

Via Electronic Comment Filing System

June 17, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Securus Petition for Declaratory Ruling, WC Docket No. 09-144*

Dear Marlene H. Dortch:

By this letter, Millicorp, on behalf of its affiliates and subsidiaries (collectively “Millicorp”), seeks to refresh the record in the above-referenced docket. As further set forth herein, Millicorp’s primary business is the provision of IP-based telephone services to the friends and family members of inmates. Specifically, a Millicorp customer informs Millicorp at what facility the customer’s friend or family member is incarcerated, and Millicorp assigns to its customer a telephone number local to that facility. When an inmate calls the customer’s Millicorp-assigned local number, Millicorp terminates the call to its customer, thereby causing the inmate to be charged for a local call from the prison, rather than a much more expensive long-distance call. This substantially lowers the cost paid by the families and friends of inmates, thereby enabling inmates to keep in more consistent contact with their friends and family members during incarceration.¹

¹ In addition to this line of business, Millicorp also has entered into a partnership with Correction Concepts Incorporated (“CCI”) to design and deploy an advanced technology inmate communications system at a 624-bed prison facility to be constructed by CCI in Wakita, Oklahoma. The low to medium security prison for adult males is expected to open in 2012 and is the first of four planned confinement facilities for which CCI and Millicorp have partnered. The other three will be an adult female facility, a juvenile facility, and a geriatric facility. See Press Release, Millicorp, LLC, Millicorp to Provide Next Generation Inmate Communication System for New Habilitation-Focused Prison to be Built in Wakita Oklahoma (May 12, 2011) available at <http://www.prweb.com/releases/2011/5/prweb8418320.htm>. Further, Millicorp has developed an IP-based holistic communications application for the Apple iPhone, which recently was approved by Apple for release in the Apple App Store.

Marlene H. Dortch

June 17, 2011

Page 2

Millicorp has demonstrated in its prior filings that Securus Technologies, Inc. (“Securus”),² Global Tel*Link Corp. (“GTL”),³ and other similarly situated inmate calling service (“ICS”) providers have no authority under applicable laws and the rules of the Federal Communications Commission (the “Commission”) to block inmate calls to Millicorp’s customers. To the contrary, the Commission’s rules prohibit call blocking by common carriers absent an express exception. No ICS provider has been granted such an exception to date, although Securus has petitioned for such an exception for ICS providers.⁴ Yet rather than wait for the Commission to rule on this request, Securus and GTL are engaging in impermissible self help by aggressively blocking inmate calls to Millicorp’s customers in violation of the law and the Commission’s rules.

Securus and GTL have argued that the need for security justifies blocking calls to subscribers of Millicorp’s ConsCallHome.com service (“CCH”), who generally are friends and family members of inmates. Yet Securus’ and GTL’s ultimate motivation for blocking calls to Millicorp’s customers is financial, not security related. Millicorp’s services reduce the cost of inmate calls to CCH subscribers, which is perceived by ICS providers to reduce their revenue and the monopoly profits that they enjoy due to their exclusive control of prison telecommunications services. ICS providers should not be permitted to arbitrarily block calls to CCH subscribers while permitting calls to subscribers of other, non-fiscally threatening but technically similar services.

² Securus is controlled by H.I.G. Capital, LLC, a private investment firm with over \$8.5 billion of capital under management, and currently is in the process of being purchased by Castle Harlan Inc., another private equity firm with over \$6 billion of capital under management. *See* Hillary Canada, LBO Blog, *Castle Harlan’s Latest Deal Connects Inmates To The Outside*, WALL ST. J., May 10, 2011. Through two ICS operating subsidiaries, T-Netix, Inc. and Evercom Holdings, Inc., Securus provided ICS as of December 2009 “to approximately 2,400 correctional facilities in the United States and Canada, and processed over 10 million calls per month during 2009.” Securus’ services are offered in 44 states and Washington, DC. In addition to local, county, state and private correctional facilities, Securus also holds ICS contracts with juvenile detention centers. *See* Securus 2009 10-K at 3.

³ GTL, which recently was acquired by a group of private investors led by Veritas Capital and the Goldman Sachs Group, Inc., provides ICS to over 900,000 inmates and their families. *See* Reply Comments of Global Tel*Link Corporation, WCB Docket No. 09-144, filed Sept. 10, 2009, at 3; *see also* Streamlined International Applications Accepted for Filing, Report No. TEL-01453S, Public Notice (rel. Sep. 3, 2010) (describing the ownership of GTL); Carrick Mollencamp, Gregory Zuckerman, and Laura Saunders, *Dividend Rock: Firms Reward Buyout Bosses*, WALL ST. J., October 14, 2010 (“Veritas Capital and a group of investors are expected to begin marketing a \$600 million debt deal for a company they control called Global Tel-Link that is expected to include a \$173 million dividend to Veritas and other investors . . .”).

⁴ Petition for Declaratory Ruling filed by Securus Technologies, Inc., dated July 24, 2009 (“Securus Petition”).

Marlene H. Dortch

June 17, 2011

Page 3

For these reasons, Millicorp respectfully renews its request that the Commission promptly deny the Petition for Declaratory Ruling filed by Securus (“Securus Petition”)⁵ and declare that the blocking of inmate calls to the customers of Millicorp and similarly situated companies is unlawful.

I. BACKGROUND

A. *The ICS Industry*

The ICS industry is a niche segment of the telecommunications market that provides telephone service to confinement facilities throughout the United States. ICS providers enter exclusive contracts with a particular confinement facility to offer inmates at that facility telephone calling capability. ICS providers generally offer two calling options: (1) collect service and (2) prepaid service. The Securus Petition relates only to prepaid ICS provided to inmates.

Confinement facilities often require ICS providers to establish security procedures applicable to inmate telephone services. These procedures are intended to limit prisoners’ ability to place unwanted calls to unwilling recipients, such as judges, prosecutors, and witnesses, and to prevent the use of the calling system to perpetrate or coordinate crimes.

ICS security procedures are generally similar across facilities.⁶ First, facility telephones for inmate use are programmed to block calls to protected phone numbers, including the telephone numbers of judges and prosecutors.⁷ Second, inmates often are permitted to call only a specified list of persons whose identity and telephone number is pre-registered by the inmates. In many cases, phone privileges are granted only after the inmate submits this calling list.⁸ Additionally, for those prisoners opting to use prepaid service, the call recipient often must establish a prepaid account with the ICS provider. The recipient must submit a billing name, address and phone number with the ICS provider before the prisoner can place a prepaid call to the call recipient.⁹ After these safeguards are in place, confinement facility employees are

⁵ Securus Petition; *see also Comment Sought on Petition for Declaratory Ruling of Securus Technologies, Inc.*, Public Notice, WC Docket No. 09-144, 24 FCC Rcd 10603 (2009).

⁶ *See* Securus Petition at 2-3.

⁷ *See* Securus Petition at 3; *see also* Securus 2010 20-K at 4 (“Security and public safety concerns associated with inmate telephone use require that correctional facilities have the ability to control inmate access to telephones and to *certain* telephone numbers and to monitor inmate telephone activity.”) (emphasis added).

⁸ *See* Securus Petition at 2-3.

⁹ *See* Reply Comments of Securus Technologies, Inc., WC Docket No. 09-144, dated Sept. 10, 2009, at 15 (“Securus Reply Comments”).

Marlene H. Dortch

June 17, 2011

Page 4

provided the ability to monitor and record calls made by inmates. Furthermore, the ICS platform creates call logs that record the pre-approved telephone numbers to which each inmate call is placed.¹⁰

ICS providers are telecommunications common carriers generally subject to Title II of the Communications Act of 1934, as amended (“Communications Act”).¹¹ The Commission has exempted such ICS providers from a limited number of common carrier regulations. Most relevant here, the Commission authorized ICS providers to block calls to competitive carriers via “800” or “950” access numbers, which inmates could use to “dial-around” facility communications security to any number they wished to call.¹²

For various reasons, ICS providers have been able to use their exclusive ICS contracts to charge excessively high rates for telecommunications services to inmates and to recipients of inmate calls.¹³ For example, inmates often are charged per-call set-up fees, which can be as high as \$3.95 per call, plus up to \$0.89 per minute for interstate calls and \$0.69 per minute for intrastate calls, which can result in charges of \$15 or more for a ten-minute telephone call.¹⁴ These prices are far in excess of market-based prices for telephone services and cannot be justified on the basis of security alone.¹⁵

¹⁰ See Securus Petition at 3.

¹¹ See Securus Petition at 2 (“Inmate telephone providers are subject to all federal and state regulations applicable to non-incumbent telecommunications common carriers.”).

¹² *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744 (1991) (“1991 TOCSIA Order”).

¹³ See John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, PRISON LEGAL NEWS, April 15, 2011, available at https://www.prisonlegalnews.org/23083_displayArticle.aspx (describing in detail the “egregious nature of exorbitant prison phone rates” offered by ICS providers) (“*Nationwide PLN Survey*”).

¹⁴ See *Nationwide PLN Survey*; see also *Ex Parte* Letter from Frank Krogh, Attorney for Martha Wright Petitioners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, filed March 16, 2009.

¹⁵ The Commission is considering in a separate proceeding, CC Docket No. 96-128, whether to take certain actions to address the consistently high rates charged by ICS providers. The Commission issued the most recent notice of proposed rulemaking in this pending proceeding eight years ago. See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248 (2002) (“Inmate Payphone Rulemaking”). Further, the Commission incorporated into Docket No. 96-128 a rulemaking petition filed in 2003 by Martha Wright and other inmate petitioners (“Wright Petitioners”) requesting the Commission to introduce additional competition into the ICS industry. See *Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services Pleading Cycle Established*, Public Notice, CC Docket No. 96-128, DA 03-4027 (filed Nov. 3, 2003). Most recently, the

Marlene H. Dortch
June 17, 2011
Page 5

B. Millicorp's CCH Service

Millicorp operates ConsCallHome (“CCH”), an Internet Protocol-based communications service offered to friends and families of prison inmates around the country. The CCH service allows subscribers to receive prepaid telephone calls from an inmate at the lower local rates charged by ICS providers, avoiding the much higher long-distance rates that are common in the ICS industry.

To set up a Millicorp account, a potential CCH subscriber must provide their name, billing address, telephone number, a valid credit card number,¹⁶ and the location of the prison facility in which their friend or family member is incarcerated. Once an account is established, Millicorp provides the CCH subscriber with a telephone number assigned to the same local exchange as the relevant prison facility (the “CCH telephone number”). Millicorp purchases these telephone numbers and certain VoIP transport services from wholesale VoIP providers. When an inmate calls the CCH telephone number, the call is automatically terminated through VoIP technology to the CCH subscriber.¹⁷ CCH has sole control of the location to which such calls are terminated. Each inmate call to a CCH subscriber terminates to a single telephone number. Millicorp does not offer its customers any ability to independently forward or re-route the calls which they receive through CCH to any other telephone number.¹⁸

All calls by inmates to recipients using CCH are subject to the same security procedures as calls to non-CCH recipients. Specifically, the call recipient must establish a prepaid account with the ICS provider and submit a billing name, address, and telephone number for their account, just as non-CCH recipients must. In addition, confinement facility employees retain the ability to monitor and record any call by an inmate to a CCH subscriber. Furthermore, the ICS

Commission sought public comment in 2007 on an alternative ICS rate regulation proposal filed by the Wright Petitioners. *See Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, Public Notice, 22 FCC Rcd 4229 (2007).

¹⁶ A very small percentage of CCH subscribers pay by mailed check.

¹⁷ Calls to the subscriber’s CCH telephone number are either terminated to the home or mobile telephone number assigned to the CCH customer by their local carrier or, if the subscriber purchases interconnected VoIP services from Millicorp, the calls are terminated through the CCH customer’s broadband connection in the same manner as calls are terminated to the customers of any other interconnected VoIP provider, such as Vonage.

¹⁸ Securus has gone to great lengths in its filings to question the legitimacy of Millicorp’s CCH service by arguing that Millicorp’s service does not comply with the Commission’s definition of interconnected VoIP service. As set forth in Section III(B) below, Securus’ fixation on the exact regulatory classification of Millicorp’s customers is not germane to this proceeding and is intended merely to distract the Commission from the impermissibility of Securus’ call blocking activities.

Marlene H. Dortch

June 17, 2011

Page 6

platform can still record the telephone number that each inmate calls, including calls to CCH telephone numbers.

C. Call Blocking by ICS Providers and the Securus Petition

Beginning in late 2008, ICS providers began identifying and blacklisting calls to some of the CCH-provided local telephone numbers of Millicorp's CCH customers.¹⁹ In July 2009, Securus, apparently questioning the legality of its self-help actions, asked the Commission to declare that the ICS providers' exemption from the prohibition on dial-around blocking also permits ICS providers to block calls to customers of Millicorp and similarly situated companies.²⁰ A broad cross-section of interested parties, including ICS providers, prisoner advocacy groups, state corrections officers, members of the general public, and Millicorp, have together filed over 150 documents in the proceeding discussing a wide variety of issues related to ICS. The Commission has not yet acted on Securus' Petition. In the meantime, Securus and GTL continue to impermissibly block calls to Millicorp's CCH customers.²¹

¹⁹ See Millicorp Comments, WCB Docket No. 09-144, filed Aug. 28, 2009, at 10-11.

²⁰ See Securus Petition at 1& n.1 ("Securus . . . petitions the Federal Communications Commission . . . for a declaratory ruling that call diversion schemes are a form of dial-around calling which Securus is permitted to block under the Commission's previous ruling . . ." and "The sole issue presented here is that the Commission's existing precedent permits Securus to block attempts to use call diversion schemes.").

²¹ As a result of Securus' impermissible blocking of calls by inmates to CCH customers, Millicorp filed with the Commission an informal complaint against Securus and GTL requesting the Commission to investigate their activities. See Request for Investigation Letter to Trent Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, from William P. Cox, Counsel for Millicorp, dated July 15, 2009. Millicorp understands that the Commission is not likely to act on this complaint until such time as the Commission has acted on the Securus Petition. In addition, Millicorp filed a lawsuit against GTL and certain of Securus' subsidiaries in October 2009 in the Federal District Court for the Southern District of Florida seeking damages for the defendants' violation of the Section 201 of the Communications Act, 47 U.S.C. § 201, as well as pursuant to various common law commercial torts and state consumer protection statutes. See *Millicorp v. Global Tel*Link Corporation*, No. 09-23093 (S.D. Fla. filed Oct. 14, 2009) ("Millicorp Complaint"). The court ultimately determined that the Commission was the proper venue for ruling on the issues raised in Millicorp's judicial complaint due to the pendency of Millicorp's informal complaint before the Commission. See *Millicorp v. Global Tel*Link Corporation*, No. 09-23093, slip op. (S.D. Fla. April 14, 210). The Court's decision was filed by Millicorp in this docket. See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from William P. Cox, Counsel for Millicorp, Docket No. 09-144 (filed April 16, 2010).

Marlene H. Dortch
June 17, 2011
Page 7

II. FEDERAL LAW AND THE COMMISSION’S RULES PROHIBIT THE BLOCKING BY ICS PROVIDERS OF INMATE CALLS TO MILLICORP’S CUSTOMERS

A. Absent an Express Exemption, Federal Law Prohibits Common Carriers From Blocking Telephone Calls

The Commission has clearly determined that, absent an express exemption, call blocking by common carriers is a violation of the Communications Act. According to the Commission,

Because the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended, . . . we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers.²²

The Commission is clear that this prohibition is a longstanding and fundamental common carrier obligation.

The Commission has been, and remains, concerned that call blocking may degrade the reliability of the nation's telecommunications network. Additionally, the Commission previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act. Specifically, Commission precedent provides that no carriers . . . may block, choke, reduce or restrict traffic in any way.²³

Although this determination by the Commission was issued in the specific context of traffic pumping issues, the Commission nevertheless is clear that the “general prohibition on call blocking” is applicable to all common carriers, “except in rare circumstances” in which the Commission has affirmatively permitted common carriers to block calls.²⁴ Even when a carrier believes that another provider is violating the Commission’s rules, common carriers “may not engage in self help actions such as call blocking” absent express permission from the Commission.²⁵

²² *Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 ¶ 1 (WCB 2009) (citations omitted) (“*Call Blocking DRO*”).

²³ *Call Blocking DRO* ¶¶ 5-6.

²⁴ *Call Blocking DRO* ¶¶ 6-7.

²⁵ *Call Blocking DRO* ¶ 1.

Marlene H. Dortch

June 17, 2011

Page 8

B. Securus and GTL Have No Express Exemption And Therefore Their Call-Blocking Practices Violate the Communications Act

As noted above, Securus, GTL, and other similarly-situated ICS providers are common carriers “subject to all federal and state regulations applicable to non-incumbent telecommunications common carriers.”²⁶ As common carriers, ICS providers are therefore prohibited from blocking calls unless the Commission expressly permits such blocking.

The Commission has not given Securus and GTL permission to block calls to CCH subscribers. That Securus found it necessary to file the Securus Petition essentially admits that no express permission has been granted. Thus, the self help practiced by Securus and GTL when they block inmate calls to the customers of Millicorp and other similarly situated companies is a direct violation of ICS providers’ obligations under Section 201(b) of the Communications Act to refrain from unjust and unreasonable practices.²⁷

C. ICS Providers’ Limited Exemption From the Prohibition on Dial-Around Blocking Does Not Provide Authority to Block Calls to Millicorp’s CCH Customers

As noted above, the Commission has permitted ICS providers to block “dial-around” calls to “800” and “950” numbers. The order permitting the blocking of dial-around calls did not authorize ICS providers to block other inmate calls, such as calls to CCH customers.²⁸ In the

²⁶ See *supra* at 3; Securus Petition at 2; see also Securus 2010 10-K (“The inmate telecommunications market is regulated at the federal level by the [FCC] and at the state level by public utilities commissions or equivalent agencies . . . of the various states.”).

²⁷ 47 U.S.C. § 201(b) (“All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful . . .”). Further, such call blocking also is a violation of Section 201(a) of the Communications Act, which states that “it shall be the duty of every common carrier . . . to furnish such communication service upon reasonable request thereof.” 47 U.S.C. § 201(a); see also Millicorp Complaint at 13-16.

²⁸ Although the Securus Petition only requested the Commission to determine that services such as Millicorp’s CCH service should be treated as dial-around services, Securus also appears to claim in the Securus Petition that the Commission’s *Billed Party Preference Order* authorizes Securus’ call blocking self-help measures. See *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (“*Billed Party Preference Order*”). Billed party preference (“BPP”) is a billing method applicable to telephone calls made from payphones. Specifically, operator-assisted BPP calls are carried by the operator service provider (“OSP”) preselected by the party being billed for the call. Millicorp’s CCH service does not involve operator assistance. Therefore, just as Millicorp’s CCH service does not qualify as a dial-around service, it also does not qualify as a BPP service.

Marlene H. Dortch

June 17, 2011

Page 9

Securus Petition, Securus argues that CCH is a “dial-around” service and asks the Commission to therefore authorize the blocking of such numbers. The Commission should reject the Securus Petition because the CCH service clearly is not a dial-around service.

First, dial around calling is a call routing service selected *by the inmate caller* by dialing an “800” or “950” access number. Yet CCH services are not available to inmates. Millicorp’s CCH service is purchased by inmates’ friends and family members—the inmates’ call recipients. The inmate is not “dialing-around” an ICS system but instead is using the ICS system to call a CCH subscriber. The very existence of the CCH service is transparent to the inmate placing the call. In fact, the inmate may not even know that their friend or family member is a CCH subscriber.

Second, when a caller makes a dial-around call, once the caller reaches the competitive carrier’s platform by dialing an “800” or “950” access number, the caller then must separately dial the number of the party he or she wishes to call. By contrast, a call by an inmate through an ICS system to the local telephone number of a CCH customer is terminated directly to the call recipient without providing the inmate any opportunity to input a second telephone number to reroute the call.

Third, dial-around calling enables the caller to complete a telephone call to any telephone number once the caller has reached the dial-around provider’s platform. Thus, dial-around calling could be used by an inmate to contact judges, prosecutors, witnesses, or any other party who would object to receiving the inmate’s call. By contrast, Millicorp’s CCH customers subscribe to Millicorp’s service for the express purpose of *facilitating* the ability of inmates to call the customers. The CCH service cannot permit inmates to complete calls to parties that do not want or intend to receive the inmates’ calls.

Finally, inmate calls to CCH customers are not “dialed-around” an ICS provider’s platform to reach another carrier’s platform. When using a dial-around service, the caller pays only the rates of the competitive dial-around carrier, and does not pay the original OSP. By contrast, calls to CCH’s customers are initiated by inmates over an ICS provider’s platform, just like calls to non-CCH customers. As a result, the ICS provider is compensated for these calls and the calls are subject to the security features intrinsic to the ICS provider’s platform.

As the above makes clear, Millicorp’s CCH service is not a dial-around service, and Millicorp is not a dial-around provider. Thus, the exception created in the *1991 TOCSIA Order* does not apply to CCH or similar services. Therefore, ICS providers are not permitted to block inmate calls to CCH customers under current law. Moreover, the Commission should reject the Securus Petition and refrain from expanding the dial-around exception to cover a completely different type of communications service. Further, while the Securus Petition remains pending,

Marlene H. Dortch

June 17, 2011

Page 10

the Commission should take action to halt ICS providers' blocking of inmate calls in contravention of the Commission's rules.

III. SECURITY CONCERNS ALLEGED BY SECURUS AND GTL ARE A PRETEXT FOR PROTECTING PROFITS

As described above, Millicorp's services save inmates' families significant sums by offering subscribers a local CCH number, thereby enabling them to avoid the extremely expensive long-distance rates charged by ICS providers. Such savings to CCH subscribers are perceived by ICS providers to represent lost revenue and profits. ICS providers therefore have a financial incentive to discourage inmates' families from subscribing to CCH and similar services, and ICS providers act on this incentive in various improper ways, including by blocking CCH numbers.

As an initial matter, Millicorp believes ICS providers' perception of lost revenue may be misguided. Inmate calls to CCH numbers, like all other inmate calls, still generate revenue for the ICS providers, albeit at the lower local rate. However, it is possible, if not likely, that an increase in inmate call volume enabled by the lower local rate paid to place calls to CCH customers will offset most of this revenue loss. In other words, if an inmate's friends and family members, who generally fund the inmate's telephone usage, have a fixed budget to spend on calls with the inmate, the lower local rates facilitated by Millicorp merely will cause CCH customers to spend more time talking with the inmate. Thus, the inmates' ICS provider will generate a similar amount of revenue as if the inmate was placing long-distance calls, but the inmate will have increased contact with his or her friends and family enabled by the fact that calls to these CCH customers are local calls.

Even though Millicorp's services only may have a small overall impact on the revenue and profits of ICS providers, it appears that ICS providers nevertheless block calls to CCH customers primarily for financial reasons. Despite this, ICS providers attempt to justify the blocking of Millicorp-assigned telephone numbers by arguing that CCH and similar services pose security threats. However, the Commission should be skeptical of such claims. ICS providers fail to acknowledge that calls to CCH subscribers are subject to the same security protocols as all other inmate calls. Furthermore, they criticize CCH's service for security characteristics shared by their own systems. ICS providers also unfairly single out and block calls to CCH customers while permitting calls to the customers of substantially similar services such as Google Voice and Vonage. Finally, although calls to local and non-local CCH numbers share the same characteristics from a security perspective, ICS providers only block inmate calls to revenue-reducing local CCH numbers and tend not to block inmate calls to CCH-assigned numbers that are not local to an inmate's confinement facility.

If the security of inmate calls placed using existing ICS system is indeed a concern that needs to be addressed, the Commission should establish and enforce uniform, bright-line rules

Marlene H. Dortch
June 17, 2011
Page 11

regarding when call blocking is permissible. Such rules would better and more impartially maintain the security of inmate calls. ICS providers should not be permitted to arbitrarily practice self help by only blocking calls that impact their revenue.

A. *Calls to CCH Customers Are Subject to the Same Security Protocols as Calls to Any Other Telephone Number*

Inmate calls to CCH customers are subject to the same security protocols as any other inmate call, including (i) blocking of calls to protected phone numbers (*e.g.*, judges, witnesses, and prosecutors), (ii) limiting outgoing calls to only those call recipients identified by the inmate by name and telephone number, (iii) monitoring and recording all calls, and (iv) the generation of call logs containing the pre-approved telephone number to which each inmate call is placed.²⁹ In addition, each telephone number dialed by inmates must be pre-approved by their ICS provider, which provides ICS providers an additional opportunity to collect information regarding the call recipient.³⁰ For example, GTL pre-approves phone numbers “manually (*i.e.*, uses human-to-human verification) to verify whether a called party is who he or she claims to be”³¹ The CCH service does not prevent or interfere with such verification processes.

For these reasons, the Federal Bureau of Prisons (“BOP”) does not have a policy requiring the blocking of calls to CCH customers. The BOP operates a federal ICS system to manage inmate calls throughout most of its 119 facilities and this system is substantially similar to the ICS platforms operated by Securus and GTL on behalf of many state and local prison systems. Unlike Securus and GTL, however, the BOP does not automatically block calls to CCH customers provided that the names and addresses of such customers appear in publicly available reverse directory systems so that they can be accessed by BOP representatives. Millicorp updates such directory systems on a daily basis with its customer information to ensure that the directories can be used to determine the identity and address of inmate call recipients. As a result, CCH customers can receive calls from their friends and family members incarcerated in federal prisons.

²⁹ Securus Petition at 3. Securus states that accountholder information associated with a prepaid account opened with Securus by friends or families of inmates is not a reliable indicator of who is receiving calls placed to the accountholder’s Securus-registered telephone number because Securus often does not cross check the accountholders’ billing records against the Securus-registered telephone number. If Securus desired to further increase its ability to identify call recipients, this would be one method of doing so.

³⁰ *See* Securus Petition at 3.

³¹ Reply Comments of Global Tel*Link Corporation, filed September 10, 2009, at 12.

Marlene H. Dortch

June 17, 2011

Page 12

B. Securus Unfairly Faults CCH For Limits Shared By Its Own System

Securus claims the blocking of calls to CCH customers is necessary for security reasons, but fails to mention that ICS suffers from basic technological limitations that prevent ICS providers from uniformly identifying who an inmate calls and the physical locations of the call recipients. ICS providers should not be permitted to discriminate against Millicorp's services for failing to meet a security standard that the ICS providers themselves cannot satisfy.

ICS providers face practical and technological limits when identifying who and where inmates call. First, even if an ICS provider can confirm the residence where an inmate call is terminated, the ICS provider cannot know who physically received the call. Second, if a call recipient is using a prepaid mobile service that does not collect identification information, there is no way for the ICS provider to identify the call recipient's identity from the telephone number called. Instead, as with Millicorp's CCH customers, an ICS provider is required to rely on the information provided by the inmate and/or the call recipient when the call recipient's mobile phone number is added to the inmate's approved calling list. Nevertheless, ICS providers do not consistently block calls to such mobile phone numbers. Third, Securus' technology to prevent call forwarding and three-way calls³² is limited to services provided by the recipient's telephone service provider. If the call recipient uses customer premises equipment to link multiple telephone lines, the three-way calling or call forwarding cannot be detected by an ICS provider.

Each of these technical limitations prevents an ICS provider from detecting the identity and/or location of an inmate call recipient who desires to remain anonymous. It is disingenuous for ICS providers to assert that inmate calls to CCH customers are required to be blocked due to security concerns when any such concerns are applicable to calls regularly permitted by ICS providers.

C. Millicorp's CCH Service Provides Equal or Greater Security Than Is Provided by Vonage and Google Voice, Two Services Permitted By Securus

Securus claims to permit inmate calls to users of Vonage and Google Voice.³³ Yet CCH makes available to law enforcement an amount of information about call recipients and their

³² See *Ex Parte* Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, dated December 14, 2009, at 8-9 ("Securus Dec. 14, 2009 *Ex Parte*").

³³ See Securus Reply Comments at n.14 ("Securus is not blocking calls to Vonage or Google Voice subscribers. . . . In fact, Securus has gone to considerable effort to avoid blocking calls to these legitimate VoIP-based service providers, for the reasons explained herein."); Securus Dec. 14 *Ex Parte* at 4; *Ex Parte* Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, dated February 16, 2010, at 4-5. Despite these representations by Securus in this

Marlene H. Dortch

June 17, 2011

Page 13

locations that is equal to or greater than the information available from Vonage, Google Voice, and other IP-based telephone service providers that offer their users phone numbers that are local to a location chosen by the user. Accordingly, if security concerns were the actual motivation of ICS providers for blocking calls to CCH customers, then such ICS providers would not permit calls to users of Vonage, Google Voice, or other IP-based telephone services providers. Moreover, CCH does not mask calls or seek to hide the identities of its customers in any way and, in fact, takes extra steps to ensure that the identities of its customers are available to ICS providers through publicly accessible reverse directories.

Google Voice and Vonage SimulRing and Enhanced Call Forwarding, as well as numerous other IP-based telephone service providers, permit their customers to control and modify via the Internet which physical device or devices will receive calls placed to their provider-assigned telephone numbers, which in most cases can be a telephone number that is local to any location chosen by the user.³⁴ Such services allow calls placed to a single telephone number assigned by the provider to ring a user's primary landline, cell phone, business number, and/or any other telephone number chosen by the user. Further, users can be assigned a telephone number that is local to any location chosen by the user and also can easily and quickly change which physical device(s) receive incoming calls, including devices that are in locations

proceeding, Millicorp understands based on discussions with its customer that inmate calls to Google Voice and Vonage are intermittently blocked by Securus.

³⁴ In addition to Vonage and Google Voice, many other IP-based communications providers offer consumer services with similar functionality to Millicorp's CCH service. These services generally allow a user to purchase a phone number that is local to any location of the user's choice and then terminate calls placed to this local number to any telephone (or softphone) selected by the user. *See, e.g.,* Skype, Online Numbers, available at <http://www.skype.com/intl/en-us/features/allfeatures/online-number>; magicJack, available at <http://www.magicjack.com/6/faq/>; Ribbit Mobile, Ribbit Numbers, available at <http://www.ribbit.com/mobile/ribbit-numbers.php>; Line2, How It Works: Overview, available at <http://www.line2.com/overview.html>; VOXOX, available at <http://www.voxox.com/>. Several services designed for business use offer the same type of call terminating functionality. For example, Digium, Inc. ("Digium") produces the open source Asterisk VoIP software that accounted for 85% of the market share of open source IP-based PBXs for the small business market as of January 2009. *See* John Malone, Open Source PBX is 18% of North American Market, NO JITTER (Jan. 28, 2009) available at <http://www.nojitter.com/showArticle.jhtml?printable=true&articleID=212903167>. Digium just released a new version of its software which enables users to direct incoming calls to up to six different phones in any location, including softphones. *See* Kevin Casey, Digium Intros Switchvox 5.0 for SMBs, INFORMATION WEEK SMB (June 6, 2011) available at http://www.informationweek.com/news/smb/network/230100032?cid=RSSfeed_IWK_News. Other services targeting the business market offer similar functionality. *See, e.g.,* Voice, Virtual Phone Number Features, available at <http://www.evoice.com/features>; Phonebooth, available at <http://www.phonebooth.com/>; RingCentral, How It Works, available at <http://www.ringcentral.com/features/how-it-works.html>; and Twilio Cloud Communications, OpenVBX, available at <http://www.twilio.com/api/openvbx>.

Marlene H. Dortch
June 17, 2011
Page 14

that would otherwise be long distance from the caller.³⁵ Many such providers, including Google Voice and Vonage, also provide call forwarding and three-way calling to their users, thereby enabling callers to such users ultimately to reach arbitrary numbers, including numbers intended to be protected from inmate calls by ICS providers.

By contrast, Millicorp's CCH service matches a single local number to a single registered phone number, enabling law enforcement to easily trace inmate calls back to the called individual who subscribed to the CCH service and his or her billing address.³⁶ Additionally, Millicorp retains call detail records of every call placed to a CCH-issued telephone number, including the terminating telephone number, the length of the call, and the date and time of the call. Millicorp consistently has provided this information to law enforcement representatives when asked to do so, including local police forces and federal law enforcement agencies. Moreover, Millicorp does not permit call-forwarding or three-way calling that could enable inmates to reach an arbitrary phone number other than the number initially called by the inmate.

Securus characterizes Millicorp's CCH service as "a grave risk to prison security and public safety" because the ICS provider cannot conclusively establish the identity and the location of the call recipient.³⁷ Yet Securus appears to ignore the fact that numerous IP-based telephone services collect less information about their subscribers and offer less secure services than Millicorp, such as call-forwarding and three-way calling.³⁸

Securus also contends that it blocks calls to Millicorp's CCH customers because the customers' CCH-issued local telephone numbers are not registered in any telephone number database, such as the Line Information Data Base ("LIDB").³⁹ According to Securus, numbers

³⁵ See, e.g., Google Voice Help: Call Forwarding with Your Google Number, *available at* <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=165221> ("You can set up to six phones to ring when someone calls your Google number. For example, with Google Voice, you can ring your home landline phone, work phone, mobile phone, and Gizmo number, just when someone calls your Google number."); Vonage Simultaneous Ring Feature, *available at* http://www.vonage.com/features.php?feature=simulring&lid=feature_nav_simulring&refer_id=WEBHO0706010001W ("When your Vonage phone rings, you can choose up to 5 other phone numbers anywhere in the United States including Puerto Rico and Canada to ring.").

³⁶ Every customer that establishes a CCH account with Millicorp is required to provide his or her (i) name, (ii) billing address, (iii) phone number, and (iv) credit card or other payment information.

³⁷ Securus Petition at 8.

³⁸ See Millicorp Comments, Affidavit of Timothy Meade ¶ 20 ("Millicorp disables all user enabled call forwarding and three-way calling features for its CCH service offering so as to comply with confinement facility regulations prohibiting call forwarding and three-way calling.").

³⁹ See Securus Reply Comments at 11; Securus Dec. 14, 2009 *Ex Parte* at 4-5.

Marlene H. Dortch

June 17, 2011

Page 15

assigned by Vonage to its users are registered to such users in the LIDB, along with the user's physical address.⁴⁰ Thus, Securus asserts that law enforcement officials examining the call detail record generated by an inmate call to a Vonage customer can also view the terminating number's registered physical address.⁴¹ However, Millicorp understands that not all Vonage-issued telephone numbers are registered in the LIDB database because the majority of carriers that provide telephone numbers to IP-based telephone service providers will not allow LIDB updates by their customers,⁴² including several carriers that are relied upon by both Millicorp and Vonage for telephone numbers.⁴³ Further, to mitigate this concern, Millicorp directly submits its customers' identity and location information on a daily basis to the National Directory Assistance database administered by LSSi Corp. ("LSSi"). LSSi is a Tier 1 provider of North American directory services and is relied upon by most national carriers to populate their directory services.⁴⁴ As a result, unlike the telephone numbers assigned to users of many IP-based telephone services providers, telephone numbers assigned by Millicorp to its CCH customers are available in most reverse directories thereby enabling any member of the public to determine the identity and the physical address of CCH's customers from their CCH-assigned telephone numbers.

Furthermore, it is not possible for many IP-based telephone services providers, including Google Voice, consistently to register their users' information in the LIDB because they do not collect the addresses of their users or confirm their identities. For example, to sign up for a Google Voice subscription, a Google Voice user only is required to provide an email address and

⁴⁰ See Securus Reply Comments at 10; Securus Dec. 14, 2009 *Ex Parte* at 4.

⁴¹ See Securus Reply Comments at 5; Securus Dec. 14, 2009 *Ex Parte* at 4-5.

⁴² Millicorp previously indicated that it will submit CCH customer information directly to the LIDB database if the Commission requires carriers from whom VoIP providers obtain telephone numbers to offer this capability to their VoIP provider customers. See *Ex Parte* Letter from William P. Cox, Counsel to Millicorp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, dated December 16, 2010, at 6 ("Millicorp Dec. 16 *Ex Parte*").

⁴³ In any event, even assuming, *arguendo*, that Vonage registers all of its telephone numbers in the LIDB, the registered physical address of Vonage's customer may not be the actual address of the customer or the location (or telephone number) where such customer receives inmate calls. For example, using Vonage's SimulRing, a customer in Texas can set his or her Vonage account to ring both landline and cell phones in multiple states or even multiple countries.

⁴⁴ See <http://www.lssidata.com/data-sets/national-directory-assistance-data.html> ("LSSiDATA is the primary resource for 411 Directory Assistance as the only enterprise vendor to provide aggregated contact information to telecommunication providers in North America. . . . LSSiDATA is a Tier 1 supplier of data as the only enterprise-based vendor to compile residential, business, and government names, addresses and phone numbers directly from (and in partnership with) the vast majority of carriers in North America.").

Marlene H. Dortch

June 17, 2011

Page 16

a telephone number to which Google Voice should terminate calls.⁴⁵ A Google Voice user is not required to provide his or her name. As a result, Securus' position that completion of inmate calls to Google Voice customers is somehow more secure than completion of calls to CCH customers simply is inaccurate. To the contrary, Millicorp takes extra measures, such as submission of its subscriber's information to LSSi for inclusion in the National Directory Assistance database, to ensure that ICS providers can obtain more information about CCH customers called by inmates than the ICS providers can obtain about call recipients that are users of other IP-based telephone services, such as Google Voice.

D. ICS Providers' Targeting of Local Numbers Further Indicates That Protecting Profits, Not Security, Is Their True Priority

If Securus and GTL's actual motivation for blocking inmate calls to CCH customers is security concerns, one would expect that all CCH numbers—both those local to a confinement facility and those outside the confinement facility's local calling area—would be treated equally by Securus and GTL.⁴⁶ Although ICS providers earn more revenue from long-distance calls, local and long-distance calls to CCH customers are identical from a security perspective. ICS providers have no additional information about the location or identity of long-distance call recipients than local call recipients and calls to both are terminated by Millicorp using the same IP-based technology. Yet Millicorp has found that Securus blocks local telephone numbers assigned by CCH but does not block CCH-assigned long-distance telephone numbers. In fact, CCH customers are regularly told by Securus and GTL representatives that the reason their CCH-assigned telephone numbers are being blocked is that the area code is different from the local area code of the customers' residence. Further, they are told that their telephone number will be unblocked if they obtain a new number with an area code that is local to their home. Because the security profile of local and long-distance calls to CCH customers is the same from the perspective of ICS providers, this clearly demonstrates that the factor that determines when calls will be blocked merely is whether the calls are local (and therefore generate less revenue) or long-distance and has nothing to do with security concerns about the call recipient or its telephone service provider.

Similarly, it has been Millicorp's experience that Securus and GTL generally do not make any effort to confirm the identity or location of inmate call recipients who have telephone

⁴⁵ See *Ex Parte* Letter from William P. Cox, Counsel to Millicorp, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-144, dated March 15, 2010, Exhibit C (“Millicorp Mar. 15 *Ex Parte*”) (displaying the Google Voice Setup Screens).

⁴⁶ Millicorp occasionally assigns to its international customers domestic telephone numbers that are considered long-distance with respect to the confinement facilities at which the customers' friends or family members are incarcerated. Millicorp primarily does so when telephone numbers that are local to the facilities are blocked by ICS providers. ICS providers generally do not block such long-distance telephone numbers.

Marlene H. Dortch

June 17, 2011

Page 17

numbers that are long-distance from a confinement facility. Instead, they primarily focus their call blocking efforts on CCH customers with local numbers. For example, Securus and GTL have at times required local recipients of inmate calls, many of whom are CCH customers, to provide utility bills or other proof that they reside at a local address. To the best of Millicorp's knowledge, Securus and GTL have not undertaken similar inquiries with respect to inmate call recipients with telephone numbers that qualify as long-distance from an inmate's confinement facility. In addition, Millicorp has been told by many of its CCH customers that Securus recently has begun contacting recipients of local inmate calls to determine whether they are Millicorp customers and has told call recipients who identify themselves as Millicorp customers that it is illegal to use Millicorp's CCH service.⁴⁷ Millicorp is unaware of any such efforts by Securus to identify Millicorp customers that are long-distance from an inmate's facility. Also, Millicorp has been informed by multiple CCH customers that Securus and GTL expressly have told local call recipients whom they have identified as CCH customers that their CCH-assigned local telephone number either will be blocked by the ICS provider *or* that the CCH customer will be charged the ICS providers' higher long-distance rate for calls to their local CCH-assigned number. These circumstances provide compelling evidence that the actual concern motivating Securus and GTL's impermissible call blocking activities are financial rather than security-based.

E. The FCC Should Establish and Enforce Consistent, Bright Line Rules That Cannot be Discretionarily Applied With Anti-Competitive Intent

If the Commission were to find plausible Securus and GTL's security concerns regarding VoIP-based subscriber services such as CCH (which, as set forth above, it should not), the

⁴⁷ Separate and apart from the illegality of Securus' call blocking, these invasive calls to Millicorp's customers may be violations of Securus' statutory and regulatory obligations to protect Consumer Proprietary Network Information ("CPNI"). Subject to certain exceptions, federal law limits the use of CPNI by a carrier for purposes other than the provision of the telecommunications services from which such CPNI is derived. *See* 47 U.S.C. § 222(a) ("Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."). The use of inmates' CPNI to identify inmate call recipients, contact them, and determine whether they are Millicorp customers is not a use of CPNI in furtherance of providing telecommunications services to the inmate. Further, the Commission's rules implementing the CPNI laws establish a policy against the use of CPNI by a carrier to harm or otherwise gain a competitive advantage over other carriers. *See* 47 C.F.R. § 64.2005(b)(2) ("A telecommunications carrier may not use, disclose, or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.").

Marlene H. Dortch

June 17, 2011

Page 18

Commission nevertheless should require ICS providers to cease their standardless, illegal call blocking practices. Instead, the Commission should establish bright line, objective rules regarding when it is permissible for ICS providers to block inmate calls.⁴⁸ Such Commission guidance would enable companies such as Millicorp to develop and provide innovative, secure, and cost effective services to the families and friends of inmates without the fear of arbitrary operational disruption and financial harm caused by call blocking by ICS providers.

These rules should take into account the increasingly IP-based nature of telephone services. ICS providers should not be permitted unilaterally to deprive the friends and families of inmates the benefits that can be derived from innovative IP-based communications technologies by refusing to complete inmate calls to such individuals if they subscriber to IP-based telephone services. Further, ICS providers and state and local facilities should be prohibited from discriminating against IP-based communications services that primarily serve the friends and families of inmates, such as Millicorp. Any call blocking policy that is deemed permissible by the Commission, if any, should be required to be applied to all IP-based telephone service providers that use substantially similar practices to assign telephone numbers to their customers and to route calls.

In addition, prior to blocking any inmate calls, an ICS provider should be required to investigate “suspect” call recipients and only should be permitted to block calls to the intended recipient if the intended recipient expresses a desire not to receive calls from the inmate or if it is not possible to identify the individual to whom a telephone number is assigned. Such rules would prevent the continued unilateral, arbitrary, and impermissible call blocking practices of Securus, GTL, and other ICS providers.

Further, ICS providers should never be permitted to unilaterally determine which calls to block. Instead, if the Commission determines to refrain from adopting bright line call blocking rules applicable to ICS providers, then ICS providers only should be permitted to block calls that they expressly are instructed to block by the state and local agencies that run the prison facilities. Further, the Commission, at minimum, only should permit such call blocking by a facility if the facility or its supervising state or local agency publicly has issued a statement of its call blocking

⁴⁸ The Commission has a long history of regulating ICS under its Title II jurisdiction. This demonstrates the Commission’s preemptive authority to impose regulations on ICS providers even if such regulations are inconsistent with, and therefore prevent the enforcement of, inmate calling policies adopted by the state and local governmental agencies responsible for the operation and/or supervision of state and local confinement facilities. To the extent that the Commission desires to avoid preempting such policies, the Commission at minimum should expressly prohibit ICS providers from blocking inmate calls to the extent that such ICS providers are not expressly required to implement such call blocking by narrowly tailored state or local laws or rules. By contrast, internal policies of state and local confinement facilities that are not imposed by state and local governmental agencies should not be permitted to withstand otherwise preemptive Commission regulations.

Marlene H. Dortch

June 17, 2011

Page 19

policies. By requiring prison call blocking policies to be publicly accessible, the Commission can equip the customers of companies such as Millicorp with the information that they need to refute the unfounded and often outlandish claims by ICS providers as to why the ICS providers are blocking certain inmate calls. Moreover, this will provide voters with the ability to impact through the election process any call blocking mandates imposed on ICS providers by state and local governments. Further, such publicly accessible policies will enable companies such as Millicorp to appropriately tailor their service offerings to comply with these policies and will halt the self-serving discretion used by ICS providers to determine unilaterally when to block calls.

IV. SECURUS' ASSERTION THAT MILLICORP DOES NOT QUALIFY AS AN INTERCONNECTED VOIP PROVIDER IS INTENDED TO DISTRACT ATTENTION FROM SECURUS' IMPERMISSIBLE CALL BLOCKING ACTIVITIES

Throughout this proceeding, Securus has repeatedly focused on Millicorp's regulatory status in an attempt to cast Millicorp as a nefarious interloper and thereby to distract the Commission from the true issue in this proceeding—Securus' impermissible call blocking activities.⁴⁹ The Commission should ignore this ruse. In this proceeding, Millicorp has referred to its IP communications service as an interconnected VoIP service in an effort to respond to these unwarranted assertions by Securus. Millicorp does in fact provide interconnected VoIP, as defined by the FCC, to some CCH customers.⁵⁰ Specifically, to the extent that Millicorp's customers connect a Millicorp-provided SIP adapter (*i.e.*, Internet protocol-compatible customer premises equipment) to their existing broadband service, they can receive and place calls over the public switched telephone network using Millicorp's service.

However, Millicorp also permits its customers to register to receive calls using their existing landline or mobile telephone services, similar to non-CPE based IP communications services provided by Vonage and Google Voice and many other IP-based telephone service providers.⁵¹ Customers of Vonage's SimulRing service and its Enhanced Call Forwarding

⁴⁹ See, e.g. Securus Petition at 12 (“Securus sees no evidence that [Millicorp] submitted a registration to the Commission or to the states that presently require VoIP service registration”); Securus Reply Comments at 4 (“ConsCallHome is not a legitimate telecommunications service provider”); Securus Dec. 14 *Ex Parte* at 2 (“Millicorp/ConsCallHome is not an ‘interconnected VoIP provider.’”); Securus Feb. 16 *Ex Parte* at 4 (“The question whether Millicorp/ ConsCallHome is an ‘interconnected VoIP provider’ must finally close.”).

⁵⁰ The Commission has defined interconnected VoIP as a service that (1) enables real-time, two way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. See 47 C.F.R. § 9.3.

⁵¹ The Commission has not yet established a regulatory classification for such IP-based communications services. This in no way renders Millicorp's CCH service illegitimate. The

Marlene H. Dortch

June 17, 2011

Page 20

service are not required to use any Internet protocol-compatible CPE to receive calls using the Vonage service. Likewise, Google Voice customers are never required to establish a broadband connection or to use any Internet protocol-compatible CPE to receive calls using Google Voice.⁵² Instead, customers of these two services can receive calls placed to their Vonage or Google Voice telephone number using a home telephone or cell phone not provided by Vonage or Google.⁵³ Under these circumstances, the Vonage SimulRing and Google Voice services are very similar to Millicorp's CCH service.

Ultimately, the fact that some of Millicorp's customers receive inmate calls on an existing telephone service does not render Millicorp's service illegitimate or unlawful, nor does it justify blocking inmate calls to CCH subscribers. It is telling that ICS providers only focus on the regulatory categorization of Millicorp's CCH service as a justification for blocking calls to CCH subscribers, but ignore the identical issue with regard to Vonage and Google Voice services.⁵⁴ The Commission should recognize the ICS providers' classification argument against the CCH service as a red herring, and should instead address the real issue in this proceeding, which is ICS providers' illegal blocking of calls.

Commission does not prohibit the deployment of new and innovative technologies. For example, the Commission has not yet determined whether interconnected VoIP qualifies as a telecommunications service or an information service, yet interconnected VoIP has become a regulated mainstay of the communications industry.

⁵² For this reason, Google has taken the position that it is not an interconnected VoIP provider. According to the Google Voice website, "Google Voice isn't a phone service, but it lets you manage all of your phones. Google Voice works with mobile phones, desk phones, work phones, and VoIP lines. There's nothing to download, upload, or install, and you don't have to make or take calls using a computer." See <http://www.google.com/support/voice/bin/answer.py?hl=en&answer=115061>. In recent comments submitted to the Commission, AT&T agreed with this assessment. See AT&T Response to Wireless Telecommunications Bureau Letter, RM-11361, Aug. 21, 2009 ("Based on AT&T's review of the information available on the Google Voice website, however, it is our understanding that Google Voice is not a Voice over Internet Protocol service that enables a user to send or receive voice calls in IP format from a wireless handset.").

⁵³ See Millicorp Mar. 15, 2010 *Ex Parte*, Exhibit B (describing Vonage's services) and Exhibit C (describing Google Voice's services).

⁵⁴ See Securus Feb. 16 *Ex Parte* at 4; Securus Dec. 14 *Ex Parte* at 4; Securus Reply Comments at 8 and n. 14.

Marlene H. Dortch

June 17, 2011

Page 21

V. THE PERSISTENT CALL BLOCKING SELF-HELP ACTIVITIES OF ICS PROVIDERS CAUSE REAL HARM TO INMATES AND THEIR FRIENDS AND FAMILIES, AS WELL AS IP-BASED TELEPHONE SERVICES PROVIDERS THAT SERVE THEM

While the Securus Petition remains pending, ICS providers continue to harm inmates and their friends and families, and companies such as Millicorp that serve them, through widespread and impermissible call blocking. For many families, phone calls are the only way to keep in touch with their imprisoned loved one. State correctional departments frequently transfer inmates to confinement facilities located in other states. According to a 2005 survey, at least 43 states transfer inmates out of state.⁵⁵ Often, the distance between the state in which the family member lives and the state in which the inmate is confined is so great that it is impossible for the friends and family of the inmate to visit, thereby leaving telephone conversations as the only means for the inmate to retain ties to their pre-incarceration lives.⁵⁶ Given that inmates' families often are low-income, the high cost of ICS providers' long-distance rates are very problematic and punish innocent Americans who simply wish to maintain contact with friends and family members.⁵⁷

High inmate calling rates also reduce the chances that inmates will be effectively rehabilitated. A recent report issued by a diverse group that included correctional officials found that high inmate telephone rates have a negative effect on the family and community ties of prisoners.⁵⁸ The strength of family and community ties has been found to be a significant determining factor in the prevention of recidivism. Studies have found that prisoners who fail to maintain these ties more often violate parole and return to prison when compared with their

⁵⁵ NAT'L INST. OF CORR. INFO. CTR., U.S. DEP'T OF JUSTICE, INTERSTATE TRANSFER OF PRISON INMATES IN THE UNITED STATES, 2 (February 2006).

⁵⁶ *See, e.g.*, Tracy Newton Comments, WC Docket No. 09-144 (dated Aug. 24, 2009); Esdwin E. Dickens Comments, WC Docket No. 09-144 (dated Aug. 18, 2009).

⁵⁷ *See* Comments of Citizens United for Rehabilitation of Errants Regarding Securus Technologies, Inc. Petition for Declaratory Rulemaking, WC Docket No. 09-144, at 6 (filed August 31, 2009) ("CURE Comments").

⁵⁸ CURE Comments at 9 (citing COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS, CONFRONTING CONFINEMENT 35-36 (John J. Gibbons & Nicholas de B. Katzenbach, Comm'n Co-Chairs) (June 2006)).

Marlene H. Dortch

June 17, 2011

Page 22

counterparts who preserve such ties while incarcerated.⁵⁹ Moreover, every parolee that does not return to jail saves approximately \$22,000 of taxpayer money.⁶⁰

One crime that is undoubtedly amplified by excessive ICS rates is the smuggling of contraband cell phones in prisons. Cell phones, some of which are prepaid and can be purchased over the counter without identification, pose a much larger security threat than Millicorp's services. These cell phones are not subject to any of the ICS provider's security procedures, and, if they are of the prepaid variety, no records identifying their ownership exist. As a result, the Commission is currently examining how to combat the use of contraband cell phones in prisons.⁶¹ However, investigations of contraband cell phone use within prisons have established that the vast majority of cell phone calls are placed to friends and families outside of the prison.⁶² In other words, many illicit cell phones smuggled into confinement facilities are not used for nefarious undertakings, but instead are used as a means to stay connected with family members. Following this logic, lawmakers in Texas recently concluded that increased access to prison phones would cut down on the prevalence of illicit cell phones in confinement facilities and therefore expanded access to prison phones.⁶³

Securus and GTL's egregious efforts to harm Millicorp's business have only become more aggressive during the nearly two years in which this proceeding has been pending before the Commission. Most recently according to Millicorp's CCH customers, Securus has begun to directly contact inmate call recipients with local telephone numbers and ask if the call recipient is a CCH customer. If the recipient replies affirmatively or refuses to answer, Securus blocks inmates from calling that individual's telephone number. Moreover, CCH customers regularly report to Millicorp that when they call Securus and GTL representatives to complain about call blocking the representatives outrageously claim that the use of CCH's services is a felony and CCH customers and the inmates who call them are subject to criminal prosecution for using the services. In addition, Securus and GTL have asserted to numerous CCH customers that Millicorp's CCH service is criminal, fraudulent, illegal, or under investigation by the FCC.

⁵⁹ Creasie Finney Hairston, *Family Ties During Imprisonment, Do They Influence Future Criminal Activity?* 52 FED. PROBATION 48, 49 (1988) ("The major conclusion of these studies is that the maintenance of family and community ties during imprisonment is positively related to post-release success.").

⁶⁰ Vince Beiser, *Prisoners Run Gangs, Plan Escapes, and Even Order Hits with Smuggled Cell Phones*, WIRED MAGAZINE, May 22, 2009, available at: http://www.wired.com/print/politics/law/magazine/17-06/ff_prisonphones.

⁶¹ See *Public Safety and Homeland Security Bureau to Hold Workshop/Webinar on Contraband Cell Phone Use in Prisons*, Public Notice (rel. Sep. 13, 2010).

⁶² See Beiser, *supra*, note 60.

⁶³ *Id.*

Marlene H. Dortch

June 17, 2011

Page 23

Further, CCH customers have been told that prison personnel will take retaliatory action against inmates that place calls to CCH-assigned telephone numbers. In recent months, Millicorp has seen a sharp rise in the number of such reports by CCH customers regarding the actions of Securus and GTL, which has been accompanied by a sharp increase in the number of Millicorp CCH customers which have cancelled their CCH service. However, Millicorp's ability to take legal action to prevent these potentially tortious assertions by Securus and GTL is substantially hampered by the Commission's inaction on the Securus Petition to date.⁶⁴

VI. CONCLUSION

For the reasons set forth herein, Millicorp renews its request for the Commission to deny the Securus Petition and prohibit ICS providers from continuing their persistent use of call blocking to prevent the friends and families of inmates from using Millicorp's CCH service. Such impermissible call blocking costs inmates and their friends and families substantial sums in exorbitant ICS charges every year and prevents inmates from maintaining adequate contact with their friends and families during their incarceration. In the alternative, to the extent that the Commission determines that certain IP-based telephone services provided to inmate call recipients pose a security concern despite the evidence provided by Millicorp to the contrary, Millicorp requests the Commission to establish a bright line rule as to when ICS providers may block inmate calls. In light of their exclusive control of ICS at the confinement facilities with which they contract, ICS providers should not be permitted continued unfettered discretion to arbitrarily determine which inmate calls to block.

Respectfully,

Phil Marchesiello
Counsel to Millicorp

Attachment

Cc: Chairman Julius Genachowski
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Sharon Gillett, Chief, Wireline Competition Bureau

⁶⁴ See *supra* note 21.

Marlene H. Dortch

June 17, 2011

Page 24

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Zac Katz, Legal Advisor to Chairman Genachowski for Wireline, International, and Internet Issues

Margaret McCarthy, Policy Advisor to Commissioner Copps for Wireline

Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell

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Lynne Engledow, Pricing Policy Division, Wireline Competition Bureau

Chin Yoo, Investigations & Hearings Division, Enforcement Bureau

Jennifer Prime, Acting Legal Advisor, Office of the Bureau Chief, Wireline Competition Bureau

DECLARATION

I, Timothy Meade, President of Millicorp, which operates the ConsCallHome.com service, declare under penalty of perjury that the factual assertions set forth in the *ex parte* letter in WC Docket 09-144 to Marlene Dortch, Secretary, Federal Communications Commission, from Phil Marchesiello, counsel to Millicorp, dated June 17, 2011, are true and correct to the best of my knowledge and belief.

Executed on June 17, 2011.



Timothy Meade, President
Millicorp