

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES	DOCKET NO. NOI-2019-0001 RESPONSE TO PRISON POLICY INITIATIVE’S OBJECTION APPLICATION FOR CONFIDENTIAL TREATMENT AND REVISED APPLICATION FOR CONFIDENTIAL TREATMENT BY SECURUS TECHNOLOGIES, INC.
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Securus Technologies, Inc. (“Securus”) submits the following in response to the Objection to Securus Technologies, Inc.’s Application for Confidential Treatment (“PPI Objection”) filed by the Prison Policy Initiative (“PPI”).

As explained in greater detail below, Securus respectfully renews its request that the Iowa Utilities Board (“Board”) grant confidential treatment to selected portions of its response to Question 2 in the Board’s Order Initiating Inquiry (“Order”) dated August 20, 2019, which was filed with the Response of Securus Technologies, Inc. on September 19, 2019 (the “Response”), but withdraws its request for confidential treatment with respect to the remaining portion of the Question 2 response.

I. Securus Withdraws in Part and Renews in Part Its Request for Confidential Treatment.

In the Application for Confidential Treatment, Securus requested that the Board grant confidential treatment to the entirety of its Question 2 response. Securus now withdraws its request for confidential treatment with respect to a portion of that response. In particular, Securus no longer seeks confidential treatment for the first three paragraphs of its Question 2 response, which appear on page 10 and the first two lines of page 11 of the Response. Securus

reviewed its Question 2 response in light of comments, and agrees that these three paragraphs contain a general discussion of industry rate setting, as opposed to internal methodology and factors for calculating specific rates. In contrast with the remainder of Securus' Question 2 response, these paragraphs do not contain detailed information regarding the methodology and variables Securus uses for calculating specific rates or bidding contracts. An amended public version of the Response, on which this portion of the Question 2 response has been unredacted, is filed herewith.

Securus respectfully renews its application for confidential treatment with respect to the remainder of its Question 2 response, which begins on page 11, line 3 and continues until the bottom of page 12 of the Response. Public and confidential versions of the Response showing the redactions and highlights required by Board rules are filed herewith. Other than the changes to the redactions and highlights reflecting the amended scope of the request for confidential treatment, these documents are identical to the Response filed on September 19, 2019.

Securus acknowledges the Board's rules require the facts underlying the legal basis relied upon to be supported by a corporate officer with personal knowledge of the specific facts. Securus rejects PPI's suggestion that its previously filed affidavit contained inadequate factual information to support its request for confidential treatment. *See* PPI Objection at 2. The Board routinely grants applications seeking confidential treatment for trade secrets and information that would give advantage to competitors the release of which would serve no public purpose that are supported by affidavits containing statements of similar detail to those provided in the affidavit filed by Securus. The cases on which PPI mistakenly relies in criticizing Securus' affidavit concern the adequacy of affidavits filed in other contexts and governed by standards not applicable to the Board's decision here. *See generally US West Commc'ns, Inc. v. OCA*, 498

N.W.2d 711 (Iowa 1993) (ruling on motion for an injunction under Iowa Code chapter 22); *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384 (Iowa 1983) (ruling on a motion for a protective order under former Iowa Rule of Civil Procedure 123). In *Searle*, the court considered whether an affidavit met the standard of good cause shown required for the issuance of a protective order. 339 N.W.2d at 389–90. And in *US West*, the court considered whether affidavits and testimony provided to the court met the standard for issuing a requested injunction. Moreover, the information at issue in *US West* — specific leases or sale agreements for physical assets — was far more tangible than the information at issue here — business processes for rate setting and bid making. 498 N.W.2d at 713–14, 715. Indeed, the information at issue here is more proprietary and more central to Securus’ competitive position in its relevant marketplace than the leases for a few buildings were to *US West*. Notwithstanding the foregoing, Securus files herewith a Supplemental Affidavit in Support of Confidential Treatment containing additional facts supporting the requested grant of confidential treatment.

II. Confidential Treatment is Appropriate.

Iowa Code chapter 22 generally grants the public the right to examine records belonging to the state with the exception of public records that shall be kept confidential unless ordered to be disclosed as set forth in Iowa Code section 22.7. Accordingly, the Board grants or denies a request for confidential treatment based on whether the information sought to be kept confidential qualifies for confidential treatment under Iowa Code section 22.7. *See, e.g., In Re: Complaints of Helen Adolphson & Charlotte Skallerup*, Dkt. No. FCU-2013-0006, 2016 WL 3612100, at *6 (Iowa Utils. Bd. July 1, 2016).

Iowa Code sections 22.7(3) and (6) provide that public records containing trade secrets recognized by Iowa law and reports to a government agency which, if released, would give advantage to competitors and serve no public purpose shall be kept confidential unless ordered to

be disclosed by a court or other entity authorized to release them. Accordingly, the Board's rules provide the Board is authorized to treat as confidential and withhold from public inspection records containing these types of information. 199 IAC 1.9(5)(1), (3).

As demonstrated below, the information for which Securus seeks confidential treatment qualifies for that treatment under Iowa Code sections 22.7(3) and (6) because it constitutes trade secret information and would give an advantage to its competitors and serve no public purpose if released.

A. The Information For Which Confidential Treatment is Sought Constitutes a Trade Secret.

The question of whether information qualifies as a trade secret protected from disclosure under Iowa Code section 22.7 turns on whether it falls within the definition set forth in Iowa Code section 550.2(4). *See US W. Commc'ns, Inc. v. OCA*, 498 N.W.2d 711, 714 (Iowa 1993). Section 550.2(4) provides,

“Trade secret” means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Iowa Code § 550.2(4). “There is virtually no category of information that cannot, as long as the information is protected from disclosure to the public, constitute a trade secret.” *US West Commc'ns*, 498 N.W.2d at 714 (internal citation and quotation marks omitted). In other words, trade secrets are not limited to the examples listed in the statute. *Id.* Confidential treatment is appropriate here because the information sought to be protected from disclosure derives

economic value from not being generally known and is the subject of reasonable efforts to keep it from being known.

The information for which confidential treatment is sought consists of “business data and facts which, if kept secret, provide the holder with an economic advantage over competitors” and therefore constitute trade secrets. *Id.* As the (now public) paragraphs preceding the confidential portion of Securus’ Question 2 response indicate, in the modern inmate calling services (“ICS”) market, correctional facility contracts are typically awarded through competitive bidding. As is evident from the public portion of the response, the information Securus seeks to keep confidential is a detailed list of variables it accounts for when calculating rates and submitting bid proposals to correctional facilities seeking ICS. This list reflects the core of the proprietary bid model Securus uses when setting rates for individual correctional facilities, and it contains numerous variables and factors accounted for in bidding contracts. The release of this highly confidential information would help competitors to anticipate Securus’ proposed rates in competitive bids. How an ICS provider accounts for its costs and derives the calling rates it offers to provide desired services to a particular correctional facility is, from the perspective of the ICS customer, a core factor distinguishing one ICS provider from another. Securus’ application of the bid model variables to a particular set of facts and facility requirements is what determines the rates it can offer to a correctional facility seeking ICS bids and, in turn, whether Securus gets that facility’s ICS contract over its competitors. As a result, Securus vigorously protects the bid model variables from public disclosure and treats them as highly confidential. Collectively these variables reflect and determine the manner in which Securus performs an extremely critical business processes that goes to one of the key competitive factors that distinguishes Securus from other ICS providers in a competitive bidding process — rate setting

and bid making. Were a competitor to obtain information regarding Securus' bid model variables, it could use it to undercut Securus in competitive bidding, thereby impairing Securus' ability to secure or retain ICS contracts. Thus, the information Securus seeks to protect derives economic value from not being known.

There is also no question that Securus makes reasonable efforts to maintain the secrecy of the information it seeks to keep confidential. PPI does not assert Securus has failed to make reasonable efforts to maintain the secrecy of the information it seeks to keep confidential, and for good reason. As the Board knows, Securus has participated in a number of proceedings before the Board regarding ICS in recent years. In doing so, Securus has consistently requested confidential treatment when providing the Board information regarding the rates it charges, the specific manner in which it derives those rates or bids ICS contracts, or internal cost data. *See, e.g.*, Response to Request for Additional Information at 7, Dkt. No. TF-2019-0033 (June 24, 2019); Additional Comments Regarding Rule Making at 6, Dkt. No. RMU-2017-0004 (May 29, 2018); *see also* Response of Securus Technologies at 15, Dkt. No. NOI-2019-0001 (September 19, 2019) (acknowledging information Securus seeks to protect from public disclosure include its internal costs and its rate-setting methodology).

As the preceding discussion demonstrates, the information for which confidential treatment is sought plainly constitutes trade secret information under Iowa Code 550.2(4). Indeed, Securus was initially surprised that PPI objected so vigorously to granting confidential treatment to such obvious trade secret information. As recently as four months ago in Securus' tariff docket, PPI referred to Securus' redaction of a much less detailed recounting of the same information it seeks to keep confidential in this docket as "modest" and acknowledged that at least some of the information could likely properly be held confidential. Reply Comments of

Prison Policy Initiative at 13, Dkt. No. TF-2019-0033 (July 8, 2019). But the question Securus was responding to when it provided the information in this docket requested criteria and considerations the **Board** should use to determine whether rates charged by alternative operator services (“AOS”) companies are reasonable (as opposed to how *Securus* determined its rates, as the Board requested in the tariff docket). As Securus states in the now-public portion of its Question 2 response, Securus believes the foundational consideration for determining whether rates charged are reasonable is whether they allow a provider to recover its costs and make a reasonable return on its investment. Securus therefore elected to provide the Board with a detailed accounting of factors Securus considers in setting rates — information which plainly constitutes a trade secret as demonstrated above — with the intention of assisting the Board in considering how it might assess the reasonableness of rates charges by Securus and other AOS providers. The subject matter of the confidential portion of the Question 2 response is now apparent from the introductory paragraphs of that response.

Securus has been participating in proceedings before the Board continuously since early 2017.¹ Far from displaying “breathhtaking hostility to the basic tenets of public transparency,”² Securus has provided a great deal of information to the Board regarding its business and ICS generally that is substantial, relevant, and responsive to its inquiries. Securus has provided detailed information in the form of written testimony, comments, exhibits, and participation in hearings. Securus was the only AOS company (and ICS provider) participating in the

¹ *In re: Rule Making Regarding Inmate Calling Rate Caps*, Dkt. No. RMU-2017-0004 (commenced March 24, 2017) (“ICS Rate Cap Rule Making”); *In re: Securus Technologies, Inc.*, Dkt. No. TF-2017-0041 (commenced April 11, 2017); *In re: Service Supplied by Telephone Utilities*, Dkt. No. RMU-2018-0022 (commenced February 7, 2019) (“Chapter 22 Rule Making”); *In re: Securus Technologies, Inc.*, Dkt. No. TF-2019-0033 (commenced April 1, 2019 with filing of compliance tariff); *In re: Inquiry Into Regulatory Requirements for Alternative Operator Services Companies*, Dkt. No. NOI-2019-0001 (commenced August 20, 2019).

² PPI Objection, at 1.

Chapter 22 Rule Making. Securus was the only ICS provider other than the petitioners participating in the ICS Rate Cap Rule Making. Throughout these proceedings, Securus has attempted to help the Board understand the business and security realities and practical requirements of providing telecommunications services to correctional facilities, and in doing so has been forthcoming with proprietary information it believes will assist the Board. Securus has been equally forthcoming with information in this proceeding, providing the Board not only with general information regarding the ICS industry but also with proprietary details regarding the considerations it uses to set rates and bid contracts. The sensitivity of these details is perhaps best reflected in the fact that no other ICS provider submitting comments in this docket has provided a similarly detailed description of its rate-setting or bid-making processes and no other participant in this proceeding has attempted to describe any mechanism taking these considerations into account.

B. If Released, The Information Provided to the Board Would Give Advantage to Securus' Competitors and Serve No Public Purpose.

As demonstrated above, there can be no question that the information for which confidential treatment is sought would, if released, give an advantage to Securus' competitors. The information Securus seeks to protect — the variables it accounts for in bidding ICS contracts — would provide its competitors a roadmap that would allow them to anticipate how Securus will bid ICS contracts. A distinguishing feature of the ICS industry is competitive bidding. If the information Securus provided to the Board were made public, Securus' competitors could use it to their advantage in bidding those contracts and harm Securus' ability to secure them. Securus therefore desires to keep this information confidential and makes extensive efforts to ensure it remains that way, including limiting its disclosures internally and sharing it externally

only under extraordinary circumstances in which the information is legally protected from disclosure.

Additionally, release of the information for which confidential treatment is sought would serve no public purpose. As an initial matter, the detailed methodology utilized by any particular ICS provider in determining the rates it will offer when bidding contracts simply is not a matter of public concern. This information is readily distinguishable from other information regarding public contracts that might serve a public purpose if released, such as the rates charged to members of the public, services on which public funds were spent, or how efficiently public funds were spent. To the extent the public has any interest in or use for information regarding the manner by which ICS providers set rates, the general information on rate-setting methodologies utilized in the ICS industry publicly addressed by Securus and others in this docket adequately serve that interest.

Moreover, this inquiry proceeding is neither a contested case nor a rule making. Neither Securus nor PPI is obligated to participate, and the goal of this proceeding is for the Board to evaluate the framework governing AOS companies and determine whether that framework needs to be revised. Order at 1. An important public purpose is served by ensuring the Board receives the information it requires to complete a thorough and efficient assessment before determining how best to regulate AOS companies. Furthermore, PPI can freely and completely participate in this non-adversarial proceeding by providing whatever comments and information it has to the Board without seeing any confidential information Securus provided to the Board. To allow PPI to use this proceeding as a back door to obtain information relevant to a contemporaneous adversarial proceeding pending before the Board would discourage public participation in dockets such as this one.

Relatedly, another important public purpose is served by encouraging companies and organizations the Board is interested in hearing from in connection with this assessment to participate in these proceedings. As stated in the order initiating this inquiry, the Board “considers it important for its review to include all interested AOS stakeholders . . . especially in the context of inmate calling services.” Order at 2–3. As an AOS stakeholder who provides inmate calling services, Securus elected to file extensive comments in this proceeding to assist the Board with gathering information needed to complete its stated objectives. Recognizing the confidential nature of information such as that provided by Securus in this docket encourages such participation. In contrast, denying the requested confidential treatment here, particularly in this case in which the proprietary and sensitive nature of the information at issue is clear, would discourage parties with information that could assist the Board from being forthcoming with that information or participating in voluntary dockets such as this one in the future. Refusing confidential treatment would therefore be contrary to the public interest.

Conclusion

For the reasons stated above, Securus respectfully asks the Board to grant its request for confidential treatment of the list contained in its response to Question 2 in the Order. Should the Board nevertheless deny confidential treatment, Securus respectfully asks that the Board withhold the confidential version of the response from public inspection for at least 14 days to allow Securus an opportunity to seek injunctive relief, as provided for under Board rules. 199 IAC 1.9(5)(a). Additionally, should the Board order the confidential response be made available to PPI, that disclosure should be subject to a stringent protective order providing a level of protection consistent with or exceeding that afforded by the protective order entered in similar

FCC proceedings. *See, e.g.*, Protective Order, *In re: TKC Holdings, Inc. et al.*, WC Docket No. 18-193 (adopted and released Sept. 11, 2018).

Respectfully submitted this 17th day of December, 2019.

By: /s/ Kristy Dahl Rogers

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**ATTORNEYS FOR SECURUS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of December, 2019, she electronically filed the foregoing document with the Iowa Utilities Board using the EFS system which will send electronic notification of such filing to the appropriate persons.

/s/ Olivia Lucas

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