STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: **INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES**	**DOCKET NO. NOI-2019-0001**

PRISON POLICY INITIATIVE'S OBJECTION TO SECURUS TECHNOLOGIES, INC.'S APPLICATION FOR CONFIDENTIAL TREATMENT

On August 20, 2019, the Iowa Utilities Board ("Board") initiated the above-captioned proceeding for the purpose of reviewing alternative operator services regulations and considering whether relevant statutes or rules should be changed. In the concluding pages of the Board's August 20 order, it posed a list of questions that it encouraged commenters to address. The second question on the Board's list ("Question 2") gets to the heart of the matter by asking "What criteria or considerations should the board use to determine whether rates charged by an AOS company are just and reasonable? This includes the basic rates and any ancillary rates." Aug. 20 Order at 7. In a display of breathtaking hostility to the basic tenets of public transparency, Securus Technologies, Inc. filed comments on September 19, 2019, in which it redacted its *entire* three-page answer to Question 2, under dubious claims of confidentiality. The undersigned contacted counsel for Securus on September 23, 2019 to inquire about the possibility of reviewing the unredacted document pursuant to a protective order, but counsel for Securus did not respond.

Documents filed with the Board are subject to public disclosure except as exempted under the Iowa Open Records Act ("ORA," Iowa Code § 22.1, *et seq.*). 199 Iowa Admin. Code 1.9(5). The ORA must be liberally interpreted in favor of disclosure, while its exemptions are to be narrowly construed. *E.g., Gannon v. Board of Regents*, 692 N.W.2d 31, 38 (Iowa 2005). A party opposing disclosure of a public record bears the burden of proving that a statutory

exemption applies. *Dierks v. Malin*, 894 N.W.2d 12, 18 (Iowa App. 2016) (quoting *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999).

Securus has cited two statutory bases for withholding its answer to Question 2: the trade-secrets exemption and the government-reports exemption. As discussed below, both purported bases are unpersuasive—this is a *public* rulemaking and Securus has no right to influence the policymaking process in secret.

Trade-secrets exemption. Securus first claims that its answer to Question 2 "contains trade secret information as defined in Iowa Code section 550.2(4), the public disclosure of which would give advantage to Securus' competitors while serving no public purpose, and which need not be released to the public pursuant to Iowa Code section 22.7(3)." Securus Application for Confidential Treatment, at 1 (Sept. 19, 2019).

The Board's rules require that an application for confidential treatment be accompanied by "a statement of the legal basis for withholding the materials from inspection *and the facts to support the legal basis relied upon.*" 199 Iowa Admin. Code 1.9(6)(b) (emphasis added). Concrete supporting facts are nowhere to be found in Securus's application for confidential treatment or the accompanying declaration of Michael Lozich. Rather, the Lozich Declaration merely recites the boilerplate definition of a trade secret and then blithely claims that "Securus *believes*" that release of the redacted information would be harmful. Lozich Decl. ¶¶ 2-5. Securus fails to describe the nature of the information it has withheld, thereby vitiating other parties' ability to both: (1) intelligently respond to the application for confidential treatment, and (2) address Securus's substantive policy arguments as part of this rulemaking. Moreover, such threadbare, self-serving affidavits have been found to be inadequate as a matter of Iowa law. *US West Comm'cns v. Ofc. of Consumer Advocate*, 498 N.W.2d 711, 715 (Iowa 1993) (rejecting carrier's attempt to obtain trade-secret protection because the carrier's "affidavits and testimony . . . provide opinions concerning the deleterious effects disclosure will have . . . [but] such evidence is self-serving and does not contain hard facts."); *Farnum v. G.D. Searle*, 339 N.W.2d 384, 391 (Iowa 1983) (affirming trial court's denial of protective order because defendant "did

not state facts as opposed to conclusions from which the court could identify what information . . . constituted trade secrets or confidential information" and because the defendant's allegations of "the alleged competitive harm that might occur from disclosure of the data was not particularized").

Government-reports exemption. Securus also seeks to withhold its answer to Question 2 because "it is information the Board requested, and its protection facilities private parties' willingness to participate and provide such information, consistent with the purpose of the protection afforded to information provided to the Board under Iowa Code section 22.7(6). Securus App., at 1. This ham-handed attempt to invoke the ORA's government-reports exemption lacks merit. To qualify for this ORA exemption, the party opposing disclosure must prove three elements: (1) the information is a report to a governmental agency, (2) disclosure would give advantage to competitors, *and* (3) disclosure would serve no public purpose. Iowa Code § 22.7(6).

Even making the questionable assumption that Securus could satisfy the first two elements, it plainly cannot satisfy the third mandatory element. Under Iowa Code § 22.7(6), commercial information can be released—even if disclosure may result in competitive harm—if the public interest supports disclosure. *Craigmont Care Ctr. v. Dept. of Social Servs*, 325 N.W.2d 921 (Iowa App. 1982) (per curiam) (compelling the release of private nursing-home operators' detailed financial information upon a finding that "[t]he free flow of information regarding the nursing home industry in Iowa is of sufficient importance to allow the interested public access to this information."). Here, Securus is attempting to shape a public rulemaking, involving generally applicable consumer protections, and impacting tens of thousands of Iowans.[1] Securus seeks to participate in this public process while simultaneously asking the Board to rely on secret information when it decides issues of grave public importance. In

[1] Approximately 13,300 people are confined in Iowa prisons and jails (see https://www.prisonpolicy.org/profiles/IA.html). Given that most of these individuals are likely to have more than one relative who maintains contact by telephone, the number of Iowans impacted by this proceeding is clearly substantial, even if difficult to estimate.

support of its application for confidential treatment, Securus cites its executive's conclusory determination that "Securus believes the public release of information contained in the Response would serve no public purpose." Lozich Decl. ¶ 5. Such self-serving and unfounded rhetoric would be laughable if it were not deployed in an attempt to freeze tens of thousands of interested parties out of the rulemaking process.

Conclusion. The purpose of the ORA "is to remedy unnecessary secrecy in conducting the public's business." *US West*, 498 N.W.2d at 713. Securus's withholding of information bespeaks contempt for this principle of Iowa law by seeking to turn the Board into an administrative-law Star Chamber. The Board should promptly and unequivocally deny Securus's application for confidential treatment pursuant to 199 Iowa Administrative Code 1.9(6)(d). In addition, as a matter of basic fairness and transparency, the Board should not consider any evidence or argument contained in Securus's answer to Question 2 unless: (1) Securus refiles the document without redactions, and (2) interested parties receive additional time to respond to Securus's comments.

Dated: September 26, 2019

Respectfully submitted,

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