STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2019-0033

MOTION TO COMPEL DISCOVERY

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, requests an order requiring Securus Technologies, Inc. (Securus) to answer OCA Data Request No. 5, for the following reasons:

1. The order dated March 2, 2021, directed Securus to "provide clarification regarding the automated payment fee for one-time calls." The order stated:

> The Board questions why the statement that a "one-time transaction fee of [Y]" does not include the $3.00 automated payment fee in the tariff. This statement appears to indicate that some other fee may be charged. The Board understands the payment of the $3.00 automated payment fee to be the only other charge, except for the per-minute rate. While an explanation regarding the single-call ancillary fees will be required, the Board will not adopt OCA's suggestion that the ancillary fees for single calls be reduced at this time.

2. By filing dated April 1, 2021, Securus responded:

> The AdvanceConnect Single Call call flow script . . . reflected the general call script used by Securus at correctional facilities throughout the United States. With regard to the statement "This call will cost [X] cents per minute plus any applicable federal, state, and local taxes, plus a one-time transaction fee of [Y]", "Y"

is the automated funding fee applicable to the specific correctional facility. There are correctional agencies , , , that negotiate or require lower caps on ancillary service charges . . . . As a result, Securus' general call flow script uses a variable (*i.e.*, "Y") rather than a specific amount for the automated funding fee, which for Iowa correctional facilities is the tariffed $3.00.

3. On April 5, 2021, OCA sent Securus the following Data Request No. 5:

Referencing your filing dated April 1, 2021, page 7, please identify each correctional agency that has negotiated or required a cap lower than $3.00 on the ancillary charge for a single call. For each such agency, specify the amount of the negotiated or required lower cap on the ancillary charge for a single call.

4. On April 12, 2021, Securus responded:

There are no facilities or agencies in Iowa that have negotiated or required a cap lower than $3.00. To the extent the request seeks a response regarding facilities beyond the jurisdiction of this docket, Securus objects to such a request as overbroad, irrelevant, and unduly burdensome.

5. On April 13, 2021, OCA attempted to resolve the dispute, stating:

The purpose of this email is to seek to resolve a discovery dispute without the need to involve the Board.

The relevance objection is without merit. Litigants are entitled to every person's evidence, and the law favors full access to relevant information. To those ends, the discovery rules are liberally construed. A party is entitled to information that is not privileged and that is relevant to the subject matter of the lawsuit. Relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings. This is so because inadmissible information is discoverable as long as it leads to the discovery of admissible evidence. *State ex rel. Miller v. Nat'l Dietary Rsch., Inc.*, 454 N.W.2d 820, 822–23 (Iowa 1990). Here, relevance does not stop at the state's borders. The data request follows up on information Securus provided in response to the Board's most recent order. The data request seeks to discover the extent to which Securus is charging Iowa inmates and called parties a higher ancillary fee for single calls than Securus is charging inmates and called parties for single calls in other states. The factors that bear on the justness and reasonableness of these ancillary fees are likely in many respects to be the same or similar

from state to state. Thus, if there is a substantial number of ancillary fees for single calls in other states that are lower than the $3.00 ancillary fee for single calls in Iowa, that fact will be relevant on the issue whether the $3.00 ancillary fee for single calls in Iowa is just and reasonable, as required by statute. The fact that Securus is claiming it would be burdensome to answer the data request suggests there may well be a substantial number of ancillary fees for single calls in other states that are lower than the $3.00 ancillary fee for single calls in Iowa. This heightens the relevance.

The burdensomeness objection is similarly without merit and is wholly unsupported. There is only one data request. Some burden is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on Securus. That burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested information is relevant to that purpose. *State ex rel. Miller v. Publishers Clearing House, Inc.,* 633 N.W.2d 732, 738–39 (Iowa 2001). Securus provides no indication of the expense that answering the data request would entail. Securus provides no indication that answering the data request would unduly disrupt or seriously hinder its normal operations. *See id*. If there are hundreds or more than hundreds of correctional agencies that have negotiated or required a cap lower than $3.00 on the ancillary charge for a single call, OCA is willing to discuss with Securus whether there is a means short of a complete listing by which a meaningful response can be provided.

Please respond no later than April 20, 2021. Thank you.

6. On April 27. 2021, after receiving an extension, Securus responded:

I write in response to your e-mail of April 13, regarding Securus's objections to OCA DR 5. We continue to disagree with your position regarding the request for what non-Iowa facilities have negotiated for an automated payment fee charge other than $3.00.

First, let me respond regarding the burden, and I note that while discovery may be liberally construed, it is also mandated that it be proportional. *See* Ia. R. Civ. P. 1.503(8)(c). In this case, Securus works with approximately 1,200 agencies nationwide, and while Securus doesn't keep a list, we believe it likely that less than two dozen agency customers have automated funding fees under $3.00. Because no list is maintained on that topic, it will

essentially be a very labor-intensive needle-in-a-haystack search to find and verify the facts surrounding each of those. Even so – and particularly because of the relative rarity – we believe our relevance objection is also valid. Jurisdictions have very different legal regimes, the nature and size of their incarceration facilities is different, the history of their contracts and market structure are different. Comparing across other states would be entirely apples-to-oranges.

Second, I do not believe the test you cite overcomes these issues. You note that the test for permissible discovery reaches beyond what is clearly admissible to those inquiries that may "lead[] to the discovery of admissible evidence." Here, however, OCA's DR 5 cannot lead to discovery of admissible evidence because there is no hearing yet to come – or even a decision yet to come. The Board has approved Securus's tariff, which is now in effect, and as of yesterday has even approved the amended pages that include this issue. There is no contested case in which evidence is being taken or can be admitted. This also goes to whether the "burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." There are no "needs of the case"; this case has no remaining process. Moreover, the amount in controversy here is small (your data request would apply if the negotiated amount was $2.99 rather than $3.00), the issues as to charges in unrelated states are not of significant importance because they are such a small minority of cases and because there is nothing improper or unlawful about the existing $3.00 charge which the Board has approved (in Securus's tariff and those of other ICS providers.) Indeed, OCA itself has repeatedly argued in favor of a $3.00 cap for such fees, arguing that the FCC ancillary service charge is presumptively fair and reasonable.

In short, there is nothing proportional about requiring a search of 1,200 customer relationships for a handful of cases where the terms are different when (a) that information would only be meaningful in a situation where all of the differences and similarities can be evaluated (the kind of more detailed cost proceeding OCA opposed as recently as its comments of January 3, 2020 in the NOI docket, referring to such review a "daunting challenge"); (b) there is no significant interest at stake as the $3.00 rate has been found lawful and proper by both the IUB and the FCC, and OCA itself has supported the $3.00 level as reasonable throughout these proceedings; and (c) the data request comes after

> any contested case is completed and there is no pending decision for which it can be submitted as evidence.
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> Should you have further questions on this matter, please feel free to contact me.

7. On April 29, 2021, counsel attempted by telephone, again without success, to resolve the dispute without the need to involve the Board.

8. Neither the FCC nor the Board has given any inmate calling service provider an approval in perpetuity on the $3.00 ancillary fee, especially not as it relates to a single call. The FCC, having observed that the record is "replete with evidence that some of these [single-call and related] services are being used in a manner to inflate charges" and that the record "also highlights substantial end-user confusion regarding single-call services,"[1] has an inquiry currently outstanding regarding ancillary charges.[2] More directly pertinent here, the Board's approval of the $3.00 ancillary fee as it relates to single calls is modified by the phrase "at this time," and there is nothing in the order or elsewhere that precludes continued investigation. On the contrary, the approval is expressly made subject to complaint and investigation. By statute, the consumer advocate has a duty to "[i]nvestigate the legality of all rates, charges, rules, regulations, and practices of all persons under the jurisdiction of the utilities board." Iowa Code § 475A.2(1). There is also a pending notice of inquiry proceeding, Docket No. NOI-2019-0001.

9. The relevance objection lacks merit. The fact that some correctional agencies have required ancillary charges for single calls lower than the FCC's $3.00 cap suggests these agencies have concluded an ancillary charge of $3.00 for a single call is too high. The logical follow-up questions are which correctional agencies have so required, why have they done so,

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[1] Second Report and Order and Third Further of Notice of Proposed Rulemaking, FCC 15-136, 30 F.C.C.R. 12763 (2015) ¶ 182.

[2] Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, FCC 20-111 (2020) ¶ 91.

and what is the magnitude of the variation. There is no reason why this information should be hidden. It may add to the Board's (and the FCC's) relevant body of knowledge and may be persuasive of a different conclusion on a better informed record at a different time. The relevance test for discovery does not, however, require proof that the discovery will lead to a particular outcome. It is enough that the requested discovery relates to the claim or defense of any party. Iowa Court Rule 1.503(1). There is nothing improper or uncommon in the Board's consideration of evidence regarding practices in other states as a part of its assessment of what is reasonable for Iowa. Many of the factors that bear on the justness and reasonableness of the ancillary rates for single calls are probably the same from state to state.

10 The burdensomeness objection also lacks merit. There is only one data request. It is narrowly focused. Securus has the ability to retrieve the requested information in order to prepare the scripts with the separate values for the variable Y noted by the Board. Its burdensomeness claim is probably exaggerated. As observed above, moreover, some burden is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest. The burden of showing that the request is unreasonable is on the resisting party. That burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested information is relevant to that purpose. *State ex rel. Miller v. Publishers Clearing House, Inc.,* 633 N.W.2d 732, 738–39 (Iowa 2001). Securus provides no indication of the expense that answering the data request would entail and no indication that answering the data request would unduly disrupt or seriously hinder its normal operations. *See id*.

WHEREFORE, OCA requests the entry of an order requiring Securus to answer OCA Data Request No. 5.

Respectfully submitted,

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