

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**SECURUS TECHNOLOGIES, INC. REPLY IN SUPPORT OF
OBJECTION TO DISCLOSURE OF CONFIDENTIAL INFORMATION**

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to the Protective Order entered in this docket,¹ files this Reply in support of its Objection to Disclosure of Confidential Information, filed August 6, 2014 (“Objection”), regarding Pay Tel Communications, Inc. (“Pay Tel”). Pay Tel’s Response, filed August 8, 2014 (“Response”), mischaracterizes Securus’s position and thus warrants a reply. Securus has amply demonstrated why, pursuant to the express terms of the Protective Order, only Don Wood should be provided the confidential Cost Study Documents.

DISCUSSION

Securus’s Objection is not “a gripe about the fact there even exists a Protective Order in this docket.”² Rather, Securus has grave concerns that are specific to Pay Tel. As Pay Tel Outside Counsel knows, Securus already has provided the proprietary versions of the Cost Study Documents to two third parties. Those persons are not employed by, and do not represent, a company that competes with Securus, nor do those persons participate in “Competitive Decision-Making”.³

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

² Response at 1.

³ Protective Order ¶ 2.

Pay Tel is a very small company. It serves only 160 correctional facilities,⁴ in contrast to Securus's 2200 (approximately).⁵ Public records indicate that Pay Tel has only 20-49 employees. Most importantly, to the best of Securus's knowledge based on considerable research, **Pay Tel has no in-house attorneys**. Its chief Outside Counsel, Marcus Trathen, acts as Pay Tel's General Counsel and has introduced himself publicly as such. Mr. Trathen has represented Pay Tel in a host of matters for at least seven years.⁶ For all these reasons, Pay Tel Outside Counsel is not so distanced from Pay Tel as the outside counsel to other companies may be.

As Securus has explained, the unredacted Cost Study Documents contain detailed, disaggregated cost data that is never released to the public.⁷ Indeed, Securus never has done such a study.⁸ Were a competitor to see the unredacted Cost Study Documents, that result would be "akin to seeing [Securus's] future bids in advance."⁹ Pay Tel fully realizes the harm that would befall Securus if its cost data is "used against it for competitive purposes."¹⁰ And Pay Tel is a direct competitor of Securus for small facilities in the southeast region of the United States.

Pay Tel Outside Counsel asserts, with some hyperbole, that Securus's Objection will prevent Pay Tel from participating in this proceeding. On its face, Securus's Objection

⁴ WC Docket No. 12-375, Pay Tel Communications, Inc.'s Petition for Waiver of Interim Interstate ICS Rates at 14 (Jan. 8, 2014).

⁵ WC Docket No. 12-375, Affidavit of Richard Smith ¶ 4 (Oct. 17, 2013) (filed with Securus Petition for Stay (Oct. 22, 2013)).

⁶ CC Docket No. 96-128, Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, FCC (Apr. 20, 2007) (providing notice of ex parte meeting held April 18, 2007).

⁷ Objection at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ Response at 4.

soundly disproves that assertion. Securus will provide Don Wood, an outside economist, with “a disk containing the proprietary versions of the Cost Study Documents.”¹¹ Don Wood previously handled highly confidential ICS carrier information in 2008, and did so appropriately.¹²

Don Wood can use the confidential Securus data to perform the adversarial review that Pay Tel apparently wishes to file.¹³ Mr. Wood can write a rebuttal report and submit the unredacted version to the Commission. He can even discuss with Pay Tel and its Counsel whatever analytical failings or conceptual problems that he perceives in Securus’s documents. Pay Tel Counsel can review and submit the redacted version of that rebuttal report. All that Securus asks is that its direct competitor not be shown disaggregated cost data, in dollars and cents, for each cost component and allocation that the Commission set forth for this Mandatory Data Collection. Securus is not “handcuffing” any party as Pay Tel Counsel outlandishly suggests,¹⁴ and Pay Tel will not be denied due process in any way.¹⁵

Pay Tel Counsel’s absolutist argument is that Securus must, without exception, hand over highly sensitive cost data to anyone who signs the Protective Order. If that were true, the Protective Order would not contain any mechanism to object; Paragraph 5 would not be in the document. But that mechanism is indeed built into the Protective Order, demonstrating that

¹¹ Objection at 4.

¹² *Id.* at 4 (“No ICS carrier requested or received the proprietary version of the Wood Study.”).

¹³ Adoption of Securus’s “one rate” approach would obviously greatly advantage any particular competitor that served predominately below-average-cost facilities—such as would be the case for Securus itself if Pay Tel is correct that the cost of providing service in prisons is materially lower than the cost of providing service in jails.

Response at 5.

¹⁴ *Id.* at 5.

¹⁵ *See id.* at 4.

the Commission will seal highly confidential data in order to protect ICS carriers from “substantial competitive harm.” 47 C.F.R. § 0.459(b)(5).

The Commission has long recognized that disclosure of confidential data requires a balancing of interests: the need for transparency and proper procedure versus the risk of competitive harm. Where, as here, the requesting party (Pay Tel Counsel) has little need for the data, but grave competitive harm would come to the disclosing party in the event of a breach, the Commission will not order disclosure.¹⁶

Securus is aware that the Commission will “disbar” outside counsel that disclose protected information to unauthorized persons in violation of a protective order.¹⁷ That penalty is of course severe. The competitive harm to the affected ICS carrier is even more severe, however, and it is irreparable. Securus cannot simply change its cost figures or its entire service configuration if its cost data gets leaked. Moreover, Securus wonders how it could ever have direct evidence of improper disclosure, and even if it could amass some evidence, whether it could satisfy the burden of proof that the Commission surely reserves for such a severe penalty. In a word, not only will the toothpaste already be out of the tube, but Securus may not even know it happened, let alone be able to prove how it happened. Securus’s bidding position for years to come would nonetheless be destroyed. Even an inadvertent disclosure would be disastrous.

¹⁶ *AT&T Request for Inspection of Records*, 5 FCC Rcd. 2464 ¶ 5 (1990) (affirming Bureau refusal to disclose confidential MCI data) (“The Bureau concluded that the limited value of the disclosure of this remaining information did not outweigh the potential for substantial competitive harm that would likely result from the information’s release.”); *see also Rural Call Completion*, 28 FCC Rcd. 16,154, 16,199 ¶ 109 (2013) (Commission will protect carriers’ rural call completion data pursuant to Rule 0.459); *Modernizing the FCC Form 477 Data Program*, 28 FCC Rcd. 9887, 9921 ¶ 79 (2013) (“we find that our current approach appropriately balances the filers’ disclosure concerns with the public need for access to this information.”) (FCC will not disclose data where the submitting carrier checks the confidentiality box on Form 477).

¹⁷ Protective Order ¶ 16.

Under the particular circumstances of Pay Tel's request, the Commission should uphold Securus's Objection.

CONCLUSION

For the foregoing reasons, the Commission should not disclose to Pay Tel personnel or Outside Counsel the confidential documents filed by Securus on July 17 and July 30, 2014.

Dated: August 15, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on this 15th day of August, 2014, that the foregoing Reply in Support of Objection to Disclosure of Confidential Information was served via First Class * or electronic** mail on the following persons:

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