

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

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

WC Docket No. 09-144

SECURUS TECHNOLOGIES, INC.

**REPLY IN SUPPORT OF
APPLICATION FOR REVIEW
(DA 13-1990)**

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. §§ 1.104 and 1.115(f), files this reply in support of its Application for Review¹ of the Declaratory Ruling released September 26, 2013, in this docket.² As explained below, the arguments Millicorp raises in its late-filed Opposition³ provide no basis to deny the relief that Securus requests.

I. MILLICORP’S ARGUMENTS DEMONSTRATE THAT THE BUREAU EXCEEDED ITS DELEGATED AUTHORITY

Millicorp argues that the *TOCSIA Order*⁴ and *Billed Party Preference Order*⁵ do not expressly permit inmate communication service (“ICS”) providers to block calls to VoIP services,⁶ and thus it necessarily follows that Millicorp is entitled to insert its “call routing services”⁷ into the path of inmate-initiated calls. Even with the most generous interpretation, Millicorp’s argument is little more than an observation that the *TOSCIA Order* and *Billed Party Preference Order* did not address a form of technology that did not exist at the time. This proves nothing, however, because the reverse can be said with greater force: none of the call blocking orders cited by Millicorp regard ICS services, even though ICS services clearly existed at the

¹ WC Docket Nos. 09-144, *et al.*, *Petition for Declaratory Ruling of Securus Technologies, Inc.*, Application for Review (DA 13-1990) (Oct. 28, 2013).

² WC Docket Nos. 09-144, *et al.*, *Petition for Declaratory Ruling of Securus Technologies, Inc.*, Declaratory Ruling and Order, DA 13-1990 (rel. Sept. 26, 2013) (“Declaratory Ruling”).

³ WC Docket No. 09-144, *Petition for Declaratory Ruling of Securus Technologies, Inc.*, Opposition of Millicorp (Nov. 14, 2013) (“Millicorp Opposition”). No other party opposed the Application.

⁴ CC Docket 90-313, *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd. 2744 (1991) (“*TOCSIA Order*”).

⁵ CC Docket No. 92-77, *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, FCC 98-9, 13 FCC Rcd. 6122 (1998) (“*Billed Party Preference Order*”).

⁶ Millicorp Opposition at 6-9; *see also* Declaratory Ruling ¶ 11 (“As a threshold matter, call routing services like Millicorp’s CCH services are not expressly addressed by the *TOCSIA Order*.”).

⁷ *E.g.*, Declaratory Ruling ¶ 7.

time.⁸ The Declaratory Ruling, therefore, cannot be viewed as the application of an existing policy, but rather would be the creation of an entirely new policy.⁹ As such, the Declaratory Ruling is a decision issued in excess of the Bureau's authority.¹⁰

The *Rural Call Completion Order*, on which Millicorp relies solely for the basic proposition that blocking calls is not a salutary practice, is inapposite. That order addresses the dropping of long distance calls somewhere within the network due to the handling of calls by multiple intermediate carriers, with the possibility that some of those carriers provide "inferior service".¹¹ Securus's Petition, by contrast, regards the deliberate re-routing of inmate calls to unknown terminating numbers through the use of unregistered "local" numbers. Thwarting attempts to terminate an inmate call to an unknown number does not equate to preventing inmates from having their calls completed if they dial the true telephone number of their loved one.

Moreover, the Commission did not need to predict the introduction of calling routing services using VoIP-based transport in order to establish a policy of permitting dial-around blocking on inmate phones. The import of the *TOCSIA Order* and *Billed Party Preference Order* was their affirmation of the existing correctional policy requiring inmates to use the pre-selected ICS provider not simply to initiate the call, as the Bureau and Millicorp now

⁸ E.g., WC Docket No. 13-39, *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-135 ¶ 5 (rel. Nov. 8, 2013) ("*Rural Call Completion Order*").

⁹ See Application for Review at 7-11.

¹⁰ 47 C.F.R. § 1.115(b)(2)(ii); see also 47 C.F.R. § 0.291(a)(2) ("The Chief, Wireline Competition Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.").

¹¹ *Rural Call Completion Order* ¶ 16.

conclude, but to carry the call to the called party.¹² Those orders clearly denied both the inmate and the called party of the right to select alternative carriers or, as here, “call routers”. The Declaratory Ruling misses the crucial policy underpinning of those decisions, and as a result contravenes them. It should be set aside on this basis.¹³

II. MILLICORP’S ARGUMENTS IGNORE END-TO-END ANALYSIS

Millicorp argues that the plain meanings of the *TOSCIA Order* and *Billed Party Preference Order* are unaffected by the Declaratory Ruling, because the inmate is still required to use the ICS provider to initiate the call.¹⁴ Millicorp must necessarily assume, then, that the inmate’s “call” is concluded when it reaches the third party’s call router, such that the ICS provider has fulfilled its role. This analysis is inconsistent with Commission precedent and ignores the serious safety consequences of allowing inmate calls to be “re-routed”.

Under long-standing end-to-end analysis, the Commission focuses on “the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switch or exchanges between carriers.”¹⁵ With regard to calls to a calling card platform,¹⁶ ISP-bound traffic,¹⁷ or Voice-over-IP services,¹⁸ the Commission has

¹² Cf. *Billed Party Preference for Interlata 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd. 6122, 6157 ¶¶ 57-60 (1998) (discussing exclusive contracts and requiring ICS providers to “identify orally themselves to **both parties** to a collect call”); see also *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd. 16629, 16632 ¶ 5 (Dec. 28, 2012) (“Unlike non-incarcerated customers who have access to alternative calling platforms on public payphones, inmates only have access to payphones operated by a single provider for all available services[.]”).

¹³ 47 C.F.R. § 1.115(b)(2)(i).

¹⁴ See, e.g., Millicorp Opposition at 9 (“Millicorp does not serve inmates but instead solely serves call recipients.”). This logic is borrowed from the Bureau. See Declaratory Ruling ¶ 14.

¹⁵ *Bell Atlantic Tel. Co. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd. 3689, 3691 (1999)).

¹⁶ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 4826, 4833-34 ¶¶ 23-24

repeatedly treated the entire call as a single call rather than dividing the communication at an arbitrary intermediate point.¹⁹ Millicorp’s position thus suffers from the sort of myopic network view that the Commission has previously rejected.

When calls made by inmates are analyzed on an end-to-end basis, it is apparent that call routing services are intermeddlers in Securus’s ICS service – a service that has been consistently treated as a unified call path by the Commission. By interposing themselves into the call path, these “call routing” services knowingly cause interstate and intrastate calls to be falsely portrayed as local. As a result, and as Securus explained in its Application for Review, the Declaratory Ruling imposes new interconnection and resale obligations on Securus and other ICS providers.²⁰ For the first time, Securus will be required to permit another service provider to deliver the call to the called party and take control of it. That service provider will be using Securus’s network to originate long distance traffic, and then pay nothing to Securus for this necessary input into the call. In order to avoid an unlawful taking,²¹ the Commission should either reverse the Declaratory Ruling or clarify that calls to such routing services are subject to full interstate calling rates.²²

(2005); *Regulation of Prepared Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290, 7297 ¶¶18-20 (2006).

¹⁷ See, e.g., *Core Communications v. FCC*, 592 F.3d 139, 142 (D.C. Cir 2010) (noting Commission’s repeated use of the end-to-end analysis for ISP-bound traffic).

¹⁸ *Vonage Holdings Corp.*, Memorandum Opinion and Order, 19 FCC Rcd. 22404, 22413 ¶¶ 17-18 (2004).

¹⁹ See, e.g., Declaratory Ruling ¶¶ 14-15 (dividing the call into two components in order to reach conclusion that call routing services do not fit within prior Commission orders).

²⁰ Application for Review at 7-11.

²¹ *Id.* at 12-14.

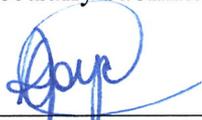
²² See Millicorp Opposition at 10-11 (Commission may need to “deal[] with intercarrier compensation issues”).

III. MILLICORP'S ARGUMENTS REGARDING ABROGATION OF CONTRACTS ARE WITHOUT MERIT

Millicorp asserts that the Declaratory Ruling does not improperly abrogate Securus's existing contracts²³ that, as Securus has shown, require the detection and thwarting of attempts to forward inmate calls, to dial around the resident phone system, and to create three-way calls.²⁴ Millicorp's argument is based on the Commission's statement in the *Inmate Rate Order* about changing existing calling rates.²⁵ Millicorp does not address the question of whether the Declaratory Ruling survives scrutiny under the *Sierra-Mobile* doctrine²⁶ which Securus discussed extensively in its Application for Review.²⁷ The Bureau actually did not address the impact of its decision on existing contracts, though it is aware of Securus's contractual obligations in this regard.²⁸ Millicorp's attempt to fill in that gap, via reference to a decision in another proceeding, cannot resolve the issue.

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²³ Millicorp Opposition at 13-14.

²⁴ See Application for Review at 15-17.

²⁵ Millicorp Opposition at 13 (citing WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 ¶101 (rel. Sept. 26, 2013)).

²⁶ See *Texaco, Inc. v. FERC*, 148 F.3d 1091, 1097 (D.C. Cir. 1998) (“the public interest necessary to override a private contract . . . requires analysis of the manner in which the contract harms the public interest and of the extent to which abrogation or reformation mitigates the contract's deleterious effect”).

²⁷ Application for Review at 15-17.

²⁸ *Id.* at 15 (citing Securus Petition for Declaratory Ruling at 8-9, 13).

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I hereby certify on this 22nd day of November, 2013, that the foregoing Reply in Support of Application for Review, was served via First Class and electronic* mail on the following persons:

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