 ("Ultimately, GDC determined that Securus was a responsible offeror, and GTL has failed to provide compelling evidence that GDC's determination was unreasonable.").

2. GTL's Claim that Securus has "Unscrupulous Business Practices" Has No Merit.

Next, GTL provides some bullet points of its previously made arguments why it believes that Securus engages in "unscrupulous business practices." GTL Appeal at 24. As Securus has already made clear and as the Deputy Commissioner found, none of these claims have any merit.

As an initial matter, as it did in its Protest, GTL cites an internet article that links to another internet article, that claims Securus was the "subject of one of the top ten biggest data breaches of 2015." GTL Appeal at 24. As Securus has already explained, this is false. Securus did not have a data breach in 2015 and has issued a press release specifically to refute these false internet stories. See Exhibit 16, Securus Press Release; Exhibit 5, Securus Response to Protests at 11.

Similarly, as it did in its Protest, GTL cites more internet articles to claim that Securus records and stores attorney-client calls. GTL Appeal at 24. As Securus has already explained, this claim also is false. See Exhibit 5, Securus Response to Protests at 11-12. Securus' calling systems include multiple safeguards to prevent attorney-client recordings from occurring. See, e.g., Exhibit 17, Securus' Response to Attachment J at MS19, MS20 (page 45). Privacy settings are determined by Securus' customers. Attorneys are able to register their numbers or a specific call to exempt them from recording. See id. at MS13 (page 25). Attorneys and inmates who do not register their numbers or calls will hear a warning about recording prior to the beginning of each call, and both must actively acknowledge they want to continue the call. If an agency or an attorney does not follow the safeguards defined by the agency, it is possible that call may be recorded. These common sense protocols are consistent with the RFP and industry practice.

In sum, GTL's mere repeating of these internet falsehoods provides no reason to disturb the deference due to the GDC's finding (which has been upheld by the Deputy Commissioner) that Securus was a responsible offeror. See Exhibit 1, Protest Denial at 4.

3. The Deputy Commissioner Properly Rejected GTL's Claims that Securus Cannot Deliver on its Promises.

GTL contends that the Deputy Commissioner incorrectly found that Securus complied with the RFP's requirements regarding continuous voice biometric technology and the Alert Capability requirements associated with Securus' voice-to-text solution. See GTL Appeal at 26-27. As Securus has already made clear and as the Deputy Commissioner found, neither of these claims have any merit.

As an initial matter, both these requirements were within Section K which was a non-mandatory section of the RFP which requested items as potential value-added technologies. See Exhibit 4, RFP at Attachment K, Additional Scored Response Document ("GDC is requesting additional information regarding **potential value-added technologies, solutions and support**. Contractors are encouraged **(but not required)** to provide a complete written response to each of the additional scored items listed in Attachment K of the eRFP." (emphasis in original)). As such, Securus' response to these two requirements could not render it non-responsive.

In any event, Securus did respond to both questions. Securus fully agreed to comply with both requirements by responding "SECURUS HAD READ, UNDERSTANDS AND COMPLIES." See Exhibit 17, Securus Response to Attachment K, Additional Scored Response Document at AS1, (pages 1-9) & AS2 (pages 9). With respect to both questions, Securus also provided an extensive description of its relevant technologies, i.e., its voice biometric technology and its voice-to-text technology. See id. Securus fully complied with these RFP requirements and provided the descriptions requested by the RFP. Nothing more was required.

In addition, as the Deputy Commissioner found, these arguments must be rejected because even if Securus had not responded to these non-mandatory questions, GTL would not have been the successful offeror. See, e.g., Amdahl Corp., 260 Ga. at 696 (protester must not only show improper conduct by agency but that it would have been successful had the agency acted properly).

In sum, as Securus has already explained in detail and as the Deputy Commissioner has already found, GTL's arguments regarding continuous voice biometric technology and the Alert Capability requirements associated with Securus' voice-to-text solution have no merit. See Exhibit 5, Securus Response to Protests at 13-15; Exhibit 1, Protest Decision at 6-7. GTL provides no new argument and just states that it disagrees with the Deputy Commissioner. Such disagreement provides no basis to rescind the NOIA.

D. CenturyLink's Commissions Argument Is Without Merit.

CenturyLink, for its part, only asserts one two-part argument regarding commissions (an argument that GTL does not even bother to assert). See CenturyLink Appeal at 8-12. First, CenturyLink claims that Securus was not responsive because Securus does not intend in the future to pay Georgia commissions on interstate calls. Id. at 9. Second, CenturyLink claims that if Securus does pay Georgia commissions on interstate calls, Securus is not responsible because Securus has allegedly "force[d] other DOCs to renegotiate contracts on terms more favorable to Securus." Id. at 10.

As an initial matter, Securus is responsive. Indeed, in both its protest and appeal, CenturyLink never disputes that Securus complied with all the RFP and BAFO's revenue share requirements, including the requirement to pay a Revenue Share Percentage on interstate calls. See CenturyLink Appeal at 8-12. Nor could it. Securus agreed to meet all the requirements in the RFP, including the definition of Gross Revenue contained in Attachment B of the RFP, as well as the BAFO. See Exhibit 17, Securus Response to Attachment I - Mandatory Response Worksheet at M1. Securus never amended or retracted this commitment. Securus also submitted its BAFO without any exception, providing its financial proposal in the format required. See Exhibit 12, Securus BAFO. In so doing, Securus unequivocally agreed to pay a 59.6% commission on the interstate revenue as required by the BAFO. See Exhibit 12, Securus BAFO at 5. Securus also agreed to comply with all regulations and mandates issued by the FCC. See Exhibit 17, Securus Response to Attachment I - Mandatory Response Worksheet, p. 2 at M10.

Accordingly, there can be no question that if the FCC permits interstate commissions, Securus will pay them in accordance with its BAFO Response. Such a response complies with the RFP and there is nothing nonresponsive about such a compliant and transparent response. The Deputy Commissioner correctly agreed finding Securus responsive because it "agreed to meet all of the requirements in the RFP, including the definition of Gross Revenue and Securus also submitted its BAFO without exception, providing its financial proposal in the format required." Exhibit 1, Protest Denial at 6.

Furthermore, none of CenturyLink's contentions show that Securus is not responsible. The contracts and amendments Securus has with some customers (that CenturyLink pulls out of context) are not relevant as to whether Securus is a responsible offeror for the RFP. The fact that Securus has worked in good faith with its customers to modify certain contracts so that they complied with existing law during a time period when the inmate telephone legal environment has been in a constant state of flux does not diminish Securus' responsibility on this RFP. CenturyLink's contention that Securus somehow "force[d] other DOCs to renegotiate contracts on terms more favorable to Securus" is ridiculous. CenturyLink Appeal at 10. Any contract or amendment Securus has with a customer has been negotiated and agreed to by sophisticated

entities capably represented by counsel who were operating in the context of a constantly changing legal environment. As the Deputy Commissioner properly found, nothing about such irrelevant contract changes renders Securus non-responsive or non- responsible:

> With regards to CenturyLink's responsibility argument, I find that argument to be without merit. The FCC's approach to regulating inmate calling has been in a state of constant flux, requiring interpretations and negotiations within limited timeframes. While CenturyLink provided evidence that contracts were renegotiated, CenturyLink did not provide evidence of a serious disagreement between the parties, such as evidence of litigation or contract terminations sought by the correctional entities. Again, if GDC believes that the law is unclear as to whether a supplier is authorized to pay a revenue share and GDC has doubt [as] to whether Securus shares GDC's interpretation of the law, GDC maintains authority to reopen contract negotiations to clarify this point.

Exhibit 1, Protest Denial at 6.

Finally, it is worth noting that Century Link's argument is nothing more than an irrelevant hypothetical argument about an unlikely future commission payment. In reality, Securus has guaranteed Georgia a minimum monthly guarantee of $325,000. See Exhibit 12, Securus BAFO at 5. Even with the projected increase in calling volumes from the historical averages by Securus, the potential commissions generated by interstate and intrastate calls will likely never realistically surpass Securus' MMG. Thus, CenturyLink's argument is moot.

For the foregoing reasons, the Deputy Commissioner's rejection of CenturyLink's commission argument should be affirmed.

CONCLUSION

In sum, Georgia found that Securus was a responsive and a responsible offeror with the highest scoring proposal by far and issued the NOIA to Securus. Nothing contained in GTL nor CenturyLink's Appeal remotely comes close to carrying the heavy burden of showing that Georgia's award of the contract to Securus was somehow improper or violated Georgia law. As such, the Commissioner should deny the appeals submitted by GTL and CenturyLink.

Dated: August 11, 2016

Bruce P. Brown, Esquire
Bruce P. Brown Law LLC
1123 Zonolite Rd., Suite 6
Atlanta, Georgia 30306

and

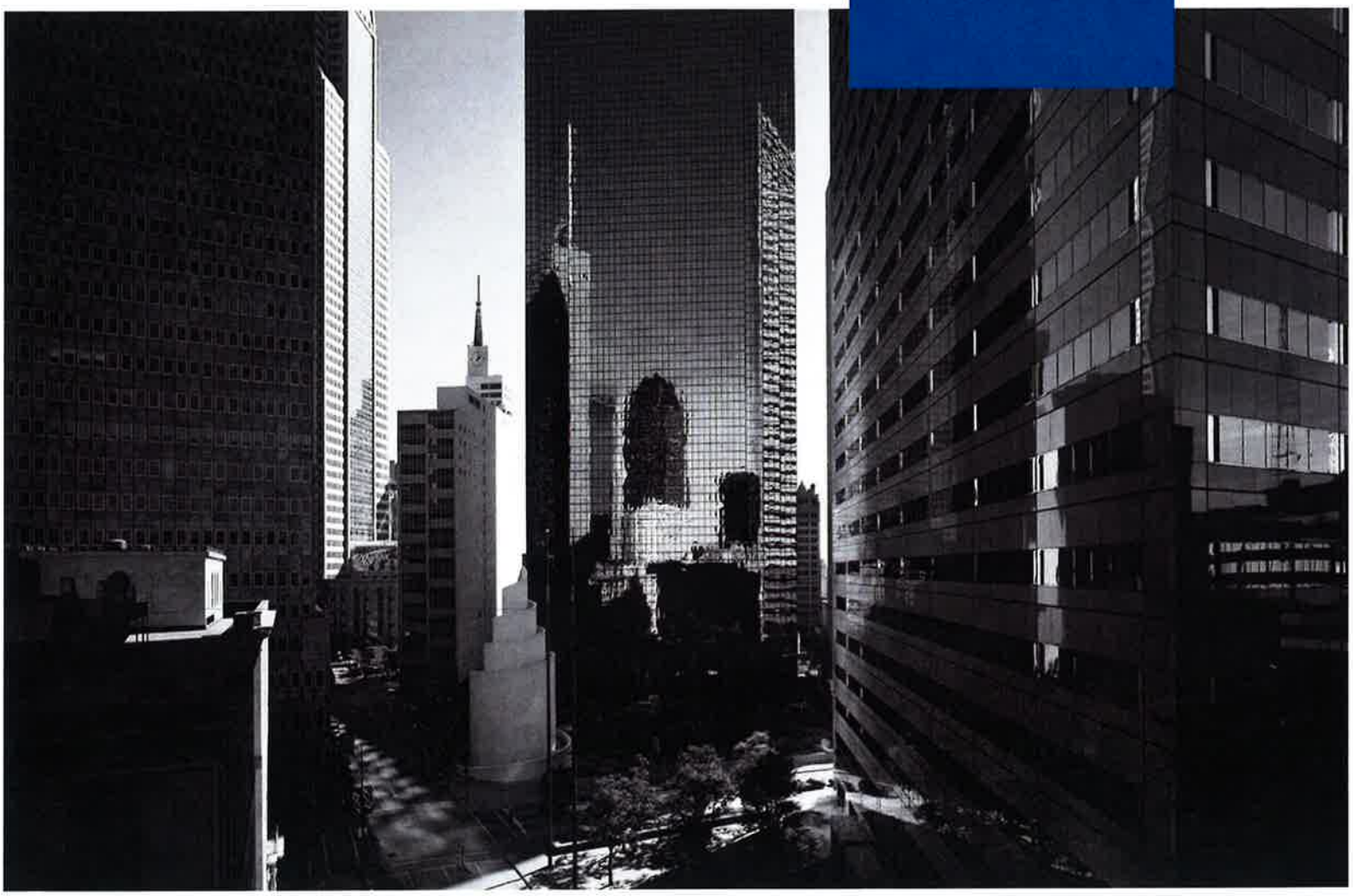
Jason L. Richey, Esquire

William D. Wickard, Esquire
K&L Gates LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222

Attorneys for Securus Technologies, Inc.

APPENDIX C

SECURUS Technologies



Negotiation Invitation:

Revenue Share Proposal - Best and Final Offer

SOLICITATION #: 46700-GDC0000669
INMATE TELEPHONE SERVICE

We exist to **SERVE** and **CONNECT** to make our world safe.

A Best and Final Offer (BAFO)
Prepared for:
Georgia Department of Corrections
Solicitation Number 46700-GDC0000669
March 1, 2016 at 5:00 PM ET

Presented to:
Jan Pytelewski

Official Issuing Officer
Georgia Department of Corrections
200 Piedmont Avenue, S.E.
Suite 1308, West Tower
Atlanta, GA 30334

Presented by:
Keith R. Eismann
National Sales Manager - DOC
Securus Technologies, Inc.
14651 Dallas Parkway, Suite 600
Dallas, TX 75254
210-385-2350

COVER LETTER

March 1, 2016 (Original by E-Mail)

Janet Pytelewski
Official Issuing Officer
Georgia Department of Administrative Services
200 Piedmont Avenue
Suite 1308, West Tower
Atlanta, GA 30334

RE: Solicitation # 46700-GDC0000669 – Inmate Telephone Service – Best and Final Offer

Dear Ms. Pytelewski,

Thank you for allowing Securus the opportunity to provide the attached response to your Best and Final Offer request for the above referenced solicitation for inmate telephone services.

It has been a pleasure working with you and your organization throughout this important procurement. As you make your final decision, I want to again assure you that if selected as your next inmate telephone service provider, Securus will use all our resources and experience to ensure that the program is successful for the State of Georgia, the Georgia Department of Corrections, the inmates and the family and friends of the inmates. We understand and agree final contract is subject to negotiation depending on the outcome of the FCC order.

We look forward to hearing from you regarding your final decision. If there is any additional information that you may require, please contact Keith Eismann at 210-385-2350 or keismann@securustechnologies.com.

Sincerely,

Robert E. Pickens, President
Securus Technologies, Inc.
14651 Dallas Parkway, Suite 600
Dallas, Texas 75254
972-277-0300
bpickens@securustechnologies.com

REVENUE SHARE PROPOSAL - BAFO

Negotiation Invitation: Best and Final Offer

Solicitation #: 46700-GDC0000669
Solicitation Title: Inmate Telephone Service
Supplier Name: Securus Technologies

Best and Final Offer No.: 01	**Supplier's Authorized Contact: Keith Eismann** **Email: keismann@securustechnologies.com**
Date of Request: February 24, 2016	**Offeror's Response Due By (Date): 5:00 pm ET on Tuesday, March 1, 2016** Email Response to Issuing Officer (Name): Jan Pytelewski at email address: janet.pytelewski@doas.ga.gov
Submission Instructions: 1. A written response, as specified below, must be submitted in response to this Best and Final Offer. 2. Best and Final Offers must be submitted by e-mail and followed by a signed hard-copy confirmation via fax, email, mail or delivery, to: Issuing Officer: Jan Pytelewski Entity Name: Georgia Department of Corrections (GDC)	

GDC (Georgia Department of Corrections) is providing Contractors the opportunity to submit a Best and Final Offer (BAFO) based on the criteria listed below and specific requirements pursuant to the Federal Communications Commission's (FCC) WC Docket 12-375 Second Report and Order and Third Further Notice of Proposed Rulemaking (FCC Order) which was voted on by the FCC on October 22, 2015, released on November 5, 2015, and published to the Federal Register on December 18, 2015 with an anticipated implementation date of March 17, 2016. The specified requirements in this BAFO shall be incorporated by GDC in the subsequent Contract. Responses to this BAFO shall be evaluated/scored in accordance with Section 6 - Proposal Evaluation, Negotiations and Award of Attachment A of the eRFP.

Contractor's response to this BAFO shall be based upon all Services identified in the eRFP, Addendum No. 1, and Request for Clarification No. 1, as well as the requirements identified below which may differ from the original requirements set forth in the eRFP. The calling rates and fees specified in the Revenue Share Proposal below are consistent with the requirements of the FCC Order. Contractor must submit its BAFO using the format included herein.

REVENUE SHARE PROPOSAL

Revenue Share Percentage: Contractor shall propose a single Revenue Share percentage (%) which shall be applied to all local, intralata/intrastate, interlata/intrastate, intralata/interstate, interlata/interstate and international Gross Revenues (as defined in Section 19 – Revenue Share of the Scope of Services of the eRFP) based on the calling rates and fees below.

MMG: Contractor shall include a Minimum Monthly Guarantee (MMG) Payment. The first MMG Payment shall be made payable to GDC within 60 days of the execution date of the Contract in conjunction with the phase one timeline of the implementation plan, and all future MMG payments shall be due on the 20th day of each month under the Contract and any renewal terms. Should Contractor complete Facility installations prior to the due date of the first MMG payment, Contractor shall pay GDC Revenue Share on Gross Revenue (as defined) at the proposed Revenue Share percentage for any revenues generated by and through the ITS during such time and follow the payment requirements in Section 22 - Payment and Reporting of the Scope of Services of the eRFP. For all MMG payments, should the Revenue Share due calculated on the Gross Revenue (as defined) exceed the MMG payment received, Contractor shall begin paying GDC Revenue Share on Gross Revenue (as defined) at the proposed Revenue Share percentage. Contractor shall follow the payment requirements in Section 22 – Payment and Reporting of the Scope of Services of the eRFP. If the sum of Revenue Share calculated on the Gross Revenue (as defined) is less than the MMG, GDC shall not be responsible for refunding any portion of the MMG to Contractor.

Financial Incentive: Contractor shall include a Financial Incentive in the form of a monetary value due GDC upon execution of the Contract. (i.e. Signing Bonus, Technology Grant, etc.)

Calling Rates: Contractor must comply with the calling rates specified below.

Call Type	Collect and Direct Billed*	Pre-Paid Collect and Debit
	Per Minute Rate	Per Minute Rate
Local	$0.13	$0.11
Intralata/Intrastate	$0.13	$0.11
Interlata/Intrastate	$0.13	$0.11
Intralata/Interstate	$0.13	$0.11
Interlata/Interstate	$0.13	$0.11
Domestic International	$0.50	$0.50
International – Mexico	$0.50	$0.50
International	$1.00	$1.00

*Effective July 1, 2018, the per minute calling rate for collect and direct billed calls will be reduced to $0.11 (contingent upon a stay of the FCC Order).

Fees, Regulatory Charges, and Taxes: Contractor must comply with the fees specified below. Additional fees shall be prohibited with the exception of regulatory required charges and taxes which are defined in Section 19 – Revenue Share of the Scope of Services of the eRFP. Contractor shall disclose the amount of the Pre-Paid Collect Transaction Fee imposed on end-users by any third-party provider(s) with whom Contractor contracts with in order to fund pre-paid collect accounts. No mark-up of such third-party fees will be allowed.

Fee/Charge Name	Description	Amount
Universal Service Fund ("USF")	Universal Service Fund is changed quarterly by the FCC.	18.2%* *adjusted quarterly
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via IVR, website, etc.	$3.00
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via live agent.	$4.75
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via cash, money order or check.	$0.00
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via third-parties (i.e. Money Gram, Western Union, etc.).	100% Pass Through - No Mark-up Allowed Contractor to Disclose.
All Other Fees	Fees or charges applied by Contractor or a third party for calls processed through the ITS from the GDC Facilities.	$0.00
Applicable Taxes	All required taxes are allowed.	Varies 100% Pass Through - No Mark-up Allowed

Voicemail Messaging: Contractor shall propose a per transaction fee to be charged to the end-user for each completed voicemail message. Contractor shall deduct the voicemail messaging transaction fee from the end-user's pre-paid collect account. Contractor shall also propose a Revenue Share amount for each voicemail message completed by the end user to the inmate. Contractor shall provide the Revenue Share on each completed voicemail message before any deductions are made for unbillable transactions, bad debt, rejected voicemail messages, uncollectible transactions, fraudulent transactions, merchant adjustments, malfunctions, or any other Contractor expenses. Additionally, GDC shall not be liable for any of Contractor's costs including, but not limited to, taxes, shipping charges, network charges, insurance, interest, penalties, termination payments, attorney fees, or liquidated damages.

Contractor is required to submit its BAFO in this specific format and only submit the information required in the table below and the areas highlighted in blue. Contractor shall not deviate from this format or modify or edit the table or add any additional footnotes or text. Contractor's response below will be evaluated and scored.

Revenue Share Percentage:	**59.6%**	
MMG Payment:	**$325,000.00**	
Financial Incentive(s):	**$4,000,000.00**	
Voicemail Messaging Transaction Fee:	**$1.00**	
Voicemail Messaging Revenue Share ($ or %):	**$0.00**	**75%**
Pre-Paid Collect Transaction Fee via MoneyGram:	**$10.99**	
Pre-Paid Collect Transaction Fee via Western Union:	**$3.95**	
Pre-Paid Collect Transaction Fee via Other Third Party:	**$3.50**	

GDC reserves the right to negotiate the impact of an implemented FCC Order on Contractor's BAFO prior to Contract execution. Negotiations may include the change affects of (1) the ITS calling rates and fees permitted to be charged by Contractor under this Contract; (2) the right of GDC to recover its ITS costs; or (3) the ability of GDC to require Contractor to pay to GDC commissions, fees (including but not limited to a cost reimbursement payment) or other ITS cost recovery mechanisms that enables GDC to fully recover its ITS costs in a manner compliant with the change in the FCC's ITS rules or policies.

Signature of Authorized Representative

March 1, 2016

Date

Robert E. Pickens, President

Name and Title

APPENDIX D

ROBBINS

LITIGATION AND REGULATORY LAW

Josh Belinfante
DIRECT LINE: 404-856-3262
E-mail: jbelinfante@robbinsfirm.com

July 29, 2016

BY HAND DELIVERY
AND
ELECTRONIC MAIL

Sid Johnson, Commissioner
Georgia Department of Administrative Services
Suite 1804 - West Tower
200 Piedmont Avenue, SE
Atlanta, Georgia 30334-9010
sid.johnson@doas.ga.gov

Re: Request for Formal Review and Oral Presentation on the Deputy Commissioner's Denial of Global Tel*Link Corporation's Appeal and Protest of Request for Proposal No. 46700-GDC0000669 Inmate Telephone Service

Dear Commissioner Johnson:

We represent Global Tel*Link Corporation ("GTL"). On its behalf and pursuant to Section 6.5.8 of the Georgia Procurement Manual, we submit this Request for Review and for Oral Presentation on the Deputy Commissioner's July 26, 2016 decision to deny GTL's protest of Request For Proposal No. 46700-GDC0000669 Inmate Telephone Service ("RFP") (the "Decision")[1]

[1] GTL submitted its Appeal and Protest of GDC's intended Contract Award for Inmate Telephone Services under e-Request for Proposal No. 46700-GDC0000669 to Securus Technologies ("Securus") on April 19, 2016, and submitted its Reply in Support of its Appeal and Protest on May 6, 2016. These documents are referred to collectively as the "GTL Appeal."

INTRODUCTION

When an entity – whether in the private sector or the public one – decides to accept less money than it could for the same service and technology, something is amiss. Either the entity does not care about value, or something has tainted the process. Yet, that is exactly what happened with this procurement: the Department of Corrections ("DOC") (1) received less than it could have for the same service, and (2) relied on a third party that was undisputedly biased against an offeror and violated the Georgia Procurement Manual ("GPM") to effectuate that bias.

The Department Of Administrative Services' ("DOAS") decision to deny the protests ("Decision") not only approves the rejection of taxpayer value, it actually defends it by asserting the DOC can knowingly undercut its own potential revenue for its preferred technology. In doing so, the Decision relies on a false binary option between better technology and better revenue. In reality, the DOC never had to choose (and still is not bound to deciding) between enhanced technology[2] and a lower price, particularly after the Federal Communications Commission's ("FCC") proposed regulation was stayed by the D.C. Circuit. Granting GTL's protest provides the exclusive means to be sure that Georgia taxpayers are getting the best value from the procurement process.

[2] Throughout its Decision, DOAS repeatedly cites the fact that GTL's technology is fifteen years old. However, as DOAS is aware, through the course of 20 contract amendments during the past fifteen years, GTL has made multiple offers to upgrade DOC's technology – at no cost to the State – all of which have been rejected. In fact, recent offers to upgrade DOC's technology were made in May 2012, March 2013, April 2015 and February 2016.

Contrary to leading to an optimal (or even reasonable) result, the procurement process and the Decision barred all bidders – GTL, CenturyLink Public Communications, Inc. ("CenturyLink"), Telmate, LLC ("Telmate"), and Securus Technologies, Inc. ("Securus") (collectively, the "Offerors") – from offering a financial bid that reflects the current regulatory environment. Adding insult to injury, the Decision does not dispute that, as a consequence of the procurement process, (1) DOC, is deliberately taking far less than it stands to receive, and is essentially overpaying for technology in the form of opportunity cost, and (2) the technology it seeks can be offered for far less than the proposal it accepted. The Decision's stated concerns of an unquantified delay cannot outweigh these conceded facts, especially given that tens of millions of dollars are at stake.

The Decision offers no compelling justification for the choice to make less to obtain the same. The only logical conclusion that can be drawn is that the entire process was tainted by how DOAS' third-party consultant violated the Georgia Procurement Manual ("GPM") to impermissibly participate in the crafting and evaluation of the RFP. Worse yet, the Decision basically admits as much and tries to shift the focus through ex parte communications and a significant weakening of the GPM. In fact, the Decision does not dispute Praeses, LLC's ("Praeses") bias against GTL; it simply finds (incorrectly) that GTL was too late in raising the issue.

These flaws render the GPM as largely advisory and reward offerors who submit bids which they acknowledge – in statements to the federal government – are not

feasible and, therefore, not responsible. For these reasons, GTL respectfully appeals to Commissioner Johnson to review the protest and Decision, and specifically requests a hearing before the Commissioner to address the issues raised in its protest.

I. The Purpose of the RFP

The purpose of the RFP at issue is "to establish a contract with a single, qualified supplier that will provide a comprehensive Inmate Telephone Service to Georgia's Department of Corrections" as set out in greater detail in the RFP.[3] With the RFP, the DOC sought "a qualified and experienced supplier" that would, "without cost to [the DOC], operate inmate telephones and related equipment, provide all wiring for the inmate telephones, and install the inmate telephones and the related hardware and software to enable inmates at the Facilities to complete, without limitation, local, long distance and/or international collect, pre-paid collect, debit and free calls from the Facilities."[4] Additionally, the Inmate Telephone Service "as provided by the selected supplier shall provide all needed functional, security/investigative and reporting capabilities."[5] Finally, the DOC insisted that the "[s]elected supplier must have the capability to provide service and support to 65 Facilities that house approximately

[3] Georgia Department of Corrections, Electronic Request for Proposals for Inmate Telephone Service, eRFP No. # 46700-DOC0000669 posted July 16, 2013, along with subsequent amendments and attachments to the RFP, GTL Protest Ex. 1 at Attachment A (emphasis added).

[4] Id.

[5] Id.

50,090 inmates/offenders generating a monthly average of 195,307 calls and 2,423,842 total minutes."[6]

II. The Decision's Errors

The Decision approved Securus' proposal, which falls short of these aims and requirements. It should be reversed for numerous and material errors. First, the Decision ignores the stark reality that the entire BAFO solicitation process was mired in regulatory uncertainty, and that pending changes have rendered the accepted financial offer dated and overpriced. Second, the Decision disregards the violations of the GPM, which violations simultaneously show how the procurement process became tainted and skewed against GTL and why the DOC relegated serious concerns about taxpayer value to a mere afterthought. Further, the Decision inappropriately dismisses and undervalues the significance of Securus' irresponsibility and false promises of technological innovation.

A. Regulatory Uncertainty Led DOAS To Approve an Undervalued Financial Offer.

1. The Regulatory Environment Shifted Continuously throughout the RFP Process.

In the fall of 2015, while the RFP was still underway, the FCC issued an Order (the "2015 FCC Order") promulgating new caps on interstate calling rates for inmates, and it set forth rate caps on intrastate inmate calls, that were previously unregulated by

[6] Id.

the FCC.[7] The new rate caps were scheduled to go into effect March 17, 2016 for prisons. GTL petitioned the FCC to stay the 2015 FCC Order, but the FCC denied the petition.

As a result, on January 27, 2016, GTL filed a Petition for Review of the FCC rate caps in the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit").[8] GTL's Petition challenges the legality of the 2015 FCC Order on statutory and constitutional grounds.[9] GTL later moved the Court to stay implementation of the new rate caps pending final resolution of the Petition for Review.[10] On February 24, 2016, before the Court had acted on either GTL's request for a stay or its Petition for Review, DOC invited Best and Final Offers ("BAFO") for Revenue Share Proposals reflecting the new rate caps under the 2015 FCC Order that were scheduled to take effect on March 17, 2016.[11] On March 1, 2016, the Offerors submitted BAFOs, which replaced the Revenue Share Proposals submitted with the RFP Responses.[12] Then, on March 7 and

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[7] Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 dated October 22, 2015, GTL Protest Ex. 12.

[8] Petition for Review, Global Tel*Link v. FCC, Nos. 15-1461 et al. (D.C. Cir. Dec. 18, 2015), GTL Protest Ex. 13.

[9] Id.

[10] Motion of Global Tel*Link for Partial Stay Pending Judicial Review ("Motion to Stay"), Global Tel*Link v. FCC, Nos. 15-1461 et al. (Jan. 27, 2016),GTL Protest Ex.14.

[11] Email from J. Pytelewski to D. Eades re: Action Required: Inmate Telephone Service RFP #46700-GDC0000669 Request for Best and Final Offer, dated Feb. 24, 2016, GTL Protest Ex. 15.

[12] Best and Final Offers of GTL, Securus and CenturyLink, GTL Protest Exs. 16-18.

23, 2016, the D.C. Circuit granted GTL's request for a stay and enforcement of the stay, respectively, of the implementation of the new rate caps.[13]

More recently, on July 14, 2016, the Federal Communications Commission ("FCC") released its Fact Sheet: Providing Affordable, Sustainable Inmate Calling Services ("Fact Sheet"), indicating that the FCC intends to issue an Order on Reconsideration that would increase the previously established interstate and intrastate inmate calling service rates.[14] The FCC is scheduled to vote on the Order on Reconsideration at its August 4, 2016 Open Commissioner Meeting. And, on July 20, 2016, the FCC filed a motion requesting that the D.C. Circuit hold the appeal of the 2015 FCC Order in abeyance pending the scheduled vote on the Order on Reconsideration.[15]

Based on the FCC's review of the record developed in the D.C. Circuit appeal, as well as in response to a Petition for Reconsideration filed with the FCC on January 19, 2016, the FCC Fact Sheet reports that it intends to **increase the rate caps** established in the 2015 FCC Order because the record now "support[s] an approach to inmate calling rate reform that expressly accounts . . . for the possibility that jails and prisons bear legitimate costs in providing access to ICS."[16] This is in contrast to the FCC's previous ruling on ICS rates and site commissions under the 2015 FCC Order. In the

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[13] Order, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Mar. 7, 2016); Order, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Mar. 23, 2016), GTL Protest Exs. 19, 20.

[14] See July 21, 2016 Letter from J. Belinfante to Commissioner Johnson.

[15] Id.

[16] Id.

2015 FCC Order, the FCC excluded site commissions as a cost of providing ICS when establishing the rate caps and discouraged payment of site commissions. The 2015 FCC Order was scheduled to take effect at the time the BAFOs were submitted.[17]

These potential rate modifications present a significantly different set of rates than those which exist today and upon which GTL's BAFO was premised.[18]

2. DOAS' Failure to Properly Appreciate the Shifting Regulatory Environment Resulted in an Award that is at Direct Odds with Statutory Mandates and the Georgia Procurement Manual.

The relationship between the recent ICS rate changes and the immediate RFP can be summarized as follows:

- At the time the BAFOs were requested, the Offerors believed (or were at least expected to assume) that the 2015 FCC Order's maximum rates of **$0.11 per minute** of use applied for **both interstate and intrastate ICS** calls for inmates in prisons;[19]
- After the BAFOs were submitted, the DC Circuit issued Stays and **interstate ICS rates** were permitted to be as high as **$0.21 and $0.25** per minute of use, and **intrastate ICS per minute use** was set by GA PSC at **$0.18 and $0.19** per minute of use.[20]

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[17] GTL Protest at 13.

[18] GTL Protest at 10.

[19] GTL Protest Ex. 15.

[20] GTL Protest Exs. 19, 20, 31.

- Notwithstanding the Stay, the pre-Stay rates of **$0.11 per minute** of use applied for both interstate and intrastate ICS remained the operative rates throughout the remainder of the RFP process.

The Decision acknowledges all of this and further acknowledges that the BAFO was intended to address a rate cap regime that was never implemented.[21] Yet, it doggedly defends the DOC's decision on the grounds that because it can be underpaid for technology, it should be underpaid. This logic flies in the face of Georgia procurement law and best practices, and the consequences are real: the Decision does not contest that tens of millions of taxpayer dollars have been left on the table.

Even more remarkably, the Decision makes additional concessions which only serve to further undermine the purported reasonableness of the award. For example, it is undisputed that:

- DOAS has the discretion to wait until the FCC vote on the Order on Reconsideration, which would potentially result in preferable ITS rates and is only weeks away now, to move forward with the award process;
- DOAS refused to wait until after the vote to move forward;
- Statutory law and the Georgia Procurement Manual require DOAS to issue procurement awards based on the "most advantageous" proposal and to identify the "best value" for the State; and

[21] Decision at 3.

- Notwithstanding such mandates, DOAS has opted not to maximize its revenue potential under the procurement.[22]

Just as important as the points which DOAS concedes are those additional points which GTL (and others) raised in its Protest and which DOAS does not dispute:

- The presumptive rates, at the time the BAFOs were submitted, were **50% lower** than rates currently available;[23]
- **Tens of millions of dollars** that DOAS has left on the table could have been put to such DOC goals as 1) ensuring public safety, 2) creating opportunities for restoration to offenders through communication with family, 3) ensuring safe and secure facilities and 4) facilitating/supporting law enforcement;[24]
- The stay of the 2015 FCC Order has had a **material impact** on the RFP process and has led to distorted results;[25]
- Both **Securus' and CenturyLink's BAFOs critically depended on a stay of rates** being implemented for their viability (despite DOAS' instruction to the contrary);[26]

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[22] Id.

[23] GTL Protest at 11.

[24] Id.

[25] Id. at 16.

[26] Id. at 18.

- The earlier draft BAFO, dated February 4, 2016, which would have requested that the **bidders submit two alternative offers** – one where rates stayed the same, and another where rates decreased based on the FCC Order – was more reasonable than the operative BAFO;[27]
- DOAS ignored GTL's inquiry whether multiple offers could be submitted in light of the regulatory uncertainty, ignored GTL's email informing it that a stay of the 2015 FCC Order rates had been entered by the D.C. Circuit, and ignored GTL's later notice that its BAFO would "**materially change given the new lift on the rate caps**;"[28]
- Soliciting additional BAFOs would not be time consuming or labor intensive;[29] and
- As a result of the above, overall revenue to the DOC subsequently **declined from $45,280,000 to $19,600,000**.[30]

Collectively, these points demonstrate that the BAFO invited unreasonable or undervalued bids and was thus arbitrary and capricious, resulting in an outcome that

[27] Id. at 20.

[28] Id. at 21.

[29] Id.

[30] Id. at 17.

ran contrary to the GPM and the animating purposes and policies of the state procurement laws, and which was a great disservice to Georgia taxpayers.[31]

DOAS attempts to excuse the fact that it overlooked these regulatory changes and stands to capture 50% less revenue than under the original RFP terms on the basis that it reserved the right to "negotiate in good faith an amendment to the awarded contract" in the event "a material change in the rules or policies of the FCC applicable to the inmate telephone services" occurred following execution of the awarded contract.[32] DOAS' optimism for the future thus rests exclusively on uncertain contract negotiations where it very likely may not be capable of achieving better terms with Securus.[33] Accordingly, without any rational basis, DOAS has resigned itself to obtaining less than the best value for the State.

3. The RFP was not Competitively Bid.

DOAS defends its Decision in part on the illusion that the RFP was "fairly competed" when in fact the opposite is true. In reality, following the 2015 FCC Order, the RFP yielded divergent proposals from the Offerors with different views of the

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[31] See GPM § 2.4.2 (RFP process is to "to identify the 'best value' for the state"); O.C.G.A. § 50-5-67(a)(7) ("The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state...."); O.C.G.A.§ 50-5-50 (state procurement purposes and policies include, inter alia, achievement of "the lowest possible costs to the state through effective competition among such vendors," "ensur[ing] the fair and equitable treatment of all persons who deal with the procurement system of the state," "provid[ing] for increased public confidence in the procedures followed in public procurement," and "provid[ing] safeguards for the maintenance of a procurement system of quality and integrity.").

[32] Decision at 2 (citing RFP § 1.1).

[33] See, e.g. Reply of Century Link Public Communications, Inc. to The Response of Securus Technologies, Inc. to Protests Filed Against the Georgia Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service at 3

undecided law. Indeed, under the law that existed between the 2015 FCC Order and the D.C. Circuit's March 7 and March 23, 2016 stays, the BAFO would have likely led to a fatal Hobson's choice for the Offerors, namely choosing between breaching an awarded contract with which it could not afford to comply or providing services at an unsustainable loss.[34] This warrants cancellation, as DOAS never obtained an apples-to-apples comparison.[35]

B. The Decision Improperly Disregarded Praeses' Inappropriate Involvement in the RFP Process.

The Decision should also be overturned due to its failure to adequately address the problems created by Praeses' involvement in the RFP process. The Decision glosses over the bright-line prohibition on consultant participation in the development and evaluation of the same RFP as well as overlooks key evidence of Praeses' significant role in evaluating the RFPs at issue here. Even more troublingly, the Decision all but concedes that Praeses was biased against GTL. And, there is no other logical explanation for why the DOC would choose to receive less when all it needed to do was ask for more. These errors were arbitrary and capricious, and merit further review by the Commissioner.

1. The Decision Failed to Address Numerous Key Facts Regarding Praeses.

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[34] Ex. 14.

[35] See Webcraft Packaging, Div. of Beatrice Foods Co., B–194087, 79–2 CPD ¶ 120, 1979 WL 12167 (Comp. Gen. Aug. 14, 1979) (sustaining protest and cancelling award so that contract could be rebid to promote full and robust competition in view of changes in contract specifications).

Several facts remain undisputed following the Decision:

- Praeses had been involved in litigation with GTL prior to the RFP;
- Praeses participated in negotiating the extension of GTL's contract with the DOC and gained knowledge of GTL's position that the new, lower FCC rate caps would decrease its ability to pay commissions to the DOC;
- Praeses "monitored" GTL as part of its contract with the DOC, a role that included tracking third party lawsuits against GTL;
- Praeses drafted and developed the Questions and Answers, Requests for Clarification, BAFO requests, and other documents related to the RFP;
- Multiple DOAS internal documents list Praeses employees as members of the Evaluation Committee;
- The Deputy Commissioner did not waive any restriction on Praeses involvement in the RFP process;
- GTL's technical evaluation scores dropped precipitously following a "validation meeting" in which Praeses participated; and
- The scores of the other Offerors increased following this same "validation meeting."

Each of these facts supports GTL's contention that Praeses was improperly involved in the RFP, and each stands unrefuted.[36]

[36] Compare GTL Protest at 23-30 with Decision at 4-6.

2. The Decision Improperly Dismissed GTL's Challenge to Praeses' Involvement as Untimely.

Notably, the Decision **does not challenge** the assertion in GTL's protest that Praeses held a bias against GTL. Instead, the Decision states that, whatever bias Praeses held, GTL was time barred from raising such issues. The Decision contends that, because the RFP states that "[the DOC] has engaged a third party consultant, Praeses, LLC to support this procurement event and the management of its days to day activities," a challenge to Praeses' involvement must have been brought prior to the closing of the RFP.[37]

This position misses the point. The RFP notice stated only that Praeses would "support this procurement." Based on this limited statement, GTL cannot be assumed to have been on notice that Praeses' involvement would **violate the terms of the GPM**. Indeed, the GPM provides specifically for separate notice, in the form of a written waiver from the Deputy Commissioner, if a consultant is to participate in RFP development and evaluation. Because no such waiver was provided, and because GTL could not have known the extent of Praeses' involvement until it received the documents cited in its Protest, there has been no such waiver of GTL's rights.[38]

Especially in light of DOAS' failure to refute Praeses' bias against GTL, the Decision's finding that GTL's was time barred in its challenge to Praeses' involvement in

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[37] Decision at 4.

[38] See GTL Protest at 24-30 (citing to numerous emails and internal DOAS documents evidencing Praeses' improper participation in RFP evaluations).

the RFP process was arbitrary and capricious, and warrants further review from the commissioner.

3. The Decision Improperly Blurs the GPM's Clear Prohibition of Consultant Participation in RFP Evaluations.

The Decision misstates the black letter standard set forth in the GPM. While the Decision concedes that "[t]he GPM currently contains limitations of involvement by third party consultants,"[39] it fails to address the clear language of those limitations. The Decision incorrectly reasons that, because the GPM "contemplates that third party consultants may be involved in a consultative role," Praeses was free to run all aspects of the RFP process.[40] This is not so.

The GPM is clear that, while consultants may be utilized for RFPs, the use of the **same** consultants for both RFP drafting **and** evaluation is prohibited.[41] The GPM presents a clear either/or rule: a consultant may assist in either developing RFP criteria or evaluating RFPs, but **not both**. This rule allows the evaluation process to be performed with fresh eyes, and assures that the winning bidder is chosen based on the merits of its offer, not preconceived notions developed prior to the submission of RFP responses. And, DOAS is not entitled to any deference of its interpretation of the

[39] Decision at 5.

[40] Id. at 5.

[41] GPM § 3.2 ("Any third-party consultant who develops or drafts specifications or requirements of a solicitation document will be prohibited from . . . serving as an evaluation committee member.").

GPM.[42] Thus, the question presented with this appeal is whether a third party that participates in the development of and RFP and the evaluation process can avoid the impropriety of its conduct by claiming – without any supporting evidence – that its participation was limited to consulting and not writing in the score itself. The answer is an unquestioned "no," and any other conclusion renders the GPM meaningless.

Other than an ex parte conversation, there is nothing in the Decision that explains or even attempts to justify Praeses' prohibited dual roles. There was no waiver to authorize it. Here, it is undisputed that Praeses participated in both the development and evaluation of the RFPs. Thus, there is no question that Praeses violated the GPM, and upholding the procurement under such circumstances was arbitrary and capricious, and warrants further review from the commissioner.

4. The Decision Inaccurately Described Praeses' Role in RFP Evaluations.

The Decision vaguely refers to Praeses as holding a "consultative role" in the RFP process. While it is unclear exactly what this characterization means, the documents referenced in GTL's appeal demonstrate that Praeses was actively involved in both RFP development and evaluation.

As an initial matter, the Decision does not dispute that Praeses developed and drafted specifications and requirements used in soliciting RFP responses.[43] Nor could

[42] Pruitt Corp. v. Ga. Dep't of Cmty. Health, 284 Ga. 158, 160-61 (2008).

[43] See generally Decision.

it, as there is ample evidence of Praeses drafting key RFP documents for DOAS.[44]

Instead, the Decision contends that Praeses did not "score the proposals" and thus did not participate in the RFP evaluation in violation of the GPM. Apparently, the Decision takes the position that, no matter how much Praeses influenced the RFP evaluations, because its employees were not individually assigned their own scoring sheets, Praeses could not have violated the GPM. The GPM does not define "score the proposals," and the Decision's interpretation would render the rule against consultant involvement toothless. However, the term need not be defined to determine that Praeses involvement was improper. Put simply, there is no material difference between a consultant advising on what to score and actually scoring.

GPM § 3.2 expressly prohibited Praeses employees from "serving as Evaluation Committee members." Multiple documents GTL received in response to its open records requests contained a listing of "Committee Members" or a "Committee Roster."[45] Each of these documents reflects that Praeses employees were on the evaluation committee.[46]

This is direct evidence that Praeses participated in the RFP evaluation in a manner that violated the GPM. The import of this evidence cannot be brushed aside by

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[44] See, e.g. GTL Protest at 24 (citing to Exhibits 38, 39, and 40, all of which are emails from Praeses to the Issuing Officer containing RFP draft documents)

[45] See GTL Protest at 24 (citing to Exhibits 7 and 8, which are materials from the RFP evaluation reflecting that Praeses employees served as evaluation committee members).

[46] Id.

referring to Praeses' "consultative role" nor the Issuing Officer's post-hoc "assurance" that Praeses' involvement complied with the GPM.[47] The Decision's failure to address this clear law and evidence was arbitrary and capricious, and merits further review by the Commissioner.

5. Praeses' Involvement Harmed GTL.

But for Praeses' improper involvement, it is likely that the results of the RFP would have been different.

The Decision concedes that, following Praeses participation in the "validation meeting," GTL's scores dropped over 50 points, while Securus' scores rose over 50 points.[48] The Decision's contention that only some of the changes to GTL's scores were made without any specific explanation does not diminish the importance of this point. Indeed, the fact that any score reductions were made based only on "group discussion" calls into question the review process, and the Decision wrongly concludes that GTL's burden was to disprove a negative.

Moreover, the Decision does not dispute that Praeses gained knowledge of how GTL would respond to the BAFO through Praeses' previous contract negotiations with GTL.[49] Instead, the Decision contends that this pre-acquired knowledge was irrelevant because all Offerors had to respond to the same BAFO. This again misses the point.

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[47] Decision at 5, n. 11

[48] See GTL Protest at 28

[49] Id. at 25-27.

Praeses already knew that including an assumption of lower rate caps would harm GTL's ability to make a competitive bid. Nonetheless, Praeses structured the BAFO to assume these lower rate caps despite the fact that it was highly likely that the rate caps would be stayed, as they ultimately were. This too is not adequately addressed in the Decision. Had Praeses allowed for an uncapped bid, or even alternative bids, it is highly likely that the results of the BAFO would have changed. At the very least, this uncertainty further emphasizes the importance of the GPM's prohibition on consultant involvement in multiple aspects of the same procurement process.

These facts show that Praeses' involvement harmed GTL's ability to compete for the BAFO, and the Decision's finding otherwise was arbitrary and capricious, and merits further review by the commissioner.

C. The Award went to an Irresponsible and Non-responsive Bidder.

1. Securus' Bid was Irresponsible and Non-Responsive.

Worse than merely preventing the evaluation of bidders apples-to-apples, DOAS issued the award to Securus based on a BAFO which made completely unrealistic presumptions and promises, including a guaranteed annual minimum payment that would exceed the annual gross revenue generated on the Contract by several hundred thousands of dollars.[50] Specifically, Securus' offer promised a 59.6% revenue share and

[50] Candidly, GTL submitted the one and only responsive and responsible bid, as, despite DOAS' instruction to the contrary, Securus' and CenturyLink's BAFOs each critically depended on a stay of rates being implemented for their viability.

a guaranteed annual payment of $3,900,000, which simply could not have been financially feasible, as the **guaranteed annual minimum offered by Securus would exceed annual gross revenue generated on the Contract by over $200,000, for a total of $839,870.88 in unsupported revenue share over the four-year term.**[51]

If these black-and-white figures were not telling enough, Securus even went so far as to tell the federal government that its business model would no longer be viable under the rate caps expressed in the BAFO:

- "Securus explained that, if adopted, the rates and rules in the Fact Sheet could be **'a business-ending event'** for the company."
- Securus described the new rate caps "as **an unwelcome surprise**."
- "Securus also showed that **the draft rate caps are significantly below Securus's costs <u>even without site commissions</u>**; if Securus must continue paying site commissions out of such reduced rates, that would make those draft rate caps **more than 75% below Securus's costs**."
- Securus represented that "**[c]orrectional facilities will be worse off under the draft rate caps, because providers will be unable to serve them.**"[52]

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[51] Best and Final Offer of Securus , GTL Protest Ex. 17.

[52] Notice of Permitted <u>Ex Parte</u> meeting, WC Docket No. 12-375, dated October 7, 2015, GTL Protest Ex. 57 (emphasis added).

- "Securus **could not allow online credit card processing** under the new caps."
- "Securus would have to **discontinue Text2Connect and PayNow** under the new caps."
- "The financial loss Securus will incur under the new rules **may prevent it from complying with covenants to its banks**."
- "The **tremendous, unrecoverable financial losses** that the new rate caps will bring to Securus **actually threaten the sustainability of its business**."
- "**[C]onsumers will benefit from a stay [of the new rates]**, because Securus would not be forced to discontinue innovative, convenient services on which consumers have relied."
- "**The public interest will be gravely impaired**" if the new rate caps become effective.[53]

Thus, DOAS issued the award to the most reckless or non-responsive bidder and not the best or even responsive and responsible offer, as Securus effectively took a gamble on whether the rate caps would actually be implemented.

The Decision summarily dismisses this point, stating that it is "without merit" because Securus "bears all cost risk" in performing the contract.[54] However, the

[53] Securus Technologies, Inc. Emergency Motion for Partial Stay of FCC Order 15-136 Pending Review, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Jan. 27, 2016), GTL Protest Ex. 58 (emphasis added).

allocation of risk between the State and Securus does not change the fact that awarding Securus the contract based on an irresponsible bid contravened both statutory law and the GPM.[55] This is of critical value to the procurement process overall, as it protects against illusory offers, the acceptance of which would necessitate beginning the process anew again to the detriment of the taxpayers.

The Decision similarly attempts to downplay the reality that Securus would be financially under water on the contract by stating that "GTL cites its own revenue experience in Georgia as the basis for its assertions, [and] I do not find GTL's argument to be compelling because GTL's current contract and pricing model is fifteen years old...."[56] This position is simply wrong. GTL cited Securus' BAFO which was purportedly based on the assumptions incorporated into the BAFO terms (and thus applicable to all Offerors), and which objectively showed that Securus represented it was going to pay more money to the State than it was projected to make off the contract in the first place.[57] If DOAS preferred, it could have incorporated a different forecast into the BAFO terms, but it did not. And, if DOAS' position is that it awarded the contract to

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[54] Decision at 4.

[55] GPM § 5.6.2.2 (requiring suppliers to have "appropriate financial capacity and controls"); O.C.G.A. § 50-5-67(c)(1)(A) (only those offerors that submit responsible bids should be invited to negotiate or accepted).

[56] See Decision at 4. Contrary to the Decision's characterization, GTL's contract, including pricing and commissions, has been amended numerous times over the past fifteen years.

[57] Best and Final Offer of Securus , GTL Protest Ex. 17.

Securus based on different assumptions than those presented in the BAFO, then the award was unlawful.[58]

2. Securus is Otherwise Irresponsible.

Under the GPM, a bidder's responsibility is demonstrated by, among other things, "a satisfactory record of **integrity**, appropriate financial, **organizational and operational capacity and controls**, and **acceptable performance on previous governmental and/or private contracts**, if any."[59] Examples of non-responsibility include "a supplier's history of nonperformance or performance problems on other contracts" and "business instability."[60] The requirement that a bidder be responsible stands on its own, and is not governed by the rational basis standard as the Decision incorrectly asserts.

In addition to showing how Securus' bid was untenable in the light of its statements to the federal government, GTL (and the other protesters) provided ample proof of Securus' unscrupulous business practices elsewhere. For example:

- Securus was the subject of **one of the top ten biggest data breaches of 2015**;[61]

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[58] See, e.g. United Telephone Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374 at 7-10 (agencies may not properly award a contract on a basis that is fundamentally different from the basis upon which the competition for the requirement was conducted).

[59] GPM § 5.6.2.2 (emphasis added).

[60] Id.

[61] Top 10 Biggest Data Breaches of 2015, Digital Guardian, available at https://digitalguardian.com/blog/top-10-biggest-data-breaches-2015 (last visited Apr. 16, 2016), GTL Protest Ex. 54.

- In 2014, Securus was sued in a **class action lawsuit for** recording phone calls between jail inmates and their attorneys in Travis County, Texas;[62]
- In 2014, the Alaska Department of Corrections discovered that Securus was **inadvertently recording attorney-client calls** at state correctional facilities, requiring the state to go through the expensive and time consuming process of identifying and destroying material that should not have been recorded in the first place;[63] and
- On May 27, 2016, **another class action lawsuit** was filed against Securus for recording thousands of attorney-client phone calls in correctional facilities throughout the State of California.[64]

DOAS responds by citing to the fact that Securus' massive data breach and one of the lawsuits against it were disclosed in Securus' RFP materials.[65] It does not even attempt to countenance the other issues which the protesting Offerors brought to DOAS' attention.[66] The Decision also does not cite anything in Securus' RFP response showing

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[62] Austin Lawyers Guild et al. v. Securus Technologies, Inc. et al., Case No. 1:14-cv-00366-LY (W.D. Tex. 2014), publicly available at https://www.pacer.gov/.

[63] Alaska Public Media, Dept. of Corrections Confirms Inadvertent Recording of Attorney-Client Calls, available at http://www.alaskapublic.org/2014/02/03/dept-of-corrections-confirms-inadvertent-recording-of-attorney-client-calls/ (last visited Apr. 16, 2016), GTL Protest Ex. 55.

[64] June 1, 2016 Letter from J. Belinfante to Commissioner Johnson.

[65] Decision at 4.

[66] See, e.g. Supplemental Brief of CenturyLink Public Communications, Inc. in Support of CenturyLink's Protest of Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service at 3 (citing Comment of Securus Technologies, Domestic Section 214 Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc., WC Docket No 16-188).

that the data breach was disclosed, and it likely was not disclosed, given that Securus denied that the data breach ever occurred in its response to GTL's protest.[67] Moreover, the fact that Securus may have disclosed the Texas class action in its RFP response should not alleviate DOAS' concerns, as Securus' Litigation Summary was itself plagued with inaccurate reporting and Securus even went on to mischaracterize the disposition of that lawsuit in its response to GTL's protest.[68]

3. Securus cannot Deliver on its Promises.

GTL pointed out to DOAS that Securus misrepresented its ability to deliver voice biometric technology and was non-responsive regarding its alert capabilities.[69] Securus offered virtually no rebuttal to GTL's showing, based on Securus' own sworn testimony, that Securus' RFP response on these points was puffery. Nevertheless, the Decision declines to seriously consider these issues because, together, they would only total a possible 35 points in the technical portion of the RFP, where 650 points was the maximum score.[70] DOAS forgets that a bucket fills drop by drop.

This represents a broader problem underlying the Decision: the Deputy Commissioner repeatedly rejects the notion that the protesting Offerors were prejudiced by reviewing each issue in a vacuum and never assessing the aggregate effects of, inter

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[67] See Response of Securus Technologies, Inc. to the Protests filed by Global Tel*Link Corporation, Telmate, LLC and CenturyLink Public Communications, Inc. ("Response") at 11.

[68] GTL Reply at 13 (citing Response Ex. 15); Response at 12.

[69] GTL Protest at 35-37.

[70] Decision at 6.

alia, the ongoing rate changes, Securus' irresponsible and deceptive bidding, and Praeses' biased intermeddling on the RFP process.[71] These actions add up and they have real consequences, namely, that DOAS issued an unlawful award that it cannot rationally justify, and in doing so, shorted various important public interests – such as ensuring public safety, creating opportunities for restoration to offenders through communication with family, ensuring safe and secure facilities, and facilitating/supporting law enforcement – by tens of millions of dollars. Put simply, if the DOC is serious about enhanced security and technological innovations, then this is surely not a rational means of seeking to achieve its goals.

III. Request for Oral Presentations

Given the questions raised in this appeal and the Deputy Commissioner's conclusory statements attempting to absolve real issues, GTL requests that the Commissioner hear oral presentation by the parties pursuant to Section 6.5.8 of the Georgia Procurement Manual.

As seen, the procurement does not live up to the goals and requirements imposed by Georgia law. There remains time to correct the wrongs caused by the procurement, and the ordering of relief or an oral presentation are well within your discretion under the Georgia Procurement Manual. GTL respectfully requests you exercise that discretion to address the flaws that materially prejudiced GTL.

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[71] See, e.g. Decision at 4-6.

Sincerely,

Josh Belinfante

JB/db

cc: Matthew T. Parrish, Esq.
J. Matthew Brigman, Esq.
Daniel J. Monahan, Esq.

APPENDIX E

GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE PURCHASING DIVISION

In the Matter of:	)	
	)	
CenturyLink Public Communications, Inc.,	)	DOAS FILE NO.
Protestor,	)	
	)	eRFP No. 46700-GDC0000669
Georgia Department of Corrections,	)	
Agency.	)	

Department of Administrative Services
State Purchasing Division
Attn: Assistant Commissioner – Procurement
200 Piedmont Avenue, SE
Suite 1308, West Tower
Atlanta, Georgia 30334-9010
Facsimile: (404) 657-8444
Email: protests@doas.ga.gov

Request for Review of the Deputy Commissioner for Procurement's July 27, 2016 Denial of CenturyLink Public Communications, Inc.'s Protest of Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service

CenturyLink Public Communications, Inc. ("CPCI") respectfully requests the Commissioner's review of the July 26, 2016 denial of Protests regarding 46700-GDC0000669 "Inmate Telephone Service."[1] This request is made pursuant to Section 6.5.8 of the Georgia Procurement Manual (GPM).

CPCI filed its Protest and now submits this Request for Review by the Commissioner because the Notice of Intent to Award (NOIA) the Georgia Department of Corrections' (GDC) Inmate Telephone Service contract to Securus violates Georgia law.[2] CPCI's Protest and supporting documents establish that Securus has engaged in unprincipled behavior that requires a finding that Securus submitted a non-responsive bid and/or Securus is not a responsible bidder. Specifically, CPCI has demonstrated the following:

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[1] A copy of the letter from Lisa Eason, Deputy Commissioner of the Department of Administrative Services, dated July 26, 2016 denying the protests ("Eason Ltr.") is attached as Exhibit A.

[2] *See* O.C.G.A. § 50-5-79 (Contracts made in violation of State Procurement laws and regulations shall be void and of no effect).

- At all times relevant to this procurement, Securus has consistently claimed that the FCC prohibits the payment of site commissions on interstate revenues.[3]

- Securus's position on the payment of site commissions includes renegotiating existing contracts with counties and state departments of correction to stop paying commissions on interstate revenues, but without reducing end user rates. This has resulted in increased profits for Securus.[4]

- If Securus does intend to pay GDC a commission on interstate revenues, as required by the eRFP and the BAFO instructions, then its decision to stop paying such commissions to other county and state DOCs is suspect at best, and unscrupulous at worst.

In denying CPCI's protest, the Deputy Commissioner made at least three significant errors that require reconsideration by the Commissioner.

First, the Deputy Commissioner found that despite direct evidence that Securus has made assertions to the Federal Communications Commission and others that are incompatible with an agreement to pay the GDC commissions on interstate calls (a requirement by GDC for this procurement), there was insufficient evidence to determine that Securus is not a responsible bidder. Regardless of the level of deference afforded to the Agency decision makers, the fact that Securus has obtained the GDC Inmate Telephone Service contract by promising to do something Securus has, on many occasions (and to its benefit), proclaimed to be illegal, belies any contention of a "satisfactory record of integrity" sufficient to contract with the State of Georgia.[5]

Second, the Deputy Commissioner ignored the import of the qualification that Securus has placed on its BAFO in holding:

> [Securus] has unequivocally agreed to pay a 59.6% revenue share on the interstate revenue as required by the BAFO ***if providing such revenue share is permitted by the FCC.***[6]

In this finding, the Deputy Commissioner has adopted Securus's qualification on its offer – "if providing such revenue share is permitted by the FCC." Given Securus's consistent assertions to the FCC and other departments of corrections that commissions on interstate revenue are illegal, this qualification is significant. The only reasonable conclusion is that Securus does not plan to

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[3] *See* CPCI's Protest of Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service, filed April 19, 2016, at 6-8 ("CPCI's Protest").

[4] *Id.*

[5] *See* Georgia Procurement Manual ("GPM"), § 5.6.2.2.

[6] Eason Ltr., at 6 (emphasis added).

pay the 59.6% commission on interstate calls, which, in turn, means that the percentage proposed by Securus in its BAFO cannot be compared to the percentages proposed by the other bidders, who offered commission percentages in their BAFOs that include commissions on interstate calls (as the GDC instructed them to do). Allowing Securus to qualify its bid in this manner creates a situation in which those evaluating the BAFOs could not make an "apples to apples" comparison of proposed commission percentages. By qualifying its bid based on its contention that commissions on interstate calls are illegal, Securus excludes a significant percentage of calls from the commission calculation,[7] and thus gained an advantage over bidders who proposed a commission percentage on all calls. Thus, the Deputy Commissioner was incorrect when she concluded that "none of the protesting parties have demonstrated that they were prejudiced by the revenue share evaluation."[8]

Third, the Deputy Commissioner erred when she concluded that if "GDC has doubt [as] to whether Securus shares GDC's interpretation of the law, GDC maintains authority to reopen contract negotiations to clarify this point."[9] If GDC were to do this, it would undermine the fundamental purpose for competitive bids. It would allow Securus to benefit from not announcing its dispute with a clear requirement of the BAFO until after it had submitted a misleading bid. It would also allow Securus to be awarded the contract, but then immediately change its terms. Thus, the process proposed by the Deputy Commissioner would fail to abide by the principles of Georgia procurements that offerors should be treated fairly and equally, that solicitation rules must be pre-determined and followed, and that the agencies cannot disregard the plain language of their own procurement documents.[10]

For the reasons set forth in this Request, and CPCI's Protest and supporting materials, CPCI asks that the Commissioner reverse the denial of CenturyLink's Protest and rescind the NOIA.[11] In addition to ensuring compliance with Georgia law, this will likely benefit the GDC by avoiding the interruption of service or reduction of revenue that will occur when Securus refuses to pay commissions on interstate revenues.

CenturyLink also requests an administrative evidentiary hearing on these issues.

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[7] *See* n.37, *infra*.

[8] Eason Ltr., at 4.

[9] *Id.*, at 6.

[10] *See* GPM, § 5.6, Table 5.3; *Amdahl Corp. v. Georgia Dep't of Admin. Servs.,* 260 Ga. 690, 696 (1990) ("It is undisputed that DOAS is bound by the terms of the RFP").

[11] CenturyLink expressly incorporates and reserves the right to argue any and all issues raised in its April 19, 2016 Protest, its May 6, 2016 Reply, and its July 22, 2016 Supplemental Brief, regardless of the breadth or depth to which an issue has been re-briefed herein.

RFP Background

On April 28, 2015, pursuant to the State Purchasing Act, O.C.G.A. §§ 50-5-50 et seq., the State issued an electronic Request for Proposal ("eRFP") seeking to award a contract to a single qualified supplier to provide a comprehensive Inmate Telephone Service to Georgia's Department of Corrections ("GDC").[12] The supplier selected under this eRFP shall, without cost to the GDC, operate inmate telephones and related equipment, provide all wiring for the inmate telephones, and install the inmate telephones and the related hardware and software to enable inmates at GDC facilities to complete local, long distance and/or international collect, pre-paid collect, debit and free calls from GDC facilities.[13] The contract covers sixty-five (65) GDC facilities that house approximately 50,090 inmates generating a monthly average of 195,307 calls and 2,423,842 total minutes.[14] The RFP closed on June 9, 2015, and on February 24, 2016, GDC requested a Best and Final Offer from three suppliers, which were submitted on March 1, 2016.

As part of the eRFP, bidders were required to provide GDC with a "Revenue Share," or commission, on all Gross Revenue generated by and through the proposed Inmate Telephone Service.[15] Significantly, for purposes of this protest, the eRFP defined Gross Revenue to include revenue received for interstate calls.[16]

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[12] Georgia Department of Corrections Electronic Request for Proposals, Inmate Telephone Service, eRFP Number: 46700-GDC0000669, § 1.1. A copy of the eRFP is attached hereto as Exhibit B.

[13] *Id.*

[14] *Id.*

[15] State of Georgia, Department of Corrections, GDC Scope of Services, RFP Attachment B/Contract Attachment 2, § 19.1. A copy of this document is attached hereto as Exhibit C.

[16] *Id.* ("Gross Revenue consists of all compensation, earnings, gain, income, generated revenue, payment, proceeds or receipts paid to or received by Contractor that are in any way connected to the provision of service pursuant to this RFP and Contract. Gross Revenue includes . . . all surcharges, per minute fees and any additional fees and/or charges generated by the completion of all calls (including any combination of free, collect, debit, and pre-paid local, Intralata/Intrastate, Intralata/**Interstate**, Interlata/Intrastate, Interlata/**Interstate** and International Calls. . .") (emphasis added). Although different instructions were provided in the original Attachment L to the eRFP and in a Question and Answer in RFP Questions and Answers Round 1, the language of the subsequent request for Best and Final Offers, like the GDC Scope of Services (Attachment B) quoted above, expressly includes interstate calls in the Revenue from which a commission must be paid. *See* n.20, *infra*.

The Notice of Intent to Award was posted on April 8, 2016, identifying Securus Technologies as the apparent successful offeror.[17] CPCI, Global Tel*Link Corporation ("GTL"), and Telmate, LLC ("Telmate") each filed timely protests of this notice. Securus filed its Response on April 29, 2016. CPCI timely filed its Reply on May 6, 2016.[18] Securus filed a Sur-Reply on July, 13, 2016 and on July 22, 2016 CPCI filed a Supplemental Brief in Support of its Protest to present additional evidence in the form of a July 1, 2016 submission by Securus to the FCC clearly expressing its view that commissions on interstate revenues are illegal.

The Deputy Commissioner denied all protests on July 26, 2016.[19]

Disqualifying Conduct by Securus

In requesting a Best and Final Offer, the GDC required offerors to propose a single Revenue Share percentage which shall be applied to "all local, intralata/intrastate, interlata/intrastate, **intralata/interstate, interlata/interstate** and international Gross Revenues . . ."[20] In response, Securus appears to have agreed to the foregoing requirement.[21]

However, such assent is entirely inconsistent with Securus's actions in other contexts. Securus has publicly proclaimed on several occasions that a ruling by the Federal Communications Commission ("FCC") prohibits the payment of commissions on interstate calls (one of the types of revenue share they promise to pay the GDC above). For example, in notices summarizing permitted *ex parte* meetings with FCC staff, Securus's counsel has asserted that paying commissions on interstate calls is prohibited:

> Although Securus believes that site commission revenue funds important programs, and has advocated in this docket that site commissions should be permitted for all calls in the forthcoming new rules, **federal law at this time prohibits interstate site commissions**.[22]

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[17] Notice of Intent to Award ("NOIA"). A copy of the NOIA is attached hereto as Exhibit D.

[18] This briefing schedule was established by email dated April 21, 2016, from Catherine "McCall" Ginsberg, Deputy General Counsel of the Georgia Department of Administrative Services, to parties of record.

[19] Eason Ltr.

[20] *See* Securus Technologies, Negotiation Invitation: Revenue Share Proposal – Best and Final Offer Solicitation # 46700-GDC0000669 hereinafter ("Securus BAFO"), at 5 (emphasis added). A copy of the Securus BAFO is attached hereto as Exhibit E.

[21] Securus BAFO, at 5, 7.

[22] Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary of the Federal Communications Commission, dated May 4, 2015 re: Ongoing

Significantly, based on its assertion that commissions on interstate calls are prohibited, Securus has demanded and received concessions from other public agencies with which Securus has contracted to provide inmate telephone service. These concessions, which terminated the payment of commissions on interstate calls, have caused reductions in Securus's payments to those public agencies.

For example, documents obtained by CPCI pursuant to an open records request reveal that Securus took this position with the Florida Department of Corrections. After agreeing to a contract that required the payment of commissions on interstate calls, Securus told Florida that such commissions violated the FCC's regulations, and as a result, the contract was changed to add a paragraph entitled "FCC Rule Prohibiting Commission on Interstate Calls," providing that "effective February 11, 2014, no commission shall be paid on revenues earned through the completion of interstate calls of any type received from the Contract."[23] Significantly, in this contract renegotiation, Securus resisted Florida's suggestion that the rates on interstate calls be reduced by the percentage of the commission previously paid.[24] As a result, not only did Florida receive less revenue from the contract than it expected, but Securus also profited from the amendment.[25]

Moreover, such conduct was not limited to Florida. As explained by Securus's counsel in a letter to the FCC: "Under the new FCC rules, Securus stopped paying interstate commissions on February 11, 2014."[26] And in another letter to the FCC Securus's counsel represented that Securus had engaged in this type of conduct with many customers:

Payment of Interstate Site Commissions in Contravention of *Inmate Rate Order* (FCC 13-113), at 2 (emphasis added). A copy of this letter is attached hereto as Exhibit F.

[23] Contract Amendment Between the [Florida] Department of Corrections and Securus Technologies, Inc., through its wholly owned subsidiary, T-Netix Telecommunications Services, Inc., Amendment # 7, dated February 7, 2014. A copy of this contract amendment is attached hereto as Exhibit G; *see also*, emails among Florida Department of Corrections Officials regarding contract amendment. Copies of these emails are attached hereto as Exhibit H.

[24] *See* Emails among Florida public officials, Shane Phillips and Jonathan Sanford, dated January 28, 2014. Copies of these emails are attached hereto as Exhibit H. Email From Dennis J. Reinhold, Vice President, General Counsel and Secretary, Securus Technologies to Jon Creamer, Shane Phillips and Jonathan Sanford, dated Monday, February 3, 2014 and attached memo. Copies of these documents are attached hereto as Exhibit I.

[25] Later, Securus and Florida amended their contract to eliminate all commissions, instead requiring Securus to provide a number of non-cash, "in-kind" services.

[26] Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary of the Federal Communications Commission, dated April 24, 2014 re: Notice of Permitted *Ex Parte* Meeting, WC Docket No. 12-375, at 1. A copy of this letter is attached hereto as Exhibit J.

> Although many of Securus's correctional facility customers were insistent upon receiving the funds to which existing contracts entitle them, Securus explained that the Interim Rate Caps simply do not permit Securus to pay site commissions on interstate revenue.[27]

Securus cannot attribute its assertions as to the illegality of commissions on interstate revenues to a changing or uncertain regulatory environment, moreover. It continues to assert the illegality of commissions on interstate revenues.

On July 1, 2016, Securus filed Comments with the FCC in a different matter, WC Docket No. 16-188. In these comments Securus again definitively stated its position that the Commission's rules prohibit the payment of Site commissions on interstate calls.[28]

WC Docket No. 16-188 was opened to consider the application of ICSolutions, LLC ("ICSolutions") for transfer of control to an entity called TKC Holdings, Inc.[29] Because ICSolutions holds certain federal licenses, the Telecommunications Act requires the FCC to approve a change of control of the company.[30]

In the comments it filed in WC Docket No. 16-188, Securus does not address the merits of the application of ICSolutions for transfer of control, but instead urges the FCC to add the following condition to any order granting the application of ICSolutions:

> "[T]he Commission … should include the express condition that the transferee immediately cease paying site commissions on interstate ICS unless and until new rules become effective to replace or supersede the Commission's prohibition of the payment of interstate site commissions."[31]

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[27] Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary of the Federal Communications Commission, dated February 27, 2014 re: Notice of Permitted *Ex Parte* Meeting, WC Docket No. 12-375, at 2. A copy of this letter is attached hereto as Exhibit K.

[28] A copy of the Securus Comments in WC Docket No. 16-188 ("Securus Comments") is attached hereto as Exhibit L.

[29] ICSolutions, like Securus, is a provider of Inmate Calling Services. ICSolutions is not only a competitor of Securus in the provision of Inmate Calling Services, ICSolutions is also a subcontractor to CenturyLink in its response to the GDC's eRFP No. 46700-GDC0000669.

[30] The subject matter of WC Docket No. 16-188, the application of ICSolutions, LLC for transfer of control to TKC Holdings, Inc., is not markedly different from two similar transactions that Securus itself has gone through in just the last five (5) years. *See*, http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0429/DA-13-961A1.pdf, and https://apps.fcc.gov/edocs_public/attachmatch/DA-11-731A1.pdf.

[31] Securus Comments, at 1.

Securus criticizes ICSolutions for acting "[i]n direct contravention of the Commission's very clear statements of federal law" and for promising to pay site commissions on interstate calls in winning jail contracts in Calhoun County, Michigan and Caldwell County, North Carolina.[32] Securus goes on to state that ICSolutions is paying site commissions on interstate calls to all of its correctional facility customers, and is therefore "acting in violation of the *First Inmate Rate Order*." [33]

CPCI disagrees with Securus's conclusion that commissions may not be paid on interstate calls. The FCC's 2013 Order upon which Securus relied to assert that it could not pay site commissions on interstate revenue did not, in fact, prohibit site commissions.[34] And in its Second Report and Order released on November 5, 2015, the FCC again stated that it was not prohibiting commissions on interstate revenue.[35]

More importantly, the GDC disagrees with Securus's assertions that commissions on interstate calls are illegal, and the GDC structured this Inmate Telephone Services Contract to **require** such commissions.

Whether Securus is right or wrong in its legal opinion on whether such commissions are prohibited by the FCC, the inconsistency of positions that Securus has taken and continues to take in its dealings with government agencies is significant.[36] Either (a) Securus honestly

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[32] *Id.*, at 5-6.

[33] *Id.*, at 6-7.

[34] "**We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions**. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates." *In the Matter of Rates for Interstate Inmate Calling Services,* Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14137, WC Docket No. 12-375, ¶ 56 (Sept. 26, 2013) (emphasis added) *available* at https://apps.fcc.gov/edocs_public/attachmatch/ FCC-13-113A1.pdf.

[35] "**[W]e do not prohibit ICS providers from paying site commissions**." *In the Matter of Rates for Interstate Inmate Calling Services,* Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12819-12821, WC Docket No. 12-375, ¶¶ 118, 123-24 (Nov. 5, 2015) (emphasis added) *available* at https://apps.fcc.gov/edocs_public/ attachmatch/ FCC-15-136A1.pdf.

[36] *See* Master Services Agreement between Securus Technologies and Georgetown County Sherriff's Department, South Carolina, made effective as of December 16, 2015, signed by Georgetown County official on January 22, 2016, Schedule at 7. ("Notwithstanding anything to the contrary contained in the Agreement . . . no commission shall be paid on revenues earned through the completion of interstate calls of any type placed from the Facility(s).") A copy of this agreement is attached hereto as Exhibit M.

believes that commissions on interstate calls violate the FCC's orders, or (b) Securus will say whatever it takes to win a contract or to maximize its benefit from an existing contract. In either case, Securus's conduct has troubling implications for the GDC contract.

Responsiveness

If Securus honestly believes that commissions on interstate calls are prohibited by the FCC, then its apparent agreement to pay them is a false promise. In such case, the GDC should expect Securus to do what it has done in other jurisdictions – after implementing the contract, Securus will assert that it cannot pay commissions on interstate calls, which will result in less money being paid to the GDC than it expected in awarding the contract to Securus. [37]

Significantly, despite being afforded an opportunity in the protest appeals process to put to rest any doubt regarding its intentions with respect to paying the GDC commissions on interstate calls, Securus cleverly dodged the issue. In response to CPCI's Protest, Securus's hides behind qualifications that obscures the intent and meaning of its statements: "Securus agreed to pay commissions **on whatever revenue it was legally permitted to pay commissions.**" [38] The "clarity" of Securus's position is obvious when it repeats this qualification on the following page of its Response: "Securus agreed to pay a revenue share on Gross Revenue **and whatever revenue it was legally permitted to pay a revenue share on by the FCC**."[39]

In its second attempt to respond, a July 13 Surreply, Securus did no better. It states that it "unequivocally agreed to pay a 59.6% commission on the interstate revenue as required by the BAFO."[40] However, in the same paragraph of its Surreply Securus immediately qualifies this promise, stating "… **if the FCC permits interstate commissions,** Securus will pay them in accordance with its BAFO Response."[41] This qualification is puzzling, given that the payment of interstate commissions as required by the GDC's request for BAFO is allowed by the FCC. The Securus Surreply also highlights a key point of CenturyLink's protest: If Securus truly believed

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[37] Interstate calls make up a significant percentage of inmate calls from GDC facilities. According to data provided by GDC as part of this procurement, Interstate calls constituted 10.8% of all inmate calls for the 6 months prior to the RFP (Nov. 2014 through April 2015). eRFP Addendum 1, Attachment R.

[38] *See* Response of Securus Technologies, Inc. to the Protests Filed by Global Tel*Link Corporation, Telmate, LLC and CenturyLink Public Communications, Inc., filed with DOAS on April 29, 2016, at 15 (emphasis added).

[39] *Id.*, at 16 (emphasis added).

[40] Securus Technologies, Inc.'s Surreply to the Reply of CenturyLink Public Communications, Inc., filed with DOAS on July 13, 2016, at 2.

[41] *Id.* (emphasis added).

that the requirements of the financial offer in the eRFP and/or the BAFO conflicted with another requirement in the eRFP – especially regarding issues as critical and material as commission compensation – Securus was required to file a specifications challenge with the State contesting these provisions.[42]

The Deputy Commissioner overlooked the effect of Securus's qualified response. If Securus seeks to avoid the requirement to pay the GDC a commission on interstate calls, it will mean that Securus is a non-responsive bidder. A bid that does not agree to pay a uniform commission on "all local, intralata/intrastate, interlata/intrastate, intralata/interstate, interlata/interstate and international Gross Revenues" fails to "materially conform[] to the requirements and specifications of the solicitation."[43] If Securus asserts that it will not pay commissions on interstate calls as it agreed to do in its Best and Final Offer, then Securus will not only be materially deviating from its Best and Final Offer, but the result will be a contract that materially deviates from the GDC eRFP specifications. These deviations create a real apples to oranges situation for the GDC in evaluating offers – it makes it impossible to compare Securus's BAFO with those of other bidders who intend to pay the revenue share percentage on all revenue, **as was clearly required by the RFP**. Therefore, the Deputy Commissioner's conclusion that none of the protesting bidders have been prejudiced by Securus's conduct is incorrect, and Securus's bid should be stricken from consideration.[44]

Responsibility

Even if, on the other hand, Securus intends to honor its commitment in its Best and Final Offer to pay the GDC commissions on interstate calls, Securus's bid is still extremely troubling.

To qualify as a "responsible" bidder the Georgia regulations require "a satisfactory record of integrity" and "acceptable performance on previous governmental and/or private contracts."[45] Securus's willingness to pay commissions to the GDC would contradict the assertion that it has made in other jurisdictions and public statements that such commissions are illegal. Further, as discussed above, Securus has used its contention that commissions on interstate revenues are illegal to force other DOCs to renegotiate contracts on terms more favorable to Securus. Such

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[42] *See* Reply of CenturyLink Public Communications, Inc. to the Response of Securus Technologies, Inc. to Protests filed against the Georgia Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service, filed with DOAS on May 6, 2016, at 6-7.

[43] *See* GPM, § 5.6.2.1; *see also*, n.20, *supra*.

[44] *See* GPM, § 5.6.2.1 (A material deviation will be cause for a rejection of the supplier's response.) *See also, Alfa v. Laval Separation, Inc. v. United States,* 175 F.3d 1365, 1367-68 (Fed. Cir. 1999) (holding that when a government agency erred in awarding the contract to an offerer whose proposal was not technically compliant with the solicitation, the unsuccessful offeror was prejudiced).

[45] *See* GPM, § 5.6.2.2.

unscrupulous behavior requires a finding that Securus is not a responsible bidder.

The Deputy Commissioner appears to excuse Securus's conduct, claiming FCC regulations have been in a constant state of flux and that there is no evidence of litigation arising from Securus's conduct.[46] These excuses ignore the fact that Securus argued that commissions on interstate revenue were illegal (when that argument benefitted Securus) both **before and after submitting its BAFO** here.[47] And it defies logic to conclude that such behavior could constitute a satisfactory record of integrity because Securus has not yet been sued because of it. Regardless of the level of deference applied to a review of the NOIA, Securus fails to meet the standard for being a responsible bidder in Georgia, and its bid should be stricken; the Notice of Intent to Award should be rescinded.

Negotiations

In response to CPCI's concerns, the Deputy Commissioner takes the position that any issues regarding the payment of commissions on interstate calls can be sorted out through negotiations between the GDC and Securus:

> At this point, to the extent that the law may be unclear regarding whether a supplier may legally pay a revenue share on interstate calls and GDC has doubt as to whether Securus shares GDC's interpretation of the law, GDC maintains authority to reopen contract negotiations regarding this item to clarify any ambiguity."[48]

While such negotiations may serve to clarify the parties' positions, they will come too late to ensure a fair comparison of bids.

Indeed, proceeding in the manner suggested by the Deputy Commissioner would completely undermine the purpose of a competitive bid process. To ensure a level playing field, changes cannot be allowed after the submission of BAFOs. In its General Evaluation Tips, the Georgia Procurement Manual warns against changes to the evaluation process: "DO NOT [c]hange the evaluation or scoring criteria;" "DO NOT [r]evise or amend the solicitation (including any specifications or requirements) after the solicitation closes;" "DO NOT allow suppliers to revise their responses except as permitted during negotiations."[49] And Georgia law clearly prohibits the alteration of a submission after the close of bidding: "Suppliers are not permitted to revise their responses after the close of the solicitation except as permitted during any authorized negotiations."[50]

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46 Eason Ltr., at 6.

47 *See* nn.22-28 *supra*.

48 Eason Ltr., at 6.

49 GPM, § 5.6, Table 5.3.

50 GPM, § 5.7.

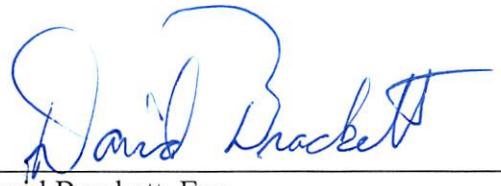
While some negotiations are allowed, their scope is limited: "RFP rounds of negotiations may not be used to alter the RFP."[51] "RFP rounds of negotiations cannot be used to allow a supplier to attempt to correct an otherwise failing response. If the supplier fails any part of the evaluation process, then the supplier is not reasonably susceptible to contract award and cannot be included in any RFP rounds of negotiations."[52] And modifying a central term of the RFP, such as whether interstate revenue is included in the RFP's definition of General Revenue upon which commissions must be paid is clearly prohibited: "Negotiations may not be used to modify the RFP, such as revising or deleting mandatory requirements."[53]

As discussed above, the Protest denial fails to recognize the prejudice that results when some offerors comply with express, mandatory terms of the solicitation and others do not. DOAS cannot choose arbitrarily which procurement requirements will be enforced and which will be ignored, especially when such arbitrary enforcement materially impacts an award. The effects of Securus's misconduct cannot be ameliorated through negotiations at this stage. The NOIA must be rescinded.

Conclusion

For the foregoing reasons the Notice of Intent to Award the GDC Inmate Telephone Services contract to Securus Technologies should be rescinded. Securus's bid should be stricken and the contract should be awarded to the next best scoring supplier, CPCI, or, in the alternative, the eRFP should be re-bid.

This 29th day of July, 2016.



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51 GPM, § 5.8.

52 GPM, § 5.8.1.3.

53 GPM, § 5.8.1.6.

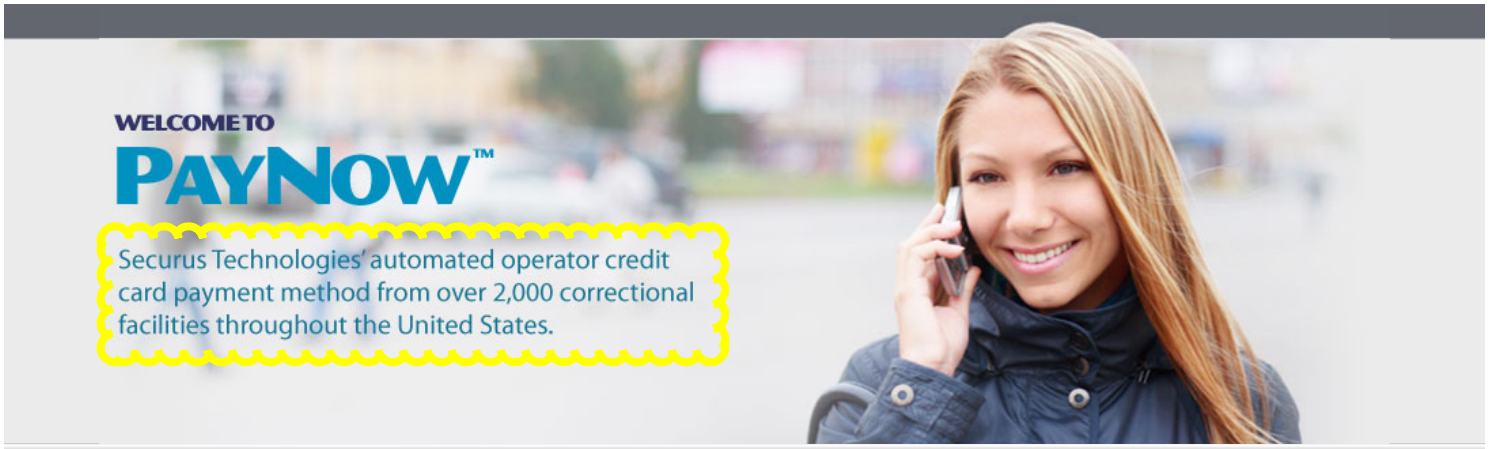
Signature of CPCI Officer

Pursuant to Section 6.5.3 of the Georgia Procurement Manual, I certify that I am authorized to sign contracts on behalf of CPCI.

This 29th day of July, 2016.

Paul Cooper

APPENDIX F



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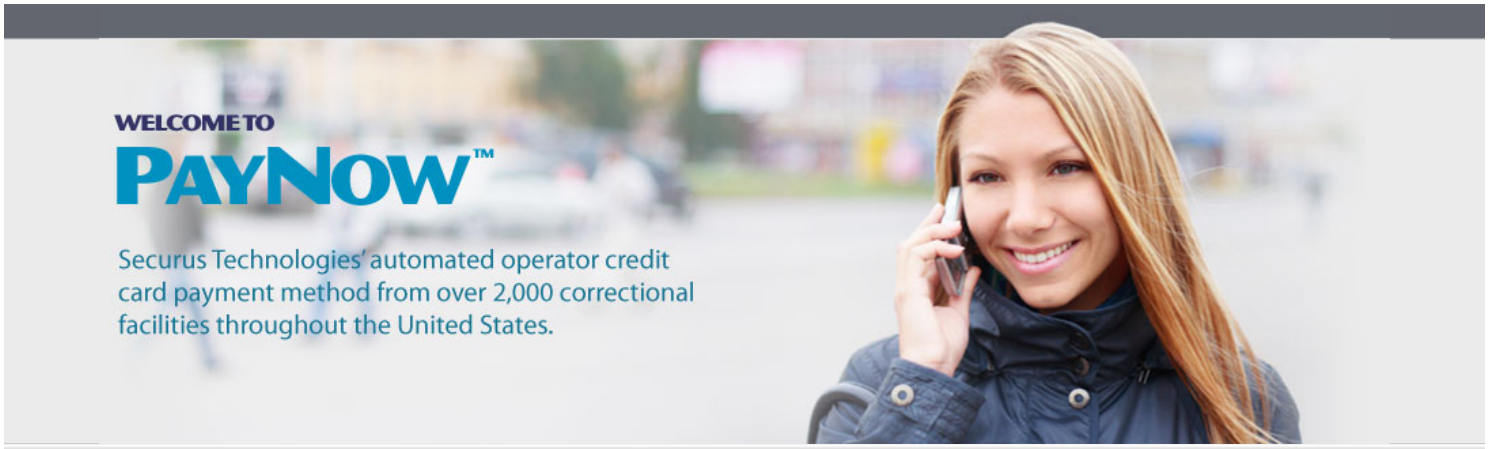

Terms & Conditions

WELCOME TO 1Tel! These Terms constitute a legal "Agreement"; please read them carefully.

By reviewing the registration during the call acceptance process or on our website located at www.1tel.com or any successor Website thereto ("Website") OR by downloading mobile content to a mobile device (each a "Download"), you **(1)** Represent that you are at least 18 years of age and **(2)** agree to be bound by the terms and conditions of this Agreement. In this Agreement, "you" and "your" refer to each customer (including the subscriber of a participating mobile communications carrier on whose behalf you are entering into this Agreement) and his or her agents, and "we", "us" and "our" refer collectively to "1Tel" or "PayNow". This Agreement explains our obligations to you, and your obligations to us in relation to the 1Tel Service. We reserve the right to modify these Terms at any time. Changes to these Terms will be posted in a revised version of these Terms on our web page at www.1tel.com. Your purchase of a Package Plan and / or continued use of your existing Plan shall evidence your acceptance of the changes to these Terms.

1. Description of Pay Now Service

PayNow™ is an Automated Operator Service (AOS) offering whereby the called party pays for each call using a major credit card — this AOS is offered exclusively by Securus™ Technologies, Inc., with underlying merchant services being managed by 3Cinteractive®, LLC. The called party will be prompted by the AOS to pay with their credit card to connect to their friend or family member that is detained at a Securus-managed facility. Prior to accepting, both the calling party and the facility in which they are calling from are announced to the called party via Interactive Voice Response (IVR). The called party will also be advised of the cost of the call and the maximum allotted call time. Please note that shorter duration calls or disconnected calls will not be credited for any unused minutes. The call time is a maximum allowed as dictated by the facility. PayNow accepts all major credit cards as a form of payment (Visa®, MasterCard®, American Express®, and Discover™ Card). You agree that you may not record, transmit, broadcast, upload to any computer or mobile device, create derivative works of, or make commercial use of the Service, including, but not limited to, any Download(s). You may not, or attempt to (or otherwise authorize, encourage or support others" attempts to) circumvent, re-engineer, decrypt, break or otherwise alter or interfere with the Service, including, but not limited to, any Download(s).

2. Pricing of Pay Now

The Price for each is $14.99 (USD) for a maximum call time as dictated by the corrections facility. You will be notified of the call charge and the maximum allotted call time as dictated by the corrections facility from which the call originates prior to the acceptance of each call. (Call times may vary and could be as few as five [5] minutes and as many as twenty [20] minutes.) The call charge is broken out as $1.80 for the **Call Fee** and $13.19 for the **Transaction Fee** and should be displayed in the same manner, or reasonably close to it, on your credit card statement. Actual talk-time may be less than the allotted maximum and you will not be credited for any unused minutes. There are no credits for disconnected calls or unused minutes. Please make sure you have a strong cell signal prior to accepting any calls. We will allow a maximum of $150.00 of paid call time or ten (10) calls per month. Please note if you reach the maximum call or dollar threshold in any given month, the service will be temporarily suspended until the first day of the next month. If the Company has reasonable grounds to suspect that information is untrue, inaccurate or incomplete, the Company has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). You acknowledge and agree that we may rely on your information to send you important information and notices regarding your account and our Services. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate Registration Data, including, but not limited to, your failure to receive critical information about the Service or your account. You further agree that we (ourselves or through third party service providers) are authorized to verify such Registration Data. The Company reserves the rights at any time and from time to time to modify, suspend, discontinue or permanently cancel the Service, or portions thereof, with or without notice to you in our sole discretion.

3. Privacy

You acknowledge that Company may collect and process "personal information" (i.e. information that could be used to contact you, such as full name, postal address, phone number, or email address), or "demographic and usage information" (i.e. information that you submit, or that we collect, that is neither personal information nor financial information but necessary for the proper functioning and billing of our Service, such as the date regarding the start and end and the extent of your usage of the service), in connection with the Service. We may pass on your personal information, or demographic and usage information to your cell phone service provider. We may also use personal information for auditing, research and analysis to operate and improve our technologies and services. We may share aggregated and non-personal information with third parties outside of 1Tel. When we use third parties to assist us in processing your personal information, we require that they comply with our Privacy Policy and any other appropriate confidentiality and security measures. We may also share information with third parties in limited circumstances, including when complying with legal process,

preventing fraud or imminent harm, and ensuring the security of our network and services. You may remove your information from our database. If you remove your information from out database it will no longer be used by us for secondary purposes, disclosed to third parties, or used by us or third parties to send promotional correspondence to you. If you no longer wish to receive calls from the PayNow service, please enter your mobile phone number at www.1tel.com. Please note that once you opt out of the Service you will no longer be able to pay for collect calls from the correctional facilities using your credit card.

4. Indemnification

You agree to release, indemnify, defend and hold harmless Company, its parent company, subsidiaries, affiliates, officers, directors, shareholders, contractors, agents, employees, licensors and assigns from all liabilities, claims, damages, costs and expenses, including reasonable attorneys' fees, made by any third party due to or arising out of or in connection with (a) your use of the Service, and (b) the breach by you of your representations and warranties set forth herein.

5. Disclaimer of Warranties and Limitation of Liabilities

You understand and agree that your use of the Service, including, but not limited to any download(s), is solely at your own risk and that you will be solely responsible for any damage to your mobile device or loss of data that may result from your use or download. You agree that the Service is provided on an "as is," and "as available" basis, except as otherwise noted in this agreement. You acknowledge and agree that the Company shall have no liability to you, or to any third party, for any modification, suspension, discontinuance or termination of the Service, or any part thereof. We expressly disclaim all warranties of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. The Company makes no warranties that the service will meet your requirements, or that the service will be uninterrupted, timely, secure, or error free. No advice or information, whether oral or written, obtained by you from us or through our Services shall create any warranty not expressly made herein. You may not rely on any such information or advice. To the extent jurisdictions do not allow the exclusion of certain warranties, some of the above exclusions may not apply to you. Except in jurisdictions where such provisions are restricted, you agree that the Company's entire liability to you or any third person, and your or any third person's exclusive remedy, in law, in equity, or otherwise, with respect to the Service provided under this agreement and / or for any breach of this agreement is solely limited to the amount you paid for such Service during the term of this agreement. Except in jurisdictions where such provisions are restricted, the Company, its licensors, and contractors (including any third parties providing all or part of the Service) shall not be liable for any indirect, incidental, special or consequential damages even if the Company has been advised of the possibility of such damages. to the extent that a state does not permit the exclusion or limitation of liability as set forth herein our liability is limited to the maximum extent permitted by law in such states.

6. Intellectual Property Rights

Except as otherwise set forth herein, all right, title and interest in and to any intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Service ("Company Intellectual Property Rights") are owned by Company or its licensors, and you agree to make no claim of interest in or ownership of any such Company Intellectual Property Rights. You acknowledge that no title to the Company Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in the Service, other than the rights expressly granted in this Agreement.

7. Termination and Cancellation of Services

If you no longer wish to receive calls from the PayNow service, please enter your mobile phone number at www.1tel.com or send an e-mail to support@1tel.com, or for customer service support information call 1-877-224-7002. Please note, you will no longer be able to pay for collect calls from the correctional facilities using your credit card. You agree that Company, at its sole discretion, may at any time terminate your use of the Service and or individual services provided via the Service and/or change its content offering made available through the Service, if Company believes that you have violated or acted inconsistently with this Agreement. You agree that upon termination of your access to the Service under any provision of this Agreement, Company may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that Company shall not be liable to you or any third party for any termination of your access to the Service.

8. Marketing Messages

By accepting and using the Service, you are also consenting to receive SMS text message marketing message from time to time from the Company. The messages are intended to improve the overall experience of the service as well as provide you with other related services from time to time. The frequency of any such marketing messages will be limited to no more than four (4) times in any given month, other than if it is a text receipt for any completed and paid call.

9. Miscellaneous Provisions

(a) Notices And Announcements
Except as expressly provided otherwise herein, all notices to Company shall be in writing and delivered via overnight courier or certified mail, return receipt requested to:

3Cinteractive, LLC
750 Park of Commerce, Suite #400
Boca Raton, Florida 33487

The Company shall serve notices related to this contract by posting them on the Website or by sending them to the postal address or email address you have given to the Company or as a text message to your mobile telephone number associated with your account. Notices sent by mail shall be deemed received seven days after they were sent. Notices posted on the Website or sent by email or as a text message shall be deemed received on the weekday following the day when they were posted or sent.

(b) Sever-ability
You agree that the terms of this Agreement are severable. If any term or provision is declared invalid or unenforceable, in whole or in part, that term or provision will not affect the remainder of this Agreement; this Agreement will be deemed amended to the extent necessary to make this Agreement enforceable, valid and, to the maximum extent possible, consistent with applicable law, consistent with the original intentions of the parties; and the remaining terms and provisions will remain in full force and effect.

(c) Entire Agreement
You agree that this Agreement constitutes the entire, complete and exclusive agreement between you and us regarding the Service and supersedes all prior agreements and understandings, whether written or oral, or whether established by custom, practice, policy or precedent, with respect to the subject matter of this Agreement.

(d) Assignment and Resale
Except as otherwise set forth herein, your rights under this Agreement are not assignable or transferable. You agree not to resell the Service or any portion thereof.

(e) Governing Law
This Agreement and any disputes hereunder shall be governed in all respects by and construed in accordance with the laws of the State of Florida, United States of America, excluding its conflict of laws rules. You and we each agree to submit to exclusive subject matter jurisdiction, personal jurisdiction and venue of the United States District Court for the Southern District of Florida, for any disputes between us under or arising out of this Agreement. If there is no jurisdiction in the United States District Court for the Southern District of Florida, for any disputes between us under or arising out of this Agreement you and we agree that jurisdiction shall be in the courts of Palm Beach County, Florida. The parties hereby waive any right to jury trial with respect to any action brought in connection with this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

(f) Waiver
No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by an authorized representative of the Company. The remedies of the Company under this Agreement shall be cumulative and not alternative, and the election of one remedy for a breach shall not preclude pursuit of other remedies. The failure of a party, at any time or from time to time, to require performance of any obligations of the other party hereunder shall not affect its right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any prior or subsequent breach.

(g) Headings
The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

(h) Survival
In the event this Agreement terminates as provided herein, Sections 4, 5, 6 of this Agreement shall survive such expiration or termination.

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