Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

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

TELMATE, LLC OBJECTION TO
DISCLOSURE OF CONFIDENTIAL INFORMATION

Pursuant to the Protective Order entered in this docket,[1] Telmate, LLC ("Telmate") partially objects to the request by counsel for Pay Tel Communications, Inc. ("Pay Tel") to obtain confidential versions of the cost data that Telmate submitted on August 18, 2014, in response to and compliance with the Commission's one-time Mandatory Data Collection ("Confidential Cost Data"). Specifically, Telmate objects to the disclosure of its Confidential Cost Data to Pay Tel or Pay Tel's counsel; it does not, however, object to providing that data to Pay Tel's outside economist, Don Wood, under the condition that the Confidential Cost Data not be shared with Pay Tel or Pay Tel's counsel unless redacted or aggregated.[2]

As Securus has explained,[3] the confidential information in those documents is extremely sensitive and unnecessary for Pay Tel or its counsel, especially in light of Telmate's willingness to share the disaggregated Confidential Cost Data with Pay Tel's outside economist. On balance, the risk of disclosure in this unique case far outweighs the benefit (if any) to Pay Tel, the

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[1] Protective Order at ¶ 5, WC Docket No. 12-375, DA 13-2434 (rel. Dec. 19, 2013).

[2] Telmate has communicated its objection to Pay Tel's counsel and agreed to send the Confidential Cost Data only to Mr. Wood pending resolution of its objection.

[3] *See, e.g.*, Securus Technologies, Inc. Objection to Disclosure to Confidential Information, WC Docket No. 12-375 (filed Aug. 6, 2014); Securus Technologies, Inc. Reply in Support of Objection to Disclosure of Confidential Information, WC Docket No. 12-375 (filed Aug. 15, 2014).

Commission, or the public at large.[4] Under the circumstances, the Commission should not disclose, or force Telmate to disclose, the Confidential Cost Data to Pay Tel or its counsel.

I. The Commission Protects Data Like Telmate's Confidential Cost Data

Under the Protective Order, "'Confidential Information' means information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act ('FOIA'), 5 U.S.C. § 552, and the Commission's implementing rules."[5] A party that designates documents and information as confidential is "deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules."[6]

Telmate's Confidential Cost Data, designated in accordance with the requirements of the Protective Order, includes its costs of providing inmate calling services, its revenue-producing minutes of use, and its costs of ancillary services and fees (plus certain related portions of the Description & Justification prepared by FTI Consulting, Inc.). Telmate has never before collected this information in this way, and it certainly has never made such information public.

Moreover, the Commission's rules make clear that information like Telmate's Confidential Cost Data is not routinely available for public inspection and may be protected from disclosure. Indeed, access to confidential information may be denied if the information is "commercial or financial, or contains a trade secret or is Privileged," or when "disclosure of the

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[4] Telmate complied fully with a similar request by Mr. Lee G. Petro, counsel for the Wright Petitioners, when, on August 19, 2014, it mailed the Confidential Cost Data to Mr. Petro and his outside economist, Mr. Coleman Bazelon of The Brattle Group.

[5] Protective Order ¶ 2.

[6] Protective Order ¶ 3 (citing 47 C.F.R. §§ 0.459(a), 0.459(a)(3)).

information could result in substantial competitive harm."[7] The Commission has protected financial information and corporate operating expenses from disclosure "because this material is competitively sensitive and therefore confidential" under FOIA.[8] Likewise, the Commission has deemed "revenue information to be the type of competitively sensitive material that should be withheld under" FOIA.[9] The Commission also has protected information concerning "business operations and plans" where disclosure could damage a company's "competitive position by giving the competitors insight into [its] business methods and strategies."[10] Cost support data, including "disaggregated cost data," also has been deemed exempt from mandatory public disclosure where disclosure of that data could "reveal[] [the company]'s market plans and positions" or "provide insight into [its] business strategies."[11]

Telmate's Confidential Cost Data, including its disaggregated operating expenses and revenues, is commercial and financial. Given the competitive procurement-based nature of the inmate calling service industry, disclosure of that data could result in substantial competitive harm if disclosed to Telmate's competitors. The Confidential Cost Data is therefore the type of material protected from disclosure under the Commission's rules and FOIA.

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[7] 47 C.F.R. §§ 0.457(d), 0.459(b)(3), 0.459(b)(5). FOIA also specifically exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential'' information. 5 U.S.C. § 552(b)(4)

[8] *Sandwich Isles Communications, Inc. on Request for Inspection of Records*, 28 FCC Red 15253, ¶ 7 (2013).

[9] *See, e.g.*, *The Consumer Law Group*, 28 FCC Red 684, ¶ 6 (2013).

[10] *Josh Wein, Warren Communications News on Request for Inspection of Records*, 24 FCC Red 12347, ¶ 13 (2009).

[11] *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport*, 13 FCC Red 13354, ¶ 9 (1998); *see also Jonathan E. Canis, Frank W. Krogh. Richard J. Metzger*, 9 FCC Red 6495 (1994).

II. Pay Tel's Counsel is Not Entitled to the Confidential Cost Data

The Protective Order allows parties that submit confidential information the "opportunity to object to the disclosure of its Stamped Confidential Documents or Confidential Information . . . ."[12] Because the Confidential Cost Data is protected from disclosure under the Commission's rules and FOIA, counsel for Pay Tel is not entitled to it.

Moreover, Pay Tel's counsel should not be permitted access to the Confidential Cost Data because it acts more like an in-house counsel than an outside counsel. Securus showed that Pay Tel "has only 20-49 employees" and "no in-house attorneys."[13] Pay Tel's "chief Outside Counsel, Marcus Trathen, [apparently] acts as Pay Tel's General Counsel[,] has introduced himself publicly as such," and "has represented Pay Tel in a host of matters for at least seven years."[14] For these reasons, Telmate worries that Pay Tel's counsel is closer to the competitive decisionmaking process than are other outside counsel. Because Pay Tel's counsel is not entitled to the confidential data, has shown no independent need for it, and – given its relationship to Pay Tel – raises unique concerns about the future use of this highly sensitive information, the Confidential Cost Data should not be disclosed to Pay Tel's counsel.

III. Pay Tel's Counsel Has No Independent Need for the Data, Especially Because Telmate Will Disclose the Confidential Cost Data to Pay Tel's Outside Economist

Notwithstanding Telmate's concerns about disclosure to Pay Tel's counsel, Telmate will conditionally disclose the Confidential Cost Data to Pay Tel's outside consultant, Don Wood. Like Mr. Bazelton, to whom Telmate already has disclosed Confidential Cost Data,[15] Mr. Wood

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[12] Protective Order ¶ 5.

[13] Securus Technologies, Inc. Reply in Support of Objection to Disclosure of Confidential Information at 2, WC Docket No. 12-375 (filed Aug. 15, 2014).

[14] *Id.*

[15] *See supra*, note 3.

would be able to perform any adversarial review that Pay Tel wishes to conduct, discuss perceived conceptual or analytical failings with Pay Tel and its counsel, rebut any of Telmate's contentions, and submit unredacted versions of that report – relying on the Confidential Cost Data – to the Commission. Reliance on its economist's expertise and redacted or generalized data will not negatively affect Pay Tel's ability to advocate, and neither Pay Tel, nor the Commission, nor the public will be harmed. Indeed, protecting confidential, commercially sensitive, disaggregated cost data from a competitor and its counsel (who again, is in this case more like in-house counsel than outside counsel) will facilitate future data collections by ensuring providers that their sensitive information will remain guarded. Accordingly, the limited value that disclosure to Pay Tel and its counsel might have, if any, cannot outweigh the potential for substantial competitive harm that would likely result from the information's release.[16] Under these circumstances, the Commission should uphold Telmate's limited partial objection.

IV. Conclusion

For the foregoing reasons, the Commission should not disclose (or force Telmate to disclose) to Pay Tel or its counsel the Confidential Cost Data filed by Telmate on August 18, 2014.

[16] Separately, forcing provider to disclose sensitive cost data under these circumstances could complicate future Commission efforts to collect it.

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Respectfully submitted,

Telmate

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