

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Petition for Declaratory Ruling of Securus) WC Docket No. 09-144
Technologies, Inc.)
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To: The Federal Communications Commission

MOTION FOR LEAVE TO FILE OUT OF TIME

Millicorp, through its counsel, hereby requests a waiver or extension of the deadline for the filing of the attached Opposition to the Application for Review filed by Securus Technologies, Inc. (“Securus”).¹ In its Application for Review, Securus sought the review by the Federal Communications Commission (“Commission”) of the Wireline Competition Bureau’s denial of a Petition for Declaratory Ruling filed by Securus.² The Application for Review was filed by Securus on October 28, 2013. Consequently, pursuant to Section 1.115(d) of the Commission’s rules,³ Millicorp’s Opposition was required to be filed 15 days thereafter, or November 12, 2013. Accordingly, due to my miscalculation of this deadline, Millicorp requests

¹ Securus Technologies, Inc. Application For Review, WC Docket No. 09-144 (filed Oct. 28, 2013) (“Securus Application”).

² *Policies and Rules Concerning Operator Service Providers*, Declaratory Ruling and Order, CC Docket Nos. 90-313 & 94-158; WC Docket No. 09-144, DA 13-1990 (Sept. 26, 2013); Petition for Declaratory Ruling of Securus Technologies, Inc., WC Docket No. 09-144 (filed July 24, 2009).

³ 47 C.F.R. § 1.115(d). Section 1.115(d) requires any Reply to Millicorp’s Opposition to be filed within ten days after the filing of Millicorp’s Opposition. Millicorp, of course, does not object to the calculation of this ten-day period based on the actual date on which Millicorp’s Opposition is filed, November 14, 2013, and does not object to any additional extension desired by Securus of the deadline for filing its Reply.

leave to file the Opposition two days late and requests the Commission to accept the Opposition as timely filed. Securus' Application for Review and Millicorp's Opposition raise significant issues of importance to the public that directly impact the public interest, and we believe that the Commission would benefit from the arguments set forth in Millicorp's Opposition. To the extent that the Commission denies this Motion, Millicorp requests the Commission to accept the attached Opposition as an *ex parte* comment in this permit-but-disclose proceeding.⁴

Respectfully submitted,

MILLICORP

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November 14, 2013

Attachment

⁴ 47 C.F.R. § 1.1206(a)(3) (holding that all declaratory ruling proceedings are permit-but-disclose proceedings).

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OPPOSITION OF MILLICORP

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November 14, 2013

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EXECUTIVE SUMMARY

The Commission should deny Securus' Application for Review. The Wireline Competition Bureau's Declaratory Ruling appropriately refuses to exempt inmate calling service ("ICS") providers such as Securus from the Commission's longstanding prohibition against call blocking. Contrary to Securus' assertions, the Commission has never – implicitly or explicitly – permitted ICS providers to unilaterally determine to block inmate calls to the customers of certain telecommunications providers.

The Commission's *TOCSIA Order* and *Billed Party Preference Order* cannot plausibly be interpreted to permit ICS providers to selectively block inmate calls to customers of Millicorp or any other VoIP telecommunications provider. These orders merely permit ICS providers to prevent inmates from utilizing certain alternative services to place outgoing calls from the prison facilities at which the ICS providers hold contractual monopolies, thereby preserving the facilities' single-provider inmate calling systems. Millicorp does not provide services to inmates. Millicorp solely provides services to the friends and family members of inmates—the recipients of inmate calls. Thus, contrary to Securus' assertions but consistent with the Bureau's Declaratory Ruling, neither order is applicable here.

The Declaratory Ruling merely reiterates that ICS providers are obligated as common carriers to refrain from blocking their users' calls without express Commission approval. In an attempt to discredit the Declaratory Ruling, Securus mischaracterizes this straightforward and longstanding obligation as a Bureau mandate requiring Securus to "resell" its infrastructure and to "interconnect" with competitors. Neither assertion withstands scrutiny. The telecommunications provider that serves a call recipient is not a reseller of the service provided to the calling party by the calling party's provider. Moreover, the Commission has not required

Securus to interconnect its facilities with Millicorp's facilities, and Securus' and Millicorp's physical infrastructure do not interconnect at any location. The Bureau merely required Securus to cease blocking the normal-course routing of inmate calls over the Public Switched Telephone Network to the telephone numbers of Millicorp's customers.

Finally, for the same reasons advanced by the Commission in its recent order imposing rate reform on the ICS industry, the Declaratory Ruling is neither an unconstitutional abrogation of contracts nor a taking in violation of the Fifth Amendment. ICS providers and correction facilities cannot agree by contract to violate the Commission's call blocking prohibition by selectively determining whether to complete inmate calls to the customers of certain providers. In any event, it is well established that the Commission may modify private contracts when necessary to serve the public interest. Further, Millicorp has no access to Securus' facilities, and therefore there is no taking of Securus' property interests.

Thus, each of the six arguments set forth in Securus' Application for Review should be rejected.

First, the Declaratory Ruling is fully consistent with longstanding Commission precedent prohibiting call blocking. Millicorp does not offer "an alternative phone service" or any other service to inmates. Millicorp only serves the recipients of inmate calls.

Second, Millicorp does not "resell" Securus' service. Securus provides services to inmates, and Millicorp provides services to inmate call recipients. A call recipient's provider is not a reseller of services provided to the calling party by the calling party's provider.

Third, interconnection is the physical linking of two providers' physical infrastructure. The Declaratory Ruling does not govern the interconnection of any ICS providers' facilities, and Millicorp's and Securus' infrastructure are not physically connected at any location. The

enforcement of the Commission's call blocking prohibition to enable the completion of inmate calls does not constitute Commission-mandated interconnection.

Fourth, the Declaratory Ruling does not require any ICS provider "to provide its finished call platform services to competing entities free of charge." Millicorp has no access to Securus' prison call platforms and does not compete with Securus by providing services to prisons or inmates. Similarly, Securus does not compete with Millicorp to provide services to inmate call recipients.

Fifth, Securus is not required by the Declaratory Ruling to provide access to any of its facilities to Millicorp or any other call routing service for resale, interconnection, or any other purpose. Further, the Commission deemed its recent rate regulation of ICS providers not to constitute a taking, and the Declaratory Ruling will have far less impact on such providers. Therefore, the Declaratory Ruling does not result in a taking of Securus' property.

Finally, the Declaratory Ruling does not impermissibly abrogate Securus' contracts with correctional facilities. Private parties may not contractually agree to violate Commission policies. Further, the Commission may require the modification of provisions of private contracts when necessary to serve the public interest.

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Petition for Declaratory Ruling of Securus Technologies, Inc.) WCB Docket No. 09-144
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To: The Federal Communications Commission

OPPOSITION OF MILLICORP

Millicorp hereby opposes Securus Technologies Inc.’s (“Securus”) Application for Review (“Application”).¹ Securus seeks review by the Federal Communications Commission (“Commission”) of the Wireline Competition Bureau’s (“Bureau”) Declaratory Ruling and Order (“Declaratory Ruling”) denying Securus’ 2009 Petition for Declaratory Ruling (“Petition”).² The Commission should deny Securus’ Application because the Application raises no issues that warrant Commission consideration under Section 1.115(b)(2) of the Commission’s rules.³ The Bureau’s Declaratory Ruling is fully consistent with the relevant statutes, regulations, and

¹ Securus Technologies, Inc. Application For Review, WC Docket No. 09-144 (filed Oct. 28, 2013) (“Securus Application”).

² *Policies and Rules Concerning Operator Service Providers*, Declaratory Ruling and Order, CC Docket Nos. 90-313 & 94-158; WC Docket No. 09-144, DA 13-1990 (Sept. 26, 2013) (“*Declaratory Ruling*”); Petition for Declaratory Ruling of Securus Technologies, Inc., WC Docket No. 09-144 (filed July 24, 2009) (“Securus Petition”).

³ 47 C.F.R. § 1.115 (b)(2) (“[T]he application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented: (i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy. (ii) The action involves a question of law or policy which has not previously been resolved by the Commission. (iii) The action involves application of a precedent or policy which should be overturned or revised. (iv) An erroneous finding as to an important or material question of fact. (v) Prejudicial procedural error.”).

Commission precedent, as well as longstanding Commission policy generally prohibiting the blocking of outgoing calls.⁴ Further, Securus’ specious attempts to raise resale and interconnection issues have nothing to do with the call-blocking issues at hand. Finally, the Commission has already determined that actions such as those taken in the Declaratory Ruling do not constitute a regulatory taking and do not impermissibly abrogate contracts.

Moreover, the Declaratory Ruling will permit the friends and family members of inmates finally to benefit from the same cost-saving efficiencies of Voice over Internet Protocol (“VoIP”) technology that have been taken for granted by the general public for many years. In its Petition, Securus requested Commission consent to block inmate calls to Millicorp and other similarly situated VoIP providers. However, rather than awaiting the Bureau’s decision with respect to the Petition, inmate calling service (“ICS”) providers have been blocking inmate calls to the customers of certain VoIP providers during the pendency of the Commission’s review of the Petition, which has done real harm to numerous families. The friends and family members of inmates generally are burdened with the egregious cost of inmate calls because inmates have no source of income. As a result, the impermissible self-help practiced by the ICS providers while the Petition remained pending imposed substantial costs on the friends and family members of inmates—often requiring them to make difficult financial choices to remain in touch with their incarcerated loved ones. Thus, by making clear that such call blocking is impermissible and a

⁴ *See id.* § 1.115(b)(2)(i-ii). Securus does not argue that the Commission’s general policy against call-blocking should be overturned. *See* 47 C.F.R. § 1.115(b)(2)(iii). Nor does Securus allege any erroneous finding as to an important or material question of fact, nor prejudicial procedural error. *See* 47 C.F.R. § 1.115(b)(2)(iv-v).

violation of Commission policy, the Declaratory Ruling furthered the public interest and promoted the general welfare.⁵

I. THE DECLARATORY RULING IS CONSISTENT WITH THE COMMISSION'S LONGSTANDING POLICY AGAINST CALL BLOCKING

The Declaratory Ruling appropriately refuses to exempt ICS providers such as Securus from the Commission's longstanding general prohibition on call blocking. "[T]he Commission has previously found that call blocking is an unjust and unreasonable practice under section 201(b) of the [Communications] Act [of 1934]."⁶ It is "antithetical to the fundamental goal of ubiquity and reliability of the telecommunications network"⁷ and therefore "Commission precedent provides that no carriers ... may block, choke, reduce or restrict traffic in any way."⁸ This policy, which has been in effect since at least 1987, prohibits common carriers such as ICS providers from blocking calls absent express Commission approval of such call blocking.⁹ As discussed below, the Commission has never – implicitly or explicitly – exempted ICS providers from their common carrier obligation to terminate calls to local numbers. The Declaratory

⁵ See *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 12-375, FCC 13-113, ¶ 2 (Sept. 26, 2013) ("*Rates for Interstate ICS Order*") (holding that making it easier for inmates to stay connected to their families and friends promotes the general welfare because "family contact during incarceration is associated with lower recidivism rates," which equates to fewer crimes, decreases the need for additional correctional facilities, and reduces the overall costs to society, as well as directly helping especially vulnerable families and the estimated 2.7 million children of incarcerated parents).

⁶ *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11631 ¶ 5 (WCB 2007) ("*2007 Call Blocking Order*").

⁷ *Declaratory Ruling* ¶ 1.

⁸ *Id.* ¶ 9 (internal quotation marks removed).

⁹ See, e.g., *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987).

Ruling is consistent with this Commission precedent, and therefore the Commission should reject Securus' Application.

A. *THE COMMISSION PROHIBITS CALL BLOCKING GENERALLY AND HAS SPECIFICALLY PROHIBITED BLOCKING OF CALLS TO VOIP SERVICES*

The Declaratory Ruling cites many Commission-level decisions¹⁰ that clearly establish that the Commission prohibits call blocking absent Commission consent, which only is provided under “rare and limited circumstances.”¹¹ Just this month, the Commission again reiterated its “longstanding prohibition on call blocking” in the *Rural Call Completion Order*.¹² Moreover, the Commission’s February 2013 Notice of Proposed Rulemaking in the Rural Call Completion proceeding cites Commission decisions dating back 25 years to emphasize the fundamental nature of its prohibition on call blocking by common carriers.¹³ The record in this proceeding also is replete with summaries of this longstanding precedent.¹⁴ As all of these sources agree,

¹⁰ *Declaratory Ruling* ¶¶ 8-9 (citing *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18209 ¶ 973 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011)); *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9932-33 ¶ 24 (2001); *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, 1572-73 ¶¶ 7-11 (2013) (“*Rural Call Completion NPRM*”).

¹¹ *2007 Call Blocking Order*, 22 FCC Rcd at 11631 n.20.

¹² *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-135 ¶ 5 (rel. Nov. 8, 2013) (“*Rural Call Completion Order*”).

¹³ *Rural Call Completion NPRM*, 28 FCC Rcd at 1572 ¶ 7 n.19 (citing *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987)); *see also* Securus Petition at 2 (“Inmate telephone providers are subject to all federal and state regulations applicable to non-incumbent telecommunications common carriers.”).

¹⁴ *See e.g.*, *Ex Parte* Letter from Phil Marchesiello, Wilkinson Barker Knauer, LLP, counsel for Millicorp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, at 2-3 (filed March 6, 2013) (recapping recent Commission affirmations of the prohibition on call blocking); *Ex Parte* Letter from Phil Marchesiello, Wilkinson Barker Knauer, LLP, counsel for Millicorp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, at 7-8 (filed June 17, 2011) (quoting *2007*

the Commission has “long recognized [that] permitting blocking or the refusal to deliver voice telephone traffic... risks degradation of the country’s telecommunications network” and therefore the FCC “does not allow carriers to engage in call blocking and has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act.”¹⁵ The FCC has further concluded that “the general prohibition on call blocking by carriers applies to VoIP-to-PSTN traffic” and therefore “carriers are directly bound by the Commission’s general prohibition on call blocking with respect to VoIP-PSTN traffic, as with other traffic.”¹⁶

B. THE FCC HAS NEVER EXPRESSLY NOR IMPLICITLY PERMITTED ICS PROVIDERS TO BLOCK INMATE CALLS TO VOIP SERVICES

Securus’ Application relies on two prior Commission decisions regulating consumer access to “operator services,” – a service provided to inmates making outgoing calls that is fundamentally different and distinct from the VoIP service provided by Millicorp to recipients of inmate calls. Neither decision supports Securus’ position that ICS providers are subject to an exception to the Commission’s policy against call blocking and therefore are permitted to block inmate calls to customers of VoIP service providers. The Declaratory Ruling correctly concludes:

The Commission orders on which Securus bases its Petition carved out a limited exception to the call blocking prohibition in order to allow ICS providers to prevent inmates from obtaining operator services from alternative providers. ... [T]his narrow exception to the ban on call

Call Blocking Order, 22 FCC Rcd at 11629 ¶ 1, for the proposition that “Commission precedent does not permit unreasonable call blocking by carriers” and “call blocking is an unjust and unreasonable practice under section 201(b) of the Act”); *Ex Parte* Letter from Phil Marchesiello, Wilkinson Barker Knauer, LLP, counsel for Millicorp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, at 3-5 (filed March 9, 2012).

¹⁵ *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹⁶ *Rural Call Completion Order* ¶ 5 (describing the decisions of the *USF/ICC Transformation Order*).

blocking does not apply to the call routing services described by the Petition. ... The call routing services described in the Petition are not used by inmates placing phone calls, but by persons who receive calls from inmates.¹⁷

1. THE *TOCSIA ORDER* DOES NOT PERMIT SECURUS' CALL BLOCKING

The Commission's implementation of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") in the *TOCSIA Order* does not explicitly exempt ICS providers from the general prohibition on call blocking.¹⁸ As set forth in the Declaratory Ruling,¹⁹ both the statute and the *TOCSIA Order* were narrowly focused on the treatment of, and consumer access to, operator service providers ("OSPs"). The *TOCSIA Order* determined that ICS providers are not subject to TOCSIA's requirements. As a result, ICS providers are not required to ensure that inmates have access to alternative competing OSPs to place outgoing calls. However, as the Declaratory Ruling concludes and as Securus admits, Millicorp's ConsCallHome ("CCH") service and other VoIP-based call routing services are not OSPs.²⁰ Thus the *TOCSIA Order's* exemption relieving ICS providers from OSP obligations does not explicitly exempt Securus or other ICS providers from their obligation to complete calls to the customers of Millicorp and similarly situated providers. Absent such an explicit exemption, the Commission's express, longstanding prohibition against call blocking and ICS providers' statutory obligations under Sections 201 and 202 of the Communications Act remain in effect.²¹

¹⁷ *Declaratory Ruling* ¶ 15.

¹⁸ *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744 (1991) ("*TOCSIA Order*").

¹⁹ *Declaratory Ruling* ¶¶ 11-12.

²⁰ Securus Application at 6.

²¹ 47 U.S.C. §§ 201-202.

Nor does the *TOCSIA Order* implicitly permit the blocking of inmate calls to Millicorp's customers. Millicorp's service simply is not an alternate long-distance service offered to inmates like those discussed in the *TOCSIA Order*. Throughout the Application, Securus deliberately conflates services purchased by inmate callers to make outgoing calls from prison facilities with services purchased by the recipients of such inmate calls. *TOCSIA* focuses exclusively on services used by the calling party. In contrast, Millicorp's services are chosen by, subscribed to, and paid for by the called party. Thus, nothing in the *TOCSIA Order* can be interpreted to permit ICS providers unilaterally to block inmates' calls to Millicorp's customers while completing calls to the customers of other providers. Such discrimination though selective call blocking is fundamentally inconsistent with Securus' common carrier obligations under sections 201 and 202 of the Communications Act.

2. THE BILLED PARTY PREFERENCE ORDER DOES NOT PERMIT SECURUS' CALL BLOCKING

Securus also incorrectly alleges that the *Billed Party Preference* ("BPP") Order's "express acceptance" of the single-provider system for inmate phones is a license for ICS providers to block inmate calls to customers of call routing services.²² The *BPP Order* declined to require ICS providers to implement BPP for outgoing calls by prison inmates because such a requirement could disrupt the existing single-provider system for inmate phone services.²³ Securus argues that the *BPP Order* therefore permits ICS providers to block inmate calls to Millicorp's customers because, like BPP, such services might disrupt the single-provider

²² Securus Application at 6-7; *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998) ("*BPP Order*").

²³ Securus Application at 6; *BPP Order*, 13 FCC Rcd at 6156 ¶ 57.

system.²⁴ This assertion is founded on a convenient misstatement of the fundamental differences between the services provided by ICS provider to inmates and the services provided by Millicorp to the recipients of inmate calls.

As discussed above, call routing services such as CCH are evaluated, selected, paid for, and used by call recipients, not by the inmates who initiate the calls. In contrast, BPP is a service used by call initiators. The *BPP Order* emphasizes this fact by focusing exclusively on call initiators, not call recipients, and by clearly distinguishing between a calling party and a called party. Indeed, the *BPP Order* focuses on “address[ing] the problem of widespread consumer dissatisfaction concerning ... calls from public phones,” noting that “callers at such locations ... typically do not know what rates the particular OSP will be charging.”²⁵ Similarly, the *BPP Order*’s discussion of ICS providers focuses exclusively on “calls from inmate-only telephones,” noting that “callers from these facilities are generally unable to select the carrier of their choice.”²⁶ The *BPP Order* concludes that “we are persuaded by comments ... on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted.”²⁷

As a result of this fundamental difference between Millicorp’s CCH service and BPP, the *BPP Order*’s underlying rationale for exempting ICS providers from BPP obligations simply does not apply to call routing services. Unlike BPP, Millicorp’s service does not disturb the single-provider inmate calling system in any way because Millicorp does not provide

²⁴ Securus Application at 6.

²⁵ *BPP Order*, 13 FCC Rcd at 6123 ¶ 1 (emphasis added). To alleviate these problems, the *BPP Order* “require[s] OSPs to disclose orally to away-from-home callers how to obtain the total cost of a call ... [and] makes it easier for such callers using operator services to obtain immediately the cost of the call...” *Id.* (emphasis added).

²⁶ *Id.* at 6155 ¶ 56 (emphasis added, citation omitted).

²⁷ *Id.* at 6156 ¶ 57 (emphasis added).

communications services to inmates or prison facilities. Millicorp no more affects Securus' single-provider arrangements with its prison customers than does Vonage or AT&T, each of which also serves customers who receive calls from inmates.

Securus further argues that inmates should be characterized as users of Millicorp's service because the inmates are dialing the prison phones and some may be "actively aware" that their friends or family members are customers of Millicorp's service.²⁸ This is nonsensical. Just as an AT&T subscriber does not transform into a Verizon subscriber each time that the AT&T subscriber calls a Verizon subscriber, inmates cannot credibly be deemed to be users of Millicorp's service merely because they sometimes place calls to Millicorp's customers.

Ultimately, nothing in the *TOCSIA* or *BPP Orders* supports Securus' contorted assertion that an inmate caller is a user of Millicorp's CCH service or that Millicorp somehow disrupts or undermines the single-provider system used by prisons to administer their phone platforms. To the contrary, both orders are concerned entirely with services used by inmates to place outgoing calls. Millicorp does not serve inmates but instead solely serves call recipients. Furthermore, consistent with the exemptions in the *TOCSIA* and *BPP Orders*, ICS providers remain contractual monopolists within the prisons that they serve, and inmates have no choice but to place calls using the ICS providers' systems. The only choice that an inmate has when placing a call over an ICS platform is who to call. Neither the inmate nor the ICS provider controls whether the call recipient is a customer of Millicorp, Vonage, or AT&T. As common carriers, however, ICS providers may not unjustly and unreasonably discriminate against Millicorp by choosing whether to complete the inmate's call based on the identity of the call recipient's service provider.

²⁸ Securus Application at 7.

II. THE DECLARATORY RULING DOES NOT IMPOSE RESALE OR INTERCONNECTION OBLIGATIONS

Securus' Application overcomplicates what is really a very simple, longstanding, and straightforward telecommunications obligation: absent an express Commission exception, common carriers are required to terminate calls to the numbers dialed by their customers. Like other VoIP providers, Millicorp may assign its customers telephone numbers that are not geographically congruent with the physical location of the customer. However, this fact does not in any way change an ICS provider's basic common carrier obligation to complete inmate calls to Millicorp's customers. Moreover, it certainly does not cause the mere completion of a call to a geographically remote number to somehow cause the called party's service provider to constitute a reseller of the calling party's service provider. Further, the Commission's requirement that ICS provider complete such calls also does not constitute a new interconnection mandate specific to ICS providers.

In its Application, Securus treats geographically unassociated numbers as a novel and subversive technical trick. However, such numbers are not unusual. There are a variety of circumstances under which telecommunications customers may hold geographically disassociated numbers—for example, virtual NXX, foreign exchange, various VoIP services, and ported numbers. This practice has existed for many years, and the Commission expressly has approved this practice with respect to VoIP services: “Your VoIP provider may permit you to select an area code for your VoIP service that is different from the area code in which you live. Calls within your VoIP area code may not be billed as long distance calls.”²⁹ Although the Commission and courts have dealt with intercarrier compensation issues regarding such

²⁹ FCC Guide: Voice Over Internet Protocol (VoIP), <http://www.fcc.gov/guides/voice-over-internet-protocol-voip> (last visited Nov. 14, 2013).

numbers, neither has ever concluded – or even considered the idea – that carriers are exempt from completing calls to geographically disassociated numbers.³⁰ That such numbers are geographically disassociated from the location of the called person does not transform the traditional obligation of a common carrier to complete a call into a resale transaction or an interconnection requirement.

A. *SECURUS IS NOT REQUIRED TO RESELL ITS SERVICES TO MILLICORP*

Securus incorrectly claims that the Declaratory Ruling entitles third parties to “use Securus’ finished calling service in much the same way that Section 251 requires ILECs to provide finished local exchange service to competitive LECs for resale to retail end users.”³¹ In fact, the completion of inmate calls by ICS providers to the customers of call routing services is nothing like a Section 251 resale arrangement. Section 251 obligates ILECs that have deployed wireline infrastructure to retail end users to permit third-party carriers to use the ILEC’s infrastructure to offer the ILEC’s retail end users third-party services. By contrast, despite the issuance of the Declaratory Ruling, Securus remains the sole entity permitted to offer voice telephony services to inmates within the prison facilities that it serves. Millicorp offers no services to inmates, has no facilities at any prison facility, and has no ability to use Securus’ physical facilities in any way.

The Declaratory Ruling does not require Securus to make any facilities or services available on a resale basis to any other carriers, including Millicorp. Instead, when an inmate in a Securus-supported prison facility places a call to a Millicorp customer, Securus merely routes the call to the public switched telephone network (“PSTN”) to ultimately be completed to the

³⁰ See, e.g., *Global NAPs v. Verizon New Eng.*, 454 F.3d 91 (2nd Cir. 2006) (resolving an access charge dispute).

³¹ *Id.*

Millicorp customer's number. To suggest that this creates a reseller relationship between Securus and Millicorp is akin to suggesting that Vonage somehow becomes a reseller of AT&T's service each time a Vonage customer calls an AT&T customer. This characterization is simply wrong.

B. SECURUS IS NOT REQUIRED TO INTERCONNECT WITH MILLICORP

Securus also incorrectly asserts that the Declaratory Ruling requires ICS providers to interconnect with call routing services "at their VoIP router." This is both wrong and a dramatic oversimplification of the manner in which calls originating from Securus' inmate calling platforms ultimately are routed to Millicorp's customers. The Commission has established a very clear scope for the term "interconnection" that contradicts Securus' misguided claim. In the *Local Competition Order* implementing Section 251 of the 1996 Telecommunications Act, the Commission "conclude[d] that the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic" and does not "[i]nclude] the transport and termination of traffic."³² In fact, no Securus facilities are physically interconnected directly to Millicorp's VoIP routers. Instead, both Securus' infrastructure and Millicorp's infrastructure are connected to the PSTN, and inmate calls initiated on Securus platforms are routed over the PSTN. To suggest that this is equivalent to the direct interconnection of Securus' and Millicorp's networks is akin to asserting that all carriers who can initiate or terminate their customers' calls over the PSTN are directly and physically interconnected. The mere act of connecting a call to a local number through the PSTN is the termination of traffic, not the physical linking of two networks through interconnection.

³² *Implementation of the Local Competition Provisions of in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590 ¶ 176 (1996) ("*Local Competition Order*") (emphasis added).

III. THE ORDER IS NOT AN IMPERMISSIBLE ABROGATION OF CONTRACTS OR AN UNCONSTITUTIONAL TAKING

As an initial matter, contrary to Securus' assertion, the Declaratory Ruling is not directed at contracts between correctional facilities and ICS providers, and Securus does not provide a single specific example of any contract between Securus and a correctional facility that was abrogated by the Declaratory Ruling. To the contrary, Securus already has committed "to cease and desist any and all blocking of inmate-initiated calls to Millicorp Numbers except to the extent permitted" under procedures jointly developed by Securus and Millicorp.³³ It is not clear how compliance with the Declaratory Ruling could cause an abrogation of Securus' contracts with prison facilities when presumably the commitments that Securus made to the Commission do not.

Even if the Declaratory Ruling were somehow construed as modifying or abrogating a particular contractual provision, the Commission nevertheless would still be acting within its lawful authority. As the Commission recently concluded in a related order imposing rate reform on ICS services, "[a]greements between ICS providers and correctional facilities – to which end users are not parties – cannot trump the Commission's authority to enforce the requirements of the Communications Act to protect those users within the Commission's jurisdiction..."³⁴ According to the Commission, "it is well established that under the *Sierra-Mobile* doctrine, the Commission has the power to prescribe a change in contract rates when it finds them to be unlawful, and to modify other provisions of private contracts when necessary to serve the public

³³ See Letter from Dennis J. Reinhold, Vice President, General Counsel and Secretary, Securus, to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 13-79, at 1 (filed Apr. 26, 2013).

³⁴ *Rates for Interstate ICS Order* ¶ 101.

interest.”³⁵ This determination is equally applicable here. ICS providers and prisons simply cannot agree by contract to violate the Commission’s longstanding call blocking policies. The Commission certainly would not permit an ICS provider and a prison to enter into a contract that prohibits the ICS provider from completing calls to all customers of AT&T or Vonage. For the same reasons, the Commission should not countenance Securus’ assertion that the Commission does not have authority to prohibit Securus and its prison facility clients from entering into contracts prohibiting the completion of inmate calls to Millicorp’s customers.³⁶

Similarly, the Declaratory Ruling does not impose an unconstitutional taking. As the Commission recently has noted, “[i]t is well established that the Fifth Amendment does not prohibit the government from taking lawful action that may have incidental effects on existing contracts.”³⁷ For example, the Commission found that any incidental effect on contractual expectations caused by the Commission’s imposition of rate regulation on ICS providers did not constitute a cognizable takings claim under the Fifth Amendment and that, even assuming *arguendo* that ICS providers could demonstrate a valid property interest, the Commission’s rate regulation was neither a *per se* nor a regulatory taking. Requiring ICS providers to complete local calls is far less likely to impact the contractual expectations of ICS providers than outright

³⁵ See *id.* ¶ 101, n.365 (citing *Western Union Tel. Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987)) (internal quotation marks removed).

³⁶ Prior to filing this Application, Securus primarily argued in this proceeding that it should be permitted to block inmate calls to Millicorp’s customers because such calls are somehow less secure than calls to the customers of other providers. See, e.g., Letter from Stephanie A. Joyce, counsel to Securus Technologies, Inc., to Marlene H. Dortch, FCC, WC Docket No. 09-144, at 1 (filed June 15, 2012) (“Securus explained the security concerns that gave rise to its Petition...”). The Declaratory Ruling rejects this position, noting that “neither petitioners nor commenters have supported their generalized allegation of security concerns with specificity.” *Declaratory Ruling* n.34. In any event, Securus now appears to have abandoned this argument and does not raise it in the Application.

³⁷ *Id.* ¶ 103.

rate regulation. Therefore, any incidental impact on ICS providers' contractual expectations does not constitute a cognizable takings claim under the Fifth Amendment.³⁸

However, even assuming that ICS providers had such a cognizable claim, prohibiting them from blocking inmate calls does not constitute a permanent condemnation of physical property and thus does not constitute a *per se* taking.³⁹ Similarly, the Declaratory Ruling does not constitute a regulatory taking under the three factors the Supreme Court has found to be of particular significance.⁴⁰ First, the economic impact of prohibiting the blocking of inmate calls to Millicorp's customers is likely to be far less than the economic impact of the Commission's regulation of ICS rates generally, which the Commission found to have a minimal adverse effect.⁴¹ Second, the Declaratory Ruling does not impinge on investment-backed expectations given that the instant proceeding has been pending before the Commission for more than four years and was decided by the Commission under its longstanding policy against call-blocking. Third, the Commission's action "substantially advances the legitimate governmental interest" in preserving the character of the national telecommunications network and "will not wreak on ICS providers the kind of 'confiscatory' harm ... that might give rise to a tenable claim under the Fifth Amendment's Taking's Clause."⁴²

³⁸ Moreover, as noted *supra* in note 36 and the accompanying text, Securus currently is not blocking inmate calls to Millicorp's customers in compliance with certain commitments that Securus made to the Commission. Thus, the Declaratory Ruling may have no impact on Securus' contractual expectations.

³⁹ *Id.* ¶ 104 & n.373 (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427 (1982) and *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 332 (2002)).

⁴⁰ *Id.* ¶ 104 (citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)).

⁴¹ *Id.* ¶ 105.

⁴² *Id.* ¶ 107 (citing *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989)).

IV. CONCLUSION

For the reasons set forth herein, the Commission should dismiss Securus' Application.

CERTIFICATE OF SERVICE

I hereby certify on this 14th day of November 2013 that the foregoing Opposition and Motion for Leave to File Out of Time was served via First Class mail on the following persons:

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