

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**SECURUS TECHNOLOGIES, INC.
RESPONSE TO HRDC OBJECTIONS**

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to the Protective Order entered in this docket,¹ files this Response to the objections lodged on July 23, 2014, in letter form (“Objections”) by the Human Rights Defense Center (“HRDC”) against the redactions to the Securus cost study filed July 17, 2014. The Objections are procedurally defective and contravene Commission precedent governing the treatment of confidential, competitively sensitive information and should be denied.

In order, however, to avoid a protracted dispute, Securus has filed a less redacted version of its cost study in the public record today. This version addresses most of HRDC’s concerns.² Detailed information about Securus’s costs of service and a recent financial transaction remain redacted and deserve confidential treatment under Rule 0.459 and Commission precedent. Should the Commission choose to consider and rule on the Objections, they should be denied as to those items.

¹ WC Docket No. 12-375, Protective Order, DA 13-2434 (rel. Dec. 19, 2013).

² Securus filed a Request for Confidential Treatment in this docket on July 17, 2014, pursuant to 47 C.F.R. § 0.459, asking that all “disaggregated cost data” “including but not limited to breakdowns of equipment costs, security costs, costs for ancillary services” be given confidential status. Securus continues to seek confidential treatment for the data that remains redacted in the cost study documents filed today.

STANDARD OF REVIEW

Rule 0.459 permits a submitting party to seek confidential treatment for particular documents due to “the degree to which the information is commercial or financial, or contains a trade secret or is privileged” and “how disclosure of the information could result in substantial competitive harm.” 47 C.F.R. § 0.459(b)(3) & (5).

DISCUSSION

I. THE OBJECTIONS ARE PROCEDURALLY DEFECTIVE AND SHOULD BE DENIED ON THAT GROUND

The Objections rely on and quote from the Protective Order, but they violate the procedural requirements set forth in that very order: “Any person wishing to challenge the designation of a document or portion of a document as Confidential must file such a challenge at the Commission and serve it on the Submitting Party.”³

The Objections contain no certificate of service nor any indication that Securus or its counsel was sent a copy, even by electronic mail. Securus found the Objections during a periodic review of the docket. But the Protective Order was meant to ensure that parties whose confidential designations are challenged will be served directly with those challenges. HRDC’s failure to comply with the Protective Order has no justification. The Commission can deny the Objections without review on that ground.

It also bears mention that HRDC has not executed the Protective Order or requested the proprietary version of any Securus document. Were it to do so, Securus would supply the unredacted documents in order to allow HRDC to review the cost data. In brief, nothing is preventing HRDC from reviewing the data if it wishes to do so.

³ Protective Order ¶ 3 (emphasis added).

II. THE COMMISSION SHOULD DENY THE OBJECTIONS REGARDING COST OF EQUIPMENT AND THE ABRY TRANSACTION

Securus voluntarily has removed many redactions from the cost study documents due to the Objections. As stated above, the version of the public cost study that is being filed today will address most of HRDC's concerns. Not all of those concerns, however, are well founded, and Securus has demonstrated good cause for seeking confidential treatment of its detailed equipment cost data and of non-public information about a recent financial transaction with ABRY Partners.

For ease of review, Securus will address each of HRDC's six (6) challenges in turn:

1. The Number of Facilities

Securus has made the information requested in this item public.

2. The Commissions Paid

Securus has made the information requested in this item public.

3. The Number of Revenue Producing [sic] and Non-Revenue Producing Calls

Securus has made the information requested in this item public.

4. Ancillary Fees

Securus has made the information requested in this item public.

5. The Cost of Telephone Systems and Equipment

Securus has provided, as it was required to do,⁴ very detailed data about the costs it incurs to provide service, divided into several categories and divided into Direct and Joint and Common costs. This information is classically of the type for which the Commission will afford

⁴ WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 ¶ 125 (rel. Sept. 26, 2013); FCC, Instructions for Inmate Calling Services Mandatory Data Collection, OMB 3060-1196 (June 16, 2014) ("Instructions").

confidential treatment under Rule 0.459: disclosure of this information “could result in substantial competitive harm.” 47 C.F.R. § 0.459(b)(5). It includes “information [that] is commercial or financial, or contains a trade secret or is privileged.” *Id.* § 0.459(b)(3).

The Objections rely on the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) rather than Commission rules. But FOIA also protects the information HRDC seeks. FOIA contains an express exemption for “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

The Commission has granted protection, in the face of a FOIA challenge, to “competitively sensitive, highly confidential financial and commercial information that is not of the type customarily disclosed to the public.”⁵ It also has protected Comsat’s “financial projections for the coming years” on the ground that “disclosure of this information is likely to cause substantial harm to Comsat’s competitive position.”⁶ Securus’s costs of service, broken down in the manner requested by the Commission, are equally sensitive in the highly competitive inmate telecommunications market. As the Commission knows, contracts to provide inmate telecommunications are awarded after a bidding process. Carriers build their bids, which include calling rates, based on costs of service. If a Securus competitor were to obtain the data that HRDC wishes to make public, they would have a tremendous advantage in building their bids throughout the country. The harm to Securus would be substantial and irreversible.

The Commission is aware of the sensitivity of the information it requested for the Mandatory Data Collection. The Instructions expressly state that carriers can employ the confidentiality procedures set forth in the Protective Order:

⁵ *WorldCom, Inc. and its Subsidiaries*, 18 FCC Rcd. 26338, 26339 ¶ 7 (Dec. 19, 2003).

⁶ *Comsat Corporation’s Request for Approval of 1996 Capitalization Plan*, 11 FCC Rcd. 13231, 13234-35 ¶ 10 (1996).

Data and supporting documents may be filed under the Protective Order in this proceeding, and, would subsequently be treated as confidential. For respondents' convenience, a link to the Protective Order is provided at the above-referenced web address.⁷

Securus also notes that Pay Tel Communications, Inc. submitted a cost study to support its Petition for Waiver of Interim ICS Rates that was filed in this docket on January 8, 2014. That cost study was very heavily redacted, in Pay Tel's discretion, and the Commission apparently has granted Pay Tel's request to keep all redacted information confidential under Rule 0.459. Securus simply seeks parity of treatment in this regard, and has provided ample grounds for granting its request for confidentiality.

6. Details of the 2013 Sale of Securus to ABRY Partners

This information, which appears at Page 8 of the FTI Report, regards a transaction between entities that are not publicly traded and whose financial statements are confidential. Contrary to HRDC's assertion, the information is *not* contained in the Joint Application for Streamlined Consent to Domestic and International Transfer of Control that Securus filed March 15, 2013.⁸

The facts that Securus redacted from Page 8 of the FTI Report have never been published and are considered by the parties to be confidential and competitively sensitive. Moreover, those facts do not regard any Securus contract, site commission payment, calling rate, or ancillary fee. Nor are the transaction documents filed with a governmental agency and thus subject to FOIA. Rather, the financial data that HRDC wishes to publicize is private, and

⁷ Instructions at 2.

⁸ "Securus filed public documents detailing the terms of its sale to ABRY Partners[.]" Objections at 2 (citing WC Docket No. 13-79). The details that HRDC wishes to publicize are not, however, in those FCC filings or in any public documents.

regards private companies, and constitutes the type of data for which Rule 0.459(b)(3) affords protection.

HRDC's Objection as to the ABRY transaction is ill-founded, baseless, and should be denied.

CONCLUSION

For the foregoing reasons, the Commission should deny the Objections as procedurally defective, or, should it wish to rule on the Objections, it should deny them as to Items 5 and 6.

Dated: July 30, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on this 30th day of July, 2014, that the foregoing Response to HRDC Objections was served via First Class * or electronic** mail on the following persons:

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