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

In the Matter of	)	
	)	
Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	
	)	OMB Control No. 3060-1222
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PAPERWORK REDUCTION ACT COMMENTS OF SECURUS TECHNOLOGIES, LLC

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EXECUTIVE SUMMARY

Securus Technologies, LLC ("Securus") submits these comments in response to the request for comment by the Federal Communications Commission ("Commission") regarding compliance with the Paperwork Reduction Act ("PRA") of certain new reporting obligations established in the 2024 IPCS Order. Securus focuses these comments on information collection and disclosure requirements related to providing automatic refunds of unused balances in accounts used to pay for communications services, particularly for "debit accounts," following a period of account inactivity. These comments also demonstrate that the Commission's excessive and unnecessary disclosures associated with alternative pricing plans violate the PRA. Securus also seeks clarification regarding disclosure of international calling rates and the elimination of certain modifications to the Commission's waiver process that undercut the goal of providing relief to providers that can show their reasonably incurred costs cannot be recovered at the new rate caps. Finally, for IPCS providers to comply with the various obligations imposed by the 2024 IPCS Order, the Commission imposes unrecognized burdens on correctional authorities over which it has no jurisdiction and for which no estimates have been proposed.

In these comments, Securus demonstrates that certain of the Commission's new rules are excessively burdensome and fail to provide information that will further the goals of the Martha Wright-Reed Act or the public interest generally. Specifically, the Commission's information collections and reporting obligations with respect to the following sets of rules violate the PRA: (1) requirements to automatically issue refunds for "debit accounts," which are accounts under control of an incarcerated individual or the correctional authority (47 C.F.R. § 64.6130(d)); (2) various rules that require notifications to IPCS account holders in excess of what is reasonably required to achieve the Commission's goals to refund unused balances wherever possible

(64.6130(d)(2); (f) and (k); (3) disclosure rules associated with alternative pricing plans (64.6140 (c) –(f)); (4) disclosure of international calling costs (64.6110(c); and (5) modifications to the Commission's rate cap waiver process (64.6120).

The Commission has not issued burden estimates for these discrete sets of disclosures but it has, unreasonably, assumed that the providers would incur no costs in developing the processes and procedures to implement these various reporting obligations. Nor has the Commission taken into account the burdens that its requirements, particularly as related to refunding debit accounts, will place on correctional authorities.

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Securus Technologies, LLC ("Securus") submits these comments in response to the request for comment by the Federal Communications Commission ("Commission") regarding compliance with the Paperwork Reduction Act ("PRA") of certain new reporting obligations established in the *2024 IPCS Order.*[1] Securus focuses these comments on information collection and disclosure requirements related to providing automatic refunds of unused balances in accounts used to pay for communications services, particularly for "debit accounts," following a period of account inactivity. These comments also demonstrate that the Commission's excessive and unnecessary disclosures associated with alternative pricing plans violate the PRA. Securus also seeks clarification regarding disclosure of international calling rates and the elimination of

[1] *See* Federal Register Notice, Information Collection Being Reviewed by the Federal Communications Commission, Vol. 89, No. 207, at 85209- 211 (Oct. 25, 2024) ("FR Notice"). *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Order, DA 24-1129 (Nov. 8, 2024) (extending PRA comment deadline to January 7, 2025). *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62 and 12-375, Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75 (rel. July 22, 2024) (*2024 IPCS Order*). The *2024 IPCS Order* has been appealed by IPCS providers, law enforcement and the attorneys general of 17 states. *See, e.g.,* Securus Technologies, LLC v. FCC, No. 24-1860 (1st Cir.).

certain modifications to the Commission's waiver process that undercut the goal of providing relief to providers that can show their reasonably incurred costs cannot be recovered at the new rate caps. Finally, for IPCS providers to comply with the various obligations imposed by the *2024 IPCS Order*, the Commission imposes unrecognized and unacknowledged burdens on correctional authorities over which it has no jurisdiction and for which no estimates have been proposed.

Securus emphasizes that it does not object to the programmatic goals that underly these disclosures. Securus has always provided refunds upon request and has worked hard to implement the Commission's interim refund rules. The concern is with the number of additional disclosures and notices required by the Commission, and in particular the Commission's rules requiring automatic refunds after a period of inactivity as applied to "debit accounts." For these accounts, providing refunds upon the person's release or transfer, which is Securus' practice, fully protects the incarcerated person without imposing burdensome obligations that fail to further the Commission's objectives. Securus further emphasizes its strong support for alternative pricing plans but explains that they can be provided in a way the protects consumers without the plethora of unreasonable and unnecessary disclosures adopted by the Commission. Securus acknowledges that consumers should be provided sufficient information about the plans to assess their usefulness to them, but this can be accomplished with far fewer disclosures than required by the Commission.

I. Background and Introduction

The *2024 IPCS Order* dramatically transforms the incarcerated people's communications services ("IPCS") industry and requires IPCS providers to substantially revamp internal systems and to renegotiate thousands of individual contracts with correctional authorities, who are the

IPCS providers' customers. Many of the changes result in new information collections and reporting obligations that are the subject of these comments. When assessing compliance with the PRA, parties are asked:

> "whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees."[2]

Congress enacted the PRA to minimize federal paperwork burdens on businesses and to ensure the greatest public benefit from information collected by the federal government, among other things.[3] The PRA defines the term "burden" broadly to include the "time, effort, and financial resources expended by persons to generate, maintain, or provide information."[4] A central purpose of the PRA is to minimize the "paperwork burden" for reporting entities,[5] and the Commission has an obligation to ensure this objective is achieved.[6] Specifically, the Commission must demonstrate that "it has taken every reasonable step to ensure that the proposed collection of information" is the "least burdensome necessary," and is "not duplicative of information otherwise accessible to the agency," and is useful.[7]

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[2] FR Notice at 85209.
[3] 44 U.S.C. § 3501(1).
[4] 44 U.S.C. § 3502(2).
[5] *See, e.g.*, *U.S. v. Dawes*, 951 F.2d 1189, 1191 (10th Cir. 1991) ("The Paperwork Reduction Act (PRA or the Act) was enacted by Congress in response to growing criticism from citizens regarding what they perceived to be an ever-increasing and onerous burden of federal paperwork. In adopting the PRA, Congress crafted a comprehensive scheme designed to reduce the federal paperwork burden.") (citing *Dole v. United Steelworkers*, 494 U.S. 26 (1990)).
[6] *See, e.g.*, *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 416 (D.C. Cir. 1983) (finding the PRA "was enacted 'to minimize the federal paperwork burden'" and that "Congress specifically applied this policy to the FCC's domain").
[7] 5 C.F.R. § 1320.5(d)(1).

In these comments, Securus demonstrates that certain of the Commission's new rules are excessively burdensome and fail to provide information that will further the goals of the Martha Wright-Reed Act or the public interest generally. Specifically, the Commission's information collections and reporting obligations with respect to the following sets of rules violate the PRA: (1) requirements to automatically issue refunds for "debit accounts," which are accounts under control of an incarcerated individual or the correctional authority (47 C.F.R. § 64.6130(d)); (2) various rules that require notifications to IPCS account holders in excess of what is reasonably required to achieve the Commission's goals to refund unused balances wherever possible (64.6130(d)(2); (f) and (k); (3) disclosure rules associated with alternative pricing plans (64.6140 (c) –(f)); (4) disclosure of international calling costs (64.6110(c); and (5) modifications to the Commission's rate cap waiver process (64.6120).[8]

At the outset, Securus emphasizes that the Commission has not issued burden estimates for these discrete sets of disclosures but it has, unreasonably, assumed that the providers would incur no costs in developing the processes and procedures to implement these various reporting obligations.[9] Nor has the Commission taken into account the burdens that its requirements, particularly as related to refunding debit accounts, will place on correctional authorities.

[8] *See* FR Notice at 85210. The Commission will conduct an additional PRA review with respect to revisions of the annual report that all IPCS providers must submit. *Id.* at 85211.
[9] FR Notice at 85210. The Commission assumed an industry-wide burden of 17,000 hours to comply with all of the information collections but has not estimated the burden in complying with any particular set of obligations.

II. The Commission's Refund Rules, Particularly With Respect to Debit Accounts, Are Unreasonably Burdensome and Unnecessary

A. The Commission's Refund Framework

The communication services that IPCS providers offer generally are paid for by the persons using those services.[10] Payments are made in advance and held in accounts with amounts subtracted as consumers use the communications services. There are generally two types of accounts. One type of account is funded by friends and family of incarcerated people and the friend or family member is the holder of the account. These are called prepaid accounts. In the second type of account, called a debit account, the incarcerated person is the account holder and these accounts may be managed by the correctional authority. Debit accounts are often funded from commissary accounts that incarcerated people use to pay for a variety of items.[11] Although friends and family may place money into debit accounts the incarcerated person remains the account holder of record.[12]

Money may sit in these accounts without being used for long periods of time. In 2022, the Commission first addressed the treatment of unused balances in these accounts and established interim rules.[13] The Commission ruled that funds in these accounts are the property of the

[10] The contracts between IPCS providers and correctional authorities generally require that the IPCS providers install and maintain communications services at no cost to the authority. IPCS providers recoup their costs primarily from friends and family of incarcerated persons that utilize the services.
[11] Securus provides two types of debit accounts: SCP [Secure Communication Platform] Debit accounts and Securus Debit accounts. For SCP Debit accounts, the relevant prison or jail administers the debit account and controls the funds. An incarcerated person funds an SCP Debit Account through his or her commissary account. Securus does not administer refunds for SCP Debit accounts, because those accounts are controlled by the carceral institution. For Securus Debit accounts, Securus maintains the incarcerated person's account, and it can be funded either by the incarcerated person through their commissary account or by deposits from friends and family. Deposits made by friends and family become the property of the incarcerated person and are therefore refundable only to the incarcerated person.
[12] *See, Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, 37 FCC Rcd 11900, 11932 (2022) (*2022 IPCS Order or 6th FNPRM*).
[13] *2022 IPCS Order*, 37 FCC Rcd at 11931-36.

account holder and the agency precluded IPCS providers from taking unused amounts into general revenue.[14] Instead, providers were required to make reasonable attempts to refund the amounts to the account holder after 180 days of continuous inactivity in the account, or, if refunds could not be made, dispose of the funds per any applicable state laws on abandoned property, such as state escheat laws.[15] The Commission also barred providers from seeking to recover any costs associated with making a refund, such as costs imposed by third-party money transfer companies or payment card companies when money is refunded to a payment card.

Following enactment of these interim rules governing unused balances, Securus, at considerable time and expense, established procedures to contact account holders, based on the contact information provided to Securus, before and after the 180-day period of continuous inactivity had lapsed.[16] Securus in fact made it a practice to warn account holders that the inactivity period was about to expire. In some states, Securus established an automatic refund mechanism for prepaid accounts by which unused funds are automatically sent to the prepaid account holder after the period of inactivity. Securus noted that while refunding *prepaid* account holders per the interim rules was a reasonable policy, providing refunds for *debit accounts* after the 180 day period of inactivity created unreasonable burdens and was unnecessary.[17]

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[14] The Commission was responding to concerns that some IPCS providers were taking unused balances after a relatively short period of activity, such as 90 days.

[15] *2022 IPCS Order*, 37 FCC Rcd at ¶ 4, ¶ 76.

[16] Securus explained its refund process in its reply comments to the Commission's *Sixth FNPRM.* Securus Reply Comments in Rates for Interstate Inmate Calling Services, filed March 3, 2023 at 36-37, available at Securus 6th FNPRM Reply Comments (3.3) REDACTED.pdf (6th FNPRM Reply Comments).

[17] *See, e.g.* Letter from Michael H. Pryor, Counsel to Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12- 375, at 3-4 (filed Sept. 21, 2022). As Securus explained to the Commission:

> "Requiring a refund of [debit] accounts following a period of inactivity does not work with respect to these types of accounts. Refund processes for debit accounts are well developed based on agreements between providers and correctional authorities. Debit accounts remain open, notwithstanding periods of inactivity, until deactivated by the facility, which typically does not occur until the incarcerated person is released or transferred. As further explained below, upon release or transfer, an incarcerated person is provided with the balance on their debit account, either by the agency or Securus and, as such, Securus is

The Commission adopted permanent account refund rules in the *2024 IPCS Order* that in critical respects expand beyond the interim rules. The new rules require *automatic* refunds for all accounts, prepaid and debit, after 180 days of inactivity.[18] The rules further provide that if the IPCS provider becomes aware that the incarcerated person is being transferred to another facility or is being released, "the 180 days of inactivity will presumptively be deemed to run."[19] The provider is also required to "contact the account holder prior to closing the account and refunding the remaining balance, to determine whether the account holder wishes to continue using the account, or to close it and obtain a refund."[20] For debit accounts, the account holder is the incarcerated person. The refunds must be issued within 30 days of an account being deemed inactive using prescribed methods.[21] Finally, the Commission requires providers to "provide account holders, through their billing statements and statements of account, notice of the status of IPCS accounts prior to being deemed inactive." The notice must be provided at least 60 days before the account is deemed inactive and be included in each billing statement or statement of account "until either some action by the account holder results in the inactivity period being

> already making reasonable efforts to refund the balance in such accounts to the released individual. Further, an offer of refunding money to the incarcerated person after 180 days (or any period) of inactivity is unnecessary because the funds would simply be remitted to the debit account."

[18] *2024 IPCS Order*, ¶ 536; 64.6130(d). The new automatic refunds rules apply to any account that can be used for pay for debit or prepaid accounts, even if the account is also used for non-telephone services over which the Commission does not have jurisdiction. *Id.* at ¶ 537. By automatic, the Commission means the IPCS provider must take proactive steps to refund unused amounts, *id.* at ¶ 544. The incarcerated person need not request a refund before one is issued.

[19] *2024 IPCS Order* at ¶ 539.

[20] *Id.* at ¶¶ 539, 545; 64.6130(f).

[21] *Id.* at ¶ 548; 64.6130(h). Refunds must be provided in the same manner as was used to place funds into the account. The Commission found that "providers must issue refunds in the original form of payment, an electronic transfer to a bank account, a check, or debit card." *Id.* at ¶ 553.

restarted or the account is deemed inactive."[22] The notice must describe how the account holder can keep the account active, and how to update account refund information.[23]

The Commission summarily rejected any claims that establishing processes and procedures to provide automatic refunds for debit accounts would be highly burdensome and costly, and not advance the Commission's objectives.[24] The Commission, however, provided no estimate of the burden or cost of the automatic refund obligation and related information collection and disclosure requirements.[25] Nor did the Commission provide any ability to recoup costs for establishing, implementing, and operating the automatic refund procedures and processes.

B. The Commission's Refund Rules, Particularly As Applied to Debit Accounts, Violate the PRA

The *2024 IPCS Order* layered on top of existing refund obligations a number of new notification and disclosure obligations that are unnecessarily burdensome. The laudable objective of providing refunds wherever practicable can, in many instances, be achieved with more efficient procedures. In some instances, it is not the substance of the notification that is problematic, but the highly prescribed manner in which the notification must be provided. Section 64.6130(k), for example, requires IPCS providers to notify account holders of the status of their accounts prior to being deemed inactive. The rules require that this notification be included in billing statements or statements of account.

[22] *2024 IPCS Order* at ¶ 554.
[23] *2024 IPCS Order* at ¶ 554; 64.6130(k).
[24] *Id.* at ¶ 551 (requiring providers "to collect whatever information and establish any procedures that will need to process refunds expeditiously as required by our rules.")
[25] The FR Notice states that all of the information collections necessitated by the *2024 IPCS Order* somehow creates no costs. FR Notice at 85210.

The Commission posits no particular reason why account status notifications must be included in billing statements or statements of account as opposed, for example, to simply sending the account holder an email regarding account status, which has been Securus' practice. The requirement to use a billing statement is problematic for a number of reasons. For one, Securus must revise its billing statements to include a countdown of the number of days since the last account activity. Moreover, Securus does not currently send statements in months during which there has been no activity in the account. Securus must separately develop and generate a no-activity statement to send or make available to the account holder to provide a status update because statements are the sole prescribed status notification method adopted by the Commission. Additionally, the substance of the notification will require substantial additional text to the statements because the rule requires an explanation of the kinds of actions the account holder can take to end the period of inactivity. The rules here also prescribe the content of this aspect of the notification.[26] This type of narrative information along with account status generally is easier to provide on a targeted basis via email to those account holders whose accounts have been inactive for a sufficiently long period of time to trigger the 60-day advance notice obligation in the rules.[27]

The problematic nature of this status notification through billing statements or statements of account is substantially heightened for debit accounts where the account holder is the incarcerated person. Securus, like other IPCS providers, has extremely limited ability to initiate

[26] The rules describe a series of actions that can end the period of inactivity and restart the 180-day clock. These actions are: (1) depositing, crediting, or otherwise adding funds to an IPCS account; (2) withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or (3) "expressing an interest in retaining, receiving, or transferring the funds in an IPCS account, or otherwise attempting to exert or exerting ownership or control over the account or funds held within the IPCS Account." 64.6130(c).
[27] 64.6130(k)(1).

communications with incarcerated persons. Communications to incarcerated persons are tightly controlled by correctional authorities. (In contrast to efforts to contact the incarcerated person, IPCS communications are always initiated by the incarcerated person and always from the correctional facility to the called person). The rules contemplate three methods for making billing statements or statements of account available to account holders: (1) via the IPCS provider's website; (2) via the IPCS provider's online or mobile application; or (3) on paper upon specific request.[28] None of these are necessarily available to incarcerated persons.

As a practical matter, providing these disclosures to incarcerated persons, if possible at all, will require the intervention of correctional authorities, and thus will impose additional burdens on state and local agencies over which the Commission has no jurisdiction. Correctional authorities would have to be alert to and receive the notification in the first instance, printing them out on paper, and then delivering them to the incarcerated person. Although Securus has some additional ability to communicate with incarcerated persons that have individual tablets, many facilities do not have tablets. The Commission made no assessment of the scope of these additional burdens or the costs that they may impose on the correctional authorities.

The foregoing is but one example in which the Commission ignored the impracticality of its automatic refund framework as applied to debit accounts. As previously indicated, there are material and relevant distinctions between debit accounts and prepaid accounts. Debit accounts are established when a person arrives at the correctional facility and the account remains open and available until the person is released or transferred from that facility. Prepaid accounts, in contrast, are created by the friends or family of the incarcerated and the friend or family member is the account holder. Prepaid funds can be set up at any time and used as needed, and are

[28] 64.6110(d).

available for however long the friend or family member wants, and the account holder can stop using prepaid accounts at any time.

Automatic refund obligations may make sense for prepaid accounts, as long as the obligations are reasonably tailored. Automatic refunds make no sense for debit accounts, particularly based on a period of inactivity, as described below. The Commission's refund obligations are designed to prevent IPCS providers from taking unused balances after some period of inactivity. Debit accounts, however, never become "inactive" while the person is incarcerated at the facility. The concern animating the refund rule for prepaid accounts simply does not exist for debit accounts. If there are unused amounts in debit accounts, the amounts are refunded to incarcerated persons once they are released from the facility or transferred to a new facility, which is Securus' practice. The requirement to refund debit accounts after 180 days of inactivity has no "practical utility,"[29] and addresses a non-existent problem. Securus does not receive complaints regarding a failure to refund debit accounts.

The requirement to automatically refund debit accounts after 180 days of inactivity is also non-sensical because it requires a provider to take money out of the debit account and then restore it to the debit account, which is how refunds of debit accounts would practically work in the carceral setting.[30] The actual mechanism for refunding unused balances to persons still incarcerated are complex and problematic and will impose even more burdens on correctional

[29] FR Notice at 85209 (seeking comment on "whether the information shall have practical utility.")
[30] As Securus previously informed the Commission: "[A]s a practical matter, an incarcerated person cannot cash a refund check, likely has no credit card, and usually has no electronic banking account. The one place an inmate typically holds funds is the inmate's commissary account, which the carceral institution exclusively controls. Those accounts are not structured to receive funds directly from debit accounts, and moreover, carceral institutions have rules governing the possession and use of money in commissary accounts and within the facility, to which the Commission should defer. So it would not make sense for the Commission to mandate transfers into those accounts." Securus 6th FNPRM Reply Comments at 41.

authorities. Any refunded amount would have to be remitted to the incarcerated person's commissary or trust accounts, over which IPCS providers have no control. IPCS providers have no mechanism to directly place funds into such accounts that are controlled by correctional authorities through contracts with other third-party vendors. Although incarcerated persons can request that money from such accounts be transferred into debit accounts, there is no ability to take money from debit accounts and place them into commissary or trust accounts. In reality, to provide refunds for debit accounts based on 180 days of inactivity, Securus will have develop a mechanism to provide the money to the correctional agency and then rely on the correctional agency to place the money into the commissary or trust account. Neither the Commission nor IPCS providers have any ability to ensure that funds will be placed in those accounts and to do will again impose unrecognized (by the Commission) burdens on correctional authorities. None of this is necessary to make the incarcerated person whole because, as noted, a refund is available once the person is released or transferred. Requiring a refund before release or transfer is non-sensical and creates burdens without benefit.[31]

Additionally, IPCS providers must now undertake the burden of first developing a mechanism to track debit account activity, and then establish debit account activity tracking processes to determine if the debit account has been "inactive," *i.e.,* not touched for any reason,

[31] The 180-day refund rule as applied to debit accounts creates burdens for both IPCS providers and the correctional authorities that are heavily involved in administrating debit accounts, even when nominally under the IPCS providers' control, as Securus explained to the Commission:

> "Requiring refunds to incarcerated persons after an inactivity period would also create a number of problems for facilities and providers. First, ICS providers' administration of debit accounts is frequently subject to facility policies and procedures. For instance, Securus's SCP debit accounts are administered by the relevant jail or prison. The facility, not Securus, controls the funds, and Securus cannot process refunds for those accounts or require that a facility do so. For Securus Debit Accounts, Securus controls the debit account funds, but it often is required to transfer funds to the correctional facility to provide refunds to the incarcerated person in accordance with facility policies." Securus 6th FNPRM Reply Comments at 40-41.

for a period of 180 consecutive days. The provider must also endeavor to contact the incarcerated person, using a billing statement or statement of account, at least 60 days in advance of the 180-day period running out. Moreover, once the 180-day period expires, or is deemed to have expired due to release or transfer, the IPCS provider must again attempt to contact the account holder and ask if they want the account closed or to remain open.[32] As noted, for debit accounts where the incarcerated person is the account holder, Securus and other IPCS providers have limited ability to contact incarcerated persons. The means, methods, and timing of contacting incarcerated persons are solely in the control of the correctional authority, and as noted above, they will bear the burden of distributing notifications to the incarcerated individual.

The notification requesting guidance on whether to keep the account open creates burdens when applied to prepaid accounts as well especially if the rule is interpreted as requiring a separate, additional notification beyond those otherwise required. The rules require that reasonable efforts to refund unused balances includes notifying the account holder that the account has become inactive.[33] Additionally, the provider must notify the account holder of the status of the account at least 60 days before the account becomes inactive.[34] There is no reason why, as part of these notices, that the prepaid account holder cannot be queried about keeping the account open or obtaining a refund.

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[32] 64.6130(d)(1). (After 180 days of account inactivity, the provider must "[c]ontact the account holder prior to closing the account and refunding the remaining balance to determine whether the account holder wishes to continue using the IPCS Account, or to close it and obtain a refund"); 64.6130(f) ("If a Provider becomes aware that an Incarcerated Person has been released or transferred, the 180-day period shall be deemed to have run and the Provider shall begin processing a refund in accordance with this section. The Provider shall contact the account holder prior to closing the IPCS Account and refunding the balance in the IPCS Account, to determine whether the account holder wishes to continue using the IPCS Account, or to close it and obtain a refund from the Provider.")

[33] 64.6130(d)(2)(i).

[34] 64.6130(k)(1). As explained above, that the 60-day advance notification must be made in a billing statement or statement of account in unnecessarily prescriptive. The Commission should allow other reasonable means of providing this notice such as an email to the friend and family account holder.

The requirement to automatically issue refunds to debit accounts and make efforts to contact incarcerated persons does not further the Commission's goals. Securus has no objection to the underlying concept of declaring that amounts in debit accounts are the incarcerated person's property and cannot be taken by the IPCS providers. Nor does Securus object to providing refunds to incarcerated persons in a reasonable manner. Industry practice is to provide refunds upon release or transfer and that process reasonably satisfies the Commission's goals of ensuring that unused balances are returned to the incarcerated account holder. Providing refunds upon transfer or release minimizes the burden on providers while achieving the Commission's ultimate objectives.

Securus thus urges the reversal of the refund rules that: (1) require automatic refunds for debit accounts after 180 days of continuous inactivity (64.6130(d)); (2) require notification to incarcerated debit account holders 60 days before the 180-day period expires (64.6130(k); and (3) notification of incarcerated persons before issuing a refund to assess whether the incarcerated debit account holder wishes to close the account and receive a refund or keep the account open. (64.6130(f)).

III. The Commission's Rules For Alternative Pricing Plans are Unnecessarily Burdensome

The default rule for IPCS pricing is that the services must be offered on a per-minute basis.[35] In the *2024 IPCS Order,* the Commission adopted a framework that allows providers to offer alternative pricing options such as a bucket of calls or minutes at a set price per month.[36] This allows IPCS to be offered in ways more consistent with commercial offerings.

[35] *2024 IPCS Order* at ¶ 427.
[36] *2024 IPCS Order* at ¶¶ 427-471.

Securus had experimented with alternative pricing plans that offered a set number of calls per month (or per week in one case) that were highly popular with consumers and provided substantial savings while increasing calling times.[37] Due to certain Commission rule changes, Securus was forced to shut down the offerings when the Commission failed to act on Securus' request to waive relevant rules.[38] Securus applauds the Commission's belated recognition of the benefits of alternative rate plans. Unfortunately, as explained below, the Commission has created a number of unnecessary and burdensome disclosure obligations that may preclude providers from offering a plan, thus potentially depriving consumers of the recognized benefits of alternative pricing options.

A. The Alternative Pricing Plan Framework

The *2024 IPCS Order* gives providers the option of offering alternative pricing plans that consumers may choose to utilize. Consumers must always have the option to stay with per-minute pricing and providers cannot require consumers to sign up for long-term plans. Service periods cannot be longer than one month. Consumers may opt into automatic renewal plans. The Commission's key concern is that providers not use the plans as a way to avoid the rate caps on per-minute pricing. To achieve this result, the Commission requires that plans have a "breakeven point equal to or less than the applicable rate cap."[39] Securus has no objection to this general

[37] Letter from Michael H. Pryor, Brownstein Hyatt Farber Schreck, LLP, Counsel to Securus Technologies, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 23-62 and 12-375, Attach. at 30 (filed Dec. 21, 2023) (Securus Dec. 21, 2023 *Ex Parte*) (explaining that the alternate pricing plans that Securus piloted provided "budget predictability for consumers" and "calling times increased 58%").
[38] *See 2024 IPCS Order* at ¶ 430 (citing Securus Technologies, LLC Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription Based Calling Services, WC Docket No. 12-375, at 6-7 (filed Aug. 30, 2021), https://www.fcc.gov/ecfs/document/10830227993038/1 ("Securus Waiver Petition").
[39] *2024 IPCS Order* at 448; 64.6140(b)(1). The breakeven point means "the usage amount: (1) Below which a Consumer would pay more under the Alternative Pricing Plan that the Consumer would have paid under the Providers' per-minute rates, and (2) At or above which the cost of the Alternative Pricing

framework, including a reasonable set of disclosures that provide sufficient information to enable consumers to make a rational choice between an alternative pricing plan or per-minute pricing. The Commission, however, has adopted a plethora of disclosures that go far beyond what is necessary.

B. Overly Burdensome, Redundant and Unnecessary Disclosures

The Commission determined that a number of disclosures to consumers are required to protect their interest when using an alternative pricing plan. The Commission however, goes overboard, promulgating three pages of codified disclosures on top of the generally-applicable disclosures required by all providers in all instances.[40] The extent of the disclosures is staggering and likely will confuse and annoy consumers while imposing unnecessary burdens on providers.

1. Requiring Repetitive Disclosures Is Unnecessary – 64.6140(c)(2)

The Commission requires that the following disclosures be made repeatedly in multiple formats including *at the beginning of **each** call or communication*:

- The plan's rates including taxes and fees, a detailed explanation of those taxes and fees, total charge, quantity of minutes, calls or communications included in the plan, the service period, and the beginning and end dates of the service period;

- Terms and conditions, including explaining the provider's policies concerning dropped calls and communications:
  - The types of dropped calls for which a consumer can seek credit or a refund;
  - How the provider will calculate a credit or refund for a dropped call or communication; and
  - The method the consumer must use to request a credit or refund (which must be easy for consumer to complete).

- An explanation that the per-minute rates are always available as an option and that the per-minute rates apply to calls that exceed the plan's limits;

- The breakeven point, and

Plan would be less than or equal to what the Consumer would pay under the Provider's per-minute rates." 64.6000.

[40] *See* 64.6140(c) (stating that the provider must comply the disclosures in 64.6110 "as well as the requirements in this section").

- The ability to obtain prior usage and billing data upon request, for each of the most recent three month service periods (where feasible), including total usage and total charges including taxes and fees.[41]

The Commission requires that the above-described disclosures must be made before a consumer enrolls in the plan; upon request at any time after enrollment; with a billing statement or statement of account, and any "related communications;" and, as noted, at the beginning of each call.[42] Requiring that all of this information be disclosed at the beginning of each call or communication (e.g., a video call) is particularly egregious. The amount of time required to make all of these disclosures could well take up a significant portion of the call. Correctional authorities typically restrict the length of a call to between 15 to 30 minutes. These disclosures would be in addition to long-required mandated disclosures at the beginning of and/or during the call that the call is from a carceral institution and is being recorded. Consumers have already complained that even these few disclosures are annoying and frustrating. It is likely consumers would find that the additional disclosures above, repeated each time a call is made, to be extremely intrusive and unnecessary. Some incarcerated persons make multiple calls a day to the same friend or family member who would be forced to listen to the same lengthy disclosure over and over again.

To the extent that these varied disclosures are required, it is more than sufficient that they be made at the time the consumer initially opts into the plan. They can also remain available on the provider's website for review at any time. Repeating the same information each time a call is

[41] 64.6140(c)(2)(i)-(v).
[42] The *2024 IPCS Order* requires all providers to make available monthly billing statements and statements of account that inform the consumer of the amount of any deposits into their account, the duration of all calls charged to the consumer, and the balance in the account after those charges. The bill or statement must be available on the provider's website, online or mobile application or as a paper bill if requested. 64.6110(e).

made is simply unnecessary. The Commission should eliminate per call disclosures with the possible exception of informing the called party of the number of calls or minutes left in the plan for the service period.

Moreover, these disclosures suffer from ambiguities regarding what is required. For example, how much explanation of taxes and fees applicable to the communications is sufficient to qualify as "detailed?" What must the provider include when describing the "types of dropped calls" for which a credit or refund may be received? As the Commission correctly notes, there are numerous reasons a call may drop that have nothing to do with problems on the provider-controlled equipment or network.[43] It is of little benefit, and potentially unlikely to satisfy either the consumer or the Commission, to disclose that credits or refunds may be available only for calls determined, after investigation, to have been dropped due to the provider's network failure.

2. Additional Disclosures Far Exceed What Is Necessary to Achieve the Goal of Protecting Consumers Opting Into Alternative Rate Plans

The Commission's disclosures required above are just the beginning. The Commission then adds disclosures, some of which are duplicative, that must be provided before a consumer enrolls in the plan and additional disclosure obligations once enrolled. The Commission's rules require, before a consumer enrolls, or at any time upon request, the following disclosures:

- The rates, breakeven point, and total cost including taxes and fees;
- An explanation that the consumer's prior usage and billing data is available upon request through a readily accessible means and must include for the provider's most recent three service periods (where feasible):
    - the minutes of use for each of the calls or communications made by the consumer and the applicable per minute rate charged;
    - the total number of minutes;
    - the total charged for each service period including the details of any taxes or fees; and

[43] *See 2024 IPCS Order* at ¶ 454.

- prior usage and billing must be made available via the provider's website or online or mobile application or by paper upon request.[44]

Once the consumer enrolls in the plan, the provider must provide monthly billing statements or statements of account using the same method the consumer used to sign up for the plan, and via paper upon request. The billing statement or statement of account must be specific to the plan being used and include the following:

- Call details, including the duration of each call made, and total minutes used for that service period, and the total charge for that period, including taxes and fees with explanations for each tax or fee;
- The charges that would have been assessed for each call using the provider's per minute rate, and the total of those charges;
- The calculated per-minute rate for the service period under the alternative plan calculated as the charge for the service period divided by the total number of minutes used by that consumer, with an explanation of that rate;
- The breakeven point with an explanation of the breakeven point; and
- Information about deposits made to the consumer's IPCS account and account balance.[45]

If the provider offers the option of automatic renewals as part of the plan, the provider must make the following additional disclosures when it initially offers the option or with each monthly automatic renewal:

- Explain the terms and conditions of automatic renewal in plain language when the provider initially offers the plan and before any automatic renewal is about to occur (e.g., monthly) by whatever method the provider has established for consumer notifications;
- An explanation that a consumer may cancel their participation in the plan; and
- Notice of an upcoming renewal "directly to the consumer" no later than three business days before the renewal date that explains the terms and conditions of the automatic

[44] 64.6140(c)(5).
[45] 64.6140(c)(6).

renewal using, as a minimum, the method of communication the consumer agreed to at the time they enrolled.[46]

The requirement that the provider explain the plan each time the consumer renews is unnecessary unless the terms of the plan have changed. Note also the inconsistency between the method of notification. The rule initially requires notification before a renewal is about to occur "by whatever method the provider has established."[47] The rule then requires notification three business days before renewal using "the method of communication the consumer agreed to at the time they enrolled."[48] While those may not entail different methods of notification they may depending on the method the consumer agreed to use.

Finally, the provider must provide information regarding the cancellation of a plan including:

- An explanation that the consumer may cancel at any time and where applicable that the provider will begin billing the consumer at the applicable per-minute rates by the first day after the termination date;
- An explanation of how the consumer may cancel;
- An explanation that the consumer can chose the termination date; and
- An explanation that the consumer is entitled to a prorated refund of the remaining balance where the incarcerated person has been released, transferred to another facility or precluded by the facility from making calls "for a substantial portion" of the subscription period."[49]

Simply describing the breadth of these disclosure obligations indicates the burdens they impose on providers. (As with other aspects of the order, the Commission did not provide an

[46] 64.6140(e).
[47] Contrast the flexibility provided here with the highly prescriptive requirement in the refund rules that account status notifications must be provided in billing statements or statements of account.
[48] Compare 64.6140(e)(2) with 64.6140(e)(4).
[49] 64.6140(f). The Commission provides little guidance of what might constitute a "substantial portion" of the subscription period. It suggests 50% or more, but only as an example. *2024 IPCS* Order at ¶ 462. The ambiguity invites disputes. A provider might determine, for example, that 90% is substantial while an incarcerated person might claim that 40% is sufficient for a refund.

estimate of the burden or costs of these alternative pricing plan disclosure obligations.) While some of these disclosures impart important information, collectively they go well beyond what is reasonably required to protect consumers. The requirement that certain basic information, such as a description of the plan or the breakeven point, must be disclosed repeatedly and in different formats (*e.g.*, monthly billing statements, at the beginning of each call, and maintained on the website) is unnecessary to keep consumers informed. The plans likely will entail a set number of calls or minutes for a set monthly price and the breakeven point is unlikely to change. Unless the terms of the plan change, there is no reason to repeat this basic information.

Nor is it reasonable to require providers to provide both the charge for the plan, plus what the consumer would have paid using the applicable per-minute rate at the facility.[50] This will require providers to develop a bill for a service not being utilized. The burden is exacerbated because per-minute rates vary by facility so that providers would have to calculate the per-minute rates at each facility at which an alternative pricing plan is being offered based on a measure of the consumers use. As noted, alternative pricing plans likely will be based on a preset number of calls, for example, 100 calls per month for X dollars. To comply with the requirement to inform the consumer what the same usage of the service would have cost if the consumer instead used the applicable per-minute rate will require providers to capture how long each call lasted, determine the per-minute rate in effect at the facility, and essentially generate a fake bill that would tell the consumer how much he or she would have paid.

The PRA requires assessment of least burdensome alternatives that meet the Commission's reasonable objective, which in this case means the least burdensome set of disclosures needed to protect the consumer and provide sufficient information for the consumer

[50] 64.6140(c)(6)(ii) (requiring disclosure of the "charges that would have been assessed for each call using the Provider's per-minute rate, and the total of those charges.").

to assess whether the plan is beneficial in terms of money saved or for other reasons. The Commission has a disclosure for that purpose – the disclosure of the breakeven point, which informs the consumer how often it must utilize the plan in order to save money compared to paying at applicable per-minute rates. For example, if the plan provides 100 calls for X dollars, the consumer might have to make at least 15 calls at maximum allowed per-call usage (e.g., 15 minutes per call) to break even. This one disclosure is more than sufficient and need only be provided when the consumer enrolls in the plan. To require the provision of an alternative bill as if the consumer used per-minute pricing is overkill.

As has been noted, Securus believes alternative pricing plans can provide substantial benefits to consumers and agrees that a reasonable set of disclosures is useful. Apart from disclosing the breakeven point, the following disclosures should be sufficient to protect and inform the consumer:

(1) a basic description of the plan (e.g., 100 calls per month for x dollars);

(2) state the prevailing per-minute rate at the facility for comparison purposes;[51]

(3) that the consumer can opt into automatic renewals;

(4) that the consumer can cancel at any time and revert to per-minute rates; and

(5) the circumstances of when refunds would be available.

These disclosures need only be provided before the consumer enrolls and be readily available on the provider's website to review at any time or made easily accessible at the jail or prison. Consumers are sufficiently savvy to know, with this information, whether an alternative rate plan is right for them. Should the plan not provide the expected benefits, for example,

[51] Securus 6 FNPRM Reply Comments at 7 (Agreeing that "the materials describing the alternative rate program should indicate the offered terms, (e.g., X number of calls per month for $X) and state the prevailing per-minute rate at the facility. Consumers can readily make determinations based on this information.")

because calling volume is much less than anticipated, the ability to cancel and revert to per-minute pricing provides sufficient consumer protection. As Securus previously explained to the Commission: "As long as the programs are voluntary, have adequate disclosures, and enable cancellation at any time, consumers can be expected to make rational choices for what works best for them."[52] Additional disclosure obligations lack any utility, are highly burdensome, and are likely to undermine the attractiveness of alternative rate plans for both the consumer and the IPCS provider.

IV. International Rate Disclosure Rule Clarification.

The new disclosure obligations include requiring providers to clearly label all additional charges for international calls including the amount the IPCS provider paid to the underlying carrier to transmit the call to the foreign destination, which may be passed through to the consumer without markup.[53] The Commission initially adopted rate caps for international calls in its *2021 IPCS Order*.[54] The international rate cap consists of the interstate rate cap plus the IPCS provider's cost to terminate the call that must be passed through without markup. The Commission acknowledged Securus' concerns that the cost Securus incurs in terminating international calls varies constantly even for the same destination. The variation is due to the use of "least cost routing" processes by which Securus (and others) identify in real time for each call the carrier that can terminate the call at the least cost. This variation would make it extremely burdensome to provide actual cost on a call-by-call basis. Instead, the Commission allowed

[52] Securus 6th FNPRM Initial Comments, filed December 15, 2022 at 13, available at Securus 6th FNPRM Comments Redacted.pdf (Securus 6th FNPRM Initial Comments). *See also* Securus 6 FNPRM Reply Comments at 7.
[53] 64.6110(c).
[54] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021) ("*2021 IPCS Order*") at ¶¶ 179-183.

providers to use and disclose on bills the average third-party pass-through termination costs.[55] Securus is unaware of any complaints regarding the use of average international termination costs.

In light of its previous recognition that disclosing the actual per call cost of an international call would be overly burdensome, the Commission should confirm that the disclosure of international charges required in section 64.6110(c) is satisfied by using average costs, as is currently the case. If the Commission's intent was to change the current average cost disclosure obligation to an actual per-call cost, the Commission should be required to amend the rule to require only average international termination costs in order to comply with the PRA's requirement for utilizing the least burdensome alternative.

V. The Commission's Modifications to the Waiver Process Deprive Providers of Their Ability to Recover Costs.

The Commission has established a process by which providers that cannot recover their costs at the rate caps can apply for a waiver. The *2024 IPCS Order* modifies the waiver requirement in a way the precludes providers from seeking to recover their costs of providing IPCS at the rate caps as long as they can earn a profit by providing services at other facilities or by offering other services.[56] The modifications that the Commission made to the waiver process are not fully reflected in the re-codification of the waiver rule but are set forth in the text of the order.

In a significant departure from precedent, providers can no longer receive a waiver of the rate caps even if it demonstrates that its costs to provide a specific service at a specific facility are not recoverable. The Commission's *2021 IPCS Order* adopted a facility-by-facility waiver

[55] *2021 IPCS Order* at ¶ 183.
[56] *2024 IPCS Order* at ¶¶ 475-480.

process that enabled a provider to obtain a waiver due to the cost structure at a particular facility without regard to the cost structure of the overall contract in which that particular facility is included.[57] (Contracts can either cover multiple facilities, as is the case with contracts to serve state prisons, or a single facility, such as a single jail).

The new waiver rule effectively jettisons the facility-by-facility rule by precluding waivers for a particular facility where the provider cannot recover its costs if the provider is profitable at the contract level.58 The Commission here is expressly endorsing cross-subsidization and effectively requires providers to operate services at facilities at a loss. Moreover, to demonstrate contract-wide nonrecovery at the applicable rate caps, providers must submit total company IPCS costs "and other financial data and information, including justification for deviating from 'average costs of service of a communications service provider.'"59 The clear implication is that if the company is profitable at either the full company level, or the contract level, including revenue from unregulated service, the company's inability to recover costs of providing IPCS at the Commission's rate caps at a particular facility or group of facilities is insufficient January 7, 2025

The practical inability to obtain a waiver undercuts the Commission's reliance on the waiver process to justify rate caps that by its own admission preclude cost recovery in many

[57] *2021 IPCS Order* at ¶ 170 ("we establish a modified waiver process requiring providers of inmate calling services that seek waivers of our interstate or international rate or ancillary fee caps to do so on a facility-by-facility or contract basis" rather than at the holding company level); *id.* at ¶ 171 (adopting "a waiver process that focuses on the costs the provider incurs in providing interstate and international inmate calling services, and any associated ancillary services, at an individual facility *or* under a specific contract.") (emphasis added).
[58] *2024 IPCS Order* at ¶ 480 ("For any waiver request based on a particular facility or group of facilities, the provider must show that the costs of the entirety of its contract are not recoverable under the applicable rate caps, not merely the costs at an individual facility or group of facilities that are part of an otherwise profitable contract.").
[59] *2024 IPCS Order* at ¶ 480.

facilities.[60] The Commission should not be able to rely on a waiver process to justify unreasonably low rates when the requirements to obtain a waiver are practically impossible to meet. The Commission's modification of the waiver process to prevent facility-by-facility waivers should be overturned and the process restored to comply with the *2021 IPCS Order*.[61]

CONCLUSION

For the reasons set forth above, a number of the Commission's information collections and disclosure notifications violate the PRA. They are excessively burdensome and unnecessary to achieve the Commission's objectives. Less burdensome but equally effective notifications are readily available.

Respectfully submitted,

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[60] *See e.g., Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order Denying Stay, DA 24-1031, at ¶¶ 8, 36 (noting existence of waiver process).

[61] The Commission justifies its modifications to its expanded jurisdiction to include intrastate services and video services. *2024 IPCS Order* at ¶ 475. This is no justification at all. That the Commission can set rate caps for more services does not justify depriving providers of obtaining a waiver at particular facilities or discrete services if the more expansive rate caps preclude cost recovery.