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Federal Communications Commission
Office of the Secretary

July 24, 2009

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
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Washington, D.C. 20554

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Re: Petition for Declaratory Ruling, CC Docket Nos. 90-313, 94-158, WCB 09-

Dear Ms. Dortch:

Enclosed for filing please find the Original plus four (4) complete copies of the Petition for Declaratory Ruling of Securus Technologies, Inc.

Also enclosed is a complete copy of this filing marked "Date Stamp and Return." Kindly stamp this document and return to me in the self-addressed envelope provided.

Sincerely,



Stephanie A. Joyce

Enclosure

cc: Certificate of Service

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ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Policies and Rules
Concerning Operator Service Providers

CC Docket No. 90-313

FILED/ACCEPTED

JUL 24 2009

Federal Communications Commission
Office of the Secretary

In the Matter of Amendment of
Policies and Rules Concerning Operator
Service Providers and Call Aggregators

CC Docket No. 94-158

In the Matter of Petition for Declaratory
Ruling of Securus Technologies, Inc.

WCB Docket No. 09-___

PETITION FOR DECLARATORY RULING

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Dated: July 24, 2009

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.2, petitions the Federal Communications Commission (the “Commission”) for a declaratory ruling that call diversion schemes are a form of dial-around calling which Securus is permitted to block under the Commission’s previous ruling in *Policies and Rules Concerning Operator Service Providers*, CC Docket 90-313, Report and Order, 6 FCC Rcd. 2744 (1991). Call diversion schemes, which are further explicated below and in the Declaration of Robert Pickens filed herewith, present a grave risk to prison security and public safety and, as demonstrated in the several letters from correctional authorities appended hereto, must not be permitted to operate in America’s jails and prisons. Securus, being authorized by federal law to block dial-around calls, must likewise block call diversion schemes in order to preserve the secure calling environment that it is required by contract to provide to correctional facilities.¹

I. BACKGROUND

A. Securus

Securus is a holding company which owns 100% of the assets of operating companies T-Netix Telecommunications Services, Inc. (“T-Netix”) and Evercom Systems, Inc. (“Evercom”). T-Netix and Evercom each hold certifications as telecommunications carriers throughout the United States, and together they serve approximately 2,300 correctional facilities in 44 states. Declaration ¶ 4. In addition, Securus leads the industry in the development and licensing of the technology necessary

¹ This Petition is not seeking a ruling on the question whether the Commission has jurisdiction over call diversion schemes or VoIP-based intrastate service providers. Nor does Securus seek the Commission’s ruling as to the rates or practices of call diverters. The sole issue presented here is that the Commission’s existing precedent permits Securus to block attempts to use call diversion schemes.

for providing inmate telecommunications service. Securus presently holds 64 U.S. patents and has more than 70 patent applications pending. *Id.*

Securus, through T-Netix and Evercom, has participated extensively in the development of policies and rules for inmate telecommunications service, including Docket No. 96-128, *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*,² and CC Docket 92-77, *Billed Party Preference for InterLATA 0+ Calls*.³

Securus has discovered that a call diversion scheme is operating in at least two of the facilities it serves: Lafayette County, Missouri and Marion County, Missouri. Declaration ¶¶ 5, 13. Securus believes that several others of its sites are affected by these schemes and continues to investigate this matter. *Id.* ¶¶ 15-18. A list of more than 500 sites believed to be affected is provided as Attachment A to the Declaration.

B. The Inmate Telecommunications Industry

The inmate telecommunications industry is a highly specialized segment of the telecommunications market. Inmate telephone providers are subject to all federal and state regulations applicable to non-incumbent telecommunications common carriers. *E.g.*, 47 U.S.C. §§ 222, 254. In addition, however, inmate telephone providers must meet the penological and security needs of the correctional facilities that they serve.

Inmate calling systems, sometimes called “platforms,” include several security features at the request of correctional authorities. One of the most important

² See CC Docket No. 96-128, Initial Comments of Evercom Systems, Inc. (Mar. 4, 2004); *see also* Initial Comments of T-NETIX, Inc. (May 24, 2002); Reply Comments of T-NETIX, Inc. (June 24, 2002) submitted in response to *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 02-39 (rel. Feb. 21, 2002).

³ Comments of Gateway Technologies, Inc., CC Docket No. 92-77; *see* 13 FCC Rcd. at 6271 ¶ 79. T-Netix acquired the assets of Gateway in 1999.

security features, one that is universally requested by correctional authorities, is the ability to capture and record the terminating telephone numbers of all inmate-initiated calls. Authorities must know the persons whom inmates call. A related and equally important feature is the ability to prevent inmates from using the telephones to harass or intimidate crime victims, judges, prosecutors, and witnesses.

In order to ensure these twin results, several safeguards are put in place. First, inmate telephones universally are programmed to block calls to several protected numbers, for example, the telephone numbers of judges and prosecutors. Secondly, inmates generally are permitted to phone only a specified list of persons identified by name and telephone number. Inmate phone privileges often are granted only when the inmate submits this calling list. Third, inmate telephones are designed to thwart attempts to place three-way calls or forward a completed call to a second telephone number.

Because of the security concerns inherent in serving correctional facilities, inmate telephone service is virtually always provided under an exclusive contract that is awarded after a public bidding process. Much as is the case for other vendor contracts with public agencies, the process typically begins with the release of a Request for Proposal (“RFP”) that both sets forth the service expectations for the relevant correctional facilities and seeks proposals for the rates, terms, and conditions by which a bidder intends to fulfill those requirements. The reviewing agency, which may be the resident procurement officer or the correctional authority of jurisdiction, awards an exclusive contract to the company that best meets the needs of the facility, the inmates, and the called parties. Throughout the term of the service contract, the telephone service provider is subject to the oversight of the resident correctional authority.

C. Commission Decisions in the *TOCSIA* and *Billed Party Preference* Dockets

The security features required of inmate telephones have been recognized and affirmed by several federal courts, including the United States Supreme Court, in the face of myriad Constitutional challenges. *E.g.*, *Lewis v. Casey*, 518 U.S. 343, 390-91 (1996) (reversing district court order mandating increased telephone usage for inmates); *Washington v. Reno*, 35 F.3d 1093, 1100 (6th Cir. 1994) (“an inmate has no right to unlimited telephone use”); *Carter v. O’Sullivan*, 924 F. Supp. 903, 909 (C.D. Ill. 1996) (“Prisoners, of course, are not entitled to the long-distance carrier of their choice.”). For the same reasons of inmate security and public safety, the FCC likewise has excused this industry from two types of common carrier regulation: dial-around and billed party preference.

1. Exemption from Prohibition on Dial-Around Blocking

In 1991, the FCC issued its first order implementing the Telephone Operator Consumer Services Information Act of 1990, codified at 47 U.S.C. § 226 (“TOCSIA”) which, among other things, prohibits call “aggregators” from blocking calls to 1-800 and 1-950 telephone numbers used to access alternative service providers. 47 U.S.C. § 226(c)(1)(B). Such calls came to be known as “dial-around calls.”

The TOCSIA definition of “aggregator” is quite broad:

[A]ny person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.

Id. § 226(a)(2). This definition on its face could apply to providers of inmate telephone service. As such, inmate telephone providers would be prohibited from blocking dial-

around calls. The Commission held, however, that inmate telephone service providers should not be deemed “aggregators,” stating that

We conclude that the definition of ‘aggregator’ does not apply to correctional institutions in situations in which they provide inmate-only phones. We are persuaded that **the provision of such phones to inmates presents an exceptional set of circumstances** that warrants their exclusion from the regulation being considered herein. Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under [TOCSIA] or the Commission’s rules.

Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Report and Order, FCC 91-116, 6 FCC Rcd. 2744, 2752 ¶ 15 (1991) (“*1991 TOCSIA Order*”) (emphasis supplied).

Despite requests to repeal this dial-around exemption, the Commission continues to permit inmate telephone service providers to block dial-around calls. See *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 94-352, 10 FCC Rcd. 1533, 1534 ¶ 15 (1995).

2. Exemption from Billed Party Preference Rules

In a further order implementing TOCSIA, the Commission again exempted inmate telephones from blocking prohibitions applied to payphone common carriers. *Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9, 13 FCC Rcd. 6122 (1998) (“*Billed Party Preference Order*”). In that order, the Commission considered, among other things, whether to require payphone operators to permit calling parties to use alternative Operator Service Providers (“OSPs”) when placing long-distance calls, a

concept known as “billed party preference.” The purpose of billed party preference was to enable persons using payphones to circumvent any agreement whereby one OSP held exclusive rights to connect payphone calls.

With regard to inmate telephones, the Commission declined to adopt billed party preference. Citing “comments of the United States Attorney General,” “other federal officials,” and “nearly all who have commented on this issue,” the Commission held that billed party preference would be an unnecessary and inappropriate regulation for inmate telephone service:

With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable to inmate calls.

Billed Party Preference Order, 13 FCC Rcd. at 6156 ¶ 57. Thus, the Commission recognized and accepted the exclusive-provider system in place for inmate telephone service. In addition, it re-affirmed its prior holding that inmate telephones should not be subject to dial-around or other methods of circumventing the service provided to correctional facilities via exclusive public contract. *Id.* & n.178.

D. Call Diversion Schemes

Call diversion schemes re-route inmate-initiated calls to unknown terminating telephone numbers. Securus’s research indicates that more than 500 of its correctional facility sites are presently affected by these schemes. Declaration of Robert Pickens, Attachment A.

According to public documents that Securus has researched, including the ConsCallHome webpage (**Exhibit 1**), entities engaged in call diversion schemes hold

themselves out to the public as a kind of telephone company. They encourage the friends and families of inmates to “subscribe” to their “service,” typically at a fixed monthly rate billed in advance. *Id.* When one “subscribes” to these entities, one is provided with a telephone number that is local to the jail in which the inmate is incarcerated. The “local” telephone number is given to the officers of the correctional facility as being the registered telephone number of the subscriber whom the inmate intends to call. As stated above, often inmates are permitted to call only the persons listed on a form that is submitted to and approved by the resident correctional authority.

When the inmate dials the purported “local” telephone number, the call platform equipment of the inmate telephone service provider, such as Securus, will validate the call based on the inmate’s representation that the “local” number is in fact the registered number of the actual call destination. Once the platform validates the call, the platform will release it to the Public Switched Telephone Network (“PSTN”) — namely, to the LEC switch. At that point, the call diversion “service” provider re-routes the inmate’s “local” call to the actual terminating telephone number of the person who “subscribed” to the call diversion scheme. This diversion may be accomplished via remote call forwarding or with a Voice-over-Internet-Protocol (“VoIP”) router.

To the call platform and the correctional authority, the inmate’s call appears to have been placed to and connected at the false “local” number that the inmate dialed. The actual case, however, is that the call has reached some other terminating telephone number that can never be identified. Indeed, the only outward indicator of a call diversion scheme is in the calling patterns that emerge over time — the proportion of local calls from a particular jail rises significantly while the proportion of long-distance

calls decreases. The dialed numbers captured by the calling system are untraceable, because they were assigned by some party, not a certificated telecommunications carrier, and are not the registered Bill-To Number (“BTN”) of any end user. *See* Declaration ¶ 9. The threat to public safety and prison security is obvious: the inmate could be calling anyone, anywhere, and the authorities would have no ability to investigate that called party.

Some of these call diverters, such as Portal32.com, openly advertise that their service will complete calls to “blocked” telephone numbers. **Exhibit 2** at p.2. In other words, these entities blatantly market their call diversion schemes as a means of circumventing the security features of the inmate telephone system.

The other danger that call diversion schemes pose is that, of the entities which Securus has been able to identify, the persons operating the scheme are not certificated to act as OSPs, LECs, or resellers, and have no tariffs on file. Nor do these entities contribute, as all telecommunications carriers must, to the federal Universal Service Fund (“USF”). *See* 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706- 54.711. It thus appears that these call diversion providers have escaped regulatory scrutiny entirely, and do not comply with any of the statutory or regulatory safeguards necessary to ensure quality of service and fair treatment of consumers. Often, in fact, the persons or corporations who operate the call diversion subscription websites cannot be identified.⁴

It bears repeating that inmate telephone service is provided pursuant to exclusive contracts awarded after a public bidding process. Thus, when a correctional

⁴ For example, Securus is aware of two websites, <www.Portal 32.com> and <www.getconnectedus.net>, that appear to sell call diversion plans to the public. **Exhibits 2 and 3**. Securus was not able to find the corporations or persons operating these websites; in both cases, the URL registrant is a webpage design company. **Exhibits 4 and 5** (excerpts).

authority executes a contract for service with Securus or one of its competitors, it expects that the calls exiting the facility will be carried and monitored by that contracting company. Call diversion schemes interfere with that contractual relationship, and introduce an unknown, sometimes hidden, third party into the inmate phone arrangement. These entities have not approached Securus or the facilities that Securus served to request permission to divert calls from any facility. Nor have these entities participated in the public bidding process. Rather, ConsCallHome and other call diverters have simply created an arrangement to circumvent the secure calling platforms in place at facilities throughout the country, and to hold themselves out to the public as common carriers demanding a monthly fee.

E. The Outside Connection Petition

Outside Connection was one of the first call diverters and operated mainly in the State of New York at facilities then served by MCI WorldCom. Outside Connection sought the Commission's ruling that its call diversion scheme was lawful and could not be blocked. Petition for Declaratory Ruling by Outside Connection, Inc., WCB/Pricing Docket No. 03-14 (Mar. 19, 2003). The Commission received a flurry of comments strongly opposing the Petition, including an Opposition and Reply Comments from T-Netix. **Exhibits 6 and 7.**⁵ The Petition was not granted. Submissions in that docket are instructive and demonstrate why this Petition should be granted.

Global Tel*Link Corporation in its comments related the story of Jessie James Caston who in 2000 was "one of the FBI's 10 most-wanted fugitives." Global

⁵ Other opposing parties included Value-Added Communications, Global Tel*Link Corporation, WorldCom, Inc., Qwest Communications International, Inc., Evercom, Inc. and Public Communications Services, Inc. (**Exhibit 9**). In addition, the following correctional authorities submitted papers in opposition: Pennsylvania Department of Corrections, Ohio Department of Rehabilitation and Correction, and New York Department of Correctional Services.

Tel*Link Comments (attached hereto as **Exhibit 8**), Exhibit 1 (Letter from Burl Cain, Warden, Louisiana State Penitentiary, to George Talbot, Jr., Vice President, Global Tel*Link, dated February 4, 2001). The inmate telephone system in place at the Louisiana Penitentiary captured and recorded the terminating phone numbers of all inmate calls. When Caston escaped, Louisiana law enforcement found him by using Caston's telephone records to identify his known associates; Caston was hiding at one of the called party's homes. Global Tel*Link appended similar letters from the Tennessee Department of Corrections and the Sheriff of Mobile County, Alabama that also emphasized the importance of capturing and recording accurate terminating numbers dialed by inmates. Exhibit 8.

The correctional authorities of Ohio, Pennsylvania, and New York filed individual comments strongly opposing the Outside Connection Petition. The Ohio Department of Rehabilitation and Correction ("ODRC") underscored the fact that "[a] single provider system is an important feature in monitoring and controlling inmate activity." **Exhibit 10** at p.4. The ODRC urged the Commission not to permit Outside Connection "to interfere with the safe and secure operation of state prisons." *Id.* at 5. The Director of the Bureau of Statistics, Practices, Security, Accreditation and Internal Audits of the Pennsylvania Department of Corrections submitted an affidavit explaining his employer's opposition to Outside Connection. He summarized the position: "It is my opinion and belief that any service that permits remote call forwarding of a call place[d] by an inmate would greatly diminish the Department's ability to control and monitor inmate telephone communications." Affidavit of James D. Shutt ¶ 16 (Apr. 15, 2003) (**Exhibit 11**).

The overwhelming majority of commenters opposed Outside Connection's scheme to divert calls from New York facilities to unknown terminating numbers. The Commission's failure to grant the Petition appears to indicate its unwillingness to approve the scheme. In addition, the Bankruptcy Court for the Southern District of New York denied Outside Connection's similar complaint for relief against the estate of WorldCom, Inc. in August 2003. **Exhibit 12**. Outside Connection was thus unable to change the federal precedent that permits inmate telephone service providers to block dial-around calls. *1991 TOCSIA Order*, 6 FCC Rcd. at 2752 ¶ 15.

F. ConsCallHome

ConsCallHome is the name of a website, <www.conscallhome.com>, by which persons can subscribe to a call diversion scheme. Exhibit 1. As stated above, Securus is aware that ConsCallHome is affecting its service in two facilities, the jail in Lafayette County, Missouri, and the jail in Marion County, Missouri. Declaration ¶¶ 5, 13. Securus has reason to believe that many more facilities are involved in the ConsCallHome scheme, and that other call diverters, such as Portal32.com, are at work in other Securus-served sites. *Id.* ¶¶ 15-18.⁶ In total, more than 500 sites that Securus serves are believed to be affected. Declaration, Attachment A.

ConsCallHome is operated by one of two domestic Florida corporations: Millicorp or Teleware, LLC ("Teleware"). *Id.* ¶ 14. The domain name history of ConsCallHome states that it was registered by Teleware. **Exhibit 13** (excerpt). An attorney representing himself as counsel to Teleware confirmed that ConsCallHome is operated by his client; other communications from persons affiliated with

⁶ Other call diversion schemes that Securus has uncovered are: Jail Calls Cheap; Cheap Inmate Calls; Inmate Phone Services; Local 123; Save on Prison Calls, Inmate Calls for Less; Cheaper Jail Calls; and American Prisoner. *Id.* ¶ 15.

ConsCallHome, however, state that Millicorp is the entity operating that website and call diversion scheme. Declaration ¶ 14. Millicorp and Teleware appear to be owned by a married couple in Cape Coral, Florida. **Exhibits 14 and 15.**

The ConsCallHome website indicates that it diverts traffic from federal, state, and local correctional facilities. **Exhibit 16.** The potential “subscriber” is invited to type in the location of the jail to find out whether ConsCallHome can divert calls from that jail. The “subscriber” must also answer the question “what phone number do we send the call to?” **Exhibit 17.** The website explains that “we provide you with a local phone number to the prison or jail where your loved one is incarcerated.” Exhibit 1. The website also purports that the ConsCallHome plan is “approved by” or “works with” federal, state, and local facilities. Exhibit 16.

According to Securus’s research, neither ConsCallHome, nor Teleware, nor Millicorp is certificated to provide common carrier telephone service in Missouri. Nor have any of these entities filed the required FCC Form 499-A to report their telecommunications revenues and calculate their required contribution to USF. Though persons purportedly affiliated with ConsCallHome assert that its operating company is registered and regulated as a VoIP provider, Securus sees no evidence that it has submitted a registration to the Commission or to the states that presently require VoIP service registration.⁷

The “local” numbers that ConsCallHome uses are not traceable, as explained by Robert Pickens. Declaration ¶ 9. A representative of ConsCallHome

⁷ An entity called “Millicorp” appears to be registered in Michigan as an Interstate Telecommunication Service Provider. See <<http://efile.mpsecis.state.mi.us/itsp/company.php?fid=26-4213201>>.

purported to inform a jail administrator that it “purchased” these numbers from Securus.

Id. ¶ 12. That statement is entirely false. *Id.*

Securus has requested that ConsCallHome cease operating in facilities that Securus serves. That request was refused, as was the request that ConsCallHome provide Securus with a list of the correctional facilities from which calls are being diverted to ConsCallHome “subscribers.”

G. Concerns of Correctional Authorities

Correctional authorities are gravely concerned by the security threat posed by call diversion schemes. *See, e.g.*, Declaration ¶ 5. Several authorities whom Securus serves have requested that Securus take measures to prevent calls from being completed via call diversion schemes.

Appended to this Petition are letters from eleven offices of County Sheriffs (spanning nine states) expressing their concern over call diversion schemes that are operating at their jails. **Exhibits 18 through 28.** These offices are:

Office of the Sheriff, Monterey County, CA
Porter County, Indiana Sheriff’s Department
Office of the Bristol County Sheriff, Massachusetts
Randolph County Sheriff’s Office, Missouri
Vernon County Sheriff’s Office, Missouri
Carroll County Prison, Georgia
Office of Carver County Sheriff, Minnesota
Martin County Sheriff’s Department, Indiana
Tarrant County, Texas
Kentucky River Regional Jail, Kentucky
Richland County Sheriff’s Office, Ohio

These letters state that call diversion schemes are “a serious breach of security and a threat to the public safety of our community.” The county officials thus urge Securus “to minimize, or preferably eliminate this security concern.” Tarrant County requests, for example, that

Securus leverage your corporate capabilities to minimize the opportunity for an inmate to access existing, new or emerging network-based technology that would allow an inmate to complete a telephone call to any number other than the dialed telephone number.

Exhibit 26.

The most evident and surest way to address these requests is to block call attempts to the false “local” numbers that call diversion schemes are using.

II. CALL DIVERSION SCHEMES ARE A DANGEROUS INTRUSION INTO THE INMATE CALLING SYSTEMS SECURED BY PUBLIC CONTRACTS

As the Commission is aware, correctional authorities establish exclusive contracts with inmate telephone service providers in order to ensure a secure calling environment for inmates. *E.g.*, *Billed Party Preference Order*, 13 FCC Rcd. at 6156 ¶ 57. Call diversion schemes like ConsCallHome completely neutralize the ability of Securus and other inmate telephone service providers to ensure a secure calling environment at correctional facilities.

The need for correctional authorities to know the true destinations of inmate-dialed calls is not frivolous. This information provides an important tool for investigating suspected illicit activity by inmates. And, in the worst case scenario, called party information is crucial in the event of a prison escape such as the case of Jessie James Caston in Louisiana. Exhibit 8 (Global Tel*Link Comments, Exhibit 1).

Call diversion schemes encourage calling parties to defraud the correctional facility and the serving telephone providers. Inmates are instructed by the perpetrators of these schemes to give false calling information — once when the inmates submit their forms to obtain telephone privileges, and again every time they dial the false “local” numbers which will be re-routed once the calls enter the PSTN. Plainly a “service” predicated on deliberate misrepresentations is not one that serves the public interest.

More troubling is the fact that these call diversion schemes intrude into correctional facilities unannounced, and often their true identities cannot be found. Although through various websites these entities advertise themselves as a type of telephone company that, to use the ConsCallHome example, “works with” correctional facilities (Exhibit 16), in fact these entities are not certificated telephone companies, do not participate in public bidding processes, and do not introduce themselves to correctional authorities as an entity that intends to serve inmates. The fact that these entities do not openly participate in the inmate telecommunications industry is telling.

III. CALL DIVERSION SCHEMES ARE AN UNLAWFUL FORM OF DIAL AROUND

In 1991, the Commission held that inmates can be blocked from using 1-800 or 1-950 dial-around services in order to use an alternative service provider. *1991 Order TOCSIA Order*, 6 FCC Rcd. at 2752 ¶ 15. The “exceptional set of circumstances” inherent in inmate telephone service, *id.*, namely the requirement to monitor and control inmate calls, renders such dial-around services a danger to prison security and public safety. Call diversion schemes such as ConsCallHome are simply dial-around in another — illicit — form. The same blocking privileges given to inmate telephone providers in

1991 are equally necessary to face this latest form of dial-around. And while the dial-around services that existed in 1991 were lawful service providers, call diverters appear to have flouted the regulatory regime altogether.

In fact, the *sub rosa* nature of call diversion schemes renders call blocking all the more necessary. As explained above, these entities generally are not certificated or registered with public utility agencies and often their corporate identity cannot be found. Persons who “subscribe” to this “service” therefore have no ability to lodge regulatory complaints regarding mistreatment, and there is no entity to answer for any such mistreatment in court. These entities cannot reasonably be found to serve the public interest.

The Commission already has found that inmates are not entitled to their choice of calling service provider. *Billed Party Preference Order*, 13 FCC Rcd. at 6156 ¶ 57. It reached this decision based on its long-standing policy of preserving the inmate calling environment, *e.g.*, *1991 TOCSIA Order*, 6 FCC Rcd. at 2752 ¶ 15, and at the urging of law enforcement officials including the United States Attorney General. *See Billed Party Preference Order*, 13 FCC Rcd. at 6156 ¶ 57. Securus therefore is permitted — indeed, expected — to block attempts to circumvent the secure calling environment that it is required by contract to provide. *See Exhibits 18 to 28.*

Call diversion schemes are simply a 21st-Century iteration of dial-around, though a much worse one for the roguish, a-regulatory manner in which these entities operate. The Commission’s well-settled precedent regarding inmate telephone operations thus indicates that Securus has the right to prevent inmates and their called parties from

using call diversion schemes like ConsCallHome. This right includes the blocking of telephone numbers known to be used for such schemes.

IV. THE COMMISSION SHOULD APPLY EXISTING CALL-BLOCKING PRECEDENT TO AFFIRM THAT SECURUS MAY BLOCK KNOWN CALL DIVERSION SCHEMES

As is evident throughout this Petition, Securus's operations,⁸ as well as the security of correctional facilities, have been severely affected by the intrusion of call diversion schemes into the correctional facilities that it serves. *See* Exhibits 18 to 28. As is also evident, Securus has conducted extensive research into the nature of these schemes and found their corporate provenance wherever possible. Declaration ¶¶ 6-14. Based on this research, Securus has identified several "local" numbers that it believes are used in call diversion schemes. *Id.* ¶¶ 8-9. These "local" numbers appear to be in use for call diversion schemes presently operating in more than 500 correctional facilities that Securus serves. Declaration, Attachment A. In other words, approximately 25% of Securus business is being impacted by these illicit schemes.

The Commission's holdings and rationales in the *1991 TOCSIA Order* and *Billed Party Preference Order* plainly permit Securus to block numbers known to be used for call diversion schemes. These schemes pose a serious threat to prison security and public safety and, as demonstrated by the letters appended to this Petition (Exhibits 18 to 28), are neither invited nor permitted to operate in correctional facilities. Certainly the submissions by law enforcement officials opposing the Outside Connection Petition

⁸ For competitive reasons, Securus is not able to provide data in a public document regarding inmate calling patterns or the other operational effects of call diversion schemes. At the Commission's request and upon entry of a suitable Protective Order, Securus will supply the Commission with such data if its deliberations require it.

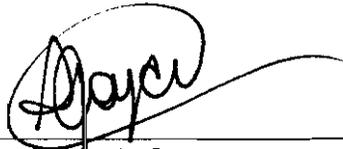
(Exhibits 8, 10 and 11) demonstrate the fact that call diversion schemes are not welcome in prisons or jails.

The Commission's appreciation for the "exceptional set of circumstances" faced by inmate telephone service providers, 6 FCC Rcd. at 2752 ¶ 15, is particularly needed with regard to call diversion schemes such as ConsCallHome. These entities thwart not only correctional policy but also the regulatory standards and consumer protections that Congress and the Commission adopted for telephone common carriage. The ability to block telephone numbers used in call diversion schemes is a necessary tool for preserving each of these regimes.

CONCLUSION

For all these reasons, the Commission should grant this Petition and affirm that Securus may, in furtherance of its obligation to block dial-around calls from inmate phones, block attempts to place calls via known call diversion schemes such as ConsCallHome.

By: _____



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Dated: July 24, 2009

CERTIFICATE OF SERVICE

I, Sara Rosinus, hereby certify that on this 24th day of July, 2009, the foregoing Petition for Declaratory Ruling to be served on the following persons via hand delivery, First Class Mail *, or electronic mail **:


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Washington, D.C. 20554

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Deputy Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**DECLARATION OF
ROBERT PICKENS
VICE PRESIDENT/
CHIEF MARKETING OFFICER**

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Policies and Rules
Concerning Operator Service Providers

CC Docket No. 90-313

In the Matter of Amendment of
Policies and Rules Concerning Operator
Service Providers and Call Aggregators

CC Docket No. 94-158

In the Matter of Petition for Declaratory
Ruling of Securus Technologies, Inc.

WCB Docket No. 09-____

**DECLARATION OF
IN SUPPORT OF PETITION FOR DECLARATORY RULING**

I, Robert Pickens, hereby attest to and declare the following under penalty of perjury:

1. My name is Robert Pickens. I am Vice President/Chief Marketing Officer of Securus Technologies, Inc. ("Securus"). My business address is 14651 Dallas Parkway, Sixth Floor, Dallas, TX 75254.
2. I am over 18 years of age and could testify competently to the facts set forth herein if requested.
3. This Declaration is being submitted in support of the Securus Petition for Declaratory Ruling regarding the right of Securus to block attempts to use known call diversion schemes. Specifically, this Declaration will explain the research that Securus conducted and its discovery of a call diversion scheme. I have attached the list of affected correctional facility sites to this Declaration as **Attachment A**. Securus serves all of these sites.

4. Securus presently serves approximately 2,300 correctional facilities in 44 states. Securus holds 64 U.S. patents and has more than 70 patent applications pending.

DISCOVERY OF THE CONSCALLHOME SCHEME

5. In March 2009, Securus was notified by authorities at the jail in Lafayette County, Missouri that inmates were placing a proportion of purportedly local calls that was much larger than previously. At the jail's request, Securus began investigating the calling patterns from this facility.
6. Employees within the Securus finance and billing organization retrieved and reviewed the call detail records ("CDRs") of inmate-initiated calls from Lafayette County. Call detail records show the telephone numbers dialed by the inmate, as well as the time and duration of the calls.
7. This CDR review showed a large proportion of calls dialed to telephone numbers having the same area code as the Lafayette County jail — area code 660.
8. Securus employees also retrieved Lafayette County CDRs from earlier periods, and compared these CDRs to the first set of CDRs. The previous set of CDRs showed a much smaller proportion of 660 calls than does the more recent set.
9. It is our belief that the new "local" telephone numbers dialed from Lafayette County are not registered to any end users. Securus has no way to know who is using these telephone numbers or who is giving them to inmates.
10. While Securus was performing this CDR research, inmates at the Lafayette County jail informed authorities that an entity called ConsCallHome had arranged a scheme in which Lafayette County inmates were given telephone numbers in the 660 area code which would be local to the jail. Inmate calls placed to those "local" numbers were diverted by ConsCallHome to the true telephone number of the persons the inmate wished to call. Had the inmates not informed authorities about ConsCallHome, it is unlikely that Securus could have found the origin of this call diversion scheme.
11. A Securus employee visited the ConsCallHome website (www.conscallhome.com) and dialed the customer service telephone number it advertises to potential customers. The employee spoke to a representative of ConsCallHome who confirmed that calls were being diverted from the false "local" telephone numbers to the actual number of the ConsCallHome customers.
12. A jail administrator from Lafayette County, Missouri also contacted ConsCallHome. A representative from ConsCallHome told this administrator that the company had obtained or purchased these "local" numbers from Securus. That statement is false. Securus had no knowledge prior to April 2009 that ConsCallHome was diverting calls from any of its correctional facilities, and never offered to assist any such entity. Moreover, Securus does not give away or