

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"))	CG Docket No. 11-116
)	
Consumer Information and Disclosure)	CG Docket No. 09-158
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170

To the Commission:

COMMENTS OF SECURUS TECHNOLOGIES, INC.

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Dated: October 21, 2011

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Securus Technologies, Inc. ("Securus" or "Company"), hereby respectfully submits its initial comments for the Federal Communications Commission's ("FCC's") Notice of Proposed Rulemaking (NPRM) in the above referenced Dockets.¹

I. SECURUS COMMENTS

Securus concurs and agrees with the FCC's efforts to provide customers of wireline and wireless carriers the ability to detect, rectify, and prevent the placement of "unauthorized" charges on the subscriber's bills, i.e. cramming. Consumers that establish service with a wireline or wireless carrier should have the ability to prevent unauthorized charges from appearing on the bills from their pre-subscribed carrier. Should such an unauthorized charge appear on a consumer's established carrier's bill, the consumer should have the ability to have the

¹ FCC Notice of Proposed Rulemaking CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170; FCC 11-106 regarding "Cramming". These comments are timely filed in accordance with the Commission's Notice of Proposed Rulemaking, released July 12, 2011, and summarized in the Federal Register on August 23, 2011. Fed Reg Vol. 76, No. 163, 52625.

unauthorized charge removed from his/her bill. However, the rules and regulations established to prevent, detect, and rectify the placement of “unauthorized” charges on consumers’ bills should not result in increased costs or increased fraud against those service providers that place authorized charges on consumers’ bills.

Securus is authorized to provide Inmate Telephone Service (ITS) in all 50 states and the District of Columbia (DC). Securus currently serves approximately 2300 correctional facility sites (locations) in 45 states and DC. Securus provides its inmate service to State, County, and Local correctional facilities throughout its service territory. County jails make up the overwhelming majority of the correctional facility sites Securus serves. Furthermore, the majority of inmate calls from these facilities are “collect” calls. All collect calls placed from facilities served by Securus require the called party to “positively accept” (authorize) the call by pressing a particular digit on the keypad before the call is connected. Additionally, on every Securus served facility collect call, the called party is given the option of hearing a rate quote, is told how to reject the call before charges apply, and is given an option to block future calls from inmates at Securus served facilities. In order to assist in the billing of these authorized collect calls, Securus has established billing arrangements with numerous providers including Local Exchange Carriers (LECs), Competitive Local Exchange Carriers (CLECs), third-party Clearing Houses, and third-party billing agents.

As stated above, the majority of the correctional facilities served by Securus are County jails. This is significant because a high percentage of persons incarcerated in County jails are “short term” detainees. That is, the person will be incarcerated only until arraignment or a bail bond is paid, which could be as little as 48 to 72 hours from the time of initial incarceration. In many cases County inmates that are sentenced to serve more than 90 to 120 days in jail will be

transferred to a longer term facility such as a State penitentiary. Because of the short term nature of most County inmates, it is highly likely that the collect calls placed by these inmates will not be billed until after the inmate is released from jail. Because basic telephone service can't be suspended or terminated for failing to pay third-party billing, such as inmate collect calls, there is little incentive for the called party to pay these legitimate call charges. In situations where the consumer doesn't pay the collect call charges, Securus's only remedy is to block future inmate calls to that telephone number until the charges are paid and/or to require the end user to establish a pre-paid account for future inmate calls. Since in most cases the incarcerated person placing the collect calls to the consumer is already released, there is little incentive for the billed party to pay for these collect calls.

The recent intensification of efforts to curb cramming has had the unintended effect of exacerbating the problems faced by Securus and other ITS providers in billing and collecting for inmate collect calls and has also significantly increased Securus's billing costs. As mentioned above, Securus contracts with LECs, CLECs and other agents to bill collect calls on Securus's behalf. These Billing and Collection (B&C) contract charges account for the second highest single element of cost, second only to facility commissions, when determining the total overall cost of providing inmate calling services. On a per call cost basis, B&C costs have dramatically increased over the last few years and since the crack down on cramming, these costs have sky rocketed. Because these third-party billing agents are now required to implement new anti-cramming protection procedures, complete numerous new cramming reports required by state regulatory agencies, and are faced with the threat of significant fines if one of the companies they bill on behalf of fails to comply with regulations, they have increased their billing rates or

discontinued providing certain services. This directly affects Securus's ability to provide service and certainly affects Securus's cost of providing service.

Securus has lost the service of two billing agents due to the increased cost of anti-cramming safe guard requirements and the increased fear of possible fines as a third-party billing agent. These billing agents indicated they dropped several of their customers, including billing collect calls for Securus, because of the cost of compliance with regulatory rules. Additionally, those billing entities that are willing to continue billing Securus collect calls are placing very onerous requirements in their B&C agreements. Most B&C agreements have per bill fees, per call fees and also additional fees for any request, such as a customer message or a change in bill format. In some cases, if an end user has only one or two Securus collect calls that appear on his/her LEC bill, it is possible that Securus will pay the LEC as much or more in B&C costs than it will receive in revenue from the collect call charges themselves. With the increased cramming scrutiny, most major LECs are not only charging substantial fees to bill Securus collect calls, but they are now including contractual requirements such as: removing charges from a customer's bill and sending the charges back to Securus if the customer merely says he/she doesn't recognize the call, charging Securus a \$150 fee for each customer that simply claims a call is unauthorized, and adding Securus to state agency cramming reports without any investigation or evidence the collect calls were not authorized.

The overzealous application of fees and the recouping of charges as a pretext for protecting consumers from cramming are causing increases in inmate telephone service costs and the rates charged to end user customers. One of Securus's largest LEC B&C agents now removes Securus's legitimate and authorized collect call charges as a "cram" simply because an end user customer says something like "I don't recognize the call" or "I don't know this

company” without any investigation or even the most minimal of inquiry. This is an open invitation for consumers to defraud Securus. When the LEC takes this approach and recourses back the charges for legitimate collect calls, Securus loses in many ways: Securus paid the LEC billing fees but received no benefit, Securus loses the revenue that it was rightfully entitled for the collect call(s), Securus must pay a \$150 fee because the calls were inappropriately categorized as a “cram”, and Securus could be placed on a cramming report to certain regulatory agencies. Securus thoroughly investigated every call this particular LEC reported as a “cram” and it unequivocally determined that each and every call was an authorized and accepted collect call. When Securus contacted the LEC requesting the LEC remove the fees and modify its cramming reports based on this indisputable evidence, the response Securus received was: *“The validity of a cramming complaint or escalated complaint is not relevant to the application of the administrative fees for cramming complaints or escalated complaints. The fees apply to any “claim or assertion” by and [sic] end user that a charge is unauthorized, without regard to whether the charge at issue may or may not have been authorized.”* Obviously, using the simple “claim” that an end user did not authorize a collect call, without regard to true facts, as a contractual consent to apply fees and recourse charges is costly and highly detrimental to Securus. Unfortunately, contract language including such fees and the designation of collect calls as a “cram” by a mere assertion without regard to whether a charge was authorized or not is appearing in virtually all new B&C agreements being presented to Securus. Securus’s toll free number appears on LEC bills to encourage customers to contact Securus directly with any questions regarding the collect call charges. However, should the customer contact the LEC first, most LECs have taken the stance of not referring the end user to Securus but, they instead immediately remove the collect call charges from the LEC bill, recourse the charges back to

Securus, and then charge Securus the \$150 fee. Furthermore, if an end user first calls Securus and Securus sustains the collect call charges because of verified positive acceptance, the end user could then call the LEC and the LEC will credit the end user and recourse the charges back without any prior coordination with Securus. Additionally, some LECs have established cramming “thresholds”, i.e. limits on the number of alleged crams the LEC receives in a certain period, which could result in the LEC terminating its B&C contract with Securus if the threshold is exceeded. This is particularly troublesome when a meager assertion of a cram counts against the threshold. Some billing agents are straightforward in saying they understand that accepted collect calls which are billed on behalf of a certified telephone service provider should be exempt from cramming allegations, but, because of regulatory uncertainty, they feel they still must take these extraordinary measures to protect themselves.

It is not only third-party billing agents that have exploited anti-cramming requirements to increase the cost to ITS providers and to negatively affect the ability of ITS providers to bill authorized collect call charges to consumers. Some state regulatory agencies have exaggerated the application of anti-cramming regulations and requirements to significantly impact the operation of ITS providers and other Operator Service providers. For example, in Iowa, Securus was accused of cramming when an inmate and an outside accomplice committed fraud which tricked the Securus billing system into charging collect calls to another party. When Securus determined how this very rare and isolated incident occurred, Securus credited the full amount to the party billed and took additional steps to prevent future fraud. This was not cramming by any reasonable definition of the term, it was fraud committed against Securus. Yet, after Securus had made the consumer whole and instituted additional preventative measures, the Iowa Office of Consumer Advocate petitioned the Iowa Utility Board (the Board) to assess civil penalties

against Securus for cramming. The case went all the way to the Iowa Supreme Court, where the court concluded that *“Cramming . . . cannot include the mistaken or improper billing of collect calls, particularly when it is the result of third-party fraud. When the Board concluded it did, it rendered a decision that was irrational, illogical, or wholly unjustifiable . . .”*² Although Securus was vindicated and a reasonable definition of what constitutes cramming in Iowa prevailed, it cost Securus tens of thousands of dollars to defend against this unwarranted action that was initiated under the pretense of protecting consumers from cramming. In California, because of anti-cramming rules, Securus must file reports in which much of the information is truly not applicable to the type of services provided by an ITS provider. Also in California, Securus must defend itself against third-party billing agent reports where the mere mention of an unrecognized call by an end user will cause a billing agent to place Securus on a cramming list.

The information above clearly shows that the application, or misapplication, of anti-cramming measures has dramatically increased Securus’s cost. At a time when the ITS industry is being encouraged to decrease rates (Martha Wright, CC Docket No. 96-128), the costs to provide inmate telephone service are increasing and the ability to offer end users the speed and convenience of having collect calls charged to their LEC bill is being threatened.

II. CONCLUSION

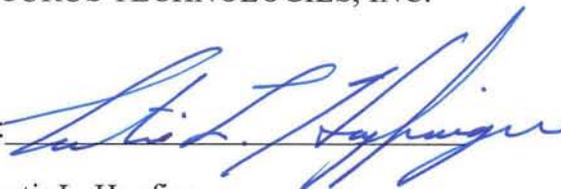
Securus supports the implementation of safe guards against the placement of “unauthorized” charges on consumer bills and agrees that consumers should be able to detect, rectify, and prevent cramming. However, any anti-cramming rules promulgated by the FCC must not hinder the billing of “authorized” charges, such as collect calls; must not encourage or

² Iowa Supreme Court, No. 09-0427, Evercom Systems, Inc [now Securus Technologies, Inc.] vs. Iowa Utilizes Board and Office of Consumers Advocate, October 14, 2011.

facilitate consumer fraud against entities billing valid charges; and must not be so burdensome or onerous as to increase costs of legitimate billing agents and their customers.

Respectfully submitted,

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