

August 7, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

Partner
202.857.6081 DIRECT
stephanie.joyce@arentfox.com

Re: WC Docket No. 12-375, Response to Human Rights Defense Center Filings (July 30 and August 6, 2015)

Dear Secretary:

Securus Technologies, Inc. (“Securus”) replies to the filings of the Human Rights Defense Center (“HRDC”) dated July 30 and August 6, 2015,¹ and specifically its request for new disclosure obligations for providers of Inmate Calling Services (“ICS”).

1. In its very recent filings, HRDC requests “that the Commission require all ICS providers to post their contracts with detention facilities on their websites where they are publicly available.”² HRDC frames its request as simply a call for transparency in what it terms “‘public’ records.”³ It does not acknowledge, however, that these public documents often contain information that is protected from disclosure under the very statutes, like the Freedom of Information Act, 5 U.S.C. § 552, that HRDC invokes. Protected information includes non-public financial data, proprietary information about patented and patentable technology, and the operation of crucial security features that a correctional facility may request.⁴ It therefore is appropriate that an ICS provider may redact or request the redaction of such information. To the

¹ WC Docket No. 12-375, Letter from Paul Wright, Executive Director, HRDC, to Chmn. Wheeler, FCC (Aug. 6, 2015) (“HRDC August 6 Letter”); Letter from Paul Wright, Executive Director, HRDC, to Chmn. Wheeler, FCC (July 30, 2015) (“HRDC July 30 Letter”).

² HRDC July 30 Letter at 2; *see also* HRDC August 6 Letter at 2.

³ HRDC July 30 Letter at 1.

⁴ FOIA, for example, exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential” from disclosure. 5 U.S.C. § 552(b)(4).

extent HRDC suggests that providers are blocking the production of contracts altogether, that suggestion is unfounded.⁵

HRDC's request seems to ask the Commission to adopt a rule that would contravene federal and state disclosure statutes. It seeks public disclosure of all contracts, making no provision for appropriate, lawful redaction. Moreover, even if HRDC were to accommodate redaction, the request would place an enormous burden on ICS carriers which is entirely unnecessary. As further explained below, the forthcoming rules will remove HRDC's need for disclosure and moot its request.

2. HRDC's letters contain a second request: ICS providers "should also be required to post the annual itemized amounts they pay to government agencies as well as related law enforcement and corrections associations This includes money paid as commissions, donations, campaign contributions, in-kind equipment or services, and related payments. These disclosures should be made within 30 days of each payment made."⁶

Site commissions have always been HRDC's focus regarding this industry.⁷ This issue has been squarely addressed in this docket by several parties, including in concrete, dollars-and-cents proposals from the National Sheriffs Association and Pay Tel. In addition, Securus, Global Tel*Link, and Telmate proposed almost a year ago that the upcoming rules contain an "Admin-Support Payment" mechanism to ensure that correctional facilities are reimbursed for the costs

⁵ Securus's filing as an intervenor in an appeal before the Pennsylvania Office of Open Records, which HRDC appended as Attachment 2 to its filing dated July 14, 2015 ("HRDC July 14 Letter"), demonstrates that Securus seeks only to protect information that is expressly exempted from disclosure by statute. There, the Pennsylvania Right-to-Know Law, exempts "record[s] that constitutes or reveals a trade secret or confidential proprietary information." 65 P.S. § 67.708(b)(11). Securus invoked that exemption for two narrow categories of information contained within its contract with the Pennsylvania Department of Corrections.

⁶ HRDC July 30 Letter at 2; *see also* HRDC August 6 Letter at 2.

⁷ *E.g.*, HRDC July 14 Letter at 1 ("the stunning amount of commission kickbacks that ICS providers give to detention facility agencies has been largely undisclosed"); Letter from Paul Wright, Executive Director, HRDC, to Marlene H. Dortch, FCC (May 21, 2015) ("kickbacks" were lead topic in HRDC meeting with Commr. Clyburn and others); Reply Comments of HRDC at 2-4 (Jan. 27, 2015).

they incur to make telephone service available to inmates.⁸ Site commissions will be a matter of federal regulation under the new rules, and they will in all likelihood be capped.

In addition, all parties to this proceeding are in agreement that the forthcoming rules should include an annual certification requirement whereby all ICS providers will attest to full compliance with all federal ICS rules. Securus, Global Tel*Link, and Telmate have proposed that three managers or executives, not just one, file these annual, sworn certifications.⁹ These carriers also have proposed the disclosure of site commissions.¹⁰

These proposed rules will give the Commission, consumers, and the HRDC full assurance that the new rates will be honored and that site commissions will be normalized. The disclosure requirement that HRDC now proposes is therefore far too broad and too burdensome. Most importantly, the request will be made unnecessary by the industry's own regulatory proposals.

Please let me know if you need any further information from Securus. Thank you for your consideration.

⁸ WC Docket No. 12-375, Letter from Securus, Global Tel*Link Corp., and Telmate, LLC to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly at 3-4 (Sept. 15, 2014) ("ICS Industry Proposal").

⁹ On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider, (ii) the most senior in-house attorney for the Provider, and (iii) the most senior person charged with handling the Provider's financial accounts that the Provider has complied with all Rules adopted herein to the best of their knowledge, information, and belief.

Securus Proposed Rule 64.6030(b) (filed July 27, 2015); *see also* ICS Industry Proposal at 7 ("all ICS providers should be required to submit an annual certification by the company Chief Executive Officer, Chief Financial Officer and General Counsel, under penalty of perjury, certifying that the company is in compliance with the FCC ICS rate rules and any admin-support payment rules adopted.").

¹⁰ All Providers must submit a report to the Commission, on April 1 of each year, stating the total amount of Facility Administrative Support payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein.

Securus Proposed Rule 64.6030(a); *see also* ICS Industry Proposal at 7 ("the locations where the ICS provider makes admin-support payments, and the amount of those admin-support payments.")

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

cc: Rebekah Goodheart, Legal Advisor to Commissioner Clyburn
Pamela Arluk, Acting Chief, Pricing Policy Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau
Madeleine Findley, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau
David Zesiger, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau
Rhonda Lien, Pricing Policy Division, Wireline Competition Bureau
Bakari Middleton, Wireline Competition Bureau
Gil Strobel, Wireline Competition Bureau

(All via electronic mail)