

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

**Rates for Interstate Inmate Calling  
Services**

WC Docket No. 12-375

**COMMENTS OF PRISON POLICY INITIATIVE, INC.  
ON SECURUS TECHNOLOGIES, LLC'S PETITION FOR WAIVER**

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## EXECUTIVE SUMMARY

In 2003, a coalition of activists led by Martha Wright came to the Commission seeking relief from egregious financial exploitation perpetrated by ICS carriers. Over the intervening years, the Commission, public interest advocates, and industry representatives have participated in this rulemaking by analyzing data, debating legal standards, and crafting rules that crack down on the type of abuse that occurred for decades.

Against this backdrop, Securus Technologies comes to the Commission asking that the reasoned system of rate regulation be tossed aside so that the company can enjoy predictable revenue streams through fixed-price subscriptions. This type of alternative rate structure could benefit consumers; or it could represent a return to the bad old days of exorbitant phone bills. As with most public policy, the devil is in the details. But in this case, Securus provides the Commission (and the general public) with hardly any details. Indeed, Securus's blithe approach to this process bespeaks a sense of entitlement that should give the Commission pause.

Securus bears the burden of coming forward with evidence sufficient to justify its request. In these comments, Prison Policy Initiative notes numerous ways in which Securus has failed to meet its burden. We start with a discussion of the procedural flaws in Securus's petition for waiver—flaws that are grave enough to justify outright denial of the petition. We then provide a brief overview of the framing effect and probability-estimation errors—two aspects of consumer psychology that are particularly relevant to weighing Securus's request to depart from the current system of ICS rate regulation. We then address the contents of Securus's petition—first by detailing the numerous vague and conclusory statements that the company puts forth, and then by noting several important questions that Securus fails to acknowledge.

Given the high burden required to waive Commission rules and the striking lack of evidence provided by Securus, we ask that the Wireline Competition Bureau deny Securus's petition with prejudice.

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Pursuant to the Solicitation of Public Comments issued by the Wireline Competition Bureau<sup>1</sup> (the "Bureau"), Prison Policy Initiative ("PPI") respectfully submits the following comments in opposition to the Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription Based Calling Services (the "Petition") filed by Securus Technologies, LLC ("Securus") on August 30, 2021.

The Commission has spent decades crafting a system of rate regulation for the inmate calling services ("ICS") market. Existing rules, while not perfect, have made great strides in combatting a long legacy of financial abuse and exploitation perpetrated by ICS carriers against their literally captive customer base. In a nine-page filing, devoid of any meaningful details, Securus asks the Commission to toss aside its decades of work and allow Securus to implement ill-defined "alternative rate options." Securus's request amounts to nothing more than a wink, nod, and "trust us."

While PPI is not opposed to alternative rate structures per se, Securus has not even made a cursory effort to provide the detailed information that the Bureau would need in order to evaluate—let alone grant—the Petition. For this reason, the Petition must be denied.

PPI begins these comments by noting the procedural deficiencies in the Petition, which alone are reason to deny Securus's requested relief. We then discuss several important consumer-protection principles that the Bureau should focus on when weighing the Petition. We

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<sup>1</sup> 86 Fed. Reg. 70427 (Dec. 10, 2021).

next address several specific assertions made in the Petition, and conclude by noting additional questions that must be answered prior to approving any alternative rate structures.

### **I. The Petition is Fatally Defective as a Procedural Matter**

Before even addressing the specific contentions raised in the Petition, the Bureau must step back and consider two foundational questions: what is Securus requesting and what showing must it make to obtain that relief. The answers to these questions are so unclear that the Petition should be denied on the basis of vagueness alone.

To begin, the Petition is so imprecise about the nature of the requested relief that parties are not reasonably informed of what Securus is attempting to do. Securus starts its Petition by arguing that “[g]ranting this petition will enable Securus *and other providers* to offer alternative rate options.”<sup>2</sup> The Petition concludes with a request that “the Commission promptly grant the requested waiver to allow continuation of *the company’s pilot subscription programs.*”<sup>3</sup> So which is it? Is Securus asking that *any* ICS carrier be able to offer any type of non-per-minute rate structure at any correctional facility? Or is it seeking authority to continue its pilot program in eight correctional facilities? Or does the company want to expand its program beyond these eight facilities? On what terms would the waiver allow alternative rate structures be offered? These are all questions that should be answered through a properly framed request for relief, but no such answers are provided in the case of the Petition.

Turning to the standards for relief, Securus bases the Petition on Rule 1.3 of the Commission’s Rules of Practice and Procedure, which allows the Commission to waive any of its rules “for good cause shown . . . [and] subject to the provisions of the Administrative Procedure Act.”<sup>4</sup> A party seeking waiver under Rule 1.3 “faces a high hurdle even at the starting gate and must plead with particularity the facts and circumstances which warrant a

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<sup>2</sup> Petition at 1 (emphasis added).

<sup>3</sup> *Id.* at 9 (emphasis added).

<sup>4</sup> 47 C.F.R. § 1.3

waiver.”<sup>5</sup> This requirement is consistent with the Administrative Procedure Act (“APA”),<sup>6</sup> which is incorporated by reference into Rule 1.3 and which provides an important procedural framework. Public policy requires that waivers should be granted “only pursuant to a relevant standard and . . . not . . . out of unbridled discretion or whim.”<sup>7</sup> The Commission must state its reasons clearly and explain how the public interest is served if it intends to grant a waiver.<sup>8</sup>

The Commission has set forth detailed factual information that an ICS carrier must submit when requesting permission to exceed per-minute rate caps.<sup>9</sup> While some of these requirements might be an awkward fit here,<sup>10</sup> they nonetheless illustrate the type of concrete, reliable, and relevant information that the Bureau must have before it can waive any ICS rules. Against the background of these requirements, the flimsiness of Securus’s Petition comes into sharp focus.

Securus speaks of a pilot program but does not disclose what facilities participated in the pilot, how many customers subscribed, how much revenue Securus collected, what subscribers’ average usage was, what the standard deviation of subscriber usage was, what the average calculated per-minute rate was, or what Securus’s realized profit margin on subscription programs is. This lack of candor fails to even approach—let alone satisfy—Securus’s burden of proof under Rule 1.3. This is reason enough to deny the Petition outright.

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<sup>5</sup> *Bais Yaakov of Spring Valley v. FCC*, 852 F.3d 1078, 1086 (D.C. Cir. 2017) (quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (internal quotation marks omitted)).

<sup>6</sup> See 5 U.S.C. § 556(d) (“[T]he proponent of a rule or order has the burden of proof.”).

<sup>7</sup> *Bais Yaakov*, 852 F.3d at 1086 (quoting *WAIT Radio*, 418 F.2d at 1159 (internal quotation marks omitted)).

<sup>8</sup> *Keller Comm’cns, Inc. v. FCC*, 130 F.3d 1073, 1076 (D.C. Cir. 1997).

<sup>9</sup> *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, [Third Report and Order, Order on Reconsideration & Fifth Further Notice of Proposed Rulemaking](#) ¶ 173 (released May 24, 2021).

<sup>10</sup> Securus may argue that it is seeking to avoid per-minute pricing altogether, not charge per-minute rates *in excess* of current caps. PPI would respond that under Securus’s subscription plan, some customers with low usage will inevitably pay calculated per-minute rates in excess of the caps imposed by 47 C.F.R. § 64.6030, and thus Securus must provide evidence at least as extensive as that required by ¶ 173 of the Third Report & Order.

## **II. The Bureau Must Focus on the Consumer Experience, Not Just the Mechanical Price Attributes of Securus's Subscription Plans**

The Commission is tasked with ensuring that common carriers' rates and practices are just and reasonable.<sup>11</sup> In carrying out its mandate, the Commission must consider not only the theoretical calculated per-minute rates cited in the Petition, but must also take into account the actual experience of consumers who are confronted with Securus's marketing campaigns. At least two well-known cognitive biases are relevant for purposes of this discussion: the framing effect and inaccurate probability estimation. We discuss each in turn.

### **A. Framing Effect**

Psychological research has demonstrated that when faced with two products or services, consumers may gravitate toward one option "based not exclusively on the objective, expected value of the choices, but also upon the way in which the choices are presented."<sup>12</sup> Put differently, on average, consumers can be expected to choose an option that is framed as a gain (regardless of actual value), even if the same option could alternatively be described as a loss. In weighing whether Securus's subscription plans are just and reasonable, the Bureau must consider whether Securus is presenting information in ways that unfairly take advantage of the framing effect.

As presently structured, the only way to obtain pricing information about Securus's subscription options is to initiate the sign-up procedure.<sup>13</sup> The first screen that the customer sees frames the subscription plan as a collection of gains, using a series of positive financial descriptors (the full screen is shown in ¶ 3 of the Raheer Declaration, with the material language reproduced as figure 1, below).

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<sup>11</sup> 47 U.S.C. § 201(b).

<sup>12</sup> Norman I. Silber, *Observing Reasonable Consumers: Cognitive Psychology, Consumer Behavior and Consumer Law*, 2 Loyola Consumer L. Reporter 69, 70 (1990).

<sup>13</sup> See Declaration of Stephen Raheer, filed herewith, ¶ 3. As described in ¶ 13 of the Raheer Declaration, Securus appears to maintain a separate website for purposes of advertising its subscription offerings, but that site contains only the most generalized information, with no references to any specific rates or facilities.





actuality there are hardly any), the inclination to gravitate toward the framed gains is powerful. The Commission should not entertain any proposals for subscription plans unless marketing materials, such as Securus's subscription landing page, plainly and concisely disclose the entire truth about the subscription model, not just the parts that marketing staff have chosen to emphasize. For example:

- Subscribers have to pay money whether or not the incarcerated caller is allowed to make calls. If phone access in the facility is curtailed broadly (because of pandemic restrictions, staffing shortages, or security concerns) or individually (e.g., the caller loses phone privileges as a disciplinary sanction), the subscriber will have spent money for no or little service in any given billing period.
- Securus advertises the maximum number of calls allowed per month (or week) under its plans, but that doesn't mean that people in the relevant correctional facility are allowed to make that many calls during a billing period. While Securus makes a vague reference to "facility specific policies and limitations," it makes no effort to help customers determine what those policies and limitations are. A subscription for up to 25 calls per week is a dubious value proposition if people in the facility are only allowed to make one call per day.
- These subscriptions are *not* comparable to a typical consumer wireless phone plan where customers receive a certain number of minutes of use (or unlimited minutes) per month for a flat fee. Flat-fee wireless callers can use their allotted monthly minutes to communicate with anyone of their choosing (or at least any party within the United States). But Securus subscription plans are only valid for *one* call recipient. If the subscriber is a mother who covers her incarcerated daughter's phone bill,<sup>14</sup> then the

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<sup>14</sup> Because incarcerated people have little or no ability to earn money, expenses for phone calls are often paid by relatives who send money to cover their incarcerated family-member's out-of-pocket expenses. See, Tommaso Bardelli, Zach Gillespie & Thuy Linh Tu, "Blood from a stone: How New York prisons force people to pay for their own incarceration" (Oct. 27, 2021), available at [https://www.prisonpolicy.org/blog/2021/10/27/ny\\_costs/#FamilySupport](https://www.prisonpolicy.org/blog/2021/10/27/ny_costs/#FamilySupport) (over

mother will not—despite Securus’s framing—enjoy a fixed monthly phone cost. She will pay a fixed monthly amount for calls between her and her daughter, *plus* she will continue paying variable amounts for her daughter’s calls to other relatives, friends, legal counsel, and outside contacts.

ICS carriers will obviously use positive terms to advertise their services; this is to be expected—to an extent. Securus has gone a step too far by emphasizing the *potentially* positive aspects of its subscription products while simultaneously withholding most details that could make customers reasonably question the value of a subscription plan. This dynamic makes Securus’s subscription program seem less like typical marketing hype and more like an unreasonable practice in violation of 47 U.S.C. § 201(b).

#### **B. Probability Estimation**

Securus claims that “per-minute effective rate[s]” for its subscription plans are “well below” the Commission’s current rate caps. This statement is based on a series of calculations premised on the (highly questionable) assumption that “subscribers use all available minutes under the plan.”<sup>15</sup> The problem is that many consumers will not use all available minutes. An informed and rational customer (and it’s important to remember that not all consumers fall into this category) would want to consider their likely phone usage and compare subscription costs to what they would pay under per-minute pricing. But consumer research shows that individuals frequently struggle with simple calculations and avoid complicated calculations entirely.<sup>16</sup> In light of this documented trend, policymakers “should not presume that consumers are capable of making certain risk decisions accurately and in their best interests when those decisions involve relatively complex probability calculations.”<sup>17</sup>

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three-quarters of survey sample reported receiving financial support from family members to cover phone, commissary, and other out-of-pocket expenses while housed in the New York state prison system).

<sup>15</sup> Petition at 4.

<sup>16</sup> Silber, *supra* note 12, at 72.

<sup>17</sup> *Id.*

Here, the risk facing consumers is that they might needlessly pay high recurring subscription costs when—depending on their actual call volume—it could be cheaper to continue paying on a per-minute basis. To determine whether the subscription is economically beneficial, a consumer would have to: predict their future calling volume with a particular incarcerated caller, divide the cost of the subscription by the anticipated usage during an average billing period, and compare the calculated rate to the actual per-minute rate they would otherwise pay. An even more complete approach would also take into account the likelihood that actual call volume varies from the predicted volume. It is implausible that many consumers will undertake an analysis like this. Even if a particularly motivated consumer wanted to do so, it's not clear that they could, since Securus does not appear to even provide subscribers with their minutes of use.<sup>18</sup>

In situations where consumer benefit must be measured through complex calculations, regulators commonly perform the analysis on consumers' behalf using data from a large sample. That cannot happen here because Securus has not given the Bureau the information it would need to conduct such an analysis. Until Securus comes forth with actual data, there is no reason to trust its representations regarding the probability of cost savings, nor should the Bureau allow Securus to continue leading consumers astray with its vague representations.

### **III. Securus's Allegations and Arguments in Support of the Petition Are Questionable at Best**

Despite the lack of concrete evidence, Securus has managed to pack the Petition full of allegations and arguments, almost all of which are conclusory and/or too vague to be accorded any substantial weight by the Bureau. In this section, we respond to the various theories Securus advances in support of its Petition.

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<sup>18</sup> Raher Decl. ¶ 13 (Securus's online customer interface shows subscribers the number of calls that the subscriber has received during a billing cycle, but not the number of calling minutes).

**A. Allegations of Customer Cost-Savings are Conclusory and Unsupported by Data**

The Bureau can measure Securus's lack of supporting evidence by carefully analyzing the progression of arguments set forth in the Petition. As detailed below, Securus has constructed a palace of attractive promises, but in reality the palace is built on a foundation of sand. Even the slightest probing reveals the Petition's claims to be nothing more than mere puffery.

"Increased calling." Securus begins by claiming that "alternative rate options . . . promote increased calling while reducing costs."<sup>19</sup> But how do subscriptions actually allow for increased calling? Subscription plans allow for users to make a certain number of calls per week or month, capped at a maximum number; but, Securus's webpage states that incarcerated callers are still subject to facility rules regarding phone usage. Thus, Securus may advertise subscriptions that allow up to 60 calls a month, but how many users are able to make 60 calls per month? Or 50 calls? Or even 30? Even if facility rules allow incarcerated callers to make 60 calls per month, is there adequate hardware so that a caller can actually access a phone for enough time to make 60 calls in a month? Where is the data on actual usage patterns from the facilities in Securus's trial program?

"Predictable prices." Before getting to any discussion of pricing, Securus argues that granting the Petition would "further[] the public interest in providing incarcerated persons and their loved ones more affordable and accessible calling options at a more predictable price."<sup>20</sup> This statement improperly attempts to conflate three separate considerations: affordability, accessibility, and predictability. As discussed in the next paragraph, Securus does not provide concrete evidence that its subscription plans are more *affordable* than per-minute calling. As discussed in the previous paragraph, an incarcerated customer's phone *access* is governed by facility rules. That leaves the issue of *predictability*. Securus claims that subscription pricing is predictable, but predictability by itself is not a worthy goal. A subscription charge that is grossly

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<sup>19</sup> Petition at 1.

<sup>20</sup> *Id.* at 2-3.

excessive in comparison to the value received by the customer may be predictable, but that doesn't make it a just and reasonable rate. Securus must provide information about the actual computed per-minute prices paid by subscribers, not just the predictability of the amounts they pay.

“Less expensive.” Securus further promotes its subscription offerings by claiming “calls are much less expensive than under current per-minute rates.”<sup>21</sup> But what does this statement even mean? Does “less expensive” mean that every enrolled subscriber pays less in subscription fees than they would have paid for the same amount of debit calling at the facility’s current per-minute rates? If this statement doesn’t hold true for every subscriber, is it true for 90% of subscribers? Two-thirds? Half? In facilities that offer subscription plans, are the per-minute rates the same as they would be in the absence of a subscription option? If the answer is “yes,” does Securus guarantee that this will remain true if the Petition is granted? Or will non-subscribers be subject to punitively high per-minute rates as a consequence of not providing Securus with a predictable stream of subscription revenue?

“A one-time \$3.00 automated payment fee.” Securus states that “all call subscription pricing is composed of a base rate, site commission cost, and a one-time \$3 automated payment fee that is assessed upon enrolling in or renewing a subscription plan.”<sup>22</sup> In actuality, there is nothing “one-time” about the \$3 automated payment fee. Subscribers are charged the \$3 fee every week or month, depending on the billing cycle of their subscription.<sup>23</sup> Securus may claim that its characterization is accurate since it disclosed that the fee is imposed upon “renewing a subscription plan,” but that would be a difficult pill to swallow—why did Securus single out the payment fee for designation as “one time” when the other two components of the subscription charge (i.e., base rate and site commission) are also charged once per billing period?

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<sup>21</sup> Petition at 3.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> See Rahe Decl., Exh. 1 (showing \$3 weekly automated payment fee).

“Assuming subscribers use all available minutes.” When attempting to speak in detailed terms about pricing, Securus states: “Assuming subscribers use all available minutes under the plan, per-minute effective rates under these preliminary pricing structures . . . range from \$0.02 to \$0.05 for the 100 or 60 calls per month options.”<sup>24</sup> Simply stated, Securus invites the Bureau to make an *enormous* assumption based on absolutely no data. The Bureau should not fall for this charade. Instead of using hypothetical per-minute rates based on unsupported assumptions, the Bureau needs to look at real data regarding how many minutes enrolled subscribers actually use in each billing period. Currently, the Bureau cannot undertake such an analysis because Securus has failed to come forward with the necessary data.

“7 million minutes.” Securus creates the mirage of quantitative measurement when it claims: “Overall, more than 7 million minutes of calls have been made under subscription plans as of [June 2021], with an overall average per call duration of 14.5 minutes.”<sup>25</sup> By tossing out a very large number (7 million), Securus is most likely to trying to impress the Bureau by implying huge usage of its subscription services. But that number by itself is meaningless. Seven million minutes of calls can only become relevant if the evaluator knows how many users accounted for those calls, over what time period the 7 million minutes of calling occurred, and the average per-subscriber usage per billing period. None of these clarifying metrics can be arrived at with the scant information in the Petition. One small crumb of information, however, can be found elsewhere in the record. In an *ex parte* filing Securus claims that “approximately 1500 persons” were enrolled in the pilot program as of November 2021.<sup>26</sup> Using Securus’s self-reported (and unverifiable) figures of seven million minutes, 1,500 subscribers, and a seven-month period (between the December 2020 beginning of the pilot program and the alleged June 2021 data collection), this would yield an average monthly calling volume of 667 minutes per customer, as shown in table 1.

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<sup>24</sup> Petition at 4.

<sup>25</sup> *Id.*

<sup>26</sup> Joanna Acocella, [Notice of ex parte meeting](#) (Nov. 4, 2021).

Total minutes (self-reported)	7,000,000
Subscribers (self-reported, Nov. 4 <i>ex parte</i> )	1,500
Average subscriber usage (total min ÷ subscribers)	4,667
Months of pilot program (Dec. 2020 - Jun 2021)	7
Avg. monthly usage per customer (total avg min. ÷ 7 months)	667

**Table 1.** Calculated average subscriber usage based on Securus’s self-reported figures

While 667 minutes per month may be above average, it is not particularly impressive. Securus’s competitor Global Tel\*Link has achieved average monthly call volumes over 1,000 minutes in the New Hampshire prison system by simply charging very low per-minute rates—with no alteration of Commission rules necessary.<sup>27</sup>

“Increased call length.” Securus wraps up its description of subscription pricing by claiming that an “initial assessment . . . concluded that the subscription plans increased call length by approximately 27% while reducing costs by over 50%.”<sup>28</sup> Once again, the lack of supporting detail is breathtaking. Securus claims that subscription billing increases call length and reduces costs, but it fails to say how it arrived at these figures. To what group is subscriber-usage and -cost being compared? Is this a measurement of the changes experienced by these specific subscribers based on their pre- and post-subscription bills? Is it a comparison to non-subscription callers at the same facilities? To all Securus customers during the same time period? To all customers during a different time period?<sup>29</sup> Securus apparently believes that the Bureau need not be bothered with such details. PPI encourages the Bureau to deny the Petition for lack of evidence.

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<sup>27</sup> Data on New Hampshire monthly call volume, is available at <https://www.prisonpolicy.org/scans/phones/PrisonMOUSourceDocs.pdf>, and cited in table 2, note 4 of PPI’s [Comments on Fifth FNPRM](#) (Sep. 27, 2021).

<sup>28</sup> Petition at 7.

<sup>29</sup> The time during which call volume is measured is particular salient today, given the trend of increased usage during the COVID-19 pandemic. See Andrea Fenster, “[People in jails are using more phone minutes during the COVID-19 pandemic, despite decreased jail populations](#)” (Jan. 25, 2021).

**B. Securus’s Characterizations of Consumer Response Are So Lacking in Detail as to Render Them Meaningless**

The crowning ornamentation on the Potemkin village presented in the pages of the Petition is alleged feedback from ratepayers and an unnamed sheriff.<sup>30</sup> Securus claims to have conducted “listening sessions with formerly incarcerated persons and their loved ones,”<sup>31</sup> but the company fails to clarify whether the participants in these sessions were subscription customers or not. If Securus simply interviewed non-subscription customers to refine its marketing strategy and identify critical buzzwords, then these listening sessions provide no meaningful evidence for purposes of evaluating the Petition.

Securus then refers to an “initial assessment done in February [2021?].”<sup>32</sup> This assessment supposedly revealed that majorities of respondents found the subscriptions “important” and had positive or neutral perceptions of the sign-up process. But note the many issues that Securus does *not* include in its description of the February assessment: no mention of whether customers think the subscription is a good value, whether they feel they save money, whether they are able to quantitatively verify that they are saving money, or whether they find the subscription cancellation process to be acceptable. Additionally, if this assessment was conducted in February 2021 (two or three months after the start of the subscription pilot), then one may question if participating customers had enough experience to arrive at a reasoned opinion concerning the value of this product.

Securus concludes this segment of the Petition by referencing “a separate set of interviews” and bandying about some positive quotes from supposed interviewees.<sup>33</sup> But (as with the “listening sessions” and “initial assessment”), Securus fails to provide any detail about the methodology of these interviews. How many people were invited? How many participated?

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<sup>30</sup> The alleged feedback referenced in the Petition mostly comes from ratepayers, with the exception of one quote attributed to “The sheriff of Fannin County.” Petition at 8. Both Georgia and Texas have counties named Fannin.

<sup>31</sup> Petition at 7.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 7-8.



Did interviewees receive compensation for their participation, and if so, how much? What were the questions and how were they phrased? Were interview responses scored in any way, and if so what was the distribution of scores?

Securus argues that granting the Petition would further the public interest because consumers support the subscription plans.<sup>34</sup> The entire record related to this supposed support comes from Securus's cherry-picked references to its internal evaluations. This is not how rulemaking works. The process for granting a waiver of the Commission's rules requires compliance with the APA.<sup>35</sup> The APA, in turn, requires that an "agency afford interested parties an opportunity to challenge the underlying factual data relied on by the agency."<sup>36</sup> Accordingly, the Bureau cannot grant the waiver without allowing parties to examine the customer-satisfaction data upon which Securus relies. The Bureau is unable to provide such access because Securus has chosen to selectively quote from its own records rather than turnover the source data from which it has culled the self-serving information. With neither customer-satisfaction data nor actual calculated per-minute rates, the record lacks evidence suggesting that a waiver is in the public interest, and therefore the Petition must be denied on that basis.

#### **IV. Additional Critical Questions Remain Unanswered**

Finally, there are several material questions that go unaddressed in the Petition. A review of the more notable ones follows.

What is a "call"? All subscriptions appear to be denominated as a certain number of calls per week or month. But what counts as a call? If an incarcerated caller places a call but no one answers, does this count against the weekly or monthly allowance? What about if a call is answered by voicemail but no one affirmatively accepts the call? Additionally, as Worth Rises

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<sup>34</sup> Petition at 6.

<sup>35</sup> See note 4 above, and accompanying text.

<sup>36</sup> *Endangered Species Comm. of the Bldg. Indus. Ass'n of S. Calif. v. Babbitt*, 852 F.Supp. 32, 37 (D.D.C. 1994) (quoting *Chemical Mfrs. Ass'n v. EPA*, 870 F25 177, 200 (5th Cir. 1989)).

notes, the Petition contains no information on how dropped calls are addressed when accounting for subscription allowances.<sup>37</sup>

How does the cancellation process work? The undersigned gained insight into the subscription enrollment and cancellation process through actually starting and stopping a Securus subscription.<sup>38</sup> While the undersigned found the cancellation process to be relatively simple in his case, the convenience was outweighed by the contradictory information that Securus provided during the process. Specifically:

- It is telling that Securus only notifies customers *after* their renewal payments have been processed.<sup>39</sup> A notification 2-3 business days *prior* to renewal would help customers avoid potential overdraft fees and remind them to cancel their subscription if they have been meaning to do so but forgot due to the pressing demands of daily life (such as providing support for an incarcerated loved one). But it would also threaten Securus's revenue stream, so it is perhaps unsurprising that the company chooses not to provide advance notice.
- Securus currently provides an online cancellation option. For this, the company should be commended. But, confusingly, the terms and conditions that Securus forces on customers state that subscriptions can only be cancelled by calling Securus.<sup>40</sup> This discrepancy leads to the question: does Securus intend to keep an easy online cancellation feature, or will that function disappear from the website once the Commission approves the company's request for a waiver?
- The subscriber interface states that "Your subscription will be active until the expiration date." But prior to submitting a cancellation request, the "Expire Date"

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<sup>37</sup> Worth Rises, [Response to Petition](#) at 3 (Oct. 27, 2021).

<sup>38</sup> Raheer Decl. ¶¶ 3-10.

<sup>39</sup> *Id.*, Exh. 1 at 1 ("Once your subscription has been renewed, you will receive a confirmation email for your records.").

<sup>40</sup> See Securus, "Saved Card Agreement (dated Jun. 26, 2019; accessed Dec. 21, 2021), *archived at* <https://perma.cc/Q3FA-RNRT> ("You may cancel this authorization [for recurring payments] at any time by contacting the Company's Customer Service unit at 972.734.1111.").

is listed as “None,”<sup>41</sup> which makes the previous statement inherently ambiguous and unreliable.

- After the undersigned submitted a request to cancel his subscription, the subscriber interface then listed the date of the request (December 28, 2021) as the “Expire Date.”<sup>42</sup> But the emailed confirmation stated that the subscription expired on the one-week anniversary of the start of the weekly subscription (December 29, 2021). These contradictory communications lead one to wonder whether a subscription ends at the moment of cancellation, or if it continues through the end of the current billing cycle.

What are the actual terms and conditions that govern subscriptions? Like any contract, a consumer subscription agreement requires a “meeting of the minds” in order to be enforceable. While Securus, like most consumer service providers, is generally free under contract law to impose terms on a take-it-or-leave-it basis, it is required to take the minimal step of at least explaining what those terms are.<sup>43</sup> Here, Securus has not done so. Securus’s general terms and conditions say nothing about subscription products, and its “Product Terms and Conditions” contain only the following statement, which is too vague to even be an enforceable contract:

Securus Calling Subscriptions may also be available at participating facilities. A call subscription is a fixed price payment option for calling services between a phone number and a facility over a specific period. These plans will vary from facility to facility.

Subscription payments are non-refundable.<sup>44</sup>

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<sup>41</sup> Raher Decl. ¶ 8.

<sup>42</sup> *Id.* ¶ 9.

<sup>43</sup> This is true not just as a matter of general contract law, but also for purposes of payment-card rules. *See* Visa Core Rules and Product & Service Rules § 5.8.10.1, table 5-17 (rev. Oct. 2021) (if a merchant desires to store a customer card to charge for later purchases, “all requirements related to specific Transaction types must be clearly displayed at the time that the Cardholder gives their consent and must be displayed separately from the general purchase terms and conditions.”).

<sup>44</sup> Product Terms and Conditions, *see* Raher Decl. ¶ 12, *archived at* <https://perma.cc/9A4C-SQUJ>.

The only concrete details concerning the subscription plans appear on the webpage that customers see when enrolling, and which are repeated in the subscription confirmation email.<sup>45</sup> But Securus’s “General Terms and Conditions” state that the actual course of performance between Securus and its customers (such as paying for and receiving subscription service) cannot alter the General Terms,<sup>46</sup> and that no statements elsewhere on Securus’s website create an enforceable warranty.<sup>47</sup> It thus appears that Securus is taking subscribers’ money without providing a clear legal contract that spells out the parties’ respective rights and obligations.

## V. Conclusion

The Commission takes the rulemaking process seriously. By seeking a waiver of existing rules, a company asks for special treatment notwithstanding the effort the Commission has invested into crafting broadly applicable rules. The waiver process is not one to be undertaken lightly. But it’s hard to see the Petition as anything other than a casual request to toss aside years of rulemaking so that Securus can boost its cashflow through a new source of predicable, recurring revenue.

Despite the serious ramifications that could flow from granting the Petition, Securus has not come forward with serious and meaningful evidence to support its request. The Bureau should not do Securus’s work for it, nor should it grant a waiver based on the thin veneer of marketing verbiage. For the reasons stated above, PPI urges the Bureau to deny the Petition with prejudice.

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<sup>45</sup> See Rahe Decl. ¶¶ 3-5 and Exh. 1.

<sup>46</sup> General Terms and Conditions § 14, see Rahe Decl. ¶ 11, archived at <https://perma.cc/K76W-VGS3>.

<sup>47</sup> *Id.* § 8(D).

Respectfully submitted,

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