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Honorable Kay Walcott-Henderson, J.S.C.
Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street
Trenton, New Jersey 08608

**Re: Securus Technologies, Inc. v. Christopher Christie,
Governor of New Jersey, et al.
Docket No.: MER-L-143-17**

Dear Judge Walcott-Henderson:

Please accept this proposed *amici curiae* letter brief in lieu of a more formal brief from proposed *amici* the American Civil Liberties Union of New Jersey (ACLU-NJ); The Immigrant Rights Clinic (IRC) of Washington Square Legal Services, Inc.; New Jersey Advocates for Immigrant Detainees (NJAID); First Friends of New Jersey and New York (First Friends); and the Prison Policy Initiative (PPI). The law at issue, the Rate Control Law (RCL), does not implicate Plaintiff's legal rights. Additionally, the Legislature acted within its authority when it restricted usurious or inflated phone rates that reduce inmates' connections with the outside world. *Amici* opposes Plaintiff Securus' request for injunctive and declaratory relief and supports the State's motion to dismiss Securus' complaint in this matter.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

For purposes of this brief, *Amici* adopts the Statement of Facts and Procedural History set forth by the State.

ARGUMENT

- I. THE STATE MAY PROTECT THE PUBLIC INTEREST BY PREVENTING USURIOUS OR INFLATED PHONE RATES THAT REDUCE INMATES' CONTACT WITH THE OUTSIDE WORLD.

The Legislature has a right to regulate business within the state unless it is otherwise beyond the bounds of its authority. *See, e.g., Manigault v. Springs*, 199 U.S. 473, 480 (1905) (declaring "[i]t is settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected"); *see also, Lane Distributors, Inc. v. Tilton*, 7 N.J. 349, 362 (1951)(explaining that the regulation of private

enterprise by a public authority is valid "when done in the exercise of the police power of the state"). In this case, the Legislature used its authority to ensure that the profit motives of facilities and vendors do not grossly burden prisoners' contact with the outside world.

It is well established that regular contact between offenders and their families benefits offenders, families and the public. See, e.g., Linda G. Bell and Connie S. Cromwell, *Evaluation of a Family Wellness Course for Persons in Prison*, 45, 46 (2015) (noting numerous studies collectively finding that family contact can mitigate the negative impact of parental incarceration on children, increase the likelihood of post-incarceration family reunification, improve the mental health of ex-offenders and their families, and reduce recidivism). Yet, for decades, families across the country and within New Jersey had been forced to pay exorbitant and frequently prohibitive phone costs in order to stay connected to their incarcerated loved ones. See, e.g., Drew Kukorowski, Peter Wagner & Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, PRISON POLICY INITIATIVE, May 2013, at 2, available at: https://static.prisonpolicy.org/phones/please_deposit.pdf (illustrating that a 15-minute call from prison or jail frequently "cost[s] more than \$17 – a disturbing anomaly in the era of unlimited long-distance plans for only \$52.99 a month.");

Comment on Prison Phone and Video Rates by New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic, Public Notice #342689, at 3, available at: <https://www.fcc.gov/file/11928/download> (charting Passaic County's June 2016 phone rates as \$2.55 for the first minute and \$0.25 cents for each additional minute - amounting to \$6.05 for a brief 15-minute call).

Moreover, these excessive rates stem from non-service based charges, such as facility commissions. See Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14110 ¶ 3 (2013) ("2013 ICS Order") ("A significant factor driving these excessive rates is the widespread use of site commission payments - fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service"), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-113A1_Rcd.pdf; see also John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 PRISON LEGAL NEWS 1, 3 (2011) (finding that in 2008 "[p]rison phone service kickbacks average 42% nationwide among states that accept commissions, and in some cases reach 60% or more), available at <https://www.prisonlegalnews.org/media/publications/revised%20nat>

[ionwide%20pln%20survey%20examines%20prison%20phone%20contracts%20C%20kickbacks.pdf](#).

Since 2012, the FCC has implemented several reforms to ensure that prison phone rates are fair, just, and reasonable. See, e.g., Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012); Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) ("2013 ICS Order"); Rates for Interstate Calling Services, 30 FCC Rcd 12763 (2015) ("2015 Order"); Rates for Interstate Inmate Calling Services, FCC 16-102 (2016) ("2016 Order"). In so doing, it has recognized that "[m]aintaining contact with family and friends during incarceration not only helps the inmate, but it is beneficial to our society as a whole." *In re Rates for Interstate Inmate Calling Services, Notice of Proposed Rulemaking*, 27 FCC Rcd 16629, 16660 (statement of Comm'r Clyburn).

In 2016, New Jersey joined the national movement for phone justice and enacted the RCL. The landmark law forbids facilities from entering contracts with vendors whose rates exceed 11 cents per minute for domestic calls or 25 cents per minute for international calls. *N.J.S.A. 30:4-8.12(a)*; *N.J.S.A. 30:4-8.12(c)*. It also precludes facilities from receiving commissions or surcharges for telephone usage by inmates. *N.J.S.A. 30:4-8.12(b)*. In so doing, New Jersey took a critical step in ending grossly exploitative inmate telephone rates.

In short, New Jersey had the authority and moral impetus to prevent companies and correctional facilities from taking advantage of our most vulnerable populations.

II. THE RCL HAS NOT DEPRIVED SECURUS OF ITS PROPERTY INTEREST.

Before the RCL was enacted, Securus entered into contracts to provide exclusive inmate calling services to Cape May County and Passaic County Jails. Defendant's Exhibit A [Def.'s Ex. A]; Defendant's Exhibit B [Def.'s Ex. B]. Each contract promised both Securus and the counties it served excessive profits at the expense of some of New Jersey's poorest and most vulnerable residents. The Cape May Contract is due to expire in March of 2018. Def's Ex. A. The Passaic contract expired, renewed and - since the enactment of RCL - has been extended to a month-to-month contract that caps phone rates and eliminates facility commissions. Def's Ex. B.

In the years since Securus signed those initial contracts, New Jersey - like some other States around the nation - has stopped companies from imposing exorbitant phone charges in exchange for facility kickbacks. N.J. P.L. 2016, c. 37, S1880 3R, as codified at C. 30:4-8.11 to -8.14. Critically, however, the RCL applies only to contracts entered into *after* its enactment. *Id.* As such, RCL has not impacted the Cape May Contract whatsoever.

Furthermore, Securus cannot claim that RCL amounts to a property taking of its extended Passaic contract because no property interest exists in *future* contracts. When the government prevents a private company from exploiting people that the company has no contractual right to exploit, the government does not exact a taking, it merely creates good public policy. *Lichter v. United States*, 334 U.S. 742, 787 (1948) (finding that Renegotiation Act which provided for recovery by the Government of "excessive profits" realized by subcontractors producing war-related products did not amount to a taking under the Fifth Amendment). Critically, where government regulations are limited to future contracts, as here, claims that the government has engaged in a taking fail. *Id.* at 788. Thus, new agreements between Securus and Passaic County that occurred after passage of the law (and thereby necessarily incorporated the law's restrictions), do not amount to a taking.

For years, both Securus and counties around New Jersey have made hundreds of thousands of dollars by exploiting New Jersey's most vulnerable residents. Securus hoped to continue to profit richly even after the contracts it signed had expired. The dashing of that hope does not amount to a taking. Because there was no taking, the complaint must be dismissed.

CONCLUSION

For all the foregoing reasons, the State's motion to dismiss should be granted.

Respectfully submitted,



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