

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2016

Released: April 8, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies Securus Technologies, Inc.'s (Securus's) objection¹ to a request by outside counsel for Correct Solutions, LLC (Correct Solutions) to obtain pursuant to the *Protective Order* adopted in this docket,² access to commercially sensitive information filed in this proceeding, some of which was included in the unredacted order the Commission released in this docket on November 5, 2015.³

II. BACKGROUND

2. On September 26, 2013, the Commission released the *Inmate Calling Services Report and Order and FNPRM (2013 ICS Order)*.⁴ As part of the *2013 ICS Order*, the Commission adopted a one-time Mandatory Data Collection “[t]o enable the Commission to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates as well as to inform [its] evaluation of other rate reform options.”⁵ The Commission delegated to the Bureau “the authority to adopt a template for submitting the data and provide instructions to implement the data collection.”⁶ In anticipation of the data submissions, the Bureau released a *Protective Order* in this proceeding.⁷

¹ Securus Technologies, Inc. Objection to Disclosure of Confidential Information, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (filed Feb. 22, 2016) (Securus Objection).

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (Wireline Comp. Bur. 2013) (*Protective Order*).

³ See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015) (*2015 ICS Order*).

⁴ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 78 Fed. Reg. 67,956 (2013) (*2013 ICS Order*), *pets. for stay granted in part sub nom. Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014); *pets. for review pending sub nom. Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

⁵ *2013 ICS Order*, 28 FCC Rcd at 14172, para. 124.

⁶ *Id.* at 14173, para. 126. Pursuant to the Paperwork Reduction Act, the Commission sought and received Office of Management and Budget approval for the Mandatory Data Collection. See *Commission Announces Inmate Calling Services Data Due Date*, WC Docket No. 12-375, Public Notice, 28 FCC Rcd 7326 (Wireline Comp. Bur. 2014).

⁷ See *Protective Order*, 28 FCC Rcd 16954.

3. In the *Protective Order*, the Bureau stated that it “is mindful of the sensitive nature of [confidential filings, but is] also mindful of the right of the public to participate in this proceeding in a meaningful way.”⁸ As such, the *Protective Order* allows, *inter alia*, Outside Counsel and Outside Consultants, as those terms are defined in the *Protective Order*, to access confidential data filed in this proceeding if they submit an Acknowledgment of Confidentiality⁹ in which they acknowledge and agree to be bound by the terms of the *Protective Order*, and certify that they are not involved in “Competitive Decision-Making” as defined in the *Protective Order*.¹⁰ Parties that submitted confidential information to the Commission pursuant to the *Protective Order* (Submitting Parties) may object to an individual seeking access to their confidential data (a potential Reviewing Party).¹¹ A potential Reviewing Party that is subject to an objection may not obtain or review confidential information submitted by the objecting party until the objection has been resolved.¹²

4. On January 19, 2016, Correct Solutions filed a letter in this docket stating that, after reading the Commission’s discussion of providers’ costs in the *2015 ICS Order*, it believes the Commission may have included some of Correct Solutions’ data in its analysis of small firms’ cost data.¹³ On February 19, 2016, outside counsel for Correct Solutions submitted an Acknowledgment of Confidentiality, in accordance with the *Protective Order*, and sought an unredacted copy of the *2015 ICS Order*.¹⁴ On February 22, 2016, Securus filed its objection, arguing that the unredacted *Order* contained confidential data regarding Securus’s costs and that Securus would suffer “substantial and irreparable harm if its data were improperly disclosed”¹⁵ Securus contends that Correct Solutions made no statement as to why it was now seeking access to the confidential information.¹⁶ Securus also argues that Correct Solutions is not entitled to review the confidential information because, in Securus’s view, the ratemaking portion of the proceeding is over and Correct Solutions is not participating in the judicial appeal of the *2015 ICS Order*.¹⁷ Correct Solutions filed a response on March 21, 2016, noting that its counsel had agreed to be bound by the terms of the *Protective Order* and arguing that its review of the confidential version of the *2015 ICS Order* could be beneficial in assessing the accuracy of the cost data

⁸ *See id.* at para. 1.

⁹ *See id.* at Appx. A.

¹⁰ *Id.* at 16954-55, para. 2 (“‘Competitive Decision-Making’ means a person’s activities, association, or relationship with any of its clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.”).

¹¹ *Id.*

¹² *Id.* Absent an objection, individuals that have filed Acknowledgments may review confidential information once the period for filing an objection has expired.

¹³ Letter from Patrick Temple, Manager, Correct Solutions, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 at 1 (filed Jan. 19, 2016).

¹⁴ Acknowledgment of Confidentiality, WC Docket No. 12-375, and Confidential Second Report and Order and Third Further Notice of Proposed Rulemaking Recipient Acknowledgment, Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, filed by Gayle Thomasson Busch, Rodel Parsons Koch Blache Balhoff & McCollister, Counsel for Correct Solutions, LLC (filed Feb. 19, 2016).

¹⁵ Securus Objection at 2-3.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

in that order and “ultimately may be of assistance in determining a supportable, fair and reasonable rate for ICS.”¹⁸

III. DISCUSSION

5. We disagree with Securus’s contention that Correct Solutions is not entitled to access the confidential information filed in this docket. The *Protective Order* provides that Reviewing Parties may review confidential information “for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceedings arising directly from this proceeding.”¹⁹ Securus argues that the ratemaking portion of the proceeding is over, but that is not correct. As Correct Solutions points out, there is a petition for reconsideration pending before the Commission, and the *2015 ICS Order* is on appeal in federal court.²⁰ The rates adopted in the *2015 ICS Order* are at issue in both contexts. Moreover, Securus ignores the fact that the *2015 ICS Order* included a further notice of proposed rulemaking. The Commission’s evaluation of the cost data submitted in response to the Mandatory Data Collection may be relevant to later proceedings in this docket for that reason as well. Given that Correct Solutions has already raised questions with the Commission regarding the accuracy of its own information in the *Order* and the Commission’s possible reliance on that information, it seems clear that having access to the unredacted version of the *Order* will better allow Correct Solutions to participate in the Commission’s ongoing proceeding. In addition, Correct Solutions might still seek to participate in the judicial proceeding as an *amicus curiae*. We therefore find that Correct Solution’s outside counsel is entitled to obtain access to the confidential information submitted in this docket pursuant to the *Protective Order* – including an unredacted version of the *2015 ICS Order* – and deny Securus’s objection.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 5 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155, 303(r), and 405(a), and sections 0.91, 0.201(d) and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.201, 0.291, 1.429(d) the Objection to Disclosure of Confidential Information filed by Securus Technologies, Inc. IS DENIED.

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission’s rules, 47 C.F.R. §1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau

¹⁸ Letter from Gayle Thomasson Busch, Rodel Parsons Koch Blache Balhoff & McCollister, Counsel for Correct Solutions, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed March 21, 2016) (Busch Letter).

¹⁹ *Protective Order*, 28 FCC Rcd at 16957, para. 7.

²⁰ Busch Letter at 2.