

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

In the Matter of)
Joint Application of) WC Docket No. 17-126
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)

MEMORANDUM OPINION AND ORDER

Adopted: October 27, 2017

Released: October 30, 2017

By the Commission: Chairman Pai issuing a statement; Commissioners Clyburn and Rosenworcel dissenting and issuing a joint statement.

I. INTRODUCTION

1. By this Order, we approve applications to transfer control of Securus Technologies, Inc. (STI), T-NETIX, Inc. (TNI), and T-NETIX Telecommunications Services, Inc. (TNTS), and, together with STI and TNI, Licensees), from Securus Investment Holdings, LLC (Transferor, and, together with Licensees, Securus), to SCRS Acquisition Corporation (Transferee, and, collectively with Licensees and Transferor, Applicants).¹

2. For the reasons set forth below, we find that these Applications meet the requirements of section 214 of the Communications Act of 1934, as amended (the Act), and our rules for transfers of licenses and, accordingly, the Applications are granted.² However, as also noted below, the Commission

¹ 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 to Transfer Indirect Ownership and Control of Licensees, WC Docket No. 17-126 (filed May 11, 2017) (Lead Application, and, together with File Numbers ITC-T/C-20170511-00094 and ITC-T/C-20170511-00095, Applications); Domestic Section 214 Application Filed for the Transfer of Control of Securus Technologies, Inc., T-NETIX, Inc., and T-NETIX Telecommunications Services, Inc. to SCRS Acquisition Corporation, WC Docket No. 17-126, Public Notice, 32 FCC Rcd 4102 (WCB 2017) (WCB Accepted-for-Filing Public Notice); Notice of Removal of Domestic Section 214 Application From Streamlined Treatment, WC Docket No. 17-126, Public Notice, DA 17-594 (WCB 2017); Streamlined International Applications Accepted For Filing; Section 214 Applications (47 CFR § 63.18), Report No. TEL-01851S, Public Notice, (IB June 2, 2017) (IB Accepted for Filing Public Notice for File Nos. ITC-T/C-20170511-00094 and ITC-T/C-20170511-00095); Streamlined International Applications Accepted For Filing Section 214 Applications (47 CFR § 63.18), Report No. TEL-01855S, Public Notice, (IB June 30, 2017) (IB Removal from Streamlined Processing Public Notice for File Nos. ITC-T/C-20170511-00094 and ITC-T/C-20170511-00095). Applicants state that they also filed applications for the transfer of authorizations associated with wireless services. Any action in this Memorandum Opinion and Order is without prejudice to Commission action on other related, pending applications.

² 47 U.S.C. § 214; 47 CFR §§ 63.04, 63.18, 63.24.

has entered a consent decree imposing a \$1.7 million fine and strict regulatory compliance procedures on Securus for making inaccurate and incomplete statements to the Chairman of the Commission in connection with advocacy by Securus of expedited action on the Applications.³

II. BACKGROUND

A. Description of the Applicants and Transaction

3. Transferor is a Delaware holding company that does not itself provide telecommunications services.⁴ Connect Acquisition Corp. (Connect)⁵ is a Delaware corporation and wholly owned, direct subsidiary of Transferor; Licensees are wholly owned, indirect subsidiaries of Connect.⁶ Transferee, a Delaware corporation, is a holding company created for the purposes of the proposed transaction and is ultimately wholly owned by SCRS Holding Corporation, a Delaware corporation.⁷ SCRS Holding Corporation is a holding company in which certain private equity investment vehicles sponsored by Platinum Equity, LLC will contribute their equity investments in connection with the proposed transaction.⁸ Platinum Equity Capital Partners IV, L.P., a wholly controlled indirect subsidiary of Platinum Equity, LLC and a Delaware limited partnership, will be the majority owner of SCRS Holding Corporation.⁹ The membership interests of Platinum Equity, LLC are ultimately held in trust by the Gores Trust, with Tom Gores and Holly Gores, both U.S. citizens, as trustees.¹⁰ Applicants state that no other person, or entity directly or indirectly, owns or controls a 10 percent or greater interest in Transferee.¹¹ All entities are U.S.-based.¹²

4. Applicants further state that Transferee does not have any telecommunications carriers in its current investment portfolio, although it is “affiliated with” MegaPath Holding Corporation, which provides cloud communications, including Voice over Internet Protocol, and connectivity through an operating subsidiary.¹³ Pursuant to the terms of a Stock Purchase Agreement between Transferor, Connect, and Transferee, Transferee will acquire all of the stock of Connect from Transferor.¹⁴ As a result, Connect will become a wholly owned, direct subsidiary of Transferee, and Licensees will become wholly owned, indirect subsidiaries of Transferee and its parent companies.¹⁵

B. Petition to Deny and Other Filings

5. We received one petition to deny the proposed transaction. On June 16, 2017, the Wright Petitioners, along with Citizens United for the Rehabilitation of Errants; the Prison Policy Initiative; the

³ Securus Technologies, Inc., *et al.*, File No. EB-IHD-17-000225128, Order, FCC 17-140 (Oct. 30, 2017) (*Securus Order*) (adopting a Consent Decree terminating and resolving the investigation) (*Securus Consent Decree*).

⁴ Lead Application at 3.

⁵ The Lead Application also refers to this entity as Connection Acquisition Corp. For ease of reference, we use the short form, Connect, that the Applicants used in the Lead Application. *See id.* at 3.

⁶ *Id.*

⁷ *Id.* at 2

⁸ *Id.*

⁹ *Id.* at 7-9.

¹⁰ *Id.*

¹¹ *Id.* at 9.

¹² *Id.* at 7-9.

¹³ *Id.* at 11, n.4.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

Human Rights Defense Center; the Center for Media Justice; Working Narratives; the United Church of Christ, Office of Communication, Inc.; and Free Press (collectively, Petitioners) filed a Petition to Deny the transfer, alleging that Securus had violated the Commission's rules by disguising prohibited connection fees as first-minute fees and had otherwise acted to demonstrate that it lacked the character qualifications to hold Commission authorizations.¹⁶ On June 26, 2017, Applicants filed an Opposition to the Petition, stating that Securus had not violated any rules, and that the Petition raised no transaction-specific issues.¹⁷ Following this, Petitioners filed a Reply to the Opposition, reasserting their allegations of rule violations and disputing Applicants' characterizations of Securus's actions in the Opposition.¹⁸

6. On July 6, 2017, representatives of Securus and Transferee met with Commission representatives, arguing that the proposed transaction is a transfer of control at the parent company level and has no competitive impact; that the Applicants are qualified for approval of the transaction; that Securus did not violate Commission rules; and that state regulation and marketplace developments continue to improve rates for inmates.¹⁹ Applicants also informed Commission staff of the expected closing date of the transaction, and reiterated that delay could result in financial penalties, which could impact service functionality or rates for Securus's services.²⁰ In a series of *ex parte* letters, Petitioners have expanded on these arguments regarding improper fees charged by Securus, and Applicants have responded, in turn, with a series of *ex parte* meetings and filings.²¹ Petitioners and Securus continued these disputes in additional *ex parte* letters and presentations.²²

¹⁶ *Petition to Deny by the Wright Petitioners; Citizens United for Rehabilitation of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center for Media Justice; Working Narratives; United Church of Christ, OC Inc.; and Free Press*, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed June 16, 2017) (Petition). Petitioners refer to Transferor and Licensees generally as "Securus." Petitioners filed their petition to deny the proposed transaction 10 days after the date that the Wireline Competition Bureau established for filing comments in this proceeding. WCB Accepted-for-Filing Public Notice at 1. Because all parties have had multiple opportunities to present their arguments, we accept the late-filed petition as part of the record. We remind commenters, however, that we reserve discretion to disregard late-filed comments or unauthorized pleadings.

¹⁷ *Opposition to Petition to Deny by the Wright Petitioners; Citizens United for Rehabilitation of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center for Media Justice; Working Narratives; United Church of Christ, OC Inc.; and Free Press*, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed June 26, 2017) (Opposition).

¹⁸ *Reply to Opposition by the Wright Petitioners; Citizens United for Rehabilitation of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center for Media Justice; Working Narratives; United Church of Christ, OC Inc.; and Free Press*, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 3, 2017) (Reply).

¹⁹ See Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126 (filed July 10, 2017) (Securus July 10 *Ex Parte* Letter).

²⁰ *Id.* at 3. Applicants omitted the expected closing date in their written *ex parte* submission from this meeting.

²¹ Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 14, 2017) (Petitioners July 14 *Ex Parte* Letter) (reiterating claims that Securus is violating Commission rules against per-connection and flat fees; disputing Securus's characterizations of its past behavior; noting that Securus continues to argue against state law safeguards cited in Applicants' *ex parte* filing as a mitigating factor against abuses; and asserting that the marketplace improvements cited by Applicants were in fact the result of regulatory compliance with Commission orders). Among the arguments made by Petitioners in this *ex parte* filing was that Applicants failed to file their Opposition and prior *ex parte* notice in the International Bureau Filing System. *Id.* at 1-2. Applicants filed their Opposition and notice of *ex parte* meeting in the FCC's Electronic Comment Filing System, where it was accessible to Petitioners and the public. While Applicants should ensure that their filings are made in all relevant systems and dockets, there is no reason to believe that their failure to do so here substantially or materially affects Applicants' character qualifications. On July 29, 2017, Petitioners submitted an *ex parte* letter disputing certain rates that it states that Securus charges for video visitation services for inmates and asserting that Commission determinations regarding

(continued....)

7. On July 21, 2017, Securus filed an *ex parte* letter describing certain prospective and existing services and programs it intends to provide or continue providing post-closing to benefit the inmate and law enforcement communities that it serves, including job assistance programs for released inmates, electronic tablets for inmates, detection services for contraband cellphones in prisons, and investigative support to identify illegal activities associated with inmate calling.²³ Securus states that, post-closing, it will use Transferee's invested financial resources to continue these and other inmate and charitable programs.²⁴ Securus also repeated its request for the Commission to approve the Applications by August 1, 2017.²⁵

8. In addition to the issues raised above, beginning on July 25, 2017, Petitioners raised two additional issues: potential privacy violations, and new allegations of misrepresentations made by Applicants in the course of this proceeding. With respect to alleged privacy violations, Petitioners first raised these issues on July 25, 2017, in an *ex parte* letter asserting that certain of the programs that Securus states that it offers or will offer to the law enforcement community to identify potentially illegal calling patterns by inmates violate consumer privacy and section 222 of the Act, and that Securus was aware of but did not explain a privacy issue with these services that is the subject of a state court proceeding.²⁶ Securus disagreed, contending that its programs did not violate section 222²⁷ and that the

(Continued from previous page)

inmate calling rates are not final. Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 29, 2017) (Petitioners July 29 *Ex Parte* Letter); Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 20, 2017) (Securus July 20 *Ex Parte* Letter) (disputing Petitioners' examples of continued high rates and reiterating the existence of state rate regulation as a safeguard for reasonable ICS practices while disputing the characterization and significance of their advocacy before the states).

²² See Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 24, 2017) (Petitioners July 24 *Ex Parte* Letter); Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 24, 2017) (Securus July 24 *Ex Parte* Letter); Petitioners July 29 *Ex Parte* Letter; Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 31, 2017) (Securus July 31 *Ex Parte* Letter); Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 5, 2017) (Petitioners August 5 *Ex Parte* Letter). Also on July 24, 2017, Securus filed in this record a copy of a letter it sent to Commissioner Clyburn regarding its specific calling rates. Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095, with Attach. (filed July 24, 2017); Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Sept. 21, 2017). Prisoners' Legal Services of Massachusetts filed an *ex parte* letter asserting that Securus charges high first minute rates for intrastate calls and that it has violated state rate cap requirements. Letter from Karina Wilkinson and Bonita Tenneriello, Prisoners' Legal Services of Massachusetts, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126 (filed Oct. 16, 2017).

²³ Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, LLC, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 21, 2017) (Securus July 21 *Ex Parte* Letter).

²⁴ *Id.* at 3-4.

²⁵ Securus July 31 *Ex Parte* Letter at 3.

²⁶ Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed July 25, 2017) (Petitioners July 25 *Ex Parte* Letter); Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, (continued....)

state court proceedings did not involve any allegations of abuse by Securus, but rather allegedly unlawful actions by a particular law enforcement official under investigation for an abuse of Securus's systems.²⁸

9. The allegation of misrepresentations involves statements to the Commission within the context of this transaction in a July 26, 2017 letter from the CEO of Securus, a Managing Director of Deutsche Bank, and a Partner from ABRY Partners to Chairman Pai stating: "To date, we have not yet received approvals from the FCC, but we have received approvals for 48 of 48 state money license transfer approvals, Hart Scott Rodino Justice Department approval, and all necessary State/PSC/PUC approvals. All approvals to close are now completed with the exception of the FCC's approval."²⁹ Securus provided the July 26 Letter to staff during a July 27, 2017 meeting. In that meeting and in a footnote to its subsequent *ex parte* letter, Securus clarified to staff that Pennsylvania had not in fact issued a final approval at the time of the July 26 Letter but had since fully approved the transaction.³⁰ Securus did not correct or amend its letter to Chairman Pai. On July 31, Petitioners filed documents from the California Public Utilities Commission (PUC) and Regulatory Commission of Alaska demonstrating that Securus both had not—and knew or should have known that it had not—received approval from those states and, in the case of Alaska, might not receive that state's approval until December 2017.³¹ Securus responds that its reference to "all necessary State/PSC/PUC approvals" was intended to refer to only those state approvals specifically identified as "Required Consents" in Schedule 7.1(b) to the Stock Purchase Agreement governing the proposed transaction.³²

(Continued from previous page) _____

ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 4, 2017) (Petitioners August 4 *Ex Parte* Letter); Petitioners August 5 *Ex Parte* Letter.

²⁷ Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 4, 2017), at 2 (Securus August 4 *Ex Parte* Letter); Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 11, 2017) at 4-5 (Securus August 11 *Ex Parte* Letter).

²⁸ See Securus August 4 *Ex Parte* Letter; see also Securus August 11 *Ex Parte* Letter.

²⁹ Securus July 31 *Ex Parte* Letter, Attach. (Letter to Honorable Ajit Pai, Chairman, FCC, from Richard A. Smith, CEO and Chairman, Securus Technologies, Inc., Manfred Affenzeller, Managing Director, Deutsche Bank, and Azra Kanji, Partner, ABRY Partners (July 26, 2017) (July 26 Letter)). Securus is currently owned by certain private equity funds affiliated with ABRY Partners. Lead Application at Exh. A.

³⁰ July 26 Letter at n.6.

³¹ Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095, Attach. (filed July 31, 2017); Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095, Attach. (filed Aug. 2, 2017); Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 & Attach. (filed Aug. 3, 2017) (Petitioners August 3 *Ex Parte* Letter); Petitioners August 5 *Ex Parte* Letter; Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 23, 2017) (Petitioners August 23 *Ex Parte* Letter).

³² See Securus August 11 *Ex Parte* Letter, Attach. 1 (providing Schedule 7.1 of the Stock Purchase Agreement, which lists Georgia, Minnesota, Pennsylvania, and New York as states whose consent is required for closing); see also Securus August 4 *Ex Parte* Letter; Securus August 11 *Ex Parte* Letter at 2-4. In response to two further requests for clarifying information from Commission staff, Securus supplied additional information regarding its receipt of state approvals. Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 14, 2017) (Securus August 14 *Ex Parte* Letter); Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 21, 2017) (Securus August 21 *Ex Parte* Letter).

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to sections 214(a) and 310(d) of the Act,³³ the Commission must determine whether the proposed transfer of control of certain licenses and authorizations held and controlled by Securus to Transferee will serve the public interest, convenience, and necessity. In making this determination, the Commission first assesses whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.³⁴

11. If the proposed transaction does not violate a statute or rule, then the Commission considers whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.³⁵

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁶ The DOJ has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader. Notably, the Commission may impose and enforce narrowly tailored, transaction-specific conditions that address the potential harms of a transaction.³⁷ Specifically, the Commission has repeatedly held that it will impose conditions "only to remedy harms that arise from the transaction (i.e., transaction-specific harms)" and "related to the Commission's responsibilities under the Communications Act and related statutes," and it "will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction."³⁸

³³ 47 U.S.C. §§ 214(a), 310(d). Section 310(d) of the Act requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T-BellSouth Order*).

³⁴ 47 U.S.C. § 310(d); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139-40, para. 18 (2015) (*AT&T-DIRECTV Order*); *Applications of Comcast Corp., General Electric Co., and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, MB Docket No. 10-56, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4247, para. 22 (2011) (*Comcast-NBCU Order*); *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*).

³⁵ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Comcast-NBCU Order*, 26 FCC Rcd at 4247, para. 22; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25.

³⁶ See *Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); see also *Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

³⁷ *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4199, para. 10 (2011) (*Qwest-CenturyLink Order*).

³⁸ See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18303, para. 19 (2005) (*SBC-AT&T Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations et al.*, WT Docket Nos. 04-70, 04-254, 04-255, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21545-46, para. 43 (2004); see also *Applications of Nextel Partners, Inc. Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, for Consent to Transfer Control of Licenses and Authorizations*, File Nos. 0002444650, 0002444656, 0002456809, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7361, para. 9 (2006); *Applications of AT&T Inc. and CellCo Partnership d/b/a Verizon Wireless for Consent* (continued....)

13. If the Commission has determined that a transaction raises no public interest harms or any such harms have been ameliorated by narrowly tailored conditions, the Commission next considers a transaction's public interest benefits. Notably, the Commission has long recognized the clear public interest benefits in a license or authorization holder being able to assign or transfer control of its license or authorization freely.³⁹ Indeed, the Commission has adopted streamlining procedures—including the automatic approval of a transaction—when a “transaction is unlikely to raise public interest concerns.”⁴⁰ The Commission will also review other claimed public interest benefits of a transaction, with the applicants bearing the burden of proving those benefits by a preponderance of the evidence.⁴¹

14. Finally, if the Commission is able to find that narrowly tailored, transaction-specific conditions are able to ameliorate any public interest harms and the transaction is in the public interest, it may approve the transaction as so conditioned.⁴² In contrast, if the Commission is unable to find that a proposed transaction even with such conditions serves the public interest or if the record presents a substantial and material question of fact, then it must designate the application for hearing.⁴³

IV. QUALIFICATIONS OF APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

15. Section 310(d) of the Act requires that we make a determination as to whether Applicants have the requisite qualifications to hold Commission licenses, including “citizenship, character, financial,

(Continued from previous page) _____
to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8747, para. 101 (2010).

³⁹ See, e.g., *Amendment of Section 73.3596 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control)*, Memorandum Opinion and Order, 4 FCC Rcd 1710 (1988), affirming 59 RR 2d 1081 (1982) (affirming elimination of requirement that broadcast licenses be held three years before they can be assigned or transferred, stating “the public interest is usually best served by allowing station sales transactions to be regulated primarily by marketplace forces,” and holding that the listening public benefits from freely allowing sales to new owners); *id.* 55 RR 2d at 1087-88 (holding buyer who is willing to pay market price more likely to deliver service audiences desire and recognizing public benefit of ready market for broadcast licenses); *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10841-44 (2003) (eliminating anti-trafficking policy for satellite licenses expedites service to the public by facilitating the transfer of licenses to those parties that have the greatest incentive and ability to construct a satellite system; enables satellite spectrum to move more efficiently to its highest and best use; and helps licensees mitigate risk thereby encouraging investment).

⁴⁰ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, CC Docket No. 01-150, Report and Order, 17 FCC Rcd 5517, 5533-35, paras. 29-34 (2002).

⁴¹ 47 U.S.C. § 309(e); see *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Applications for Consent to the Assignment and/or Transfer of Control of Licenses of Adelpia Communications Corporation, et al. to Time Warner Cable Inc., et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8217-18, para. 23 (2006) (*Adelpia-TWC Order*); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574, para. 25.

⁴² Although the Commission has suggested in the past that it may employ a “balancing test,” see, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18, or a “sliding scale approach,” see, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5761, para. 203, in practice the Commission has not allowed potential competitive harms to go unremedied nor allowed them to be offset by benefits that are not transaction-specific, i.e., benefits that do not naturally arise from the transaction at issue.

⁴³ 47 U.S.C. § 309(e); *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20562-63, para. 3. Section 309(e)'s requirement applies only to those applications to which Title III of the Act applies. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but may do so if we find that a hearing would be in the public interest.

technical, and other qualifications.”⁴⁴ The Commission generally does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.⁴⁵ While we do not set for hearing the question of Securus’s basic qualifications to hold any Commission license or authorization,⁴⁶ we address the allegations of inaccurate and incomplete information provided by Securus in the context of this transaction.

16. *Candor.* The Commission can discharge its responsibilities only when parties are truthful. Securus’s provision of inaccurate and incomplete information, that could be read as false and misleading in support of its efforts to expedite action on its application, is unacceptable. Providing false and misleading information to the Commission in connection with filed applications can be disqualifying to an applicant and may be grounds for denying an application.

17. At the outset, we find that the claim in the July 26 Letter that Applicants had received “all necessary State/PSC/PUC approvals” was inaccurate and incomplete, and we reject Applicants’ arguments to the contrary.⁴⁷ As of July 26, Applicants had not received all required approvals from Pennsylvania, nor any approvals from California or Alaska. Securus acknowledged the misstatement as to the status of approvals from Pennsylvania in a subsequent cover letter to staff.⁴⁸ It did not, however, address or correct the misstatements as to approvals from California or Alaska.⁴⁹ Staff was able to determine the facts with respect to the status of the state approvals only after multiple inquiries and back and forth with Securus.⁵⁰ Additionally, subsequent submissions from Securus reflect that Mississippi granted its approval on August 1, 2017, after the July 26 Letter.⁵¹ On August 24, 2017, Securus informed the Wireline Competition Bureau that the California PUC had that day approved the pending state application for transfer of control of Securus to the Transferee.⁵² To date, the Regulatory Commission of Alaska has not approved the transaction.⁵³

⁴⁴ 47 U.S.C. §§ 308, 310(d); *see also, e.g., AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24; *Qwest-CenturyLink Order*, 26 FCC Rcd at 4199, para.11.

⁴⁵ *Applications of Sprint Nextel Corp. and SoftBank Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9676, para. 85 (2013) (*Softbank-Sprint Order*), 28 FCC Rcd at 9653, para. 27.

⁴⁶ *Securus Order* at para. 6.

⁴⁷ July 26 Letter at 1.

⁴⁸ Securus July 31 *Ex Parte* Letter at 3, n.6.

⁴⁹ *Id.*

⁵⁰ *See* Securus August 14 *Ex Parte* Letter at 2; Securus August 21 *Ex Parte* Letter 1-2 (responding to requests of Commission staff). Securus cooperated with the Enforcement Bureau’s investigation. *See Securus Order* at para. 3.

⁵¹ Securus August 11 *Ex Parte* Letter at Attach. 5.

⁵² Letter from Paul C. Besozzi, Counsel for Securus Investment Holdings, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095 (filed Aug. 28, 2017) (Securus August 28 *Ex Parte* Letter) (attaching Joint Application of SCRS Acquisition Corporation, Securus Investment Holdings, LLC, and Securus Technologies, Inc. (U6888C) for Approval to Transfer Indirect Control of Securus Technologies, Inc., Application 17-05-011, Decision Authorizing Transfer of Indirect Control of Securus Technologies, Inc. to SCRS Acquisition Corporation (CA PUC Aug. 25, 2017) (California PUC Decision)).

⁵³ Petitioners August 3 *Ex Parte* Letter, Exh. A (*Application Filed by SCRS Acquisition Corporation to Acquire a Controlling Interest in Securus Technologies, Inc. Holder of Certificate of Public Convenience and Necessity Nos. 461 and 758 from Securus Investment Holdings, LLC*, U-17-040, Order Granting Petition for Confidential Treatment and Establishing Timeline for Decision (AK Reg. Comm’n Aug. 2, 2017) (stating that “we will issue a final order in this proceeding no later than December 11, 2017.”)).

18. We reject Applicants' claims that the July 26 Letter should be understood to be "focus[ed] just on the approvals which, per [Schedule 7.1(b) of] the Stock Purchase Agreement, *must be obtained prior to closing*."⁵⁴ Any reasonable person would understand "necessary" to refer to approvals necessary under law, and not solely to approvals necessary under the private law created by the contract. It is irrelevant that the signatories were "bankers and businessmen,"⁵⁵ as there is no reason to assume such individuals care more about some legal obligations than others, and presumably such sophisticated individuals are able to consult with counsel when referencing complex legal matters such as state utility approval processes. The letter states, without qualification, that "we have received ... all necessary State/PSC/PUC approvals." It makes no reference to the Stock Purchase Agreement nor to any other contractual conditions or schedule. Applicants did not submit the Stock Purchase Agreement or the schedule to which the Applicants claim the July 26 Letter refers until August 11, 2017⁵⁶ To be truthful, by the clear language of the letter, any state, PSC, or PUC whose approval was required would need to have already granted its approval on or before the letter was filed on July 26. Alaska, California, and Mississippi plainly had not.

19. We reject Securus's claim that a letter to the *Chairman of the Commission* should somehow be taken less seriously than other communications with the Commission. Securus argues that the July 26 Letter "was not intended to be a detailed, granular, legal description" but was rather "a personal and informal note from Deutsche Bank, ABRY Partners senior executives and Securus's CEO and Chairman with a plea to provide the required FCC approval."⁵⁷ It is precisely because these filers attempted to persuade the head of the agency to act more quickly on applications by relying on information known to be incorrect that the filers' actions are so egregious. The responsibility for the inaccurate and incomplete information falls squarely on Securus and its current management. As Petitioners point out, Applicants have affirmed that the current management of Securus will remain in place post-transaction.⁵⁸ The rule violations at issue here and the transparency problems associated with them relate to Securus, not to Transferee and Platinum Equity, LLC, the acquirer.

20. We also reject Securus's claim that the inaccurate statement concerning California should be discounted because in California, Securus had "ceased selling" even "a de minimis level of intrastate services" subject to state regulation in the interval since filing its California application for transfer of control.⁵⁹ It is not the role of the Commission to determine if Applicants are required to file an application in any state, but Securus had a duty to provide accurate and complete information on the matter once it raised the issue in this record. The California Public Utilities Commission (PUC) decision approving the transfer of control of STI to Securus Acquisition Corporation states that STI holds a current certificate of public convenience and necessity (CPCN) requiring it to obtain pre-approval prior to any merger, acquisition, or transfer of control.⁶⁰ It states that STI will continue to provide service under

⁵⁴ Securus August 11 *Ex Parte* Letter at 2-3 (emphasis in original).

⁵⁵ *Id.*

⁵⁶ *Id.* at Attach. 1 (Schedules to Stock Purchase Agreement).

⁵⁷ *Id.* at 3. In response to staff requests, Securus has provided a copy of its Stock Purchase Agreement, certain schedules, and documents supporting its assertion that it had received 48 state money license transfer approvals, documents indicating that the Federal Trade Commission and Department of Justice had not taken action under the Clayton Act, and records of its filings with and actions taken by state commissions. Securus August 11 *Ex Parte* Letter; Securus August 14 *Ex Parte* Letter; Securus August 21 *Ex Parte* Letter; Securus August 28 *Ex Parte* Letter. We note that the Commission reviews transfers of control independently of state review.

⁵⁸ Petitioners August 4 *Ex Parte* Letter at 3. See Lead Application at 12.

⁵⁹ Securus August 11 *Ex Parte* Letter at 3.

⁶⁰ California PUC Decision at 1-3.

existing rates, terms, and conditions to customers.⁶¹ It requires STI to “maintain its performance bond of at least \$25,000” in accordance with a prior PUC decision and affirms that the California PUC must be listed as a current obligee on the bond.⁶² We would expect that Securus would have withdrawn its pending transfer application or sought to cancel its CPCN and the associated bond obligations if it had ceased all operations in the state since it filed the application on May 16, 2017, several days after filing its section 214 applications on May 11, 2017.⁶³

21. The record in the California PUC proceeding is also clear that Securus participated in a July 20, 2017 prehearing conference with the Administrative Law Judge (ALJ) about the pending application, at which the ALJ “informed the Joint Applicants that the August 1, 2017 target completion date for the transfer of control was not possible, because the next Commission meeting is August 10, 2017.”⁶⁴ The California Scoping Memo also states that the ALJ questioned Securus about why it had waited to file its state application with the PUC if it sought an August 1, 2017 closing date and explains that the judge cautioned the Applicants that state law permitted imposition of penalties and nullifying the transfer “if they do not wait for Commission approval before completing the transaction.”⁶⁵ There is no indication that Securus was no longer subject to state regulation or that it was not necessary for the PUC to expend resources to complete its review of the proceeding.

22. The July 26 Letter is therefore inaccurate and incomplete.⁶⁶ This issue has direct bearing on the transaction. We find Securus’s cavalier and willful attitude towards the Commission and its transaction review process unacceptable. We agree with Petitioners that Securus provided inaccurate information to attempt to secure faster approval of the proposed transaction.⁶⁷

23. Because candor is paramount in Commission dealings and wholly relevant to the pending Applications, the Wireline Competition Bureau referred the July 26 Letter to the Enforcement Bureau, and we did not act on the Applications while the Enforcement Bureau determined appropriate action. The Enforcement Bureau has engaged in a detailed examination of the facts and circumstances surrounding that matter. The result of that action is that Securus has now agreed to enter into a consent decree to resolve the Enforcement Bureau’s investigation, which recognizes that the July 26 Letter was not accurate on its face.⁶⁸ To settle the matter, Securus has agreed to pay a \$1,700,000 civil penalty and to implement a three-year compliance plan to ensure that it adheres to Commission rules. Among other things, the compliance plan requires Securus to appoint a compliance officer, implement internal procedures and training to ensure compliance, report noncompliance, and submit periodic reports.⁶⁹ The plan agreed to

⁶¹ *Id.* at 2-3.

⁶² *Id.* at 4.

⁶³ STI made various filings in the state proceeding record between May 16, 2017 and August 8, 2017 addressing state law requirements. Joint Application of SCRS Acquisition Corporation, Securus Investment Holdings, LLC, and Securus Technologies, Inc. (U6888C) for Approval to Transfer Indirect Control of Securus Technologies, Inc., Application 17-05-011 (CA PUC).

⁶⁴ Joint Application of SCRS Acquisition Corporation, Securus Investment Holdings, LLC, and Securus Technologies, Inc. (U6888C) for Approval to Transfer Indirect Control of Securus Technologies, Inc., Application 17-05-011, Scoping Memo and Ruling of Assigned Commissioner, at 3 (CA PUC July 31, 2017) (California Scoping Memo); Petitioners August 3 *Ex Parte* Letter at 1-2.

⁶⁵ *Id.*

⁶⁶ See 47 CFR § 1.17.

⁶⁷ Petitioners August 3 *Ex Parte* Letter at 2; Petitioners August 4 *Ex Parte* Letter at 3 (citing *Leflore Broadcasting Co. Inc. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980); *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946)).

⁶⁸ *Securus Order* at para. 4; *Securus Consent Decree* at paras. 13-17 (citing 47 U.S.C. §§ 154, 308; 47 CFR §§ 1.17, 1.65).

⁶⁹ *Securus Consent Decree* at paras. 12-15.

by Securus requires, among other things, that all employees who perform or directly supervise the performance of duties relating to responsibilities of the Securus entities under the Act and other laws, rules, and decisions of the Commission must ensure that all filings with the Commission will be preceded by review and documented written approval by legal counsel. Importantly, the provisions of the consent decree or any other enforcement action between the Enforcement Bureau and Securus or between the Commission and Securus are binding on Securus and SCRS Acquisition Corporation as the transferee. We further clarify that grant of the Applications will not alter Securus's or SCRS Acquisition Corporation's responsibility to comply with the consent decree or other Commission enforcement action.

24. We have carefully examined the facts and circumstances surround this matter, and the commitments Securus has made in the consent decree. While as noted above we do not condone efforts to expedite Commission action based upon an inaccurate and incomplete characterization of the status of these other regulatory proceedings, we have also taken due account of the specific commitments that Securus has made in its compliance program, designed to ensure that it will be truthful to the Commission and comply with its rules in the future. Accordingly, in light of these commitments, we do not believe that the inaccurate and incomplete statements made here, in an attempt to secure faster approval of the transaction, raise substantial and material questions of fact concerning the basic qualifications of Securus so as to bar approval of this proposed transfer of control of its authorizations.

25. *Other Issues.* Petitioners raise several instances of Securus's past behavior that they claim demonstrate that we must deny the proposed transaction.⁷⁰ These instances include allegedly misleading customers as to the effects of the Commission's earlier orders; misrepresentations about the vulnerability of its businesses in the face of Commission action; and repeated violations of the Commission's procedural rules.⁷¹ However, Petitioners fail to demonstrate that these allegations raise substantial and material issues regarding Securus's basic qualifications, as required by well-established Commission policy.⁷² Each of these instances is associated with the *Inmate Calling* rulemaking proceeding; in each case, the Commission addressed the matter at the time it arose and did not find a substantial rule violation.⁷³ Moreover, to the extent these matters are adjudicated allegations with respect to non-FCC misconduct, they are not cognizable under our *Character Policy Statement*. Nor do we believe that the remaining allegations raised by Petitioners regarding Securus's conduct in the *Inmate Calling* proceeding have demonstrated a substantial and material question of fact as to Securus's character

⁷⁰ See Petition at 11-13.

⁷¹ *Id.*; Petitioners July 14 *Ex Parte* Letter at 3-4.

⁷² See *Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order, and Policy Statement, 102 F.C.C.2d 1179, 1208-10, paras. 54-57 (1986) (*Character Policy Statement*); *MCI Telecommunications Corp., Petition for Revocation of Operating Authority*, Order and Notice of Apparent Liability, FCC 88-24, 3 FCC Rcd 509, 515 n.14 (1988) (stating that character qualification standards adopted in broadcast context can provide guidance in common carrier context); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to Fairpoint Communications, Inc.*, *Memorandum Opinion and Order*, 23 FCC Rcd 514 (2008) ("The Commission does not, as a general rule, reevaluate the qualifications of the transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.").

⁷³ Opposition at 13-20 (citing various Commission actions addressing issues that arose during the rulemaking proceeding regarding interstate site commissions, mandatory fees associated with inmate calling, the procedural propriety of a filing made by Securus, and representations by Securus to the Commission about the impact of rate caps to its business). Petitioners also claim that Securus's information about rates for video calling services was false and that the rates are higher than Securus has stated. Petitioners August 23 *Ex Parte* Letter at 2.

qualifications.⁷⁴ We caution however that future violations of Commission rules and policies by Securus could be grounds for revocation of its section 214 operating authority. The record in this transfer of control proceeding does not raise any issues with regard to the character, financial, technical, or other qualifications of Transferee and Platinum Equity, LLC. Accordingly, we find that Applicants hold the basic qualifications to be a Commission licensee under the Act and our rules and policies.

26. The proposed transaction must comply with the Act, other applicable statutes, and the Commission's rules before we can find that it is in the public interest, unless a waiver is granted.⁷⁵ We find that the proposed transaction will not violate any statutory provision or Commission rule.

V. POTENTIAL PUBLIC INTEREST HARMS AND BENEFITS

A. Potential Harms

27. Having addressed the foregoing candor issue and the significant burdens it caused the Commission and interested parties by having to garner the facts and work to develop an accurate and transparent record in this proceeding, we now consider the other allegations Petitioners raise regarding Securus's rates and practices for inmate calling service. We find that these allegations are not directly related to the proposed acquisition of Securus by Transferee and are appropriately addressed in other proceedings. The D.C. Circuit Court of Appeals has held that the Commission lacked jurisdiction to adopt certain rules addressing intrastate calling services that Petitioners assert Securus has violated.⁷⁶ Given these circumstances, consistent with Commission practice, we believe that these questions, which we take seriously, are best resolved via a complaint to the Enforcement Bureau or other enforcement proceeding addressing alleged rule violations within the Commission's jurisdiction.⁷⁷ Because we do not find a potential harm as result of this transaction, we reject Petitioners' request that we impose certain conditions requiring Securus to charge specific rates or to freeze rates.⁷⁸

28. Petitioners' claims that the "substantial restructuring" of Securus's rates between 2013 and the present violates a commitment it made in a previous transaction involving the company, and that Securus and its management are therefore unqualified to hold Commission authorizations,⁷⁹ also are

⁷⁴ See *AT&T-DIRECTV Order*, 30 FCC Rcd at 9143-49, paras. 27-40 (finding that AT&T did not lack the character qualifications to be a Commission licensee based on conduct that the Commission had previously investigated and that further inquiry in the merger proceeding was not warranted).

⁷⁵ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9154, para. 52.

⁷⁶ The D.C. Circuit Court of Appeals denied the Petition for Rehearing En Banc in the case. See *Global Tel*Link v. FCC*, 859 F.3d 39 (D.C. Cir. 2017), *amended and superseded by* 866 F.3d 397, *reh'g en banc denied*, No. 15-1461 (D.C. Cir. Sept. 26, 2017).

⁷⁷ See, e.g., *WorldCom, Inc. and MCI, Inc. Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses*, Memorandum Opinion and Order, 18 FCC Rcd 26484, para. 25 (2003); *Applications of EchoStar Communications Corp. and Hughes Corp. for Consent to Transfer Control of Licenses*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20578-79, para. 33 (2002).

⁷⁸ Letter from Lee G. Petro, Counsel for Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-126, ITC-T/C-20170511-00094, ITC-T/C-20170511-00095, at 2-3 (filed Oct. 2, 2017) (Petitioners October 2 *Ex Parte* Letter). We also deny Petitioners' request to condition the transaction on requiring Securus to provide video relay service in each facility that it serves "to offset potential public interest harms caused by the Transaction." *Id.* at 3.

⁷⁹ Petition at 11-14. Applicants assert that Securus did not commit in 2013 to freeze rates in perpetuity, that the transaction was not conditioned on a specific rate commitment by Securus, and that Petitioners' argument focuses on intrastate rates that are outside of the Commission's jurisdiction. Opposition at 11-15. In 2013, the Wireline Competition Bureau referred to Securus's statement that there would be no changes in its rates "as a result of the transaction" in its finding that the transaction would likely result in some public interest benefits. The Wireline Competition Bureau granted the applications subject to one enforceable and binding condition associated with Securus's commitment to cease blocking inmate-initiated calls to certain phone numbers. *Applications Granted for*

(continued....)

directly related to the extent to which Securus's rate practices are lawful. Accordingly, this claim also is best addressed in an enforcement or rulemaking proceeding.⁸⁰ The Commission likewise takes seriously allegations regarding possible violations of section 222 of the Act, and of its rules regarding the proprietary information of the customers of telecommunications services. However, like allegations regarding Securus's rates and practices, any allegations regarding violations of these rules are better handled in the context of an enforcement proceeding and not in that of a transaction.⁸¹

B. Potential Benefits

29. Having addressed any potential public interest harms of the transaction, we next review the public interest benefits of the particular transaction, beyond fostering the free transferability of licenses and authorizations. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms only "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."⁸² Specifically, the Commission finds a claimed benefit to be cognizable only if it is transaction-specific—meaning it naturally arises as a result of the transaction⁸³—and verifiable, and is "more likely to find marginal cost reductions to be cognizable than reductions in fixed cost."⁸⁴

30. Based on our evaluation of the record, we find that the transaction is likely to result in some net public interest benefits beyond fostering the free transferability of licenses and authorizations. These benefits include increased capital resources available to Securus to implement or continue offering certain services and programs it has stated it will provide post-closing.⁸⁵ We also note that there are no issues in the record regarding the ability of Transferee to provide service, and Applicants expressly commit in the Lead Application that, post-closing, Securus will provide "services to the same extent and at the same rates and on the same terms and conditions as are currently in effect."⁸⁶ With regard to its services, we also take notice of the fact that during the pendency of this transaction proceeding, a representative of Securus filed a signed certification with the Commission stating that Securus is "in

(Continued from previous page) _____
the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, LLC, Public Notice, 28 FCC Rcd 5720, 5723 (WCB 2013).

⁸⁰ See *Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee*, 15 FCC Rcd 14032, 14229, para. 432 (2000) (finding alleged violations of the Act and merger conditions are best addressed in the broader proceedings of general applicability and in enforcement proceedings). Petitioners have acknowledged that an investigation would be an appropriate vehicle to determine whether their allegations regarding Securus's rates are valid. Petition at 14.

⁸¹ See, e.g., *Softbank-Sprint Order*, 28 FCC Rcd at 9676, para. 85; *Verizon Communications, Inc. and America Móvil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6206, para. 25 (2007) (rejecting assertions that a transfer of control should be denied or conditioned based on prior conduct that can be raised in the enforcement context, and stating that applicants were subject to existing Commission requirements).

⁸² *AT&T-BellSouth Order*, 22 FCC Rcd at 5760, para. 201.

⁸³ Or as the Commission has previously put it, "more likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects." *Id.* at 5761, para. 202.

⁸⁴ *Id.*

⁸⁵ Securus July 21 *Ex Parte* Letter at 1-4 (describing anticipated post-closing investments in inmate services, education and recidivism-reduction programs, and correctional facility assistance that the proposed transaction would support).

⁸⁶ Lead Application at 12. Applicants state that "STI's nationwide average per-minute rate across all of the over 2000 correctional facilities it currently services is \$0.18 per minute (*i.e.*, \$2.16 for the average 12 minute call)." Opposition at 14. This grant does not approve the current rates, terms, or conditions, and as noted above, those issues are part of the *Inmate Calling FNPRM* proceeding.

compliance with the Federal Communications Commission's rules governing inmate calling services (ICS). I acknowledge that failure to comply with the rules governing ICS may result in civil or criminal prosecution."⁸⁷ We expect this statement of compliance, coupled with the compliance plan in the consent decree, to firmly guide Securus's future dealings with the Commission and to prevent any type of misrepresentation in any proceeding.

VI. CONCLUSION

31. Securus has pursued approval of the transaction in an unacceptable fashion. With this serious lapse addressed in a consent decree imposing significant monetary and compliance-related penalties, and other, non-transaction-specific issues best handled in enforcement or rulemaking proceedings, upon review of the record, we find that this transaction, which involves a transfer of control to a holding company entity with no competing operations, imposes no public interest harms.

32. After thoroughly reviewing the proposed transaction and the record in this proceeding, we conclude that the transfer of control of the licenses and authorizations in Appendix A is in the public interest and hereby grant the Applications.

VII. ORDERING CLAUSES

33. Accordingly, having reviewed the record in this matter, **IT IS ORDERED**, pursuant to sections 4(i) and (j), 5(c), 214(a), and 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 214(a), 214(c), and sections 63.03-04, 63.18, and 63.24 of the Commission's rules, 47 CFR §§ 63.03-04, 63.18, and 63.24, that the Applications to transfer control of the licenses and authorizations listed in Appendix A **ARE GRANTED**.

34. **IT IS FURTHER ORDERED** that the Petition to Deny of The Wright Petitioners; Citizen United for Rehabilitation of Errants; Prison Policy Initiative; Human Rights Defense Center; The Center for Media Justice; Working Narratives; United Church of Christ, OC Inc.; and Free Press **IS DENIED**.

35. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order **SHALL BE EFFECTIVE** upon release, in accordance with section 1.103 of the Commission's rules, 47 CFR § 1.103. Petitions for reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the release date of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁷ Securus Technologies, Inc., Inmate Calling Services Annual Certification Form, WC Docket No. 12-375 (Aug. 23, 2017).

APPENDIX A

SECTION 214 AUTHORIZATIONS

A. International

We grant the applications for consent to the transfer of control of the international section 214 authorizations from Securus to SCRS Acquisition Corporation.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20170511-00094	Securus Technologies, Inc.	ITC-214-19991115-00713
ITC-T/C-20170511-00095	T-NETIX, Inc	ITC-214-19980312-00185

B. Domestic

We grant the application to transfer control of domestic section 214 authority in connection with the proposed transaction.

**STATEMENT OF
CHAIRMAN AJIT PAI**

Re: *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; *Securus Technologies, Inc., et al.*, File No.: EB-IHD-17-000225128

This action could have occurred months ago. Yet one of the Applicants chose to misrepresent facts to the Commission. A lack of candor with the Commission is a very serious matter, and there must be a strong deterrent to such misconduct.

So as we approve this transaction from which we find no competitive harms, we also have a consent decree with Securus that both punishes its untruthfulness and serves as a strong deterrent to others who would mislead the agency.

I believe the purpose of this misrepresentation was to speed the approval of this transaction. But it ended up having the opposite effect. Those doing business in front of the agency should take note of that fact. They should also note that while Applicants urged quick approval to avoid incurring fees, in the companion decree Securus will pay a civil penalty of \$1.7 million because of their lack of candor, a particularly large amount for this type of violation.

Lastly, it's important to understand that none of the conditions that it's been suggested we impose here are transaction-specific — that is, they have nothing to do with remedying a transaction-specific harm. And as the standard of review in this document makes clear, a transaction is not an opportunity to apply extraneous conditions upon a licensee.

**JOINT DISSENTING STATEMENT OF COMMISSIONERS
MIGNON L. CLYBURN AND JESSICA ROSENWORCEL**

Re: *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; *Securus Technologies, Inc., et al.*, File No.: EB-IHD-17-000225128

Today, the FCC's majority gives its blessing to an approximately \$1.6 billion deal involving Securus, one of the nation's largest providers of inmate calling services. This is the same company that attempted to mislead the Chairman into prematurely granting its transaction. For violating our rules, and our trust, the Commission also adopts a consent decree that is worth:

- 0.1% of the value of the transaction;
- 0.39% of the company's 2015 revenues; and
- 0.12% of the kickbacks Securus paid to correctional facilities from 2004-2014.

To give an idea of how relatively small this penalty is, consider that we routinely fine companies up to several percent of their gross annual revenues for egregious infractions of our rules.

But to anyone familiar with how this company operates, this is unsurprising. It is a company that has shown it is willing to operate on the bleeding edge of legality when it comes to this agency's rules. For example, when the FCC banned connection fees, this company simply renamed them "first minute rates" and continued to charge them. This is unacceptable and wrong.

Is this transfer of control and consent decree just a slap on the wrist? More like a pat on the back. And it is precedent-setting. Until now, the FCC has never granted a transfer of control when a company has made misrepresentations during the review process. We could have adopted conditions on the transaction to mitigate public interest harms. Indeed, we suggested several, but the Chairman respectfully declined to act on any of them, including a condition to ensure that the company could not decline to serve incarcerated people with disabilities.

When it comes to the plight of prisoners and their families paying usurious rates for phone service, the current leadership of the Commission has not made a single move to help. Instead, we've seen a string of half-hearted words that add up to a refusal by the Commission to do its job under the law. This Commission is failing in its duty to protect prisoners and their families from usurious phone rates.

Unfortunately, disregard for inmates and their families is not the only thing wrong with this item.

The Communications Act instructs the Commission to consider the public interest when it reviews a transaction. A deeply-rooted preference to protect and promote competition in relevant markets, accelerate deployment of advanced services, ensure a diversity of license holdings, and manage spectrum in the public interest, have traditionally been a part of this consideration. However, today's item sets an ominous precedent by narrowing the Commission's standard of review to effectively take the public interest out of the equation. By doing so, we shirk our responsibility under the Act.

For all of the above reasons, we dissent.