



December 17, 2008

VIA ECFS

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

Re: CC Docket No. 96-128, Martha Wright Alternative Rulemaking Proposal

Dear Ms. Dortch:

Securus Technologies, Inc. ("Securus"), by and through counsel, files this letter in the above-named proceeding to provide data regarding the duration of inmate-initiated calls.

As Securus has explained, Petitioners' reliance in this case on an average call length of 15 minutes or 20 minutes is not an appropriate ratesetting tool. CC Docket No. 96-128, Letter from Stephanie A Joyce to Chairman Kevin J. Martin at 6-7 (July 7, 2008). Inmate calls are much shorter. For example, Pay Tel Communications, Inc. has stated that the interLATA calls it carries average 9.42 minutes, and interstate calls average 8.87 minutes. CC Docket No. 96-128, Letter from Marcus W. Trathen to Marlene H. Dortch at 2 (Sept. 9, 2008).

Enclosed is the Declaration of Curtis L. Hopfinger, Director of Regulatory Affairs (dated December 17, 2008), setting forth the results of the call analysis performed by Evercom Systems, Inc. and T-Netix, Inc., the operating companies of Securus, at his direction. This analysis, which included the approximately 2,600 facilities that Evercom and T-Netix serve, reveals that 96% of these facilities have average call durations of 14 minutes or less, and 57% of these facilities have average call durations of 9 minutes or less. Hopfinger Dec. ¶ 3.

These results demonstrate that Petitioners' use of average call durations of 15 or 20 minutes, Petition at 19, does not accurately reflect the inmate calling market. As such, using these inaccurate call lengths to analyze cost recovery would result in improper rates. Petitioners rely on a select set of low calling rates, such as the rates charged at Colorado Department of Corrections facilities (\$1.25 per call plus \$0.19 per minute). *Id.* They then calculate that a 20-minute call from these facilities garners "a total per minute cost of slightly over \$0.25." *Id.* Petitioners also rely on the rates in place at Nebraska Department of Corrections sites which are \$0.60 per call plus \$0.16 per minute, resulting in a \$0.20 per-minute rate assuming a 15-minute

call. *Id.* This calculus, Petitioners advocate, demonstrates that the Commission should adopt a per-minute interstate rate of \$0.20 to \$0.25 with no permissible per-call charge.

Petitioners understand that inmate telephone service providers must recover their costs, though they continue to refuse to acknowledge that site commissions are an unavoidable exogenous cost of doing business in this space. Site commissions notwithstanding, all agree that below-cost rates are inappropriate. Indeed, as Securus and others have shown, below-cost would be confiscatory and thus unlawful. *E.g.*, Initial Comments of T-Netix and Evercom at 8 (May 2, 2007) (citing *Verizon v. FCC*, 535 U.S. 467, 524 (2001)). Yet Petitioners want to force providers to recover all costs via per-minute rates that are based on assumed call lengths that are twice the true average call length. If the Commission were to assume a length of even 15 minutes, the resulting rates would be below-cost in 96% of the facility sites that Evercom and T-Netix serve. If it assumed a length of only 10 minutes, rates would be below-cost in 57% of the facilities they serve.

Further, as the Hopfinger Declaration shows, we cannot provide a “silver bullet” answer as to average call duration. Call length, as well as call volume, varies widely across the approximately 2,600 correctional facilities — state, county, and local jails — that T-Netix and Evercom serve throughout the nation. These factors cannot be generalized even by type of jail: a state DOC facility may average 73 calls per month or 10,000 calls per month; a county jail may have an average call length of three minutes or fifteen minutes. Hopfinger Dec. ¶¶ 4-5.

Added to this complex usage data are the unique circumstances that the inmate telephone industry experiences in terms of billing and payment. As Securus has explained, the majority of inmate calls are collect which, as the Commission Rules dictate, cannot be billed absent completion (positive acceptance of the call). Letter from Stephanie A. Joyce to Chairman Kevin J. Martin at 5 & n.5 (May 23, 2008) (citing 47 C.F.R. § 64.705(a)(1)). Securus estimates that only 40% of inmate collect call attempts are completed. *Id.* n.6. Of the inmate calls that are completed, 15% to 20% of the resultant call charges will not be paid. *Id.* Thus, not only are inmate calls shorter than Petitioners believe, the pool of revenue from which Securus must recover its costs is smaller than what typical wireline residential service providers experience. All of these factors render it impossible to derive a per-minute rate that on its own will ensure cost recovery.

For these reasons, if any rate or rate cap is adopted for interstate inmate calls in this proceeding, it must include a per-call charge to ensure that inmate telephone providers recover their costs. As explained in the cost analysis sponsored by several service providers, dated August 15, 2008, this methodology is not only far more likely to permit cost recovery but it also comports with the Commission’s policy that costs should be compensated in the same manner in which they are incurred: per-call costs should be recovered by fixed rate, and per-minute costs should be recovered by a per-minute rate. CC Docket No. 96-128, Inmate Calling Services Interstate Call Cost Study at 16-19. Petitioners’ proposal to exclude all per-call charges for inmate telephone calls therefore would result in unreasonable, unlawful rates.

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Thank you for your consideration of this matter. Please do not hesitate to contact me with any questions or concerns you may have: 202.857.4534.

Very truly yours,

s/Stephanie A. Joyce
Counsel for Securus Technologies, Inc.

cc: Donald Stockdate, Deputy Chief, Wireline Competition Bureau
Marcus Maher, Associate Chief, Wireline Competition Bureau
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