Filed with the Iowa Utilities Board on June 9, 2021, TF-2019-0033

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, LLC	DOCKET NO. TF-2019-0033 **SURREPLY RESISTING OCA'S MOTION TO COMPEL**

While the issues in this case, and in OCA's motion, have largely been addressed , OCA now brings new assertions amidst two significant omissions to its Reply that cannot be allowed to stand without response.

The omissions establish important context for the novel arguments OCA now raises: nowhere in its Reply does OCA mention either of the touchstones of proper discovery – proportionality or relevance – even once. Despite each being an obligation of discovery under the Iowa Rules of Civil Procedure, as well as a key argument in Securus' Resistance, OCA fails to show how a post-Board ruling review of 1,200 individual contracts from other states for potentially a small amount of irrelevant information respects proportionality. OCA further makes no effort to explain how this small amount of out-of-context material subject to entirely different facts is relevant, particularly when there is no pending proceeding that it could be relevant *to*.

This clear lack of acknowledgment of proportionality may explain the new argument OCA makes that Securus can simply change up its workflows, or perhaps hire more resources, to satisfy the OCA's request. Moreover, OCA's position that a "small legal staff is not a valid basis for objection" also entirely eviscerates the common and expressly contemplated objection that the requested discovery is burdensome. Perhaps state agencies can call upon unlimited

resources, but private companies cannot. Burden is not defined by a fixed quantity of effort or dollars, but is understood in the context of the relevance of the information requested and the resources necessary to produce the information. As Securus argued in our Resistance, the OCA request remains out of proportion and the requested information remains irrelevant to OCA's stated purpose.[1] OCA's position is that nothing is burdensome with sufficient resources dedicated; but the objection that discovery is burdensome is entirely based on the idea that expenditure of resources is excessive compared to the relevance of the information.[2] The entire point of the proportionality requirement is that a litigant can't require the other party to move mountains unless the material sought is of comparable importance to a material element of a case.

Here, as Securus already has pointed out, there is no remaining case, and for a number of reasons the information sought simply does not lend itself to any analysis contemplated in this docket. ***First***, this request adds nothing compelling to the extensive facts the Board already knows from its years of investigation[3] of incarcerated calling services ("ICS") over multiple rulemaking, inquiry, and tariff dockets. ***Second***, the Board already approved Securus' tariff knowing the essential information to be obtained from this data request, which Securus has already disclosed: that Securus has some out-of-state facilities with Automated Payment Fee caps of less than $3.00 per use. ***Third***, OCA agrees this should not be an issue directed solely at

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[1] Securus Resistance to Motion to Compel at 5-11.

[2] IRCP 1.503(8) instructs the court to limit discovery where "[t]he 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."

[3] *See, e.g.*, *In re Rulemaking Regarding Inmate Calling Rate Caps [199 IAC Chapter 22]*, Docket No. RMU-2017-0004 (the "ICS Rulemaking Docket"), Reply Comments of Securus Technologies, Inc, (Jul. 6, 2018), at 9 (requesting the Board to confirm that the proposed rule allows for the $3 automated payment fees to apply to single-call payment transactions).

Securus, and yet it persists in seeking to make Securus alone undertake this burden. The Board should reject that unfair effort.

Notably, OCA has also said nothing about relevance. Indeed, the word does not appear once in its Reply. Yet, the Iowa Rules of Civil Procedure expressly provide that "Parties may obtain discovery . . . which is relevant to the subject matter involved in the pending action" because "it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." IRCP 1.503(1). Here, OCA has failed to show how a list of facilities *in other states* with Automated Payment Fees under $3.00 relates to any live issues before the Board (there is no "pending action") or how it relates to any claim or defense without meaningfully more context – without, essentially, the kind of cost review OCA itself previously admitted was difficult, and which the Board rejected when it approved Securus' tariff.[4] It has not shown how (a) a list of such non-Iowa charges is relevant to any new analysis (or re-analysis) the Board might undertake, or (b) the Board might evaluate and use the list to consider whether any ancillary service charges in Iowa are just and reasonable. OCA does attempt to create a basis for relevance by use of an analysis that is not tied to practical realities: that a consumer would voluntarily incur significantly greater cost by repeatedly making a comparable amount of single calls rather than through the use of prepaid accounts.[5] But OCA does not disclose to the Board the fact from Securus' call flow script that consumers are informed before

[4] "Also, the Board will not address ancillary fees at this time, but may revisit the issue at a later date." Board Order Approving Revised Tariff Sheets at 6.

[5] OCA Reply, at 2-3.

connecting each and every single call precisely how to create or fund a prepaid account so that the consumer does not need to make repeated single calls.[6]

OCA's other argument is that the Board approved the tariff subject to complaint and investigation, and the OCA is fulfilling a duty to investigate. But the investigation cannot be perpetual. These ICS-related dockets have already gone on for years. If the mere fact that the Board literally just issued its decision weeks ago were not enough, OCA ignores and has no answer for the fact that the Board was informed and aware of the prospect that there could be different charges in other states when it approved Securus' tariff. This is not a new investigation – no matter how OCA seeks to deny it, this is purely a re-litigation of an issue the Board already resolved. OCA should not be allowed endless, repeated bites at the same apple.[7]

CONCLUSION

The mere fact that OCA is interested in an issue is not sufficient to make discovery proper or permissible. Neither the Iowa Rules of Civil Procedure, prior Board orders, nor due process allow discovery to be that unbounded. OCA's position ignores the proper scope of discovery as set forth in Iowa Rule of Civil Procedure 1.503(1) and 1.503(8). OCA has not and cannot show that Data Request 5 is relevant to any outstanding issue to be resolved. OCA has not and cannot show that Data Request 5 is in anyway proportional to the need to individually

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6 *In re Securus Technologies, LLC,* Docket No. TF-2019-0033, Prison Policy Initiative's Comments Regarding Securus Technologies' Revised Tariff (Feb. 8, 2021), Exh. 1, at 2 ("If you do not want to connect this call but would like to fund an account for future calls, please hang up and call 800.844.6591.").

7 OCA's repeated bites at the apple also forego consistency. Until the present motion, OCA has analyzed rates and charges in the ICS dockets as just and reasonable based on how they compare to the FCC's rules, and it did so without qualification. *See, e.g.,* Inquiry Docket, Response to Order (Sep. 19, 2019), 3-5. The FCC's ICS rules (including rate and ancillary service charge caps) are a comprehensive package of regulation intended to protect consumers while ensuring ICS providers are adequately compensated. These rules (and the rate and charge caps contained in them) were the product of data collections and analysis of cost data. OCA now wants to start picking apart the FCC rules it called upon the Board to rely upon – rules that allow a $3.00 ancillary fee *cap* – cherry picking from what is intended as a comprehensive package the parts it likes and those it would like to unilaterally modify. In the absence of consistently collected cost data subject to a rational methodology of review, the Board should reject this effort.

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review 1,200 contracts for a few needle-in-a-haystack examples that are in a different context because they are in different states. And OCA should not be able to continue a proceeding where the Board has already approved Securus' tariff and in the course of doing so has ruled on the very issue the disputed discovery pertains to. These proceedings have gone on for years, and there has been ample opportunity for whatever investigation OCA believed was necessary in a timely manner. OCA itself agrees that its alleged desire to investigate whether ancillary fees should be capped below $3.00 is an issue that should apply to all ICS providers (again, despite the Board clearly telling OCA literally just weeks ago that it would "not take up ancillary fees at this time"). There is no basis for allowing burdensome discovery to proceed in this docket, at this time, on this issue. There is no dispute that Securus' Automated Payment Fee is lawful, and was found reasonable by the Board. The Board should deny the motion to compel.

Respectfully submitted this 9th day of June, 2021.

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ATTORNEYS FOR SECURUS TECHNOLOGIES, LLC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of June, 2021, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
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