PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

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Internet: http://www.fcc.gov

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DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF PREFERRED COMMUNICATIONS OF TEXAS, LLC FROM EMBARQ CORPORATION TO SECURUS TECHNOLOGIES, LLC

WC Docket No. 21-275

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the application filed by Embarq Corporation (Embarq) and Securus Technologies, LLC (Securus) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of Preferred Communications of Texas, LLC (Preferred) from Embarq to Securus.[2]

On July 6, 2021, the Bureau released a Public Notice seeking comment on the Application.[3] We received no comments or petitions in opposition to a grant of the Application.

Applicants and Description of Transaction

Preferred, a Delaware limited liability company, is a wholly-owned, direct subsidiary of Embarq.[4] Preferred's sole asset is the contract to provide "customer account creation and maintenance services related to inmate calling" to the Texas Department of Criminal Justice (TDCJ).[5] Preferred is currently the primary contractor, and Securus is the subcontractor providing call routing, security, software, and other services necessary to fulfill the TDCJ contract.[6]

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[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

[2] Joint Application for Consent to Transfer Control of Domestic Section 214 Authorization, WC Docket No. 21-275 (filed June 24, 2021) (Application).

[3] *Domestic Section 214 Application Filed for the Transfer of Control of Preferred Communications of Texas, LLC From Embarq Corporation to Securus Technologies, LLC*, WC Docket 21-275, Public Notice, DA 21-793 (WCB 2021).

[4] Application at 3. Embarq is a wholly-owned direct subsidiary of Lumen Technologies, Inc. (formerly CenturyLink, Inc.). *Id*.

[5] *Id*. at 1-2. According to Applicants, at the time of the signing, the TDCJ contract included 110 facilities and an estimated 155,239 incarcerated persons, of which an estimated 134,064 were eligible to make use of the communications services. *Id*. at 5. Applicants state that TDCJ facilities currently have a total average daily population of approximately 120,000. *Id.*

[6] *Id.* at 1. Applicants state that Embarq formed Preferred in 2020 to hold the TDCJ contract when Embarq sold the rest of its inmate calling services business to Inmate Calling Solutions, LLC d/b/a ICSolutions (ICSolutions). *Id*. at 3, 8-9. *See Applications Granted for the Transfer of Control of CenturyLink Public*

Applicants state that with the transfer of Preferred, Embarq would completely exit the inmate calling services market.[7]

Securus, a Delaware limited liability company, provides services and products to incarcerated individuals, including inmate calling services, in the District of Columbia and 47 states.[8] Securus is an indirect, wholly-owned subsidiary of SCRS Acquisition Corporation and, in turn, its parent, SCRS Holding Corporation (SCRS Parent), both Delaware corporations.[9] The majority ownership of SCRS Parent is held by Platinum Equity Capital Partners, IV, L.P., a Delaware limited partnership and private equity investment vehicle ultimately owned by Platinum Equity, LLC (Platinum Equity), a Delaware entity.[10]

Pursuant to the terms of the proposed transaction, Securus would acquire from Embarq all of the membership interests and equity in Preferred.[11] After consummation, Preferred would become a wholly-owned subsidiary of Securus.[12] Applicants state that the TDCJ entered into the contract with Embarq on September 1, 2018, and that pursuant to Texas law, inmate calling services contracts must extend for a period of at least seven years and provide the TDCJ the option of renewing the contract for additional two-year terms.[13] The initial term of the TDCJ contract will expire in August 2025, and it reserves for TDCJ the right to exercise three optional two-year renewal terms.[14]

Discussion

We find, upon consideration of the record, that the proposed transaction will serve the public interest, convenience, and necessity. Although the Commission has found that the potential for public interest harm is unlikely in transactions involving non-dominant carriers providing resold or facilities-based interstate, interexchange services,[15] the Applicants in this transaction provide their

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Communications, Inc. to Inmate Calling Solutions, LLC d/b/a ICSolutions, WC Docket No. 20-150, Public Notice, 35 FCC Rcd 8661 (WCB, IB 2020) (*CenturyLink/ICSolutions Grant Public Notice*). Embarq and ICSolutions closed their transaction on August 27, 2020. Letter from Howard M. Liberman and Jennifer L. Kostyu, Counsel to ICSolutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-150, ITC-T/C-20200522-00080 (filed Aug. 28, 2020).

[7] Application at 2.

[8] *Id*.

[9] *Id.*

[10] *Id.* at 3, 11-15. The sole manager of Platinum Equity, LLC is Tom Gores. *Id*. at 15. All the membership interests of Platinum Equity are held in trust by the Gores Trust dated January 26, 1999, as amended. *Id*. Tom Gores and Holly Gores, both U.S. citizens, are the trustees of the Gores Trust. *Id.*

[11] *Id.* at 3-4.

[12] *Id*. at 4.

[13] *Id.* at 5 and n.3 (citing Tex. Gov't Code Ann. § 495.027(b)).

[14] *Id.* On June 25, 2021, TDCJ provided its consent to the proposed transaction, waived its termination rights under the contract, and agreed that the contract would remain in full force and effect following the closing of the proposed transaction. Letter from Michael H. Pryor, Counsel for Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-275, at 1 (filed July 2, 2021).

[15] *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5533, paras. 29-30 (2002).

interstate, interexchange telecommunications services in the inmate calling services industry. The Commission has historically recognized that the inmate calling services marketplace is different from other telecommunications marketplaces.[16] In light of this difference, and as we have done in other inmate calling transactions, we have taken into account the size of the entities involved and the unique concerns applicable to the inmate calling services industry, including the impact the transaction could have on the ability of incarcerated individuals to communicate with their families and other loved ones at just and reasonable rates and charges.[17] We have also considered whether the transfer of the correctional facility contract at issue would result in anti-competitive harm in the inmate calling services industry.

We conclude that, based on the specific factual circumstances surrounding Embarq's decision to exit the marketplace and cease providing inmate calling services, the likelihood of harm resulting from this transaction is minimal. Unlike proposed transactions where a carrier seeks to acquire and eliminate an independent growing competitor, Embarq has chosen to exit the inmate calling services industry for its own business reasons.[18] In doing so, it has worked to ensure continuity of service for its correctional facility customers through a transaction with its subcontractor that serves its sole remaining contract. Upon consummation of the proposed transaction and expiration of the terms of the TDCJ contract transferred to Securus, other inmate calling services providers will remain in the industry to compete for the TDCJ contract when it is publicly rebid, as typically occurs in this industry.[19] In addition to other bidders, the Bureau has also stated that it expects ICSolutions, which has acquired Embarq's other correctional facilities contracts, to be "better positioned to more effectively competitively bid for service contracts, especially for larger state department of corrections contracts, against the largest inmate calling service providers, Global Tel*Link Corporation (GTL) and Securus Technologies, Inc. (Securus),

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[16] *See CenturyLink/ICSolutions Grant Public Notice*, 35 FCC Rcd at 8663 (citing *Rates for Interstate Calling Services*, WC Docket 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8486-87, para. 5 (2020) (*2020 ICS Order and NPRM*)); *Rates for Interstate Calling Services*, WC Docket 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, FCC 21-60, at paras. 31-32 (2021) (*2021 ICS Order and NPRM*) (stating that the record reaffirms that incarcerated people have no choice in the selection of their calling services provider).

[17] *CenturyLink/ICSolutions Grant Public Notice*, 35 FCC Rcd at 8662-63; *Section 214 Applications Granted*, WC Docket Nos. 20-207, 20-218, Public Notice, 35 FCC Rcd 13089, 13091-92 (WCB, IB 2020) (*Legacy Grant Public Notice*) (granting applications to transfer contracts and assets of Legacy Long Distance International d/b/a Legacy Inmate Communications, which was exiting the inmate calling business, to Network Communications International Corp. d/b/a NCIC Inmate Communications and Global Tel*Link Corporation).

[18] Application at 2.

[19] *See Legacy Grant Public Notice*, 35 FCC Rcd at 13092, n.28 (citing Cook County, Illinois Government, Board of Commissioners, https://cook-county.legistar.com/LegislationDetail.aspx?ID=3838415&GUID=B28DFE68-E804-4F19-8FCE-DCDFCC9B729E&Options=&Search= (stating that Edovo's contract to provide services to Cook County Jail and the Juvenile Temporary Detention Center "was awarded through Request for Proposals (RFP) procedures in accordance with the Cook County Procurement Code")). Although Embarq has determined it will transition away from providing inmate calling services, there is no evidence in this record of barriers that would prevent other inmate calling services providers from bidding on the TDCJ contract when it expires. *See CenturyLink/ICSolutions Grant Public Notice,* 35 FCC Rcd at 8664 & n.17.

which could result in better services and lower prices for incarcerated individuals and their families."[20]

We recognize that Securus is the second largest provider of inmate calling services in the United States,[21] and any transaction that serves to increase Securus' industry position raises concerns of potential competitive harm and potential adverse impacts on incarcerated individuals' ability to communicate with their families and other loved ones at just and reasonable rates and charges. These concerns are mitigated here, however, because the TDCJ contract to be transferred from Embarq to Securus represents a small share of the inmate calling services industry in terms of both publicly available average daily population and Commission data on total industry revenue.[22] Accordingly, although Embarq's exit from the inmate calling services industry reduces the total number of competitors in the industry, this proposed transaction is not the cause of that reduction, nor will it increase Securus's industry position so as to raise concerns of potential competitive harm in this situation in which it is already the subcontractor serving the TDCJ for the remainder of the contract term.[23] In addition, Applicants assert that Securus has significant experience in the inmate calling services industry and that the TDCJ contract customers will continue to receive high-quality service supported by Securus' inmate communications expertise and experienced management team.[24]

Because Embarq relies on Securus as its subcontractor for the TDJC contract, we are persuaded that incarcerated individuals and their families will continue to receive service without disruption and without the loss of an independent competitor.[25] Applicants have affirmed that Securus will "maintain the same rates, terms, and conditions of the existing contract and is contractually required to assume, perform and be bound by the covenants, obligations and

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[20] *CenturyLink/ICSolutions Grant Public Notice*, 35 FCC Rcd at 8664.

[21] *2021 ICS Order and NPRM* at para. 75 (comparing inmate calling provider costs and noting that Securus is the second largest provider). *See also* News Release, U.S. Department of Justice, Securus Technologies Abandons Proposed Acquisition of Inmate Calling Solutions After Justice Department and the Federal Communications Commission Informed Parties of Concerns (rel. Apr. 3, 2019), https://www.justice.gov/opa/pr/securus-technologies-abandons-proposed-acquisition-inmate-calling-solutions-after-justice (observing that Securus is one of the two largest inmate calling services providers in the nation).

[22] *See* Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses, Public Notice, 34 FCC Rcd 515 (WCB 2019); *see also 2021 ICS Order and NPRM*, Appx. E (Analysis of Responses to the Second Mandatory Data Collection) at Table 1 (Inmate Calling Services Providers Ranked by Number of Contract) (including total numbers of contracts and facilities, and ADP) and Table 7 (Inmate Calling Services Revenues and Costs Inclusive of Site Commissions by Provider in 2018 (in $ thousands)); *Wireline Competition Bureau and Office of Economics and Analytics Make Revised Inmate Calling Services Database Available to Eligible Individuals Pursuant to Protective Order*, WC Docket No. 12-375, Public Notice, DA 21-672 (WCB/OEA Jun. 9, 2021).

[23] *See Legacy Grant Public Notice*, 35 FCC Rcd at 13093-94.

[24] Application at 6-8 (describing Securus' recent commitments to providing "more responsive and innovative services" to its customers, lower rates and reducing recidivism and improving education and post-incarceration employment opportunities for inmates). *See Domestic Section 214 Application Granted for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc.*, WC Docket No. 16-188, Public Notice, 31 FCC Rcd 8731, 8733 (WCB 2016) (recognizing "that there is a likelihood that a financially sound provider that has the requisite capital and management capability can provide service to benefit customers").

[25] *CenturyLink/ICSolutions Grant Public Notice*, 35 FCC Rcd at 8663-64 (finding no harm to competition where the transferee, ICSolutions, was the subcontractor for the contracts it acquired from CenturyLink).

agreements in the contract."[26] Applicants state that Securus is familiar with the TDCJ contract operations and pledge that the transition will be "seamless and transparent," including that Embarq call center employees that currently interact with TDCJ incarcerated persons and their families will have the opportunity to stay in their current position.[27] We agree with Applicants that approval and consummation of the proposed transaction will ensure that persons incarcerated in TDCJ facilities will continue to be able to communicate with their families and loved ones, which is of particular importance in light of continuing hardships related to the COVID-19 pandemic.[28] The Commission has previously deemed continued service to incarcerated individuals at existing rates, terms, and conditions to be a public benefit when reviewing a transaction between inmate calling services providers.[29] The proposed transaction will ensure that incarcerated people in TDCJ facilities continue to have access to communications services so they may regularly contact family members, which the Commission has identified as critical for these consumers.[30]

Accordingly, pursuant to sections 214(a) and 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214(a), 214(c), and sections 63.03-04 of the Commission's rules, 47 CFR §§ 63.03-04, and pursuant to the authority delegated under sections 0.51, 0.91, 0.261, and 0.291 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, and 0.291, we grant the Application listed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice. For further information, please contact Dennis Johnson, Wireline Competition Bureau (202) 418-0809.

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[26] Application at 4. Applicants state that the current rate for all ICS calls under the TDCJ contract is $0.06 per minute. *Id*. at 5.

[27] *Id*. at 5-6.

[28] *Id*. at 4-6. *See 2021 ICS Order and NPRM* at paras. 28, 38 (noting the need to take action to provide financial relief to incarcerated people and their families for inmate calling services in light of the exigent circumstances and hardships associated with the COVID-19 pandemic).

[29] *See Joint Application of Securus Investment Holdings, LLC, Securus Technologies, Inc., T-Netix, Inc., T-Netix Telecommunications Services, Inc., and SCRS Acquisition Corporation for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, and Sections 63.04 and 63.24 of the Commission's Rules to Transfer Indirect Ownership and Control of Licensees*, WC Docket No. 17-126, Memorandum Opinion and Order, 32 FCC Rcd 9564, 9576, para. 30 (2017) (noting the commitment to provide "services to the same extent and at the same rates and on the same terms and conditions as are currently in effect" as a net public benefit of an inmate calling services transaction) (quotation marks omitted); *Legacy Grant Public Notice*, 35 FCC Rcd at 13090-91, 13094 (stating that NCIC and GTL would provide service under the transferred contracts at existing rates, and finding that approval of the proposed transaction would avoid disruption in calling services at the pertinent correctional facilities upon Legacy's exit from the business); *CenturyLink/ICSolutions Grant Public Notice*, 35 FCC Rcd at 8663-64.

[30] *See 2020 ICS Order and NPRM*, 35 FCC Rcd at 8486-87, para. 5; *2021 ICS Order and NPRM* at paras. 7, 34-37 (stating that access to affordable communications services that allow incarcerated people to have regular contact with family members is critical to their ability to succeed after release and have lower recidivism rates, and is vital to consumers and society).