

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2019-0033
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REPLY ON MOTION TO COMPEL DISCOVERY

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, replies as follows to the Resistance to Motion to Compel (Resistance) filed May 19, 2021, by Securus Technologies, Inc. (Securus) with the Iowa Utilities Board (Board).

Securus' burdensomeness argument is not credible. The company is one of considerable means. Its ultimate corporate parent was purchased in 2017 for \$1.6 billion.¹ While the company may have elected to employ a small number of inhouse legal personnel,² a company does not properly escape its discovery obligation by so simple an expedient. The bulk of the work that would need to be done to answer the data request could and would probably better be done by the non-legal personnel who have intimate knowledge of the company's day-to-day operations. Any legal work required for response could be assigned to outside legal counsel, who are already active in the matter. The work can probably be shortened up by making inquiry of the knowledgeable personnel. The company has already determined, for example, that none of the Iowa contracts call for ancillary fees on single calls lower than \$3.00, so the Iowa

¹ *In the Matter of Securus Techs., Inc., et al.*, 32 F.C.C. Rcd. 9552, 2017 WL 4942792 (2017).

² Resistance at 8.

contracts can be eliminated immediately from the assertedly burdensome search. Similar determinations can probably be made easily in some, perhaps most, other states. With a little effort in contacting the right company personnel, it is probably more like looking for a pitchfork than a needle in a haystack. The proceedings before the FCC and the California and New Mexico public utility commissions³ are not a legitimate basis for refusing discovery in Iowa. Again, a small inhouse legal staff is not a valid basis for objection. Similarly, under authority previously cited by OCA, the fact that there may be some burden is not a valid basis for objection.

The suggestion that some correctional agencies may have required that the ancillary fee for single calls be lowered from \$3.00 to \$2.99⁴ is similarly not credible. Responsible personnel at correctional agencies have many demands on their time. It is unlikely that they would devote their resources to securing an insignificant one cent reduction. OCA and the Board, moreover, should not be required to guess as to the amount of the reductions. That is what discovery is for.

Although it is true that OCA has expressed support for capping the ancillary automated payment fee for intrastate calling at the FCC's \$3.00 cap for interstate calling, there is nothing that restricts OCA from taking a closer look as new issues are brought to light. Indeed, OCA has a duty to do so. An ancillary automated payment fee of \$3.00 for a \$50.00 deposit to an ICS account is one thing. An ancillary automated payment fee of \$3.00 on a single call is quite another—as a look at the numbers reveals.

³ Resistance at 8-9.

⁴ Resistance at 10.

At \$.21 per minute, the maximum per minute charge for a 15-minute call is \$3.15. Thus, for \$53.00 (\$50.00 deposit plus \$3.00 ancillary fee) the incarcerated person can place fifteen 15-minute calls and still have \$2.75 left in the account. By contrast, if the calls are placed singly, with a \$3.00 ancillary fee on each call, the incarcerated person is charged \$6.15 for each call, or a total of \$92.25 for the 15 calls—a 74 percent increase over the \$53.00.

There is no “mockery of the Board’s order.” Resistance at 10. As is typical of orders approving tariffs, the order made the approval of the tariff subject to complaint and investigation. OCA has a right and duty to investigate Securus’ tariff and may file a complaint based on what the investigation discloses. Nor is there any unfairness to Securus or any attempt by OCA to “relitigate” the issue. Resistance at 11. On the contrary, as soon as Securus filed a document disclosing that some correctional agencies have required an automated payment fee for single calls lower than \$3.00, OCA immediately sent its Data Request No. 5 to Securus. The vast majority of the time that has lapsed since Securus made the disclosure is the time taken by Securus first to object to the data request, then to fashion its arguments in response to OCA’s required attempt to resolve the issue without the need to involve the Board, and finally to resist the motion to compel.

OCA agrees this should not be solely a Securus issue. Resistance at 11. Wherever the investigation leads, its conclusions should be applied uniformly to all inmate calling service providers. The current data request is directed to Securus because Securus is the party that disclosed that some correctional agencies have required an ancillary automated payment fee lower than \$3.00 for single calls. If and when additional information is brought to the Board’s attention, it will be up to the Board to decide whether and when it wishes to address the issue further and if so whether it wishes to do so in tariff or in rulemaking proceedings.

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

Respectfully submitted,

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