

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling)	WC Docket No. 12-375
Services)	

**PAY TEL COMMUNICATIONS, INC.
SUPPLEMENTAL RESPONSE TO
SECURUS TECHNOLOGIES, INC.’S OBJECTION
TO DISCLOSURE OF CONFIDENTIAL INFORMATION**

Pay Tel Communications, Inc., (“Pay Tel”), by its attorneys, respectfully submits this supplement to its response to the Objection to Disclosure of Confidential Information filed by Securus Technologies, Inc. (“Securus”) in this docket on August, 6, 2014. This supplement responds to new arguments made by Securus in its Reply dated August 15, 2014, and is submitted pursuant to the oral permission of Commission staff.

In its Reply, Securus shifts direction from its original objection and now claims that Pay Tel’s Outside Counsel should not be granted access to Securus’s confidential cost data pursuant to the Protective Order entered in this docket¹ because counsel allegedly “acts as Pay Tel’s General Counsel” and has represented Pay “in a host of matters” for at least seven years.²

Securus is correct that counsel has a longstanding relationship with Pay Tel in connection with regulatory matters, having represented Pay Tel both in this proceeding and since the inception of this proceeding’s previous incarnations in Docket No. 96-128. This longstanding service in an FCC regulatory proceeding, however, only heightens the harm that would be caused

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

² Securus’ Reply at 2 (Aug. 15, 2014).

in denying counsel access to the requested data, given counsel's specialized knowledge and experience, and does nothing to convert counsel's relationship with Pay Tel into one that is of a "General Counsel" nature.

Securus's musings about the role of Pay Tel's Outside Counsel are simply wrong. As explained in the Declaration of Vince Townsend, attached hereto, Pay Tel's attorneys in this proceeding do not serve as Pay Tel's "General Counsel" but rather serve as regulatory counsel.³ More to the point, Pay Tel's regulatory attorneys in this proceeding do not participate in competitive decision-making (including rendering advice or analysis with respect to Pay Tel's competitive bidding practices)—a fact that has already been certified by these attorneys by virtue of their execution of the Protective Order's Acknowledgment of Confidentiality.⁴

The cases cited by Securus do not provide support for its position here, as they are not analogous to the present situation—where one party (Securus) has submitted confidential data in a rulemaking proceeding, which it intends to use in advocating for a particular outcome in the proceeding, while objecting to the disclosure of that same information to Outside Counsel for another participant (Pay Tel) in the proceeding.⁵ Pay Tel is unaware of any prior proceeding where the Commission has declined to permit Outside Counsel of a participating party to review

³ In fact, Securus dealt directly with Pay Tel's corporate and litigation counsel (not Pay Tel's regulatory counsel) on a general corporate matter unrelated to this proceeding. See Declaration of Vince Townsend (attached).

⁴ The undersigned Outside Counsel is not aware of any instance where he has identified himself as Pay Tel's "General Counsel" and expressly disavows that he serves in such a capacity.

⁵ See *AT&T Request for Inspection of Records*, 5 FCC Rcd 2464 (1990) (the Commission refused production of specified competitive information belonging to MCI to AT&T; there was no issue of outside counsel presented in that case—the issue was whether the information should be produced directly to the competitive company); *Rural Call Completion*, 28 FCC Rcd 16, 154 (2013) (Commission adopts streamlined procedures for filing required reports under confidential seal, noting that the public could request access to the data under 47 CFR 0.459; no issue presented of requests to review by outside counsel); *Modernizing the FCC Form 477 Data Program*, 28 FCC Rcd 9887 (2013) (same).

confidential data filed in the relevant proceeding, and certainly Outside Counsel review is expressively permitted under the terms of the Protective Order in this proceeding.

Finally, Pay Tel would observe that, as of this date, Securus has failed to comply with the terms of the Commission's Protective Order with respect to production of the requested data to Pay Tel's Outside Consultant, Don Wood. Securus has not objected to producing the requested data to Mr. Wood but, as of this date, it has not done so. As of this date, Securus's production is 11 days overdue.⁶ The orderly conduct of this proceeding requires that the parties comply with the orders issued by the Commission, which Securus has failed to do. Pay Tel would request that the Commission issue an order requiring production of the requested information.

CONCLUSION

For the foregoing reasons, the Commission should require Securus to provide to Pay Tel's Outside Counsel the unredacted Cost Study Documents that have been requested under the terms of the Protective Order adopted in this proceeding and should issue an order requiring the production of the same information to Pay Tel's Outside Consultant, Don Wood, together with other appropriate relief as may be deemed appropriate by the Commission.

⁶ Pay Tel requested access to Securus' unredacted Cost Study Documents on August 1, 2014. The Protective Order requires production within five business days. Protective Order at ¶ 5. Securus did not object to providing the requested Cost Study Documents to Mr. Wood; it should have provided them to him by August 8, 2014.

Dated: August 19, 2014

Respectfully submitted,

PAY TEL COMMUNICATIONS, INC.

A handwritten signature in blue ink, appearing to read "M. Trathen", written over a horizontal line.

By:

Marcus W. Trathen
Timothy G. Nelson
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wells Fargo Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304
mtrathen@brookspierce.com
tnelson@brookspierce.com

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of August, 2014, the foregoing Supplemental Response to Securus Technologies, Inc.'s Objection to Disclosure of Confidential Information was served via First Class* or electronic** mail on the following persons:

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

Kalpak Gude **
Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
Kalpak.Gude@fcc.gov

Stephanie A. Joyce * **
Arent Fox, LLP
1717 K Street, NW
Washington, D.C. 20036
stephanie.joyce@arentfox.com

Lynne Engledow **
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
Lynne.Engledow@fcc.gov

By: s/ Marcus W. Trathen
Marcus W. Trathen

DECLARATION OF VINCENT TOWNSEND

I, Vincent Townsend, declare and state as follows:

1. I am the President of Pay Tel Communications, Inc. I am over the age of 21. I am competent to make this declaration and, unless otherwise indicated, all the facts set forth in this declaration are based on my personal knowledge.

2. This request is submitted in connection with Pay Tel's counsels' request for Confidential Data of Securus in Docket No. 12-375.

3. With respect to Pay Tel's employment of attorneys:

a. Securus is correct that Pay Tel does not employ an in-house attorney.

b. Pay Tel employs Ken Gumbiner of the Law Firm of Higgins Benjamin PLLC to provide assistance on general corporate and litigation matters. Securus is well-aware of this fact, having dealt directly with Mr. Gumbiner on certain corporate matters.

c. Pay Tel employs other specialized counsel for assistance with certain matters where expertise is required; for example, Pay Tel employs separate counsel on patent issues.

d. Pay Tel employs Marcus Trathen of the law firm of Brooks Pierce to provide counsel and representation on state and federal regulatory matters involving the Federal Communications Commission and state regulatory agencies. Tim Nelson is an associate with Brooks Pierce who has also provided regulatory counsel to Pay Tel. Neither Mr. Trathen nor Mr. Nelson represent Pay Tel or provide counsel to Pay Tel with respect to competitive decision-making within the meaning of the Protective Order issued in this proceeding —i.e., “advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.”

e. Contrary to the statement made in Securus's Reply, Mr. Trathen is not, and has never been, engaged by Pay Tel as Pay Tel's General Counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information and materials are true and correct to the best of my knowledge, information, and belief.

Dated: August 15, 2014


Vincent Townsend