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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)**

Stephanie A. Joyce  
ARENT FOX LLP  
1717 K Street, N.W.  
Washington, D.C. 20036  
Telephone 202.857.6081  
Facsimile 202.857.6395  
Stephanie.Joyce@arentfox.com

*Counsel for Securus Technologies, Inc.*

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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 Review<sup>1</sup> of the Declaratory Ruling released September 26, 2013, in this docket.<sup>2</sup> As explained below, the arguments Millicorp raises in its late-filed Opposition<sup>3</sup> 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*<sup>4</sup> and *Billed Party Preference Order*<sup>5</sup> do not expressly permit inmate communication service (“ICS”) providers to block calls to VoIP services,<sup>6</sup> and thus it necessarily follows that Millicorp is entitled to insert its “call routing services”<sup>7</sup> 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

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

<sup>2</sup> 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”).

<sup>3</sup> 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.

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

<sup>5</sup> 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*”).

<sup>6</sup> 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*.”).

<sup>7</sup> *E.g.*, Declaratory Ruling ¶ 7.

time.<sup>8</sup> 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.<sup>9</sup> As such, the Declaratory Ruling is a decision issued in excess of the Bureau's authority.<sup>10</sup>

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".<sup>11</sup> 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

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<sup>8</sup> 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*").

<sup>9</sup> See Application for Review at 7-11.

<sup>10</sup> 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.").

<sup>11</sup> *Rural Call Completion Order* ¶ 16.

conclude, but to carry the call to the called party.<sup>12</sup> 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.<sup>13</sup>

## 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.<sup>14</sup> 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.”<sup>15</sup> With regard to calls to a calling card platform,<sup>16</sup> ISP-bound traffic,<sup>17</sup> or Voice-over-IP services,<sup>18</sup> the Commission has

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<sup>12</sup> 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[.]”).

<sup>13</sup> 47 C.F.R. § 1.115(b)(2)(i).

<sup>14</sup> 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.

<sup>15</sup> *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)).

<sup>16</sup> *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.<sup>19</sup> 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.<sup>20</sup> 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,<sup>21</sup> the Commission should either reverse the Declaratory Ruling or clarify that calls to such routing services are subject to full interstate calling rates.<sup>22</sup>

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

<sup>17</sup> 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).

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

<sup>19</sup> 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).

<sup>20</sup> Application for Review at 7-11.

<sup>21</sup> *Id.* at 12-14.

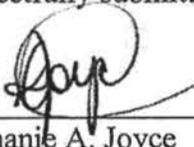
<sup>22</sup> See Millicorp Opposition at 10-11 (Commission may need to “deal[] with intercarrier compensation issues”).

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

Millicorp asserts that the Declaratory Ruling does not improperly abrogate Securus's existing contracts<sup>23</sup> 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.<sup>24</sup> Millicorp's argument is based on the Commission's statement in the *Inmate Rate Order* about changing existing calling rates.<sup>25</sup> Millicorp does not address the question of whether the Declaratory Ruling survives scrutiny under the *Sierra-Mobile* doctrine<sup>26</sup> which Securus discussed extensively in its Application for Review.<sup>27</sup> 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.<sup>28</sup> Millicorp's attempt to fill in that gap, via reference to a decision in another proceeding, cannot resolve the issue.

Dated: November 22, 2013

Respectfully submitted,

By:   
Stephanie A. Joyce  
ARENT FOX LLP  
1717 K Street, N.W.  
Washington, D.C. 20036  
Telephone 202.857.6081

<sup>23</sup> Millicorp Opposition at 13-14.

<sup>24</sup> See Application for Review at 15-17.

<sup>25</sup> 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)).

<sup>26</sup> 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”).

<sup>27</sup> Application for Review at 15-17.

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

Facsimile 202.857.6395  
Email Stephanie.Joyce@arentfox.com

*Counsel for Securus Technologies, Inc.*

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CERTIFICATE OF SERVICE

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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:

Marlene H. Dortch \*  
Secretary  
Federal Communications Commission  
Marlene.Dortch@fcc.gov

Chairman Tom Wheeler  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, DC 20554

Commissioner Mignon Clyburn \*  
Federal Communications Commission  
Mignon.Clyburn@fcc.gov

Commissioner Michael O'Rielly  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, DC 20554

Commissioner Jessica Rosenworcel \*  
Federal Communications Commission  
Jessica.Rosenworcel@fcc.gov

Commissioner Ajit Pai \*  
Federal Communications Commission  
Ajit.Pai@fcc.gov

Sean Lev \*  
General Counsel  
Federal Communications Commission  
Sean.Lev@fcc.gov

Julie Veach \*  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
Julie.Veach@fcc.gov

Phillip R. Marchesiello  
Wilkinson Barker Knauer LLP  
2300 N Street, NW  
Suite 700  
Washington, DC 20037

Cherie R. Kiser  
Cahill Gordon & Reindel LLP  
1990 K Street, NW  
Suite 950  
Washington, DC 20006

*Counsel to Millicorp*

*Counsel to Global Tel\*Link Corporation*

Michael Jeffreys-Bey  
#197457  
Jessup Correctional Institution (JCI)  
P.O. Box 534  
Jessup, MD 20794

Clarissa Ramon  
Public Knowledge  
1818 N Street, NW  
Suite 410  
Washington, DC 20036

Luis DelaRosa  
Spain Telecom, Inc.  
1220 Broadway  
Suite 803  
New York, NY 10001

Menachem M. Katz  
Aleph Institute  
9540 Collins Avenue  
Surfside, FL 33154

Larry J. Levine  
Pacific Telephone Company  
Post Office Box 215  
Moorpark, CA 93020

James K. Dank  
CheapJailCalls.com  
P.O. Box 8245  
Tampa, FL 33674

G. K. Butterfield  
Member of Congress  
2305 Rayburn House Office Building  
Washington, DC 20515

Major Roger Paxton  
Correctional Officer  
Richland County Jail  
73 East Second Street  
Mansfield, OH 44902

Tommie E. Joe  
Public Communications Services  
11859 Wilshire Blvd.  
Suite 600  
Los Angeles, CA 90025

Molly Woods  
Jail Commander  
Office of Sullivan County Sheriff  
24 South State Street  
Sullivan, IN 47882

James P. LaPine  
Jail Commander  
Switzerland County Jail  
405 Liberty Street  
Vevay, IN 47043

Stephanie B. Jackson  
NCIC Operator Services  
606 East Magrill  
Longview, TX 75601

Bill Robinson  
Corrections Concepts, Inc.  
P.O. Box 821433  
Dallas, TX 75382

Lee G. Petro  
Drinker Biddle & Reath LLP  
1500 K Street, NW  
Washington, DC 20005

*Counsel to CURE*

Michael S. Hamden  
Hamden Consulting  
1612 Homestead Road  
Chapel Hill, NC 27516

Jay A. Nolte  
Assistant Warden  
Columbiana County Jail  
P.O. Box 540  
Lisbon, OH 44432

Paul Jennings  
AGM, Inc.  
11859 Wilshire Blvd.  
Ste. 600  
Los Angeles, CA 90025

Mike Harris  
Jailer  
Pulaski County Detention Center  
300 Hail Knob Road  
Somerset, KY 42503

David C. Bartlett  
Jeffrey S. Lanning  
John E. Benedict  
CenturyLink  
701 Pennsylvania Ave., NW, Suite 820  
Washington, DC 20004

Donald K. Hall  
Jailer  
121 Lee Avenue  
Morehead, KY 40351

Janet Beckett  
107 Northwood Drive  
Fishers, IN 45038

Anthony R. Bambocci  
Inmate Telephone, Inc.  
4200 Industrial Park Drive  
Altoona, PA 16602

Harvey Pelfrey  
Administrator  
Three Forks Regional Jail  
2475 Center Street  
P.O. 695  
Beattyville, KY 41311

Capt. R. Gibson  
Jail Administrator  
Wood County Sheriff's Office  
1960 East Gypsy Lane Road  
Bowling Green, OH 43402

Dave Phalen  
Fairfield County Sheriff  
221 East Main Street  
Lancaster, OH 43130

Brad M. Little, Lt. Colonel  
1<sup>st</sup> Assistant Deputy Superintendent  
Berkshire County Sheriff's Office  
467 Cheshire Road  
Pittsfield, MA 01201

Theodore B. Bruner  
Captain, Jail Administrator  
Darke County Sheriff's Office  
5185 County Home Road  
Greenville, OH 45331

Lt. Larry Mosley  
Jail Administrator  
Pickaway County Sheriff's Office  
Circleville, OH 43113

Dale R. Osborn  
Executive Director  
Multi-County Correctional Center  
1514 Victory Road  
Marion, OH 43302

Marty V. Donini  
Sheriff  
Scioto County Sheriff's Office  
1025 Sixteenth Street  
Portsmouth, OH 45662

Granville Bud Potter  
Director  
Franklin County Community Based  
Correctional Facility  
1745 Alum Creek Drive  
Columbus, OH 43207

Thomas J. Grills  
Ripley County Sheriff  
P.O. Box 686  
Versailles, IN 47042

Capt. Mike Kyle  
Jail Administrator  
Ashland County Jail  
Justice Complex  
1205 East Main Street  
Ashland, OH 44805

Barry Harmon  
Jailer  
Boyle County Detention Center  
1860 S. Danville Bypass  
Danville, KY 40422

Lt. John Allen  
Allen County Sheriff's Office  
333 N. Main Street  
P.O. Box 1243  
Lima, OH 45802

Wayne H. Genereux  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747

Ken Dawson  
Inmate Calling Solutions, LLC  
5883 Rue Ferrari  
San Jose, CA 95138

Kermit D. Heaton  
Value-Added Communications  
3801 East Plano Pkwy.  
Suite 100  
Plano, TX 75074

Marcus W. Trathen  
Brooks, Pierce, McLendon, Humphrey &  
Leonard LLP  
Suite 1600  
Wachovia Capitol Center  
Post Office Box 1800  
Raleigh, NC 27602

*Counsel to Pay Tel Communications, Inc.*

Jim Dennis  
Corrections Commission of Northwest Ohio  
03151 County Road 2425  
Stryker, OH 43557

James N. Richards  
Wayne County Sheriff's Office  
Justice Center  
201 W. North Street  
Wooster, OH 44691

Ralph C. Youmans  
Warden's Office  
Tioga County Prison  
1768 Shumway Hill Road  
Wellsboro, PA 16901

Barbara McCarty  
13500 Chenal Parkway  
Apt. 1203  
Little Rock, AR 72211

By:



Stephanie A. Joyce