

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

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

COMMENTS OF SECURUS TECHNOLOGIES, INC.

Securus Technologies, Inc. (“Securus”), by its undersigned counsel, submits these comments in conditional support of the Petition for Forbearance (“Petition”) filed in the above-captioned docket by Network Communications International Corporation (“NCIC”) on August 9, 2019.

The Petition requests that the Commission forbear from enforcing the obligation of providers of Inmate Calling Services (“ICS”) to contribute to the Universal Service Fund (“USF”) with respect to their interstate and international ICS revenues. Securus provides ICS technologies to more than 1.2 million inmates across North America, and serves over 3,400 public safety, law enforcement, and correction agencies. Securus agrees that granting forbearance as requested by NCIC, subject to one important condition, will serve the public interest, convenience, and necessity by promoting just and reasonable rates for ICS, and making those services more affordable for users. The Commission has recognized that communications between inmates and their friends and families can have a meaningful impact on prisoner rehabilitation and recidivism. *See, e.g., Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14130, para. 43. Encouraging such communication and making

it more affordable will have substantial benefits for the public at large, as well as for the individuals using the service.

As NCIC explains, ICS providers, like other telecommunications providers, currently are required to contribute approximately 24.4% of their gross interstate and international end user revenues from telecommunications services to the USF. The Commission's rules governing interstate and international ICS expressly permit providers to pass these contribution costs through to end users, 47 C.F.R. §§ 64.6000(b), 64.6070(a), although (like other providers) they are prohibited from imposing a surcharge that exceeds their actual contribution cost. 47 C.F.R. § 54.712. As a practical matter, ICS providers generally do pass through their USF contribution costs, on a dollar-for-dollar basis, in the form of Authorized Fees added to their base rate for interstate and international calls.

Most ICS providers, like Securus, are resellers of underlying carriers' services. As a reseller, Securus provides exemption certificates to its underlying carriers attesting that it contributes to the USF with respect to its end-user telecommunications services revenues, including ICS.¹ If the Commission grants NCIC's Petition, it is critical that it also clarifies that resellers like Securus can continue to provide exemption certificates to their underlying carriers for services resold to provide ICS, even though they will no longer be contributing to USF based on revenues from these services. This would require a change in the certification language specified in the Form 499-A instructions – currently, a reseller must certify that it “is purchasing service(s) for resale, at least in part, and ... is incorporating the purchased services into its own

¹ See *Universal Service Contribution Methodology*, XX FCC Rcd. XX (FCC 12-134 released Nov. 5, 2012) (clarifying obligations of and certification requirements for resellers); FCC Form 499-A Instructions (2019) at 36-39 (instructions for attributing revenues from “contributing resellers”).

offerings which are, at least in part, *assessable U.S. telecommunications or interconnected Voice over Internet Protocol services*"; and that it "either directly contributes or has a reasonable expectation that another entity in the downstream chain of resellers directly contributes to the federal universal support mechanisms on the assessable portion of revenues from offerings that incorporate the purchased services."² If the Commission grants the Petition, the language in the Form 499-A instructions italicized above should be changed to read as follows:

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

Without this crucial change, the benefits of forbearance outlined in the Petition and in the following discussion would not be realized, since resellers would continue to bear the burden of USF contribution obligations to their underlying carriers and would be forced to pass these costs through to their users, either directly or indirectly.

Securus agrees with NCIC's statement of the forbearance standard under Section 10 of the Communications Act, Petition at 4-5; and, in most respects, with its analysis of how the Petition satisfies that standard, Petition at 5-11. To avoid repetition, Securus will not address in any detail those aspects of the Petition with which it concurs.³

² Form 499-A Instructions (2019) at 38-39 (emphasis supplied).

³ NCIC cites, with apparent approval, the Commission's finding in 2015 that inmate calling service "is a prime example of market failure" Petition at 5. Although Securus does not agree with this description, this point is irrelevant to NCIC's argument that enforcement of a USF contribution obligation is "not necessary to ensure that the charges ... for ... telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory." Petition at 5, citing 47 U.S.C. § 160(a)(1). Even if there were a market failure, it would be addressed by the Commission's ICS rate caps, not by the USF contribution obligation; and elimination of USF contributions would make rates more just and reasonable regardless of the level of competition for provision of this service.

Securus agrees that elimination of the contribution obligation for ICS will help ensure that rates for this service are just, reasonable, and non-discriminatory. Petition at 6-7. Of course, this alone is not enough to justify forbearance — *any* interstate or international telecommunications service would be more affordable for consumers if the USF contribution obligation were removed.⁴ But the unique hardship that incarceration imposes on both inmates and their family members, who often are the ones actually paying for ICS calls, creates a strong basis for distinguishing between ICS and other telecommunications services. *See* Petition at 8-9. So does the fact that ICS has benefits for its users, and for the community at large, that are both greater in value and different in kind than the typical use of telecommunications services. While telecommunications services are a convenience for most consumers (except in an emergency), they are a necessity for contact with persons who are incarcerated, sometimes at facilities remote from their friends and families. Even correctional facilities recognize the societal value of these services —

[R]egular access to communications between inmates and their families is an effective tool for reducing recidivism. ... These phone calls allow inmates to reach out to family, friends, and their attorneys; such a connection is vital for inmate management, the safety of the facility, and inmate transition once freed into the community. We know from firsthand experience that if given the opportunity to use a phone and call home, an inmate is much more likely to behave and follow officer's orders. Further, phone calls greatly increase the interaction between attorney and client; for those jails in rural communities, the logistical benefits of a phone call versus in-person visit is extraordinary. It is not uncommon to have an inmate whose attorney works upwards of 100 miles away from the jail.⁵

⁴ NCIC also asserts that ICS providers would avoid some administrative costs by being relieved of the burden of collecting and remitting USF contributions. Petition at 7. Securus doubts whether these savings will be material, particularly if the Commission or USAC requires additional documentation to justify a claim of exemption under the proposed forbearance. In any event, as discussed further *infra*, the Commission should consider benefits to consumers and to the public at large, rather than any benefits to ICS providers, as the primary reason for granting forbearance.

⁵ Comments of the American Jail Association, WC Docket No. 12-375 (filed Dec. 20, 2013).

Importantly, these benefits do not just flow to the inmate themselves, or to their friends and family members. Reduced recidivism, improved inmate morale, facility safety, and improved functioning of the criminal justice system are all results that benefit society as a whole.

The fact that ICS provides crucial benefits to a user population that is generally low-income and may be suffering additional hardship from the incarceration of a family member, as well as the benefits to society as a whole discussed above, means that the proposed forbearance will serve the public interest. *See* Petition at 9-11. ICS can rationally be distinguished from other services that contribute to the Universal Service Fund, and the proposed forbearance is consistent with the purposes of the Fund, as codified in Section 254(b). Specifically, the proposed forbearance would enable users of ICS, many of whom are low-income, to enjoy improved access to high-quality telecommunications services. *See* 47 U.S.C. § 254(b)(3). Furthermore, the benefits of forbearance to users and to the general public would substantially outweigh the slightly increased contribution burden to users of other telecommunications services. *See* Petition at 9-10. As NCIC notes, the Commission has previously granted forbearance petitions in analogous situations where the benefits to users substantially outweighed the cost to the Fund. *See* Petition at 5 n. 15.

Further, it is critical to the Commission's public interest analysis to recognize that the benefits of the proposed forbearance will flow directly to the *users*, not to the providers, of ICS services. As Securus has described above, USF contributions are passed through on a dollar-for-dollar basis to users as Authorized Fees; but, by Commission rule, such fees may not exceed the actual contribution rate multiplied by the price of the service. 47 C.F.R. § 54.712. If the actual contribution rate is reduced to zero, then the amount that can be added as an Authorized Fee with respect to USF will also be zero. Thus, any reduction in Securus' cost due to elimination of its USF contribution obligation will be offset by elimination of its fee receipts. The monetary benefit

of forbearance will be received by inmates and their external contacts in the form of lower prices for interstate and international calls.

Accordingly, Securus urges the Commission to grant the Petition promptly, and eliminate the unnecessary burden of USF contributions on users of inmate calling services, including by modifying the resale certification obligations for providers of ICS service as described herein.

Respectfully submitted,

/s/

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