



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

March 28, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Re: *Ex Parte* filing for WC Docket 12-375

Dear Chairman Pai:

The Human Rights Defense Center (HRDC), publisher of *Prison Legal News* (PLN), respectfully submits this Comment for WC Docket No. 12-375 in response to the Motion for Extension filed by Securus Technologies, Inc.¹

We should not lose sight of the fact that Securus Technologies, Inc. (Securus) is attempting to delay reporting requirements that it in large part created in a “carefully constructed consensus proposal” submitted by not only Securus, but Global Tel*Link Corporation (GTL) and Telmate, LLC (Telmate),² which the Commission relied upon in its Second Report and Order and Third Further Notice of Proposed Rulemaking.³

That we need this level of reporting at all is the direct result of current and past industry practices and the lack of transparency regarding Inmate Calling Services (ICS) rates and fees. *Id.* at ¶202. Not only did the Commission “share the concern that ICS contracts are not sufficiently transparent,” but it also found adequate evidence “to support HRDC’s assertion that members of the public must ‘unnecessarily expend time and money to obtain records’ of ICS Contracts.” *Id.*

Lack of Transparency

Numerous filings on this Docket detail the pervasive lack of transparency that has been allowed to exist in the ICS industry for far too long. HRDC received a small grant in 2009 to begin to collect ICS contracts from the 50 state departments of corrections and the Bureau of Prisons, and it wasn’t until that data was collected, published and reported to the FCC that we could see how

¹ *Securus Technologies, Inc. Motion for Extension*, WC Docket No. 12-375, March 10, 2017.

² See Joint Provider Proposal, WC Docket No. 12-375, September 15, 2014 at 7.

³ *Second Report and Order and Third Further Notice of Proposed Rulemaking*, WC Docket 12-375, November 5, 2015 at ¶264.

commission kickbacks artificially inflate ICS rates and that ICS providers were taking every opportunity to price gouge prisoners and their families – not only by charging exorbitant phone rates, but also by charging excessive fees. If not for the initial grant and our constant efforts to identify and obtain funding to continue this critical work, we might not know today the depth and breadth of the abuses and consumer exploitation within the ICS industry.

The public records request process in each of the 50 states *should* provide consumers with reasonable access to public records – in this case ICS contracts – but often it doesn't. In fact, it is not unusual for correctional facilities to consult and work with ICS providers on responses to public records requests. Private industry should have no involvement in this process; the public has a right to know the terms of the contracts entered into by government agencies, which are funded with taxpayer dollars.

As HRDC has previously reported on this Docket, we were required to file a lawsuit to obtain records after GTL and the Mississippi Department of Corrections refused to produce an ICS contract and related records under the guise of a protective order.⁴ The case settled in May 2009 and the records were finally produced.⁵ We've also reported on difficulties obtaining unredacted public records from the Pennsylvania DOC (where both GTL and Securus intervened in the process) and from the Ohio DOC, under claims of "proprietary information" and "copyright." *Id.* In 2015, the Illinois DOC summarily rejected our request for public records, including ICS contracts and documents related to commission kickbacks, as being "unduly burdensome." *Id.* at 2. The Alabama DOC requires that we send someone to its office in Montgomery to photocopy records, while Tennessee's public records statute limits the public's ability to request documents to Tennessee citizens. *Id.*

Lack of transparency by government officials who oversee correctional institutions is not limited to state agencies. We were required to retain counsel and file suit against the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) for failure to timely produce an ICS contract under the Freedom of Information Act (FOIA), and for relying on improper exemptions. In a ruling granting HRDC's summary judgment motion, U.S. District Court Judge Marsha Pechman found that DHS and ICE "violated FOIA by failing to respond to Plaintiff's requests and have failed to prove that [ICS provider] Talton's performance incentive falls within one of FOIA's exemptions." *Id.* at 3.

The integrity and transparency of the telecom industry in general and ICS providers in particular are too important to be entrusted to the vagaries of public records laws. Even if HRDC litigates and prevails in such cases, the delay in disclosure harms our advocacy efforts and impedes public and regulatory understanding of the underlying issues. It is also a drain on the resources of a small non-profit organization confronting the secrecy and vast resources of the ICS industry.

We must further note that lack of transparency in the ICS industry also leads to corruption. Our most recent filings on this Docket detail the sentencing of Sam Waggoner, a paid consultant for GTL who pled guilty to bribing Christopher Epps, the former Mississippi DOC Commissioner and then-president of both the American Correctional Association and the Association of State Correctional Administrators, to contract/retain GTL as the MDOC's exclusive prison phone

⁴ *Prison Legal News v. Mississippi Department of Corrections and Global Tel*Link Corporation*, Hinds County, Mississippi, Civil Action No. G2009-391 T/1.

⁵ Human Rights Defense Center Comment, WC Docket No. 12-375, July 15, 2015.

provider,⁶ and the subsequent filing of RICO and other claims against GTL related to the Waggoner/Epps case by Mississippi's Attorney General.⁷

ICS providers and the correctional facilities they enter into monopoly contracts with work hard to protect each other and withhold information from the true consumers of ICS services – prisoners and their families who have been required to pay exorbitant rates and fees in order to stay connected during times of incarceration. The public records disclosure process can be unduly burdensome and expensive, as detailed above. The FCC has encouraged ICS providers and facilities to make their contracts publicly available.⁸ However, not only have ICS providers universally declined to do so, but Securus is now attempting to unnecessarily delay the very reporting for which it previously advocated.

HRDC is in full support of the Reporting Rules issued by the Commission in its Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015), and we urge the Commission to deny Securus' Motion for Extension.

Thank you for your time and attention to this matter.

Sincerely,



Paul Wright
Executive Director, HRDC

⁶ Human Rights Defense Center, *Ex Parte* filing, Docket No. WC 12-375, February 21, 2017.

⁷ Human Rights Defense Center, *Ex Parte* filing, Docket No. WC 12-375, February 23, 2017.

⁸ *Second Report and Order and Third Further Notice of Proposed Rulemaking*, WC Docket 12-375, November 5, 2015 at ¶202.