

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

In the Matter of )  
)  
Rules and Regulations Implementing the ) CG Docket No. 02-278  
Telephone Consumer Protection Act of 1991 )  
)  
Petition of 3G Collect Inc. and 3G Collect )  
LLC For Expedited Declaratory Ruling That )  
TCPA Is Inapplicable to the Use of )  
Automated Systems by Operator Service )  
Providers To Telephone Numbers Assigned )  
to Cellular Telephones )

To the Commission:

**INITIAL COMMENTS OF SECURUS TECHNOLOGIES, INC.**

Paul C. Besozzi  
Patton Boggs LLP  
2550 M Street, NW  
Washington, D.C. 20037  
(202) 457-5292

*Counsel to Securus Technologies, Inc.*

Curtis Hopfinger  
Director-Regulatory and Government Affairs  
Securus Technologies, Inc.  
14651 Dallas Pkwy, 6th Floor  
Dallas, TX 75254  
(972) 277-0319

Dated: November 21, 2012

**Before the  
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| Petition of 3G Collect Inc. and 3G Collect<br>LLC For Expedited Declaratory Ruling That<br>TCPA Is Inapplicable to the Use of<br>Automated Systems by Operator Service<br>Providers To Telephone Numbers Assigned<br>to Cellular Telephones | ) |                      |

To the Commission:

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Securus Technologies, Inc. (“Securus” or “Company”), acting with counsel and pursuant to FCC Public Notice DA 12-1706, “Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling from 3G Collect,” hereby respectfully submits its initial comments on 3G Collect’s (“3G Collect”) Petition for Expedited Declaratory Ruling filed on October 28, 2011, concerning the applicability of the Telephone Consumer Protection Act (“TCPA”) and the Commission’s related rules to the use of prerecorded messages by operator service providers in the course of connecting collect callers to telephone numbers assigned to wireless telephones.<sup>1</sup>

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<sup>1</sup> Securus’s comments are timely filed in accordance with the schedule established in Public Notice DA 12-1706 (rel. Oct. 23, 2012).

## **I. INTRODUCTION AND SUMMARY**

The 3G Collect Petition raises issues comparable to those previously put before the Commission by Global Tel\*Link (“GTL”) with respect to calls made by inmates at confinement facilities to wireless telephone numbers.<sup>2</sup> Securus is a leading provider of inmate telephone service (“ITS”) in over 2300 correctional institutions throughout the United States. As Securus previously noted, the Commission should expeditiously clarify that the existing restrictions under the Telephone Consumer Protection Act of 1991 (“TCPA”)<sup>3</sup> and the Commission’s rules on the use of “an artificial or prerecorded voice” message do *not* apply to automated operator-assisted calls employed by inmate telephone service (“ITS”) providers, who require a called party to receive an instructional message on how to accept or decline a call from an inmate, including those calls made to wireless telephones. Today, most calls placed by inmates are on a “collect call” basis and use an automated operator which incorporates a prerecorded voice message informing the called party how to accept, or decline, the call. Additionally, for safety and security purposes, providers of ITS in correctional institutions are required by contract to announce to the called party that the call is from a correctional institution and obtain positive acceptance from that party before allowing the inmate-initiated call to be completed. ITS announcements of necessity use prerecorded voice messages. It is not a reasonable or practical

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<sup>2</sup> See FCC Public Notice “Consumer & Governmental Affairs Bureau Seeks Comment on Global Tel\*Link Corporation’s Petition for Expedited Clarification and Declaratory Ruling Concerning Applicability of the Telephone Consumer Protection Act and Federal Communications Commission Rules,” CG Docket No. 02-278, DA 10-997 (rel. June 15, 2010). Securus filed comments in support of a related Notice of Proposed Rulemaking and GTL’s Petition, which specifically requests clarification that the TCPA and related Commission rules are inapplicable to GTL’s practice of utilizing automatic notifications before completing inmate calls to the general public. See Initial Comments of Securus Technologies, Inc., CG Docket No. 02-278, filed May 21, 2010.

<sup>3</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227, as implemented by the Commission at 47 C.F.R. Part 64, Subpart L.

alternative to obtain “prior express consent” through the use of live operators as a prelude to completing the millions of collect calls or other inmate-initiated calls that take place daily. Such automated prerecorded announcements are essential to the provision of ITS and must be allowed to continue to be made to wireline and wireless telephones without threat of being considered inconsistent with the TCPA or the FCC’s implementing rules.

## **II. DESCRIPTION OF SECURUS’ SERVICES**

The Commission is well aware of the specialized nature of and requirements applicable to ITS. Thus, Securus’s ITS systems provide state-of-the-art safety and security features and extensive criminal investigation tools. Securus offers both premise-based (physically located at the correctional institution) and centralized call processing hardware which incorporates the highly specialized software needed to safely and securely process inmate-initiated calls. One of the safety features of all Securus’s calling platforms is call acceptance by the called party. On all inmate-initiated calls, the called party receives an automated announcement identifying the call as an inmate call, announcing the correctional institution from which the call originated, providing the inmate’s name and providing instructions on how to accept the call, decline the call, get a rate quote on collect calls, and how to block all future calls from the correctional institution. These announcements and the acceptance process occur whether the call is placed as a “collect” call or paid for by the inmate with a calling card or commissary debit account (rate quote information is only applicable to the called party on collect calls). Correctional institutions require these announcements, and the called party’s positive acceptance, as a contractual obligation. Further, FCC regulations require the ability of the called party to obtain a rate quote on collect calls and that the called party has the right to terminate the call without charge before

the call is connected.<sup>4</sup> So Securus and other ITS providers are to a degree using this technology to satisfy FCC-imposed requirements.<sup>5</sup>

There are also situations where an inmate may place a collect call to a called party whose terminating carrier does not typically allow “collect calls.” This may include collect calls to wireless telephones, to Voice over Internet Protocol (“VoIP”) services and to some competitive local exchange carriers (“CLECs”). When the called party’s terminating carrier does not have arrangements for the party to accept collect calls, the called party must establish a separate account with Securus to receive the inmate’s collect calls. Therefore, the ITS provider must give instructions to the called party, using an automated prerecorded voice message, on how they can establish an account if they wish to receive the inmate’s collect calls. Usually, this is accomplished by providing an 800 number to speak with a customer service representative.

### **III. SECURUS SUPPORTS THE 3G COLLECT PETITION**

Securus concurs with and supports the 3G Collect Petition and the principal arguments outlined therein.

Securus generally provides ITS based on contracts in which it agrees to enable and complete calls from incarcerated individuals to people with whom the inmate is permitted to communicate. Inmate communications are only outbound, and calls may only be made from within a confinement facility on a secure telecommunications platform to a person outside the facility. Unless an inmate has established another method of payment, such as an inmate debit account or prepaid calling card, calls may only be made as collect calls. Securus obtains the telephone number of the called party when dialed by the inmate and uses a prerecorded

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<sup>4</sup> 47 C.F.R. § 64.720 relating to operator services for prison inmate phones.

<sup>5</sup> Many state regulatory regimes applicable to ITS impose the same or similar announcement and call termination opportunity requirements.

announcement and automated interactive response system to inform the called party that an inmate is trying to make contact. In addition to required announcements, the called party is asked to accept or decline the call, or agree to receive calls by creating an account to which the calls can be billed. A vital part of any ITS provider's platform is to facilitate the safe and secure completion of as many authorized inmate-initiated calls as possible. To achieve this, it is critical that called parties know an inmate is attempting to call them and to inform them how to receive and accept, or decline, these inmate calls.

Securus does not use automated prerecorded voice messages to contact individuals randomly and only attempts to contact persons with such messages when an inmate has initiated a call to the individual's telephone number. Securus's prerecorded voice messages are not the type intended to be targeted by the TCPA. As highlighted by 3G Collect, these contacts are not telemarketing solicitations, but rather are instructional messages to assist and allow an inmate to securely complete calls to friends and loved ones.<sup>6</sup> Finally, it must also be noted that Securus's prerecorded voice messages include an interactive feature for the called party to block future inmate calls or to suspend any further notification announcements. The types of calls delivered by 3G Collect and Securus are not telemarketing calls and are not encompassed by the TCPA's prohibitions.

The 3G Collect Petition's focus on the use of automated notifications to wireless telephones is particularly relevant to inmate service providers because an increasing number of inmates' outbound calls are made to wireless telephones. Securus, like 3G Collect, uses automated notifications to provide collect call services and comply with the requirements of the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. 101-435, 104 Stat.

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<sup>6</sup> See 3G Collect Petition at 3 ("Services like the ones provided by 3G Collect are not 'marketing calls.'").

986 (1990), codified at 47 U.S.C. § 226. Securus agrees with 3G Collect that a collect call service provider that uses an automated voice notification to a call recipient does not “make” or “initiate” a call.<sup>7</sup> Rather, it assists the called party by facilitating collect calls and/or establishing a payment mechanism to receive inmate calls. The calling party, and in Securus’ case, an inmate, initiates the call by dialing the telephone number, which can be a wireless telephone number. Similar to 3G Collect, Securus does not know the phone number of the called party until the inmate initiates a call or the party contacts Securus to establish a billing account. Securus has no control over whether a call is initiated, when it is initiated, the number to which a call is made, or the content of the call.

Securus also agrees that providers of collect calling services to wireless telephones should be deemed to have obtained the called parties’ consent.<sup>8</sup> Wireless telephone numbers are not generally available to the public via public telephone directories.<sup>9</sup> If a party, in Securus’ case an inmate, places a call to that number, it should be clear that the telephone number was provided by the called party. Unlike other types of collect calls, in the case of ITS calls where accounts have not yet been established, collect calls from inmates may be the only mechanism to notify a friend or loved one that someone has been incarcerated.

As the 3G Collect Petition notes, the Commission has previously clarified that the TCPA allows parties to make certain calls and third-party entities operating on their behalf are shielded

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<sup>7</sup> See 3G Collect Petition at 4 (“3G Collect cannot know the cellular phone number of the called party to connect to absent the action of the calling party...3G Collect has no control over whether a call is initiated...the time at which it is initiated, the telephone number to which the call is made, or the content of the call...”).

<sup>8</sup> 3G Collect Petition at 6.

<sup>9</sup> *Id.*

from liability.<sup>10</sup> Third party fundraising companies conducting fundraising for nonprofit groups, and debt collection agencies operating on behalf of creditors, are allowed to rely on the indicia of consent provided by those entities.<sup>11</sup> Providers of collect calling services, including ITS, should be able to rely on similar indicia of consent inherent in making a collect call to remove any doubt that the collect call service provider using pre-recorded or automated messages does not violate the TCPA.

In any event, Securus reiterates the critical need for the FCC to clearly articulate that the prohibition of the use of “an artificial or prerecorded voice” message does *not* apply to automated prerecorded informational calls, or announcements, associated with inmate-initiated calls to wireline or wireless telephones. All ITS providers must be permitted to execute the provisions of their contracts with correctional institutions, including safety and security provisions, and provide appropriate information to people called by inmates without fear of misguided lawsuits or costly regulatory action.

#### **IV. CONCLUSION**

For all of the aforementioned reasons, the FCC should grant the relief requested in the 3G Petition. The Commission should make clear that this relief applies generically to all ITS providers employing similar mechanisms to provide informational messages to called parties and to verify the acceptance or declination by called parties for inmate calls, both fundamental

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<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

components of the provision of ITS. Securus seeks this relief with respect to the employment of automated prerecorded voice messages for no other purpose.

Respectfully submitted,

A handwritten signature in blue ink that reads "Curtis Hopfinger". The signature is written in a cursive style and is positioned above a horizontal line.

Paul C. Besozzi  
Patton Boggs LLP  
2550 M Street, NW  
Washington, D.C. 20037  
(202) 457-5292

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Curtis Hopfinger  
Director-Regulatory and Government Affairs  
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14651 Dallas Pkwy, 6th Floor  
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