



PUBLIC NOTICE

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DA 15-1341

Released: November 20, 2015

**Notice of Prohibited Presentations in the Matter of Implementation of the Pay Telephone
Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.
(WC Docket No. 12-375)**

Notice is hereby given that the Commission received prohibited written presentations in the above-referenced proceeding between October 16, 2015, and November 5, 2015 (the “Sunshine Agenda period”).¹ The presentations are listed in the Appendix.

With specified exceptions, section 1.1203 of the Commission’s rules, 47 C.F.R. § 1.1203, prohibits the making of any presentation to decision-making personnel, whether ex parte or not, concerning any matter listed on the Commission’s Sunshine Agenda from the day after the Sunshine Agenda is released until the Commission releases the text of a decision or order relating to that matter or removes the item from the Sunshine Agenda. The instant presentations addressed the merits of a matter that was included in the Commission’s Sunshine Agenda by a Public Notice released on October 15, 2015, for consideration at the October 22, 2015 open Commission meeting. The Commission released a Second Report and Order and Third Further Notice of Proposed Rulemaking relating to this matter on November 5, 2015 (FCC 15-136).

Two parties filed statements arguing that their filings made during the Sunshine Agenda period did not violate the ex parte rules. We are not, however, persuaded by these arguments. Securus Technologies and Global Tel*Link argued that their filings were allowed under 47 C.F.R. § 1.1204(a)(3), which permits communications when the presentation directly relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened.²

¹ In addition to the presentations addressed herein, the Wireline Competition Bureau concluded that a filing by Global*Tel Link Corporation was in violation of the ex parte rules and referred that violation to the Office of General Counsel. *Notice of Violation and modification of Ex Parte Rules in the Matter of Rates for Inmate Calling Services*, Public Notice, WC Docket No. 12-375, DA 15-1202 (rel. Oct. 21, 2015). Global Tel*Link filed a sworn statement explaining the circumstances of the ex parte presentation; in particular, that the presentation was made in response to another ex parte presentation and there was insufficient time between when certain confidential cost data became available and the Sunshine Agenda period began. Letter from Cherie R. Kiser, Counsel to Global Tel*Link Corporation, to Jonathan Sallet, General Counsel, Federal Communications Commission (filed Nov. 2, 2015). The Office of General Counsel takes no further action on this violation.

² Letter from Richard A. Smith, Chief Executive Officer, Securus Technologies, Inc., to Tom Wheeler, Chairman, Federal Communications Commission, et al. (filed Oct. 26, 2015) (Securus Letter); Letter from

The communications in question involved menacing comments made against the filers on third party websites. Contrary to the parties' arguments, the part of the filings that constituted a presentation on the merits was not the discussion of the menacing comments, but rather the advocacy that followed in those letters.³ Thus, the reliance on § 1.1204(a) is misplaced, as the violative portion of the communications was not directly related to the putative emergency.⁴

Under section 1.1212(d) of the Commission's rules, 47 C.F.R § 1.1212(d), presentations that are received during the Sunshine Agenda period and do not meet an exception provided by section 1.1204(a) of the Commission's rules, 47 C.F.R. § 1.1204(a), or a Commission waiver shall be associated with, but not made a part of, the record in the relevant proceedings. In accordance with the rule, the presentations listed in the Appendix will be associated with, but not made part of the record in the above-referenced proceeding.

The full texts of these presentations are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. These filings may also be viewed in the Commission's Electronic Comment Filing System (ECFS) at http://apps.fcc.gov/ecfs/comment_search_solr/search.

In addition to the above referenced presentations, the Commission received numerous communications from individual members of the public regarding this proceeding during the Sunshine Agenda period, some of which were filed in ECFS. Section 1.1200 of the Commission's rules, 47 C.F.R. § 1.1200, provides that where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable ex parte rules by public notice. To the extent these informal communications, which were received during the Sunshine Agenda period, could be considered presentations within the definition of the ex parte rules, and were not filed in ECFS, the Commission staff hereby modify the requirement that they be associated with the official record. 47 C.F.R. § 1.1212(d). *See also* 47 C.F.R. § 1.1212(f) (discretion regarding whether to make Sunshine Agenda period presentations available for public inspection). We also have determined that the public interest

Brian D. Oliver, Chief Executive Officer, Global Tel*Link Corporation, to Tom Wheeler, Chairman, Federal Communications Commission, et al., (filed Oct. 27, 2015).

³ Securus Letter at 3; Global Tel*Link Letter at 2. Other filers noted that their filings were inadvertent, and they did not intend to violate the Sunshine Agenda period prohibition. Declaration of Karen Doss-Harbison, Secured Perimeters International, WC Docket No. 12-375 (filed Nov. 5, 2015); Letter from Thomas M. Susman, Director _ Governmental Affairs Office, American Bar Association, to Jonathan Sallet, General Counsel, Federal Communications Commission (filed Oct. 27, 2015); Letter from China Brotsky, Director of Operations and Finance, SumOfUs.org, to Ryan Yates, Attorney Advisor, Federal Communications Commission (filed Nov. 13, 2015).

⁴ To the extent Securus Technologies wished the information regarding the menacing comments to be included in the record, Securus Technologies accomplished that goal by separately filing a copy of the comments without the additional violative material. Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-375 (filed Oct. 30, 2015).

would not be served by enumerating every such informal communication. Therefore, these informal communications are not listed in the Appendix and, absent those already filed in ECFS, are not available for public inspection.

Action by Office of General Counsel, Administrative Law Division

APPENDIX

Name of Filer	Date Received
Demand Progress	10/16/15
Books to Prisoners (Michelle Dillon)	10/19/15
Secure Perimeters International	10/21/15
American Bar Association	10/21/15
Massachusetts Attorney General (Maura Healey)	10/26/15
SumOfUs.org	10/26/15
Securus Technologies, Inc.	10/26/15
Global Tel*Link Corporation	10/27/15