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Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Comment for the Paperwork Reduction Act

Dear Commissioner and Staff,

Worth Rises submits this comment relating to the proposed revision of FCC Form 2301 for reporting, certification, and consumer disclosure requirements for correctional telecom providers.

The Commission's Annual Report requirement is a vital resource that allows members of the public to evaluate nationwide data about the correctional telecom industry. However, the industry has repeatedly interfered with the public's right to view this information by improperly redacting vast swaths of their filings. In many cases, these redactions defy both the Commission's requirements and common sense. Regardless of how the Commission amends the Annual Report form, the Commission should rebuke and penalize correctional telecom corporations who undermine the integrity of the process.

Worth Rises (formerly known as the Corrections Accountability Project) is a non-profit organization dedicated to ending the exploitation of people touched by the prison industrial complex. Our objective is to build a society in which no entity or individual relies on human caging or control for its wealth, operation, or livelihood. Worth Rises has previously written to the Commission to encourage the regulation of the correctional telecom industry and to ask that the Commission protect incarcerated people and their support networks.

COMMENT

The Commission's mandatory Annual Reports are a vital resource. The data collected by the Commission is essential to the public's ability to oversee the activities of correctional telecom corporations. As the Commission knows all too well, unfortunately, these corporations have a history of fraud at every level of government. For example, in 2017, the Commission required Securus to pay a \$1.7 million fine for providing inaccurate and misleading information related to its sale to Platinum Equity.ⁱ That same year, Global Tel Link (GTL) paid \$2.5 million to settle a lawsuit brought by the Attorney General of Mississippi after the corporation bribed the state's most senior corrections officials to secure the state's prison telecom contract.ⁱⁱ With Securus and GTL controlling 80% of the market share,ⁱⁱⁱ their wrongdoing highlights the need for increased transparency in this industry.

The Commission publishes information in the Annual Reports because the public has a right to "participate in this proceeding in a meaningful way."^{iv} For this reason, the Commission has

previously stated its expectation that the “*entirety* of each annual report will be filed publicly,” unless the filer can show that the information is not publicly available and its disclosure would “likely result in substantial competitive harm.”^v Prison telecom corporations have routinely flouted the Commission’s annual reporting requirements and violated its rules. Year after year, providers redact huge swaths of information in their Annual Reports that the public has a right to see and use, claiming that the redacted information is confidential. Yet, their explanations defy the Commission’s parameters for confidential and common sense entirely. Their abuses of the process are not isolated accidents; they are a part of an intentional effort to frustrate the Commission’s ability to regulate the industry by thwarting public scrutiny.

I. Telecom corporations have repeatedly violated the Commission’s regulation by redacting massive amounts of information, falsely claiming it to be confidential.

The industry’s campaign of secrecy is a flagrant violation of the Commission’s rules on confidentiality. Under the simplest terms of the Commission’s Protective Order, information cannot be labeled as confidential if it is publicly available.^{vi} Even when information is not publicly available, its disclosure must be shown to “likely result in substantial competitive harm” to create any grounds for its redaction.^{vii} And finally, even if information is not publicly available and has the likelihood of creating such harm, the Commission can still disclose the information if “the considerations favoring disclosure outweigh the considerations favoring non-disclosure.”^{viii}

A. Much of the data that prison telecom corporations redact under claims of confidentiality are publicly available, creating the clearest violation of the Commission’s Protective Order.

Despite this clear standard, prison telecom corporations have repeatedly sought to justify redactions by claiming that redacted information is not publicly available. Not only is much of the data immediately available online, but that which is not is publicly available under the Freedom of Information Act and its state equivalents. Any government agency would be legally obligated to turn over this contract and revenue reports upon request, which carry much of the information required for the Annual Report. In fact, the Commission recognized this itself with respect to site commissions, which it bars from being classified as confidential for that exact reason.^{ix}

To demonstrate the dishonesty of these corporations, we have collected a few examples. This is just a tiny sample of the countless pieces of data that should be available to the public.

i. GTL redacted information about facilities that is available in press releases on GTL’s own website.

On page two of its Annual Report submitted on April 1, 2019, GTL claimed, under penalty of perjury, that the number of correctional facilities that it serves is not “routinely publicly available” and that disclosing this information would “damage [the] company’s competitive position if revealed.”^x GTL then redacted this number in on page five of its Annual Report.^{xi}

This information is publicly available. GTL serves 2,400 facilities,^{xii} a figure it has published on *its own website* under “GTL Leadership by the Numbers.”^{xiii} Furthermore, six days before submitting this filing, GTL published a press release containing this information as well.^{xiv} GTL made a statement to the Commission that was unequivocally false in violation of the Commission’s regulations.

ii. Securus redacted site commissions that were publicly available in a legislative report and despite an explicit prohibition on claims that site commissions are confidential.

On page one of its Annual Report submitted on April 1, 2019, Securus claimed, under penalty of perjury, that information about site commissions was “sensitive, non-public data” that would result in “substantial competitive harm” if revealed to the public.^{xv} Securus then redacted information about its fixed site commissions for every single one of its facilities. As just one example, in Part IV, Row 92 of Securus’ Annual Report, the corporation redacted the 2018 commission rate for Barnstable County, Massachusetts.

This information is publicly available. In 2018, Barnstable County received \$240,734.75 in commissions, resulting in an effective commission rate of 72%.^{xvi} Because site commissions generate revenue for corrections agencies, governments release this information to the public. Massachusetts Department of Corrections and the Department of Telecommunications and Cable released a report in December 2018 that detailed the phone rates, agency commissions, and corporate revenues for each state and county facility.^{xvii} Securus, which provides phone services for 90% of people incarcerated in the state, responded to the state’s requests for data which underpin the report by sending detailed reports about every contract the corporation has in the state. In redacting this data from its Annual Report, Securus made a statement to the Commission that was unequivocally false, in violation of the Commission’s regulations.

But moreover, the Commission’s Protective Order *explicitly* bars any claims to confidentiality over site commissions data.^{xviii} Still, Securus has claimed confidentiality and it has gone unrecognized and unpunished.

B. The information that prison telecom corporations redact under claims of substantial competitive harm is not harmful and routinely shared by other corporations.

Prison telecom corporations have also repeatedly sought to justify redactions by claiming that information is damaging to their competitive advantage. They use this less concrete qualification indiscriminately across their Annual Reports, clearly violating the narrow intention for its use under the Protective Order and belying the sincerity of their concerns.

They typically shield their financial statements under this claim. Not only are their financial statements often made public by government agencies through standard open records request and readily accessible on the internet—like the copy of Securus’ unredacted financial statement filed with the Alabama Public Service Commission^{xix}—but their release is also not at all harmful to their business. How much revenue a corporation generates says nothing about how it generates

that revenue. There are no proprietary business secrets embedded in an income statement or balance sheet. For one, their financial statements have been disclosed for years with no “substantial competitive harm” and secondly, publicly traded companies release mountains of financial data every quarter with no harm.^{xx} Prison telecom corporations should not be able to hide behind some abstract and unspecified harm they claim will occur, despite other corporations being subjected to more stringent harms. Prison telecom corporations are abusing this parameter in the Protective Order and must be rebuked.

C. Much of the information requested in the Annual Report should be disclosed to the public under any analysis that considers the factors in favor versus the factors against.

Correctional telecom corporations’ practices give the public a particularly compelling need to access this information in its unredacted form, especially when compared to the corporations’ meager interest in confidentiality. As the Commission knows, correctional telecom corporations allow government agencies to generate revenue from phone calls that are often the only way for incarcerated people to stay connected to their loved ones. Corporations like Securus have collected huge profits while charging up to \$25 for a fifteen minute call.^{xxi} Moreover, the burden of paying for phone calls falls on families and particularly on women of color.^{xxii} These costs force nearly two-thirds of impacted families to choose between paying for calls or paying for basic necessities. Half of those families—one in three with someone behind bars—will go into debt in order to keep in touch.^{xxiii}

In light of these harms, the public’s interest in accessing this information far exceeds whatever interest that correctional telecom corporations can claim. These corporations, owned by private equity firms backed by billionaire oligarchs, only want to keep this information confidential as a means to generate revenue for investors.^{xxiv} In pursuit of this goal, prison telecom corporations have lied to regulators, bribed officials, and repeatedly violated attorney-client privilege.^{xxv} These are the interests that correctional telecom corporations have asked the Commission to protect. The Commission serves the public interest, not the profit margins of eccentric billionaires—these claims should be given no weight in the Commission’s balancing.

II. The public needs open access to the information in the Annual Reports submitted by prison telecom corporations with the proper application, review, and enforcement of confidentiality standards.

The Commission’s reporting requirement creates the only centralized source of information that allows for a comparative analysis of correctional telecom corporations and their contracts. Yet, their sweeping redactions render the Annual Reports effectively useless in providing meaningful data to the public as transparency requires. As previously explained, this information is publicly accessible, but without open access to the information in these reports, members of the public are left cobbling together information from thousands of sources.

Through this regular and deliberate action, prison telecom corporations have defeated the Commission’s intent to create a centralized information repository and made it effectively impossible for members of the public to analyze their operations. For this reason, the

Commission must regularly review information that the corporations mark as confidential, require the release of information that does not meet the narrow standards, and penalize corporations that deliberately misuse claims of confidentiality.

III. The Commission should fine prison telecom corporations for misuse of the Protective Order's confidentiality rules.

Parties before the Commission have a duty to make truthful and accurate statements.^{xxvi} Further, Section 1.17(a)(2) of the Commission's Rules forbids anyone from providing "material factual information that is incorrect or omit[ing] material information."^{xxvii} Yet, the truth is as obvious as the falsehood they purport, at times evident from their *own* materials. The misclassifications of information as confidential by prison telecom corporations are no accident—they are clear attempts to mislead the public and the Commission.

The examples we collected above show that both GTL and Securus have flagrantly violated these rules. The Commission already imposed a \$1.7 million fine on Securus for making four false statements in 2017—the corporation's most recent Annual Report contains countless more omissions based on misstatements. And with respect to Securus, these repeated violations are even more concerning because the corporation has previously been warned by the Commission.^{xxviii} In order to protect the integrity of the reporting process, the Commission must penalize the corporations for their repeated violations of the Protective Order's confidentiality rule.

The Commission should continue to collect the critical information it does from prison telecom corporations through Annual Reports. However, it must stop these corporations from undermining the intent of this collection—public scrutiny and effective regulation—by abusing the confidentiality parameters. The Commission should ensure that all information in Annual Reports is accessible to the public with only redactions that are limited and clearly necessary in the light most favorable to the communities these corporations exploit. Finally, in light of their repeated violations of the confidentiality rules, the Commission should penalize and fine prison telecom corporations that make false claims to confidentiality in their Annual Reports.

Thank you for your concern and attention. Please feel free to contact me with any questions.

Sincerely,



Bianca Tylek
Executive Director

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- ⁱ “Securus Agrees to Pay \$1.7 Million Civil Penalty.” 32 FCC Rcd 9552 (11). (Oct. 30, 2017). <https://www.fcc.gov/document/securus-agrees-pay-17-million-civil-penalty>.
- ⁱⁱ “Second company settles lawsuit filed by attorney general in Epps bribery case.” Mississippi Today. (Aug. 15, 2017). <https://mississippitoday.org/2017/08/15/second-company-settles-lawsuit-filed-by-attorney-general-in-epps-bribery-case/>.
- ⁱⁱⁱ Wagner, Peter & Alexi Jones. “State of Phone Justice.” Prison Policy Initiative. (Feb. 2019). https://www.prisonpolicy.org/phones/state_of_phone_justice.html.
- ^{iv} Protective Order. In the Matter of Interstate Inmate Calling Services. WC Docket 12-375. Dec. 19, 2013.
- ^v DA 19-173
- ^{vi} Protective Order. In the Matter of Interstate Inmate Calling Services. WC Docket 12-375. Dec. 19, 2013.
- ^{vii} *Id.*
- ^{viii} *Id.*
- ^{ix} Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12891, n. 392.
- ^x “Global Tel Link Corporation Annual Report and Certification.” Global Tel Link. (April 1, 2019). [https://ecfsapi.fcc.gov/file/104010462420615/REDACTED%20-%20GTL%20annual%20report%20and%20certification%20\(4-1-19\).pdf](https://ecfsapi.fcc.gov/file/104010462420615/REDACTED%20-%20GTL%20annual%20report%20and%20certification%20(4-1-19).pdf).
- ^{xi} *Id.* at 5.
- ^{xii} “GTL by the numbers.” Global Tel Link. https://www.gtl.net/about-us/gtl_by_the_numbers/.
- ^{xiii} *Id.*
- ^{xiv} Press Release. Global Tel Link. (Mar. 26, 2019). <https://www.gtl.net/about-us/press-and-news/inmates-can-find-jobs-with-careeronestop-reentry-application/>.
- ^{xv} “Annual Report of Securus Technologies.” Securus Technologies. (April 1, 2019). <https://ecfsapi.fcc.gov/file/10401416619203/WC%2012-375%20Securus%20Filing%20Letter%20for%20FCC%20Annual%20Report%20Apr%201%202019.pdf>.
- ^{xvi} Mass. Dept. of Corr. “Study and Report of the Department of Correction.” 2018.
- ^{xvii} *Id.*
- ^{xviii} “Public Notice.” In the Matter of Interstate Inmate Calling Services. WC Docket 12-375. (Mar. 12, 2019).
- ^{xix} Securus Preliminary Consolidated Balance Sheet. Securus Techs. (Mar. 27 2019). https://www.prisonpolicy.org/phones/financials/2018/Securus_Preliminary_Consolidated_Balance_Sheet_2018.pdf.
- ^{xx} “Exchange Act Reporting and Registration.” U.S. Securities and Exchange Commission. (Oct. 24, 2018). <https://www.sec.gov/smallbusiness/goingpublic/exchangeactreporting>.
- ^{xxi} Wagner, Peter & Alexi Jones. “State of Phone Justice.” Prison Policy Initiative. (Feb. 2019). https://www.prisonpolicy.org/phones/state_of_phone_justice.html.
- ^{xxii} Saneta de Vuono-Powell et al., *Who Pays? The True Cost of Incarceration on Families* (Sept. 2015). <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.
- ^{xxiii} *Id.*
- ^{xxiv} “Fact Sheet: Private equity-owned firms dominate prison and detention services.” Private Equity Stakeholder Project. (Sept. 17, 2018). <https://pestakeholder.org/report/private-equity-owned-firms-dominate-prison-and-detention-services/>.
- ^{xxv} See *supra* note i & ii; Smith, Jordan. “Securus Settles Lawsuit Alleging Improper Recording of Privileged Inmate Calls.” *The Intercept*. (Mar. 16, 2016). <https://theintercept.com/2016/03/16/securus-settles-lawsuit-alleging-improper-recording-of-privileged-inmate-calls/>.
- ^{xxvi} 47 CFR § 1.17(a)(2).
- ^{xxvii} *Id.*
- ^{xxviii} “Public Notice.” In the Matter of Interstate Inmate Calling Services. WC Docket 12-375. (Mar. 12, 2019).