December 11, 2014

Regulatory Commission of Alaska
701 West 8th Avenue
Suite 300
Anchorage, AK 99501

Re: Docket No. U-14-113: Securus Technologies
Private Pay Telephone Application

Dear Commissioners:

We hope that you are well. Thank you for the opportunity to comment on the application by Securus Technologies (docket no. U-14-113) to impose new fees on prisoners’ telephone calls.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, we ask that you reject Securus’s application: it counters regulations and guidance—guidance that may preempt Securus’s new proposal—by the Federal Communications Commission and it will unreasonably limit prisoners’ constitutional rights.

Securus’s proposal takes place in the midst of a national reconsideration of billing for prison calls, which the FCC recognized as exorbitant and abusive.1 (We are surprised that Securus, as a national provider of these services, omitted this national process in its application: it did note that it lost money from its interstate calls, but it did not explain that this loss came from the FCC’s prohibition of “extortionate” interstate prison-call rates.)

Of course, Securus should be paid for its services at a rate that allows it to continue to provide the telephone access prisoners need to call attorneys, third-party custodians, and family members. This legitimate profit motive, however, must be tempered by the Commission’s

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recognition that Securus is a monopoly: prisoners cannot avail themselves of market-based competition to find another telephone provider. Accordingly, Securus’s proposed rates must both be reasonable and collected in a way that does not trench on the Constitution’s right to due process, the right of access to the courts, the right to meaningful assistance of counsel, or the right to rehabilitation.

To help the Commission evaluate Securus’s proposal, we divide our comments into three areas, (1) specific FCC regulations, (2) general constitutional concerns, and (3) five significant differences between the telephone calls of prisoners versus the general public.

1. **Securus’s Proposal Conflicts with the Federal Communication Commission Regulations and Its Guidance that 7 Cents per Minute, Not a Flat $1 Per Call, Is Reasonable.**

Implicit in Securus’s proposal is the Commission’s duty to evaluate its reasonableness: how should it square Securus’s costs and desire for a fair profit with prisoners’ need to make reasonable telephone calls? Fortunately, the Commission need not balance this equation blind: rather than guessing about how these reasonable rates should be calculated or constructed, it can look to the FCC’s existing work in this area, that 7 cents per minute, not a flat $1, is reasonable for intrastate calls.

In 2013, the FCC set out guidance on how prison telephone providers should bill for interstate prison calling;\(^2\) it is now considering guidance for intrastate calling and has indicated several points on which it is likely to rule.\(^3\) The FCC’s guidance to date undermines Securus’s admitted “speculative exercise” and remedies it with a national survey setting reasonable rates.\(^4\) Indeed, once the FCC rules on intrastate rates, it may counter Securus’s proposal and preempt the Commission’s actions.

The FCC’s 2013 order set a safe harbor rate of 12 cents per minute for prepaid and debit system interstate calls and 14 cents per minute for collect calls.\(^5\) The District of Columbia Circuit Court stayed the safe harbor rule, but allowed to stand the FCC’s order that

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\(^2\) FCC 13-113 September 26, 2013 Order.


\(^4\) Mot. of Securus Technologies to Waive Certain Regulatory Requirements, at 6.

\(^5\) FCC 13-113 September 26, 2013 Order, at 34.
interstate calls not exceed 21 cents per minute for prepaid or debit calling and 25 cents per minute for other calls.\(^6\) The rate cap remains in effect today.\(^7\)

Despite the logic of this order, Securus’s proposal would set a flat $1 rate for any local call, even a call of less than a minute. Despite the systemic analysis of the FCC, Securus claims that a billable local telephone call actually costs $0.54 cents/minute, more than twice the cap for \textit{interstate} calls set by the FCC.\(^8\) Securus does not explain why its costs for cheaper local calls are more than double reasonable long-distance rates. The Commission should discount its analysis and instead rely on the far more elaborate and sophisticated analysis by the FCC.

The FCC’s 2014 notice of further rule-making points to even lower rates for local calls, noting that the proposals for reasonable local rates on calls currently focus on a proposed rate of $0.07 per minute.\(^9\) Of course, the FCC’s final ruling may not embrace that specific per-minute rate, but the 2014 notice, especially combined with the 2013 order on interstate calling, gives the Commission some notion of the ballpark of reasonable intrastate rates.

If the $0.07 per minute charge holds in the FCC’s final rule making for local calls, Securus’s $1 per 15-minute call proposal would be unreasonable for every caller except the one who made exactly a 15-minute call,\(^10\) and would result in gross and unreasonable overpayment for short calls.

The FCC’s 2014 notice also expresses skepticism of per-call (rather than per-minute) charges and asks for comment on whether it can ban per-call charges such as those proposed by Securus here.\(^11\) The rationale for such skepticism is precisely that laid out above; such a flat rate unnecessarily penalizes those who make very brief calls.\(^12\) The 2014


\(^8\) Mot. of Securus Technologies to Waive Certain Regulatory Requirements, at 5.

\(^9\) FCC 14-158 Oct. 26, 2014 Notice of Rule-Making, at 10 (noting that Minnesota, one of few states attempting to reform prison telephone charges, sets its local rate at $0.07/minute and noting that the petitioners seek a $0.07/minute rate for local calls).

\(^10\) A rate cap of $0.07/minute would yield a bill of $1.05 for a 15-minute call.


\(^12\) FCC 13-113 September 26, 2013 Order, at 49 (“In particular, we are concerned that a rate structure with a per-call charge can impact the cost of calls of short duration, potentially rendering such charges unjust, unreasonable and unfair.”).
notice specifically cites Securus on the record questioning whether it may impose exactly
the scheme it proposes here.\footnote{Id. at 32 (“Securus sought additional guidance on whether the Order allows providers to use a flat-routed charge based on the interim rate caps for a 15-minute call regardless of call duration.”).}

The FCC does not prohibit imposing some kind of connection charge. It does allow the
calculation of reasonable costs based on a 15-minute call.\footnote{47 C.F.R. § 64.6030.}
But its framing of the
reasonable billing rate on a per-minute basis suggest that a flat per-call billing process
without any consideration for minutes of connection is unreasonable. By calculating a per-
minute cost to each call (even an outrageous and unreasonable one), Securus acknowledges
that the costs associated with each call grow minute by minute. Securus’s proposed billing
rate will maximize its profits per call without regard to the length of call, something the
FCC found as “unreasonable.”\footnote{FCC 13-113 September 26, 2013 Order, at 49 (“As a result, we conclude that unreasonably high per-call charges and/or unnecessarily dropped calls that incur multiple per-call charges are not just and reasonable.”).}

In short, Securus proposes a significant regulatory change relying only on its own
representations of cost and comparison to charges by other monopolies in other states,
without regard to whether those costs are, in fact, reasonable. The nationwide
unreasonable nature of billing practices for telecom providers such as Securus is the very
prompt for FCC action.

We have stringent rules against monopolies in this country precisely because, in the
absence of competition, billing rates may balloon far past what is reasonable and what a
competitive market would bear. Securus’s speculative claims of cost and likely
consequences of imposition of this scheme do not meet the heavy burden of good cause. Its
proffered evidence is rebutted by the FCC’s more systemic and unbiased review of the costs
of prison telephone services. The Commission should reject the proposal and allow Securus,
if it wishes, to submit another more reliable and objective proposal consistent with federal
law, state law, and FCC findings.

2. The Constitutional Interests of Prisoners Must Be Served by Any
   Imposition of Fees for Local Calls

Securus proposes to exempt from local calling charges any calls made to bail bondsmen
and to state agencies, including the Public Defender Agency, the Office of Public Advocacy,
and the State Ombudsman. While this is a decent first step, it would still significantly
impair the constitutional guarantees of prisoners to vindicate their rights.
While the Public Defender Agency and the Office of Public Advocacy can defend prisoners at criminal trial, they are strictly prohibited from engaging in any non-criminal advocacy for prisoners. Securus’s proposal would prevent prisoners without any money from calling other organizations, such as the ACLU of Alaska or the Alaska Innocence Project, or private attorneys. Letters are not always adequate, particularly when time is of the essence: a prisoner seeking immediate medical attention or kept in prison past the date of his release may find his rights diminished if he must wait on the U.S. Mail to relay his complaint.

A prisoner may also need to use a telephone to get help in his legal case, perhaps by asking family for bail money or to contact a third-party custodian: requests that one cannot effectively ask by letter. Securus’s proposal also leaves little opportunity for an indigent prisoner to buttress his own case by contacting potential witnesses; while the Public Defender and the Office of Public Advocacy have investigators, it is frequently challenging for attorneys to arrange these investigations or to do so with the speed and efficiency of a prisoner who personally knows his own case.

Preventing or limiting prisoners’ telephone calls will not be cheap to the State. Aside from the interests of justice, the State has a real economic interest in ensuring that prisoners who can pay a reasonable bail or find a reasonable third-party custodian are able to do so and be released. Otherwise, the State is stuck housing an otherwise releasable prisoner at a cost of $136 a day. Restricting an indigent prisoner’s opportunity to seek those who could pay bail or serve as a third-party custodian will both prolong his incarceration and increase the financial burden on the State.

Prisoners in Alaska have a specific constitutional right to rehabilitation. An essential part of that right to rehabilitation is the right to communicate with one’s family. Authorities, including the FCC, recognize that family support and relationships are key to prisoners’ successful release. Family can help prisoners find housing, get a job, and stay on

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17 Alaska Const., Art. I, Sec. 12 (“Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the *principle of reformation.*”) (emphasis added); *Abraham v. State*, 585 P.2d 526 (Alaska 1978) (holding that the Alaska Constitution created an affirmative right to rehabilitation).
the straight and narrow path.\textsuperscript{18} Without this important support, prisoners often find themselves living in homeless shelters and unable to survive outside of prison.\textsuperscript{19}

Family support is so important that prisoners may not be unreasonably denied family visits.\textsuperscript{20} Given the importance of these relationships and Alaska’s enormous size, which makes in-person visitation difficult, the functionally absolute denial of family telephone contact to indigent prisoners is likely unconstitutional. A prisoner with family in Naknek or Point Lay (or Baton Rouge, for that matter) cannot count on regular in-person visits if he is housed in Southcentral Alaska. Telephone contact is a prerequisite to maintaining family bonds.

Securus’s proposal will effectively deny all phone access to indigent prisoners. Given the many ways in which contact with family, friends, and legal professionals outside of state government are essential to protecting constitutional rights, Securus’s proposal is likely unconstitutional unless there is a special protection for indigent prisoners.

We suggest, therefore, that if the Commission approves Securus’s plan, it first modify it so that indigent prisoners may make a certain number of free calls per week. In light of the challenges we discuss in the next section, we suggest that 20 free calls, or up to 60 minutes a week, would be reasonable. This is consistent with existing practice regarding indigent prisoners and the mail.\textsuperscript{21}

3. Prison Telephone Access Is Not Like Access for the General Public

Prisoners have vastly different access to the telephone system than the general public. Five examples of those differences countenance against adopting Securus’s proposal.

First, prisoners cannot call mobile phones. As more people shift to primary or exclusive use of mobile phones, this policy increasingly reduces the number of people prisoners can call, and reduces their chance of catching someone sitting next to a landline telephone.

\textsuperscript{18} FCC 13-113 September 26, 2013 Order, at 3; \textit{Brandon v. State}, 938 P.2d 1029, 1032 n.2 (Alaska 1997).

\textsuperscript{19} \textit{Five-Year Prison Re-Entry Strategic Plan}, at 64 (estimating 25\% of prisoners released in Anchorage had no resources for self-support at all).

\textsuperscript{20} \textit{Brandon}, 938 P.2d at 1032.

\textsuperscript{21} Alaska Dep’t of Corr., Policy and Procedure 810.03(VII)(C)(3)(b) (“Indigent prisoners may mail, at the Department’s expense, up to five pieces of mail per week, legal or otherwise, weighing up to two pounds each.”), \textit{available at http://www.correct.state.ak.us/pnp/pdf/810.03.pdf}. 
Second, prisoners generally cannot leave voicemails. Securus’s software does not connect a prisoner until a human voice is on the other end of the line. A prisoner calling an unattended number will not be able to make any connection at all.

Third, prisoners generally cannot accept incoming or returned calls. By virtue of being in prison, a prisoner must contact the other person when she is present; they cannot wait for the other person to return the call.

All of this means that prisoners will frequently call a number when the other person is not around. To actually reach someone, prisoners must call again at different times, hoping to catch the other person and likely making many unsuccessful attempts before actually reaching her. The burden of a flat fee on all connected calls, even ones resulting in a simple reply of “she’s not here right now,” will more significantly burden prisoners than the public.

Fourth, prisoners must respond to the conditions around them while on a call. At any point during a call, a prisoner may be ordered to hang up, to lock down or go to some other place in the prison. Through no fault of the prisoner’s, the prisoner may have to disconnect the call and call again—and under Securus’s proposal, incur another charge—later.

Fifth, phone calls from Alaska prisons usually disconnect automatically after 15 minutes. Anyone needing more than 15 minutes of legal counsel or family contact would have to call again and incur another charge.

For all these reasons, imposing a per-connection charge unrelated to the call’s length poses the serious risk of systematically overbilling prisoners. Prisoners may have to make multiple brief calls to reach the person they seek and they may have to repeatedly call again to continue a longer conversation or one interrupted by prison staff.

**Conclusion**

We ask the Commission to reject Securus’s application: it is substantively unreasonable in light of the Federal Communication Commission’s work and it will unconstitutionally and unfairly curtail the rights of low-income prisoners. We also certify that we filed these comments with Securus by emailing a copy to its attorney, Barat M. LaPorte, today.

If the Commission or Securus have any questions or want to talk about our concerns, we are happy to do so at your convenience. Thank you for your consideration.

Sincerely,

Joshua A. Decker
Executive Director

cc: Barat M. LaPorte, counsel for Securus (by email)