



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 13, 2018

Federal Communications Commission
Secretary Marlene H. Dortch
Office of the Secretary
445 12th St. S.W.
Washington, D.C. 20554

Re: Comment on WC Docket No. 18-193

Dear Ms. Dortch:

The Human Rights Defense Center (HRDC) respectfully submits this comment to the Federal Communications Commission in reiteration of our position on Chairman Ajit Pai's conflict of interest in matters involving Securus Technologies, Inc. (Securus).ⁱ While employed with the law firm of Jenner & Block, LLP immediately preceding his confirmation as FCC Commissioner in May 2012, Chairman Pai represented Securus. There is reason to believe that Chairman Pai's prior relationship with Securus has influenced his decisions at the FCC, particularly in regard to his decisions concerning the Inmate Calling Services (ICS) industry.

The ICS industry, which controls the ability of prisoners to communicate with their loved ones, has grown into an effective duopoly: Securus, along with rival telecom Global Tel*Link (GTL), currently control over 70 percent of the ICS industry.ⁱⁱ Securus maintains monopoly contracts at facilities that collectively house over 1.2 million prisoners,ⁱⁱⁱ charging often exorbitant fees which burden families and provide lucrative kickbacks to government agencies. Former Chairwoman Mignon Clyburn and many others in the FCC worked diligently to reform this industry, issuing orders in 2013,^{iv} 2015^v and 2016^{vi} to cap the rates for calls made from prisons and jails.

By contrast, Chairman Pai has dissented on **all** votes taken by the Commission with respect to reforming the ICS industry. In his short tenure as Chairman, he has undercut reforms in dubious ways, including barring FCC attorneys from defending the Commission's order on intrastate rate caps before the U.S. Court of Appeals for the District of Columbia.^{vii}

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HRDC is not the only group that has questioned the motivations of Chairman Pai. On June 19, 2018, U.S. Senator Ron Wyden (D-Ore.) demanded Chairman Pai's recusal from a matter involving Securus. Upon learning that Securus had allowed law enforcement agencies to track Americans' phone location data, Sen. Wyden declared that "Chairman Pai's total abandonment of his responsibility to protect Americans' security shows that he can't be trusted to oversee an investigation into the shady companies that he used to represent."^{viii}

HRDC is in complete agreement.

With respect to WC Docket 18-193, we also object to the acquisition of ICSolutions by Securus, as that would further increase the duopoly nature of the ICS industry and thus result in even less competition within that market. See attached **Exhibit A** for an article on this topic that ran in the July 2018 issue of HRDC's monthly publication, *Prison Legal News*.

Given Chairman Pai's history with Securus as well as his record of contrarian decision-making related to the ICS industry, HRDC is respectfully requesting, again, that Chairman Pai recuse himself from all actions and decisions involving both Securus and the ICS industry. We further call on Chairman Pai to disclose any financial relationships he has with Securus or any other ICS providers, or companies that own or control ICS providers. Lastly, we object to Securus' acquisition of ICSolutions and urge the FCC to deny the requested transfer of control.

Thank you for your time and attention to this matter.

Sincerely,



Paul Wright
Executive Director, HRDC

ⁱ See HRDC Ex Parte Comment (August 9, 2017) (https://www.humanrightsdefensecenter.org/media/publications/HRDC_Ex_Parte_Filing_re_Pai_Confirmation_080917_final.pdf)

ⁱⁱ See Prison Phone Giant GTL Gets Bigger, Again (August 28, 2017) (www.prisonpolicy.org/blog/2017/08/28/merger)

ⁱⁱⁱ See About Us (<https://securustech.net/about-us>)

^{iv} See Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-113A1.pdf)

^v See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-136A1.pdf)

^{vi} See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300 (2016) (https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-102A1.pdf)

^{vii} See "Prison Phone Update: Appellate Court Deals Major Blow to Prisoners and Their Families," *Prison Legal News* (July 2017, p.52) (<https://www.prisonlegalnews.org/news/2017/jun/30/prison-phone-update-appellate-court-deals-major-blow-prisoners-and-their-families>)

^{viii} See Following Wyden's Investigation, Verizon Pledges to End Contracts with Companies that Sell Americans' Location (June 19, 2018) (<https://www.wyden.senate.gov/news/press-releases/following-wydens-investigation-verizon-pledges-to-end-contracts-with-companies-that-sell-americans-location->)

<https://www.prisonlegalnews.org/news/2018/jul/1/prison-phone-industry-has-quietly-become-even-more-duopoly/>

Prison Legal News, July 2018, p.20

The Prison Phone Industry Has Quietly Become Even More of a Duopoly

by Steve Horn

In little-noticed regulatory filings in New York, Maryland, West Virginia, Ohio and Arizona in May 2018, telecom company Securus Technologies solidified its grip over the prison and jail phone service industry by announcing its acquisition of one of its competitors, ICSolutions, also known as ICS. First reported by Law360.com, the purchase further consolidates the duopoly of the prison telecom market, which is largely split between Securus and Global Tel*Link (GTL).

GTL and Securus currently own over 70 percent of the prison and jail phone industry, according to data crunched by the Prison Policy Initiative (PPI), a criminal justice research and advocacy organization. The regulatory filings – joint petitions by Securus and ICSolutions regarding the acquisition – also included the private equity firm TKC Holdings, the company that owned ICSolutions. TKC Holdings also owns Trinity Services Group and Keefe Group, which provide food and commissary services to prisons and jails.

“Securus will acquire all the issued and outstanding membership interests of ICS,” the filings stated. “As a result, ICS will become a wholly owned, direct subsidiary of Securus. Petitioners intend to consummate the Transaction as promptly as possible after the necessary federal and state regulatory approvals have been received.”

Just a week before the announcement of the acquisition, *The New York Times* revealed that former Missouri sheriff Cory Hutchenson had been indicted for using Securus’ telephone system at his jail to obtain location data on cell phone customers without a court order. Put another way, Securus’ platform can be abused by law enforcement officials to spy on people who receive calls from their incarcerated loved ones.

Officially, as the regulatory filings in New York and West Virginia point out, there are other competitors in the prison and jail telecom market besides Securus and GTL, including Legacy Long Distance, Network Communications International Corp., Pay Tel and Legacy Inmate Communications. But by and large, Securus and GTL dominate the industry and ICSolutions was already in a distant fourth place behind GTL, Securus and CenturyLink, according to PPI.

The regulatory filings noted that Securus would now have an even greater opportunity to market its telecommunications services to prisoners, including tablet devices. [See: *PLN*, April 2018, p.44; Sept. 2015, p.16; July 2015, p.42]. “Inmate calling can also be permitted from such tablets, further facilitating the ability of inmates to connect with their friends and family,” the filings stated.

An investor note written by the analyst and credit ratings firm Moody’s observed that Securus was acquiring ICSolutions by taking on the company’s \$350 million in debt. It also noted that the purchase will rid Securus of one of its competitors.

“The transaction is strategically positive for Securus as it removes a marginal competitor and improves the company’s market share position,” the note said. “ICS has grown significantly over the past three years by winning new contracts, occasionally from Securus as well as other competitors. While a costly purchase, the acquisition eliminates an aggressive competitor in the smaller facility space comprised of local and county jails. Moody’s believes this is a prudent defensive tactic which fortifies Securus’ recent market share gains and helps preserve the company’s solid growth trajectory.”

Securus also owns JPay, a company it acquired in 2015 that provides fee-based email services, video calling, money transfers and tablets to prisoners. Securus, in turn, is owned by the private equity firm Platinum Equity. The company, managed by Detroit Pistons owner Tom Gores, acquired Securus for \$1.5 billion in November 2017. [See: *PLN*, Oct. 2017, p.48]. GTL, meanwhile, purchased Telmate, another corrections phone service provider, in August 2017 – further consolidating the industry into a duopoly.

In a research note about GTL’s acquisition of Telmate, the Prison Policy Initiative explained why the ever-consolidating prison and jail phone industry matters for prisoners and their families.

“Now that there are just two major national companies left to compete for contracts, it will be harder for facilities that want to lower prices to do so,” PPI stated. “Because the primary differentiation between vendors is cost, having fewer companies compete for contracts will mean less choice for the facility that awards the contracts and less of an incentive for the companies to offer good deals.”

Lee Petro, an attorney with the law firm of Drinker Biddle & Reath, LLP who represents petitioners in the Wright Petition – a regulatory proceeding before the Federal Communications Commission related to the cost of prison and jail phone services – told *Prison Legal News* that he largely shares those concerns.

“The acquisition of ICSolutions by Securus is just another step in the consolidation of an industry that already operates as a monopoly at the facility level. By acquiring ICSolutions, Securus has eliminated a potential competitor that had actively bid for large jails and state prison systems,” said Petro. “If this transaction is approved, it is likely that we will see just two or three bidders for large facilities, and further elimination of controls over ICS rates and fees.”

Sources: www.prisonpolicy.org, www.riverfronttimes.com, www.nytimes.com, www.documents.dps.ny.gov, www.moody.com, www.law360.com, www.psc.state.wv.us