

HEARING BEFORE THE HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,
AND THE INTERNET

Testimony of Curtis L. Hopfinger
Regarding H.R. 1133, the
“Family Telephone Connection Protection Act of 2009”
On Behalf Of
Securus Technologies, Inc.
Dallas, Texas

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Good morning Chairman Boucher and Members of the Committee. Thank you for inviting me to speak to you today regarding inmate telecommunications and H.R. 1133, entitled the "Family Telephone Connection Protection Act of 2009".

My name is Curt Hopfinger, and I am Director of Regulatory and Government Affairs for Securus Technologies, Incorporated. Securus is based in Dallas and presently provides inmate telecommunications services, through our wholly owned subsidiaries T-Netix Telecommunications Services, Inc. and Evercom Systems, Inc., to correctional institutions in 44 states. Each of these states has granted us the regulatory certification required in order to provide common carrier telecommunications service, and have approved our tariffs containing the rates, terms, and conditions of that service.

We serve approximately 2,600 locations that span the range of city, county, and state-operated facilities. In addition, Securus is the leading owner and licensor of the technology necessary for providing robust, reliable, and, above all, secure inmate telecommunications services.

My remarks will be brief. My aim is to provide the Committee further context and information regarding this highly specialized industry and the role my employer, Securus Technologies, Incorporated, plays in assisting law enforcement professionals in meeting the demands of the correctional setting.

I. FIERCE COMPETITION WITHIN THE INMATE TELECOMMUNICATIONS INDUSTRY IS BRINGING SUBSTANTIAL BENEFIT TO CORRECTIONAL AUTHORITIES, INMATES, AND THE PUBLIC

The inmate telecommunications industry is highly competitive. Today Securus competes with several different providers of inmate telecommunications for the service contracts that correctional authorities put out for public bidding. It is common for as many as eight different competitors to bid for the same contract. This bidding process, which is governed by the procurement codes and regulations applicable to the area in which the correctional facility is located, forces all participants to present their very best menu of technologies, security features, and telephone call prices in order to win a contract. I assist Securus in crafting its bids, and I assure you that each bidding cycle is hard fought and, when Securus has been awarded the final contract, hard won.

As a direct result of this competition, the inmate telecommunications industry has achieved significant advancements in the technologies and services from which correctional authorities can choose. In the last ten years, this industry has made technological advancements that have brought greater security, increased service sophistication, and lower calling prices for inmates and their loved ones. The technology used for these services allows for greater efficiency and capacity, thus resulting in more robust service, as well as enhanced investigative tools to assist law enforcement in the challenging correctional environment. In addition,

advancements in technology have made telephones accessible more often and to more inmates than at any time in the nation's history.

Prices have fallen, and are falling, sharply. By virtue of advanced technology and persistent, fierce competition among providers, Securus and, in my experience, the entire industry has slashed calling rates dramatically as compared to the rates that were in place as recently as ten years ago. Moreover, inmates and their loved ones enjoy a greater range of payment options. Ten years ago almost all inmate-initiated calls could be placed only as collect calls. Today these calls can be collect or pre-paid, with payment options that include the use of calling cards, pre-paid calling accounts, and the ability to pay one's bill or replenish an inmate's account at an electronic kiosk located on the facility's premises.

All of these benefits flow from the highly competitive environment in which Securus does business. Competition is working in the inmate telecommunications industry for all the right reasons and with all good results.

II. THE INMATE TELECOMMUNICATIONS INDUSTRY PROVIDES CORRECTIONAL AUTHORITIES THE TOOLS THEY NEED TO PRESERVE PUBLIC SAFETY AND TO ENSURE A SECURE PENOLOGICAL ENVIRONMENT

As many law enforcement officials have explained to the Federal Communications Commission ("FCC") and elsewhere, the inmate telephone system is a critical tool for maintaining security both within and outside the correctional facility. Today our industry provides law enforcement with a greater choice and quality of investigative tools than ever before.

The inmate calling environment is special. The calling system not only furnishes inmates and their families with the ability to keep in touch, but it also must not become the means for committing criminal acts or other conduct that endangers inmate security or public safety. For example, we must do all we can to ensure that judges, prosecutors, and witnesses are kept safe. The inmate telephone system is therefore equipped with technology to prevent the forwarding of calls to a third number and the setting up of three-way calls in which neither the phone system nor correctional authorities can know who is the third party on the call. These protections require the development, installation, and maintenance of special hardware and software that establishes a secure calling environment. Law enforcement officials have decided that the best method for achieving a secure environment is to procure inmate telecommunications services via exclusive contracts that are awarded pursuant to public bids.

Correctional authorities expect the inmate telephone system to include the features and functionalities needed to prevent improper telephone use and to investigate misconduct. Securus, for example, holds dozens of patents for the technology used to prevent three-way and forwarded calls, as well as to ensure that innocent persons are not injured or harassed by phone calls.

I will provide two examples of how inmate telephone systems have assisted law enforcement officials in preventing crime and protecting the public. The first example comes from a Sheriff in Ohio who experienced a jail break. After the inmate absconded, this Sheriff asked the resident inmate telephone service

provider to give him the list of phone numbers that the inmate had called in the days preceding his escape. Because the inmate calling system requires all inmate calls to be recorded and stored according to the inmate's unique identification number, the service provider was able quickly to satisfy the Sheriff's request. Using that list of dialed phone numbers, the Sheriff's Office found the residence at which the escaped inmate was hiding, and was able to return him to the facility before any further crimes could be committed.

Another example comes from Grant County, Kentucky which is a Securus client. The Federal Bureau of Investigation routinely relies on the recordings of Grant County inmate calls to assist in finding Al-Qaeda terrorist cells. Thus, even at the county level, secure inmate calling platforms are proving to be a necessary tool for preserving homeland security.

Dozens of other new and highly sophisticated features are available to law enforcement, such as a feature that alerts guards when a particular inmate telephones a known criminal associate, and the use of inmate biometric voice recognition to ensure that each inmate is phoning only the persons whom the jail permits him to phone. The inmate telecommunications industry — which today is comprised not of the Baby Bells or huge long-distance companies but rather is a collection of smaller, highly specialized players — has brought these benefits to law enforcement officials and hopes to continue to do so.

III. OUR INDUSTRY EXPERIENCES A COST STRUCTURE FAR MORE CHALLENGING THAN DOES THE TELECOMMUNICATIONS INDUSTRY GENERALLY

All of the features and services I have described come, of course, at a cost. In this specialized corner of the telecommunications industry, those costs are large not only in absolute figures, but also in terms of the proportion of revenue that these costs represent.

An inmate telecommunications system is not like the local telephone network serving the residential and business market. Unlike a local exchange carrier, or “LEC,” Securus cannot simply install one switch and light an entire city. Our system, and the systems used by our competitors, are custom-built with proprietary hardware and software packages that will serve the needs of each correctional facility.

Of the nearly 2,600 facilities that Securus serves, the majority use what we call “premises-based platforms.” By that I mean that we create a calling service platform — a combination of hardware and software — and physically install it at the facility. We then purchase or lease from the local LEC the phone lines and transport facilities to connect the facility to the Public Switched Telephone Network (“PSTN”). Each site is built out to satisfy the features and functionalities that the resident correctional authority has chosen and which Securus, as the winning bidder, promised to provide. This requirement to provide premises-based, customized products to law enforcement and correctional authorities causes Securus to incur substantial costs. In addition, it prevents

Securus from enjoying any real economies of scale, unlike the LEC and long-distance companies that serve the general public.

Now, I am pleased to tell you that Securus has created a new calling system that alleviates this cost burden somewhat. Beginning in 2007, Securus began using a system called the Secure Calling Platform, or SCP, which is a centralized system requiring less reliance on hardware and software at the correctional facility level. This system is operated, monitored, and to some extent maintained from a central Network Operation Center, or NOC. Though some call platform functions continue to require equipment at each jail, such as the system in which correctional authorities store the lists of phone numbers each inmate is permitted to call, the SCP platform is more centralized and entails less on-site presence than any system in the country. In addition, the SCP system uses Voice over Internet Protocol, or “VoIP,” technology, in part, to transport the calls.

The level of funding and work involved in creating SCP was mammoth. It required several years and the work of engineers who are the best in this business. Now that SCP has been deployed, our network efficiency has improved and our calling rates at many sites served via SCP have dropped significantly. I must, however, make clear that SCP is not always a feasible option, and some correctional authorities choose not to have it. My point is that in order to compete, and wishing to meet the needs of correctional facilities and inmates, Securus made an enormous investment in technology. This investment is indicative of the fact

that the industry is competitive and that law enforcement, the inmates, and the families of inmates are in fact reaping the benefits.

IV. H.R. 1133, THE “FAMILY TELEPHONE CONNECTION PROTECTION ACT OF 2009”

Having given you the foregoing background on how inmate telephones work and are developed, I would like to say a few words about H.R. 1133. I have read this bill closely, both this version and those which Congressman Rush has introduced in previous terms. In addition, I have been privileged to speak with Mr. Rush’s knowledgeable staff to gain a better understanding of the laudable goals they have for this bill, namely, to afford inmates and their families increased access to telephone calls.

Securus is concerned that H.R. 1133 will have the unintended consequences of hindering competition, compromising security, and decreasing the availability of telephone service for inmates. In brief, this legislation would make it more difficult for Securus, as well as other inmate telephone service providers, to compete, innovate, and retain their existing presence in the market.

First, the legislation would require the FCC to set a federal rate cap. Though the FCC has the authority and expertise to perform ratemaking for telecommunications services, in the context of inmate telephone systems this task may be insurmountable. The widely variant technological needs of correctional facilities, coupled with tremendous range in the cost of facilities needed to connect our systems to the PSTN, result in enormous differences in our cost of service taken

on a nationwide level. Securus is concerned that a federal rate cap would inevitably impose below-cost rates for some facilities in high-cost areas, or would leave such a slender margin that, for many contracts, few service providers could risk putting in a bid. For in addition to a high cost of service in proportion to overall revenue, our industry faces a bad debt rate that is as much as three times as high as the bad debt that residential LECs experience. Not only that, but our costs of service are not easily predictable; there is no one determinant — not the jail size, not the inmate population, not the geographic location — that could be a reliable barometer of costs nationwide.

It is difficult for Securus to imagine a rate cap that adequately would cover all of these cost inputs. Setting a rate even at the state level would be difficult given our unique cost structure. At the federal level, the job is more complex, and perhaps even impossible. I ask the Committee to consider whether the recent market-driven rate decreases in this industry alleviate the need for such a complicated ratemaking.

Second, the legislation would impose facilities-based unbundling at the individual facility level. Our engineers have considered this concept and are quite daunted by it. The telephone systems that inmate service providers have developed and installed are proprietary. They run on proprietary software built from the ground up. The challenges of interoperability would be tremendous. Moreover, there is no true “incumbent network” for inmate telecommunications as there was in 1996 in the local telecommunications network. Questions therefore arise as to

which company will be deemed the steward of the telephone systems, and which company's technical standards will prevail. Alternatively, this mandatory unbundling would require installation and maintenance of two or more fully redundant inmate calling platforms at every facility. This configuration would impose a heavy burden on correctional facilities, in terms of both administration and security, while also reducing by half each service provider's ability to recover their costs. Again, the existing bidding process that I have described produces real and sustained competition among providers. Companies are winning contracts away from each other quite regularly. I ask the Committee to consider whether a Section 251-like regulatory regime — with notions of “interconnection” and “unbundled network elements” — should be made to displace this already-effective competitive pressure.

Third, the legislation would require an inmate telephone service provider to enable and complete calls to persons regardless of whether the provider has any billing agreement with the called party's carrier. This provision would force service providers to render service without any assurance of being paid. Though Securus fully appreciates the goal of this draft provision — to increase inmates' ability to place telephone calls — it is concerned that this requirement carries a risk of increased bad debt and a decreased ability to recover costs. Further, I assure the Committee that Securus and the industry at large already are making great efforts to establish billing relationships with potential called parties, whether through the resident LEC or via direct billing straight to the called party's

home. It is already in the industry's interests to be pro-active and innovative in reaching customers quickly to set up accounts and enable inmate calls to be completed. In fact, Securus has led the way in this regard by inventing a new service. When the LEC serving an inmate's loved one has no billing agreement with Securus, our new service allows the inmate to call home and speak briefly with that loved one right away, at no charge, and then allow them to set up a calling account over the phone. A federal mandate requiring the completion of any and all inmate calls, however, may discourage both inmates and called parties from allowing Securus to set up a billing relationship with them. The possible result would be an unprecedented situation in which a telephone company is forced to give away service for free.

Securus and the other participants in this industry are striving to provide affordable, robust, and accessible service to inmates and their loved ones. My sincere belief is that these efforts will continue, and will attain the goals of H.R. 1133 without regulatory intervention.

V. THIS INDUSTRY NEEDS YOUR HELP IN FACING THREATS TO THE PUBLIC SAFETY AND CORRECTIONAL SECURITY

I am ready and able to answer any questions the Committee may have related to H.R. 1133. I will, however, ask the Committee's indulgence to consider two significant challenges that our industry faces and that you can help resolve.

The first challenge is the cell phone. As almost any law enforcement professional will tell you, the use of cell phones by inmates poses an enormous

threat to facility security and the public safety. An inmate could call absolutely anyone with a cell phone, and the facility would have no knowledge of the call nor any record of it. Several recent jail breaks were planned and carried out via cell phones. For this reason, several Departments of Corrections — Florida, Texas, and the District of Columbia are two examples — have attempted to test technology that would jam cell phone signals within their facilities. The FCC has been unable to authorize this testing, because it is constrained from doing so under the existing statutory regime. I invite the Committee to consider how to give the FCC the authority it needs to help correctional authorities with this serious security issue.

The second challenge is the unauthorized diversion of inmate calls by entities holding themselves out as inmate telephone service providers. One phone company has called these entities “traffic pirates.” These “traffic pirates” are not certificated, have no tariffs, and in many instances cannot be identified as to their corporate origin. The scheme involves obtaining local telephone numbers in the area of a jail, giving those numbers to inmates, and then using some form of number translation or remote call forwarding to bounce the supposedly “local” calls out to the interexchange network to unknown telephone numbers. Correctional authorities are extremely worried about the obvious breach of security that these call diversion schemes create, and they have asked Securus’s help in stopping them. I in turn ask the Committee to consider adopting legislation that will declare this conduct unlawful and punishable by civil and criminal penalties.