

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 OF SECURUS TECHNOLOGIES, INC.
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Securus Technologies, Inc. (“Securus”) submits the following in response to the Order Initiating Inquiry issued by the Iowa Utilities Board (“Board”) on August 20, 2019 (the “Order”). Securus welcomes the opportunity to participate in the Board’s evaluation of the regulatory framework applicable to alternative operator services (“AOS”) companies and, in particular, AOS companies that provide inmate calling services (“ICS”), in Iowa. As the Board is aware, Securus is an ICS provider and has a tariff pending approval by the Board in docket TF-2019-0033, which was filed consistent with the Board’s instructions upon the conclusion of its rule making regarding inmate calling rate caps in docket RMU-2017-0004. Securus is also currently participating in the Board’s rule making regarding chapter 22 of the Board rules, which contains rules applicable to AOS companies, in docket RMU-2018-0022.

In this new proceeding, the Board has requested information responsive to a series of questions. Securus’ answers to those questions follow.

- 1. Should all AOS companies' tariffs have consistent definitions for the services provided, identify the types of facilities where the service is offered, offer the same types of service, offer the same calling options, and contain the same requirements for billing and cancellation of service?**

Response:

This question goes to the heart of the Board's stated purpose in this docket "to understand any differences in services offered by AOS providers in different types of facilities." As the Order notes, originally, AOS companies provided services to public and non-correctional institutional facilities such as hotels, hospitals, airports, or dormitories. While at one time ICS providers offered services that were similar to those provided in these contexts, over time ICS evolved into a distinct, indeed unique, service provided under special circumstances, which offers additional technologies and features targeted to the challenges associated with the correctional environment.

In contrast to the services provided by other AOS companies, ICS are not consumer-focused. This is a necessary consequence of the fact that people initiating calls using ICS are located in correctional facilities. To understand why, it is helpful to consider how consumer-focused telephone services might operate in the context of incarceration. The widespread use of contraband cell phones in correctional facilities throughout the United States provides a useful proxy for what consumer-focused telephone services would look like in that context. While there is no doubt that many inmates use contraband cell phones simply to maintain contact with friends and family, other inmates use them for malicious purposes. Inmates have used contraband cell phones to harass witnesses and victims;¹ operate drug rings² and prostitution

¹ See, e.g., *Inmates Using Facebook, Cell Phones to Harass Their Victims, Witnesses, Accusers*, CBS News, Nov. 11, 2011, available at <https://www.cbsnews.com/news/inmates-using-facebook-cell-phones-to-harass-their-victims-accusers-witnesses/>; *Ind. Prison Drug Ring Shows Contraband Phone Risk*, Associated Press, Aug. 23, 2012, available at https://www.heraldbulletin.com/archives/ind-prison-drug-ring-shows-contraband-phone-risks/article_5398d3a0-778e-5d3f-8cf0-bf277194c2c0.html.

rings;³ commit extortion,⁴ wire fraud, and money laundering;⁵ coordinate murders;⁶ and even to coordinate escape.⁷ Because contraband cell phones are not subject to monitoring or other limitations imposed by correctional facilities, they make it possible for inmates to engage in a broad range of criminal activities.

The proliferation of contraband cell phones in correctional facilities throughout the United States has underscored that these facilities require the capability to monitor and control inmate communications in order to protect the public and prevent inmates from participating in criminal activities. The attributes of ICS that distinguish it from consumer-focused phone service evolved to meet these needs and continue to evolve with available technology.

Modern ICS assist correctional facilities with monitoring and placing necessary limitations on inmate calls, providing tools and capabilities that are simply inapplicable to consumer-focused phone services. ICS utilize a unique telecommunications system infrastructure with no comparison to consumer or residential telephone service, consisting of a

² See, e.g., *id.*; *SC Inmate Helped Run Drug Trafficking Ring Using Cell Phone From Prison, Jury Says*, L. Daprile, The State, Aug. 23, 2019, available at <https://www.thestate.com/news/local/crime/article234311217.html>; *Feds: Northern California Inmate Led Prostitution Ring in Virginia From Prison Cell Phone*, Associated Press, The Mercury News, Nov. 1, 2018; available at <https://www.mercurynews.com/2018/11/01/feds-northern-california-inmate-led-prostitution-ring-in-virginia-from-prison-cell-phone/>.

³ See, e.g., *id.*; *Inmate Ran Woodbury Prostitution Ring From Kanabec County Jail, Say Charges*, M. Divine, Pioneer Press, May 16, 2019, available at <https://www.twincities.com/2019/05/16/inmate-ran-woodbury-prostitution-ring-from-kanabec-county-jail-say-charges/>.

⁴ See, e.g., *Prison Inmates Used Contraband Cellphones In 'Sextortion' Ring Targeting Military Service Members, Officials Say*, Algona Radio, ABC Radio, Nov. 29, 2018, available at <http://www.algonaradio.com/2018/11/prison-inmates-used-contraband-cellphones-in-sextortion-ring-targeting-military-service-members-officials-say/>; *Cell Extortion: Inmate Phones Leading to Violence, Fraud*, L. Riordan Seville & H. Rappleye, NBC News, Mar. 24, 2015, available at <https://www.nbcnews.com/news/us-news/cell-phones-n327311>.

⁵ See, e.g., *States Bedeviled by Contraband Cellphones in Prisons*, Teresa Wiltz, PBS NewsHour, June 7, 2016, available at <https://www.pbs.org/newshour/nation/states-bedeviled-by-contraband-cellphones-in-prisons>; *Autry State Prison Inmates Pleads Guilty to Laundering \$1 million from Prison*, U.S. Department of Justice, Apr. 13, 2016, available at <https://www.justice.gov/usao-ndga/pr/autry-state-prison-inmate-pleads-guilty-laundering-1-million-prison>.

⁶ See, e.g., *id.*; *Get Cellphones Out of Prison Cells*, R. Johnson, RealClearPolicy, Mar. 21, 2019, available at https://www.realclearpolicy.com/articles/2019/03/21/get_cellphones_out_of_prison_cells_111131.html; *For Safety, Or Profits? Inside the Debate Over Contraband Jail Cell Phones*, E. Markowitz, International Business Times, Apr. 7, 2016, available at <https://www.ibtimes.com/safety-or-profits-inside-debate-over-contraband-jail-cell-phones-2349467>.

⁷ See, e.g., *Cell Phones in Prisons*, National Institutes of Justice, Feb. 8, 2011, available at <https://nij.ojp.gov/topics/articles/cell-phones-prisons>.

calling platform with comprehensive tools for allowing facilities to control access, manage inmate use of services, monitor communications, and conduct investigations. The system typically includes centralized call servers supported by secure data servers (with multiple backup facilities) that allow for all calls to be recorded, backed-up, and archived.

ICS platforms include various features intended to ensure the security, confidentiality, and integrity of personal information, and to prevent inmates from committing crimes. These features typically prevent three-way calling, allow call recipients to block unwanted or harassing inmate calls, allow facilities to block calls to prohibited numbers, and notify officers of violations immediately. ICS platforms also include administrative tools that allow facilities to manage inmates' access to and use of telephones, ensure that calling accounts are properly used, and ensure that calling restrictions are enforced. Additional security features may include voice recognition software and call forwarding detection. Because ICS platforms can provide these security features only on outbound calls, calls must be placed by the inmate to family, friends, and other specifically authorized parties. There is no inbound calling.

With the exception of privileged calls, typically all ICS calls are subject to real-time monitoring and recording. ICS providers must maintain call recordings and provide facilities with the ability to search them for information relevant to facilities' investigatory needs, which may be directed toward preventing the commission of crimes, intercepting contraband, or cooperating with other law enforcement agencies. Facilitating investigations requires information technology to search across recording databases and call data, as well as automated reporting tools.

To protect called parties, ICS platforms typically provide notice to the called party prior to a call being accepted and connected that the call is subject to monitoring and recording and

provide the party paying for the call with the opportunity to obtain a rate quote. Additionally, every inmate call must be affirmatively accepted by the called party, regardless of whether the inmate or the called party is paying for the call.

Costs associated with installing, operating, and maintaining the ICS platform in a correctional facility are typically the exclusive responsibility of the ICS provider. These costs include providing and maintaining the telephones themselves, which are designed and manufactured specifically for use in the correctional facility environment. These devices must be hardened due to the potential for misuse and abuse, must be capable of being used hundreds of times per day, and must be built so that component parts cannot be adapted as weapons or used to store contraband. In addition, ICS handsets are designed to enhance voice biometric monitoring through improved voice capture and background-noise-elimination technologies.

ICS contracts are no-cost-to-the-facility arrangements, in which ICS providers are responsible for installing and maintaining the necessary equipment inside the correctional facility and ensuring that equipment meets the facility's operational requirements, complies with applicable rules and regulations, and remains in constant working order. The employees of ICS providers are typically required to have security clearances and must comply with the security policies and procedures of each facility served, including with respect to tool and equipment management.

Because the needs of facilities vary, rather than offering a one-size-fits-all service, Securus customizes the ICS packages it provides for each facility it serves. The services and technologies provided are configured to the specific needs of the customer. The facility selects the security and investigative tools it wants or needs, the length of storage of inmate call recordings, and other features. Securus then provides an ICS package to meet the facility's

requirements. Due to the nature of the technologies and tools required to provide ICS services and the variation in the desired or required services among facilities, each correctional facility is necessarily serviced by a single ICS provider. Having multiple providers service the same facility would multiply the technological and administrative demands associated with providing ICS and require the installation and maintenance of duplicative equipment, thereby increasing associated costs.

Because correctional facilities have different needs and the ICS industry has evolved to meet those diverse needs, ICS are not fundamentally interchangeable commodity services. Correctional facilities do not all want the same tools or capabilities. In practice, the ICS industry offers a wide range of solutions for correctional facilities, from very basic services to leading-edge technologies.

Securus takes pride in the investments it has made in research and development. Over the years, Securus has been awarded 213 ICS-related patents, of which it currently has 170 ICS-related patents in force. An additional 26 patents are held by a Securus subsidiary, and together Securus and its subsidiaries have 117 pending patent applications. These numbers reflect Securus' business model of offering a comprehensive portfolio of best-in-class technology to its correctional facility customers. While some of Securus' competitors provide a similar range of products, many others offer less advanced options. These less costly, less technologically advanced options may be more compatible with available staffing and available resources at some facilities. Other facilities prefer the leading technologies offered by Securus.

As set forth above, various requirements and capabilities unique to ICS distinguish it from typical, consumer-focused AOS provided to public or non-correctional institutional facilities such as hotels, hospitals, airports, or dormitories. Further, because ICS may be

customized for individual facility customers and may utilize different technologies depending on what is required to meet their needs, ICS providers do not offer precisely the same services or technologies. Securus respectfully suggests that any revision the Board makes to the existing regulatory framework applicable to AOS should reflect these distinctions. Many features distinguish ICS from consumer-focused AOS, ICS are not interchangeable commodity services, and regulation of AOS companies reflecting these real distinctions will be more effective than regulation that does not fit actual practice.

In the sections that follow, Securus briefly addresses each subpart to the first question posed in the Order. To the extent the Board seeks to consistently define the services or type of service, calling options, and billing and cancellation requirements applicable to AOS and ICS providers, that desire for consistency should be balanced against the benefits of allowing service providers to offer innovative solutions, develop new technologies, and accommodate diverse facility requirements. With regard to differences among providers in types of service, calling options, and billing and cancellation requirements, Securus notes it has not received any customer complaints in Iowa regarding these matters in recent years.

1A. Should all AOS companies' tariffs have consistent definitions for the services provided?

No, all AOS providers should *not* be required to utilize consistent definitions for the services provided on their tariffs. Requiring such definitions might be appropriate if AOS companies provided commodity services that were readily interchangeable among competitors. As indicated above, however, there are fundamental differences between consumer-focused AOS and corrections-focused AOS. ICS providers offer services that are fundamentally distinct from traditional AOS provided in public or non-correctional institutional facilities. Additionally, ICS

offerings, including calling options and technological capabilities, vary among ICS providers, and services provided a single provider may vary from facility to facility.

1B. Should all AOS companies' tariffs identify the types of facilities where the service is offered?

Yes, Securus believes that requiring AOS companies to identify the types of facilities where services are offered *is* appropriate and would assist the Board in regulating AOS. To the extent AOS providers offer different types of services to different types of facilities, identifying the applicable types of facilities where services are offered would assist the Board in evaluating their tariffs. Such identification is particularly appropriate to distinguish between AOS providers that offer ICS and those that do not. This distinction is relevant because ICS providers offer different services from those provided to the public facilities associated with traditional AOS and necessarily must limit the calling capabilities of the telephones installed in correctional facilities. In its tariff currently pending before the Board, Securus identifies itself as an ICS provider of calling services to confinement facilities.⁸

1C. Should all AOS companies' tariffs offer the same types of service?

No, all AOS companies should *not* be required to offer the same types of services. As illustrated above, there are fundamental differences between traditional consumer-focused AOS and the corrections-focused AOS provided by ICS providers like Securus. ICS providers offer services that are very different from those traditional AOS providers offer to public or non-correctional institutional facilities.

1D. Should all AOS companies' tariffs offer the same calling options?

No, all AOS companies should *not* be required to offer the same calling options. As discussed above, AOS companies serve a wide variety of facilities, including correctional

⁸ Securus Tariff, filed April 1, 2019, § 0.1 and § 0.2, at sheet 5.

facilities with diverse needs. The fundamental differences between consumer-focused AOS and corrections-focused AOS require that AOS providers be permitted to offer distinct calling options based on the type of customer being serviced and its individual needs. Because different correctional facilities have different needs, the calling options provided vary even among ICS providers.

1E. Should all AOS companies' tariffs contain the same requirements for billing and cancellation of service?

No, all AOS companies should *not* be required to offer the same requirements for billing and cancellation of service. The differences between consumer-focused and corrections-focused AOS necessarily lead to corresponding differences in the way ICS are billed or cancelled as compared to traditional AOS. In addition, different ICS providers offer different calling options and capabilities associated with corresponding differences in billing and cancellation practices.

For example, Reliance Telephone of Grand Forks, Inc. (“Reliance”) offers special rates for direct-billed customers (i.e., customers who are billed for calls after they have taken place).⁹ In contrast, Securus offers direct billing on a very limited basis in Iowa, and does not have a different intrastate rate for direct-billed calls. Other ICS providers may not offer direct billing at all. There is no reason to require Reliance or Securus to stop providing this service or, in the alternative, to require other ICS providers to begin providing it.

Regarding cancellation of services, calls placed through Securus may be prepaid by either by an inmate using a debit account or a prepaid calling card (which may be purchased using a commissary account), by a person using a previously funded Securus AdvanceConnect account to pay for calls to that person and others, or by the recipient of the call upon receipt.

⁹ Reliance tariff, filed March 28, 2019, § 4.1, at sheet 14.

Cancellation is not applicable to these arrangements. Calls will go through if they are accepted and prepaid in advance; otherwise they will not.

2. What criteria or considerations should the Board use to determine whether rates charged by an AOS company are just and reasonable? This includes the basic rates and any ancillary rates?

Response:

A foundational consideration for determining whether rates charged by an AOS company are just and reasonable is whether the rates charged for calls recover the associated costs and allow the ICS provider to make a reasonable return on its investment. There are two basic options for an ICS provider to set its rates. The first involves looking at the specific costs associated with providing ICS in each specific correctional facility and allocating those costs across the facility's usage to determine the appropriate rate. The second involves the ICS provider averaging all of its costs across all its Iowa correctional facility customers' usage to determine a uniform rate applicable to all of them.

There are significant challenges to the second practice described above. Averaging costs and equalizing rates across different customers (1) ignores differences in ICS costs among facilities of different sizes, (2) ignores the costs associated with a facility's specific requirements, (3) implicitly requires larger facilities to subsidize smaller facilities, (4) limits the flexibility of the ICS provider to charge lower rates for the larger facilities, and (5) makes the rate structure of the ICS provider dependent on retaining a suitable number of larger facilities. Because of these challenges, Securus applies this alternative rate-setting methodology only when developing rates for large, multi-site customers, such as a state department of corrections.

In the modern ICS market, calling rates are typically set through a competitive bidding process whereby facilities issue requests for proposals setting forth in detail their particular requirements, and providers submit bid proposals with the calling rates they would charge to

provide the desired services. Securus accounts for the following variables when submitting proposals to these facilities:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Should an AOS company be allowed to offer rates and service for non-correctional facilities that are different from rates and services provided for correctional facilities?

Response:

Yes, AOS companies should be permitted to offer different rates for correctional facilities as opposed to non-correctional facilities because providing AOS to correctional facilities involves different services and different costs. As previously noted, ICS are distinct from consumer-focused AOS, with different attributes and different costs.

Securus does not provide AOS to non-correctional facilities and cannot estimate the difference in cost between ICS and non-correctional AOS or what rates should be charged for traditional AOS. Although Securus does not presently provide public payphones to any of its Iowa customers or elsewhere within the state, when required by a customer, Securus will contract with a third-party provider to install and operate public payphones on its behalf within a facility. These payphones may be located at police stations or courthouses for public use, and the attributes and costs applicable to ICS do not apply to them.

4. Should agreements between facilities, including state or local correctional facilities, and an AOS company also be filed with the Board, similar to the AOS tariff?

Response:

No. Securus respectfully submits that requiring contracts to be filed with the Board would serve little purpose and would unnecessarily burden both the Board and ICS providers. As an initial matter, ICS contracts are already available to the degree they are not confidential under the Iowa Open Records Law. In Securus' experience, ICS providers do not routinely disseminate these agreements because they typically contain detailed terms and conditions or other business information that is generally regarded as confidential and proprietary by facility customers and/or ICS providers. If the Board requires ICS providers to file their facility

contracts without extending confidential treatment to them, those contracts would become readily available to competitors without affording ICS providers any opportunity to demonstrate that they are excepted from disclosure under the Iowa Open Records Law. Securus believes this relative ease of access would have a competitive impact on ICS providers. Securus therefore believes that if the Board imposes a requirement that ICS providers file their facility contracts with the Board, the Board should also expressly and routinely afford these contracts confidential treatment.

More fundamentally, because ICS contracts may already be obtained under the Iowa Open Records Law, it appears that little to no consumer benefit would result from requiring them to be filed with the Board. To the extent information relevant to consumers may be contained in these contracts, that detail is readily captured within ICS tariffs. It is unclear to Securus how the Board might use ICS contracts in evaluating calling rates, as no additional information relevant to their reasonableness is included therein. Requiring ICS providers to file their contracts with the Board would also create unnecessary administrative burdens for both the Board and ICS providers, as these agreements are often amended. These burdens would outweigh any minimal benefit that may be associated with ICS contracts being available to the Board.

5. Companies that are providing AOS service are requested to provide a description of the company's current corporate structure and affiliations and whether that company is a successor to a company that previously provided AOS service in Iowa.

Response:

Please see the attached organizational chart Securus' current corporate structure and affiliations. Securus is the successor of a number of companies that previously provided AOS in Iowa:

- Tele-Matic Corporation, which later changed its name to T-NETIX, Inc. ("T-NETIX") in 1996.
- Gateway Technologies, Inc., which was acquired by T-NETIX in 1999.

- Ameritel Pay Phones, Inc., Security Telecom Corp., and Talton Invision, Inc., which merged with other companies in 1998 to form Evercom Systems, Inc. (“Evercom”)

In 2004, Evercom and T-NETIX were both acquired by a private equity firm (H.I.G. Capital) and over time contracts and services were consolidated in Evercom, which changed its name to Securus Technologies, Inc. in 2010.

6. What information regarding AOS service should be considered confidential and not available for public inspection?

Response:

In general, Securus typically seeks the protection of internal, proprietary, non-public information related to its finances (including its revenues and internal costs), its internal methodologies, its trade secrets, the design and operation of its products, its contracts with vendors and other non-governmental companies, and any personal information regarding individuals or information otherwise required to be protected by law (e.g., customer proprietary network information).

Specific examples of the types of information Securus typically seeks to protect from public disclosure include its revenues (and non-public information that may be used in connection with public information to calculate revenues such as the number of times a fee is charged), its internal costs, its rate-setting methodology, and internal documentation related to the operations of its products. In addition, when required by its contract with facility customers, Securus may be required to obtain customer consent prior to the disclosure of contracts themselves.

Securus does not redact information that is publicly disclosed or which can be readily derived from publicly available resources, including, by way of example, the names of facility

customers that may be discovered using our online Rate Quote feature, or the average daily population of those facilities.

7. Are the Board's current registration and billing procedures understandable and are there any issues or questions about those procedures?

Response:

As further described in responding to the question that follows, the annual registration form requires each telecommunications services provider to indicate the services it provides but does not offer any guidance as to when a provider should select the "Other" category provided as an option for responding.

As addressed in Securus' comments dated March 11, 2019, in docket RMU-2018-0022, the AOS billing requirements in the Board rules do not appear to be applicable to the ICS context, in which calls are prepaid in advance by either the calling inmate, the creator of an account, or the called party. *See* 199 IAC 22.19(6). Rather, the rules seem only to address the case in which a party is billed for a call after the fact.

8. When would an AOS company select only one of the options on the current telecommunications registration form (Local Exchange Service; Interexchange Service; Data Transmission; Alternative Operator Services Only; Other) or a combination of options?

Response:

Securus Technologies, Inc. currently selects only the Alternative Operator Services Only option on the current telecommunications registration form because Securus only provides AOS and does not provided local exchange service, interexchange service, or data transmission service in Iowa.

The options a carrier selects on the telecommunications registration form should reflect the service types actually (or authorized to be) provided by that carrier in Iowa. If a carrier provides both AOS and another type of service (e.g., Local Exchange Service), then it should

select all of the applicable services. If a carrier only provides AOS, then it should only select that option.

Chapter 22 of the Board rules identifies five types of telecommunications service providers (i.e., competitive local exchange carriers, incumbent local exchange carriers, interexchange utilities, local exchange utilities, and AOS companies). *See* 199 IAC 22.1 (defining types of service providers), 22.19 (incorporating by reference definitions contained in Iowa Code § 476.91). In addition, pursuant to rule 22.23(3), “each carrier that provides or bills for telecommunications services to customers located in Iowa shall register with the board and shall provide, at a minimum, the information specified in the [registration] form” 199 IAC 22.23(3). The registration form itself in turn directs providers to indicate the types of telecommunications service they provide by indicating all that apply among five options, including local exchange service, interexchange service, data transmission, alternative operator services only, and other. The form further indicates that a provider should indicate all service types that apply and specify any “other” service it provides. Neither the Board rules nor the form itself provides further clarification regarding when providers should select the “other” category or any guidance regarding how providers should determine whether to check multiple service types in the provided list. The purpose of the “Other” category on the registration form is unclear, as the other options appear to encompass each of the service types addressed in Chapter 22.

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

Olivia Lucas