

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

In the Matter of )
)
Petition of Network Communications International )
Corporation for Forbearance Pursuant to 47 U.S.C. )
§ 160(c) from Application of Contribution ) WC Docket No. 19-232
Obligations on Inmate Calling Services )
)
Securus Technologies, LLC Request for Waiver of )
Section 54.706 of the Commission’s Rules )

ORDER

Adopted: July 31, 2020

Released: July 31, 2020

By the Commission:

I. INTRODUCTION

1. The Universal Service Fund is critical to the Commission’s efforts to close the digital divide and supports the deployment of advanced communications services to rural areas, low-income families, schools, libraries, and healthcare providers. Telecommunications service providers and certain other providers of telecommunications contribute to the Fund a portion of their end-user revenues for certain international and interstate services they offer.

2. Last year, one such provider—Network Communications International Corporation (NCIC)—petitioned the Commission to forbear from this obligation with respect to inmate calling services it provides in jails and prisons.1 More recently, another inmate calling services provider, Securus Technologies, LLC (Securus), sought a waiver from contributions obligations for all inmate calling services providers during the COVID-19 pandemic.2 Given the critical role that the Universal Service Fund plays in bringing connectivity to rural and low income Americans, schools, libraries, and health care providers, and the statutory directive to collect equitable and non-discriminatory contributions from all providers of interstate telecommunications services, we deny both NCIC’s and Securus’ petitions.

II. BACKGROUND

3. The Obligation to Contribute to the Universal Service Fund. Section 254(d) of the Communications Act of 1934, as amended (the Act) mandates that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”3 The Commission may also require “[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of

1 Petition for Forbearance of Network Communications International Corporation, WC Docket No. 19-232 (filed Aug. 9, 2019) (Petition).

2 Emergency Request for Waiver by Securus Technologies, LLC, WC Docket No. 19-232 (filed Mar. 18, 2020) (Request for Waiver).

3 47 U.S.C. § 254(d).

universal service if the public interest so requires.”<sup>4</sup> To carry out our statutory responsibility, the Commission has adopted rules requiring each carrier as well as each interconnected voice over Internet Protocol (VoIP) provider (including each inmate calling service (ICS) provider) to “contribute on the basis of its projected collected interstate and international end-user telecommunications revenues.”<sup>5</sup> Contributors may recover contribution costs through a line item on a customer’s bill as long as the contributor does not mark up the fee beyond the amounts collected and actually paid to the Fund.<sup>6</sup> Accordingly, ICS providers are permitted, but not required, to pass through to consumers the contribution fee assessed on interstate and international ICS calls.<sup>7</sup>

4. *NCIC’s Request for Forbearance.* On August 9, 2019, NCIC filed a petition seeking forbearance from the application of contribution requirements to inmate calling service (ICS) providers. NCIC’s request is limited to just those entities that provide inmate calling services and is further limited to just interstate and international inmate calling services.<sup>8</sup> NCIC argues that granting forbearance to ICS providers from contribution obligations “will lead directly to the reduction of the cost of interstate and international ICS calls for inmates and their families, will eliminate administrative costs for ICS providers, and will not impair Universal Service Fund goals.”<sup>9</sup>

5. The record on NCIC’s forbearance request is mixed.<sup>10</sup> Several commenters note that ICS customers already pay the highest costs for telephone calls in the country,<sup>11</sup> with one commenter claiming that ICS providers charge consumers excessive fees under the pretense of USF contribution requirements.<sup>12</sup> Others note that the ICS user population is generally low-income,<sup>13</sup> otherwise eligible to receive government assistance,<sup>14</sup> and that low-income communities are disproportionately represented in prisons and jails.<sup>15</sup> Some ICS providers, like ICSolutions and Pay Tel, support NCIC’s forbearance request, arguing that it could lower the cost of interstate ICS calls.<sup>16</sup> Another ICS provider, Global Tel\*Link, cautions that competitively neutral administration of the Fund requires that no entity receives an unfair competitive advantage.<sup>17</sup> And another ICS provider, Securus, urges a grant of forbearance so

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<sup>4</sup> *Id.*

<sup>5</sup> 47 CFR § 54.706(b).

<sup>6</sup> 47 CFR § 54.712.

<sup>7</sup> *See* 47 CFR §§ 64.6000(b), 64.6070(a).

<sup>8</sup> Section 10(c) of the Communications Act of 1934, as amended, states that “any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.” 47 U.S.C. § 160(c).

<sup>9</sup> Petition at 5.

<sup>10</sup> The Wireline Competition Bureau issued a Public Notice seeking comment on the Petition on August 16, 2019. *Pleading Cycle Established for Comments on Network Communications International Corporation’s Petition for Forbearance from USF Contribution Requirements*, WC Docket No. 19-232, Public Notice, 34 FCC Rcd 7189 (WCB 2019). *See* Appendix A for a full list of commenters.

<sup>11</sup> *See e.g.*, HRDC Comments at 1; Pay Tel Communications, Inc. Comments at 3; ICSolutions at 2; Prison Policy Initiative Comments at 1.

<sup>12</sup> HRDC Comments at 1.

<sup>13</sup> Securus Comments at 5; *see also* Pay Tel Comments at 3-4.

<sup>14</sup> The Wright Petitioners Comments at 1.

<sup>15</sup> Worth Rises Comments at 2.

<sup>16</sup> ICSolutions Comments at 1; Pay Tel Comments at 2.

<sup>17</sup> Global Tel\*Link Reply at 2.

long as the Commission also revises the rules so that resellers “can continue to provide exemption certificates to their underlying carriers for services resold to provide ICS, even though they will no longer be contributing to USF based on revenues from these services.”<sup>18</sup>

6. Some commenters observe that ICS customers also receive benefits from the programs funded by the USF,<sup>19</sup> and one commenter believes that forbearance from USF contribution obligations may lead to lower funding for the Lifeline program.<sup>20</sup> Some argue that forbearance would lead to reduced costs for ICS calls and may lead to lower rates for ICS consumers.<sup>21</sup> But others argue that instead of forbearance, the Commission should prohibit ICS providers from passing through USF fees to consumers.<sup>22</sup>

7. *Securus’s Request for Waiver.* On March 18, 2020, Securus filed a request for an immediate waiver of the obligation of all ICS providers to contribute to the Fund.<sup>23</sup> Securus contends that due to the COVID-19 pandemic, immediate relief from contributions obligations is critical while in-person visitation to inmates is limited or prohibited. Securus also requests that the Commission expeditiously grant the petition for forbearance filed by NCIC in order to extend relief from USF contribution obligations to ICS providers on a permanent basis.<sup>24</sup>

8. Comments in the record are again mixed.<sup>25</sup> ICS providers supported Securus’ request for waiver, largely reiterating Securus’s arguments.<sup>26</sup> In contrast, comments signed by over sixty public interest organizations argue that the Commission should deny Securus’s “self-serving and short-sighted petition to waive its obligation to pay into the USF at a time of national emergency when low-income people, schools, libraries, and rural telehealth providers will need the Fund most” and that the Commission should not set aside the values of universal service “for companies charging some of the highest and most unjust rates in the country.”<sup>27</sup> Another commenter argues that Securus’s request “is even more galling considering the efforts of other corporations in the broader telecom industry to assist their low-income customers by offering free and expanded service during the outbreak.”<sup>28</sup>

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<sup>18</sup> Securus Comments at 2-3, 6.

<sup>19</sup> See e.g., Pay Tel Communications, Inc. Comments at 3-4; The Wright Petitioners Comments at 1. See also OTI et. al. Comments at 2.

<sup>20</sup> Worth Rises Comments at 3.

<sup>21</sup> See, e.g., HRDC Comments at 1; Prison Policy Initiative Comments at 1; The Wright Petitioners Comments at 1.

<sup>22</sup> Worth Rises Comments at 2; see also OTI et. al. Comments at 2. In response, NCIC argues that ICS providers could pass these costs through to their users either directly or indirectly by raising unregulated intrastate ICS rates. NCIC Reply at 4.

<sup>23</sup> Request for Waiver at 1, 4-6.

<sup>24</sup> *Id.* at 1, 4, 6-7.

<sup>25</sup> The Wireline Competition Bureau issued a Public Notice seeking comment on the Request for Waiver on March 27, 2020. *Pleading Cycle Established for Comments on Securus Technologies, LLC, Emergency Request for Waiver*, WC Docket No. 19-232, Public Notice, DA 20-351 (WCB Mar. 27, 2020). See Appendix A for a full list of commenters.

<sup>26</sup> Pay Tel Communications, Inc. Comments at 2. See also e.g., NCIC Comments at 2; ICSolutions Comments at 1; Secured Perimeters International Comments at 2.

<sup>27</sup> OTI et. al. Comments at 2; see also Worth Rises Comments at 2.

<sup>28</sup> Worth Rises Ex Parte at 2. *But see* Securus Comment at 1 (arguing that it had already made special accommodations during the crisis); Securus Response to Worth Rises and OTI Letter (indicating that it is committed to continuing assistance initiatives underway).

### III. DISCUSSION

9. Since the adoption of our contribution rules in 1997, the Commission has held that the base of contributors to universal service should be construed broadly.<sup>29</sup> The Commission has further determined that providers benefiting from universal service because they connect to the nation's communications networks should contribute on the basis of revenues derived from those services.<sup>30</sup> The Commission's universal service programs depend on contributions to fund deployment of and access to voice and broadband services in places where services may not be available at all without support. Moreover, when one set of telecommunications providers are excluded from the funding base, other contributors will face an increased burden as a result.

10. Our universal service contribution system has long been premised on the principles of equitable contributions from telecommunications providers and competitive neutrality.<sup>31</sup> Those principles compel our conclusion that ICS providers should continue to contribute to the support mechanisms. Forbearing from the Act's contributions requirements (or waiving the Commission's rules to the extent they are not required by the Act) to exempt ICS providers from contributing to the Fund would undermine the broad funding base for universal service, would not be competitively neutral, and would not be in the public interest. Accordingly, we deny NCIC's petition for forbearance and Securus's request for waiver.

#### A. A Waiver is Not in the Public Interest

11. We start with Securus's request to waive federal requirements that it contribute to the Universal Service Fund. Generally, the Commission's rules may be waived for good cause shown.<sup>32</sup> The Commission may exercise its discretion to waive a rule where the specific facts make strict compliance inconsistent with the public interest.<sup>33</sup> Waiver of the Commission's rules is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.<sup>34</sup>

12. To the extent Securus seeks to waive the statutory requirement that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute,"<sup>35</sup> we deny the request as beyond the reach of our authority. It is blackletter law that the Commission may not waive the provisions of the Communications Act but only its own rules.<sup>36</sup>

13. What is more, we find such a waiver would not serve the public interest—both for ICS providers that are carriers and those that are "provider[s] of interstate telecommunications" required to

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<sup>29</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9173, para. 779 (1997) (*Universal Service First Report and Order*).

<sup>30</sup> *See, e.g., id.* at 9173, 9184-85, paras. 779, 797 (finding it appropriate to require both international telecommunications providers and payphone aggregators to contribute to universal service support mechanisms because they interconnect); *Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review*, 21 FCC Rcd 7518, para. 43 (finding that providers of interconnected VoIP services similarly benefit from universal service).

<sup>31</sup> 47 U.S.C. § 254(d); *Universal Service First Report and Order*, 12 FCC Rcd at 8783, para. 7; *id.* at 8801, para. 47.

<sup>32</sup> 47 CFR § 1.3.

<sup>33</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>34</sup> The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>35</sup> 47 U.S.C. § 254(d).

<sup>36</sup> *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994); *see also* 47 CFR § 1.3 (only providing for waiver of the Commission's own rules).

contribute by Commission rule.<sup>37</sup> For one, we agree with comments signed by over sixty public interest organizations arguing that the Commission should deny Securus’s petition “at a time of national emergency when low-income people, schools, libraries, and rural telehealth providers will need the Fund most.”<sup>38</sup> We agree that “[e]ach telecommunications company must bear its fair share in order to meet the needs of all people in the U.S. The values of universal service are embedded in our nation’s communications policy and should not be set aside” for one subset of service providers.<sup>39</sup> Indeed, we find that continuing to maintain a sufficiently broad contributions base for the Fund is crucial to keep Americans connected during this time and carries out our statutory obligation to ensure that all providers of interstate telecommunications contribute to the universal service mechanisms in an equitable manner.<sup>40</sup>

14. For another, granting Securus’s request (to the extent legally permissible) would not be competitively and technologically neutral. Such a waiver would, for example, give one set of interstate voice service providers a regulatory advantage over others, violating our neutrality goals; given our inability to waive the statutory requirement that each “carrier” contributes, it would give one set of ICS providers (those that are interconnected VoIP providers) a regulatory advantage over another set of ICS providers (those that are carriers). This is precisely the opposite of our longstanding goal to level the playing field among competing providers and to treat all providers offering the same services similarly.<sup>41</sup>

15. We disagree with Securus that the fact of the COVID-19 pandemic and Securus’s response warrant a waiver of our contribution rules for ICS providers.<sup>42</sup> The disruption caused by the COVID-19 pandemic indisputably constitutes extremely unusual circumstances and the Commission has responded to the crisis expeditiously.<sup>43</sup> However, the pandemic impacts all contributors—not just ICS providers—and contributors across the country—not just ICS providers—have taken a number of steps to aid their customers.<sup>44</sup> And waiving contribution requirements for all contributors that have taken steps to address the pandemic for their customers would all but mean an end to universal service contributions entirely—an untenable result and one that would leave schools, libraries, health care providers, low-income families and veterans, and rural America without a safety net.

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<sup>37</sup> 47 CFR § 54.706.

<sup>38</sup> OTI et. al. Comments at 2.

<sup>39</sup> *Id.*

<sup>40</sup> 47 U.S.C. § 254(d).

<sup>41</sup> *See, e.g., Petition of NTCA—The Rural Broadband Association and the United States Telecom Association for Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Broadband Internet Access Transmission Services*, Order, 33 FCC Rcd 5712, 5716, paras. 15-16 (2018) (*NTCA/USTelecom Forbearance Order*); *Universal Service Contribution Methodology Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review*, Order, 21 FCC Rcd 7518, 7540-41, paras. 43-44 (2006).

<sup>42</sup> Request for Waiver at 1, 4; Securus Response to Worth Rises and OTI Letter at 5.

<sup>43</sup> *See, e.g., Connect America Fund ETC Annual Reports and Certifications*, Order, DA 20-601 (WCB Jun. 8, 2020); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-462 (WCB Apr. 29, 2020); *Schools and Libraries Universal Service Support Mechanism*, Order, DA 20-364 (WCB Apr. 1, 2020); *Lifeline and Link Up Reform and Modernization*, Order, DA 20-354 (WCB Mar. 30, 2020); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-285 (WCB Mar. 17, 2020); *Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, DA 20-290 (WCB Mar. 18, 2020).

<sup>44</sup> *FCC Chairman Thanks Companies that Have Gone Above and Beyond The Keep Americans Connected Pledge*, News Release, Office of Chairman Pai (rel. Mar. 18, 2020). Securus and Global Tel\*Link are among over 700 providers that have signed The Keep Americans Connected Pledge.

16. We also disagree with Securus that limitations on in-person visitation warrant a waiver.<sup>45</sup> As advocates for inmate calling service reform point out, even before the pandemic, many inmates were not permitted in-person visits and already were limited to “video visitation.”<sup>46</sup> Moreover, the country’s general population also has been advised to stay home to the greatest extent possible,<sup>47</sup> and access to affordable telecommunications services has never been more essential. As a result of the pandemic, the general population also faces new hardships, including challenges resulting from illness, quarantine requirements, and rising unemployment. In other words, Securus has not shown that its circumstances as an ICS provider are extraordinary compared to other voice service providers. And to the extent limitations on in-person visiting raise the importance of affordable communications for inmates, we note that many commenters argue that rates for inmate calling services are unjustly high.<sup>48</sup> We also note that Securus has not supported its waiver request with any evidence about the relationship of its rates or the rates of other ICS providers to cost, such that ICS providers would not be able to reduce their rates further during the COVID-19 pandemic.<sup>49</sup> Thus, waiving the contribution requirement is far less likely to impact whether such communications are affordable than actually reducing the rates that ICS providers charge for such services.

17. In short, the burden of proof rests with the applicant seeking waiver to demonstrate good cause.<sup>50</sup> Given our obligations to safeguard the Fund, ensure that providers of interstate telecommunications contribute in an equitable manner, and promote competitive and technological neutrality, we find that Securus has not met its burden, that granting the requested waiver would not be in the public interest (to the extent we even could grant such a waiver), and that Securus’s request is thus denied.

#### **B. Forbearance Is Not in the Public Interest**

18. We next turn to NCIC’s request that we forbear from the federal requirement that ICS providers contribute to the Fund. Unlike Securus’s request for a waiver, the Commission’s forbearance authority is broad enough to apply to both the Commission’s rules as well as the provisions of the

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<sup>45</sup> Request for Waiver at 3; *see also, e.g.*, Pay Tel Comments at 2; NCIC Comments at 2; ICSolutions Comments at 1; Secured Perimeters International Comments at 2.

<sup>46</sup> *See, e.g.*, The Leadership Conference Comments, WC Docket No. 12-375 at 1 (rec. Feb. 8, 2016) (in some instances video visitation has begun replacing in person visitation); Prison Policy Initiative Reply, WC Docket No. 12-375 at 1 (rec. Feb. 8, 2016) (some ICS providers included contract clauses requiring replacement of in person visitation for video visitation); Legal Services for Prisoners with Children Comments, WC Docket No. 12-375 at 1-2 (rec. Jan. 20, 2016) (three-fourths of the nation’s jails have replaced in person visitation in favor of video calling services); Electronic Frontier Foundation Comments, WC Docket No. 12-375 at 2 (rec. Jan. 19, 2016) (video visitation competes with or replaces in person visitation).

<sup>47</sup> Federal Emergency Management Agency, *Coronavirus (COVID-19) Response*, <https://www.fema.gov/coronavirus> (advising the public to stay home as much as possible) (last visited Mar. 27, 2020). *See also* Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), Deciding to Go Out*, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html> (explaining the risks of going out) (last visited July 9, 2020).

<sup>48</sup> OTI et. al. Comments at 2; *see also* Worth Rises Comments at 1.

<sup>49</sup> Pursuant to the second, one-time mandatory data collection in WC Docket No. 12-375, the Commission has required ICS providers to submit detailed cost and rate data. *See Rates for Inmate Calling Services*, WC Docket No. 12375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12891-92, paras. 198, 266-67 (2015); *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 515 (WCB 2019).

<sup>50</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).



Communications Act.<sup>51</sup> Under the Act, we must forbear if and only if we determine that the following three conditions are satisfied: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>52</sup> Forbearance is warranted only if all three statutory criteria are satisfied.<sup>53</sup> To make a *prima facie* case for forbearance under the Commission's rules, petitions for forbearance must contain facts and arguments which, if true and persuasive, are sufficient to meet each of the statutory criteria for forbearance.<sup>54</sup>

19. For many of the same reasons that we found Securus's requested waiver was not in the public interest, we find that NCIC's requested forbearance is not in the public interest (and thus does not meet criterion of section 10(a)(3)). In short, granting forbearance would result in inequitable contribution burdens on contributors and increase the contributions burden on other contributors and their customers as a result of a reduced funding base. It would also unfairly advantage ICS providers over other telecommunications providers that contribute to the Fund.

20. The Commission has long held that the base of contributors to the USF should be construed broadly and that those who benefit from access to networks and services supported by the Fund should also contribute.<sup>55</sup> As Global Tel\*Link recognizes, "any action the Commission takes with respect to federal USF contribution obligations must be equitable and nondiscriminatory, competitively neutral, and not unfairly advantage or disadvantage particular service providers, technologies, or consumers."<sup>56</sup> And as several public interest organizations note, "[e]ach telecommunications company must bear its fair share in order to meet the needs of all people in the United States."<sup>57</sup> Indeed, when services are excluded from the funding base, other contributors will face an increased contributions burden. The goals of universal service are strengthened when there is a broad base of contributors and when the contribution obligations apply consistently across providers—and we thus find exempting ICS providers would be inequitable and thus contrary to the public interest.

21. *Second*, granting NCIC's forbearance petition would not advance the Commission's longstanding goal of competitive neutrality, which ensures that contributions obligations neither unfairly advantage nor disadvantage one provider over another nor one class of providers over another.<sup>58</sup> When

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<sup>51</sup> 47 U.S.C. § 160.

<sup>52</sup> 47 U.S.C. § 160(a). In making the public interest determination, the Commission must also consider, pursuant to section 10(b) of the Act, "whether forbearance from enforcing the provision or regulation will promote competitive market conditions." *Id.* § 160(b).

<sup>53</sup> *CTIA v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

<sup>54</sup> 47 CFR § 1.54(b).

<sup>55</sup> *Universal Service First Report and Order*, 12 FCC Rcd 8776, 9173, para. 779.

<sup>56</sup> Global Tel\*Link Corporation Reply at 5.

<sup>57</sup> OTI et. al. Comments at 2.

<sup>58</sup> In the *Universal Service First Report and Order*, the Commission established "competitive neutrality" as an additional principle upon which it would base its policies for the preservation and advancement of universal service, pursuant to section 254(b)(7) of the Act. The Commission adopted the definition from the Federal-State Joint Board's Recommended Decision, determining that universal service support mechanisms and rules should be competitively neutral. The Commission agreed with the Joint Board that as a guiding principle, competitive neutrality is consistent with several provisions of Section 254, including the explicit requirement of equitable and nondiscriminatory contributions. *Universal Service First Report and Order*, 12 FCC Rcd 8776, 8801, paras. 47-49.

the Commission forbore from contributions obligations in 2018 for certain rural local exchange carriers, it did so in part in order to facilitate competitive neutrality—no other provider of broadband Internet access service contributed to the Fund base.<sup>59</sup> That is, absent our forbearance in that case, one subset of rural providers was facing a *greater* contributions obligation than other providers of the same service. As ICS provider Global Tel\*Link points out, our action “was necessary to ensure rural LECs were not treated differently than all other types of providers that were not subject to USF contributions for broadband Internet access transmission services” and it was “consistent with the Commission’s long-standing efforts to reduce the ‘possibility that carriers with universal service obligations would compete directly with carriers without such obligations.’”<sup>60</sup> Notably, NCIC does not argue that it is in a similar situation in which it faces USF contribution obligations that its competitors do not. Indeed, its entire argument hinges on the ICS industry being special and calling for differential treatment of ICS providers—a view in stark opposition to our contributions precedent.

22. Although NCIC argues that forbearance will have only a *de minimis* impact on USF collections,<sup>61</sup> we disagree that merits a grant here. We note that NCIC itself estimates that the total contributions for ICS providers in the third quarter of 2019 was \$58 million<sup>62</sup>—or about 2.6% of the \$2.229 billion that the Fund collected in that quarter.<sup>63</sup> Although certainly less than other sources for contributions, that is hardly an insignificant amount. What is more, we agree with many organizations in the record that even this contribution is important to the “low-income families, schools and libraries, rural telehealth projects and rural consumers around the country” that depend on the Fund.<sup>64</sup>

23. NCIC next argues that forbearing from this contribution obligation is in the public interest because it would reduce the cost of ICS calls for a population that is generally low-income.<sup>65</sup> Securus and Pay Tel similarly argue that granting the instant petition would eliminate the USF pass-through charge and lower the overall costs on this type of call.<sup>66</sup> Although eliminating the contribution requirement would somewhat reduce the cost of ICS calls and could potentially reduce ICS rates for consumers, we also find these arguments lacking. One reason is that ICS providers need not pass through these charges *already*, and so to the extent these ICS providers are concerned with high ICS rates, reducing those rates to eliminate the pass-through does not require forbearance at all.<sup>67</sup> (Indeed, the record does not even make clear the extent to which ICS providers actually pass through these charges to consumers rather than build them into existing rates). That is perhaps why one commenter argues that instead of forbearance, the Commission should prohibit ICS providers from passing through USF fees to consumers (a request beyond the scope of this proceeding).<sup>68</sup>

24. To the extent that NCIC is arguing that ICS rates are too high, commenters apparently agree. For example, they argue that ICS “companies [are] charging some of the highest and most unjust

<sup>59</sup> *NTCA/USTelecom Forbearance Order*, 33 FCC Rcd 5712, 5716, paras. 15-16 (2018).

<sup>60</sup> Global Tel\*Link Corporation Reply at 3.

<sup>61</sup> NCIC Petition at 4-5, 9-10.

<sup>62</sup> *Id.* at 10.

<sup>63</sup> *Proposed Third Quarter 2019 Universal Service Contribution Factor*, Public Notice, 34 FCC Rcd 4839, 4840 (OMD 2019).

<sup>64</sup> OTI et. al. Comments at 2.

<sup>65</sup> Petition at 9. NCIC also says this relief would provide greater protection of ICS customers.

<sup>66</sup> Securus Reply at 2; Pay Tel Comments at 3.

<sup>67</sup> See 47 CFR § 54.712(a).

<sup>68</sup> Worth Rises Comments at 2; see also OTI et. al. Comments at 2. In response, NCIC argues that ICS providers could pass these costs through to their users either directly or indirectly by raising unregulated intrastate ICS rates. NCIC Reply at 4.



rates in the country.”<sup>69</sup> Accordingly, one commenter argues that “the Commission should not reward this predatory behavior by excusing [ICS providers] from paying the USF fee, especially now.”<sup>70</sup> This proceeding is not the appropriate place to decide whether ICS rates are just and reasonable (state commissions are charged with overseeing intrastate rates and the Commission has a separate ongoing rulemaking proceeding to address interstate and international ICS rates), but it is clear that the high rates that NCIC and others complain of are not the fault of the neutrally administered contribution system. By NCIC’s own calculations, contributions to the Fund are less than five percent of total ICS industry revenue<sup>71</sup>—and to the extent ICS rates go down as a result of other proceedings, contributions to the Fund would automatically go down in turn under our rules.

25. Finally, although we need not resolve NCIC’s arguments on the criteria under sections 10(a)(1) and 10(a)(2) to deny their request for forbearance, we also find that NCIC has not met its burden in satisfying those criteria. Specifically, NCIC argues that, under section 10(a)(1), forbearance would reduce the interstate and international ICS rates to a more just and reasonable level and ensure that ICS rates are not unjustly or unreasonably discriminatory when compared with competitive telecommunications services available to the general public.<sup>72</sup> However, non-ICS providers (and accordingly their customers) must also contribute to the Fund, and so we fail to see how treating ICS providers differently *prevents* rather than creates unreasonable discrimination among providers, services, and customers. What is more, to the extent that ICS rates are not just and reasonable now (as Worth Rises suggests<sup>73</sup>), that is an argument for a renewed focus on reducing *those* rates—not on eliminating otherwise just and reasonable fees that may be passed through to ICS consumers without a markup. Similarly, NCIC argues that contribution is not necessary for the protection of consumers because ICS consumers already pay higher rates than those paid by consumers using non-ICS competitive telecommunications services.<sup>74</sup> Although such an argument may be (again) a good reason to review ICS rates, it (again) fails to explain why exempting ICS providers from the same just and reasonable contributions made by other telecommunications providers makes sense. A broad contribution base protects consumers by spreading out the cost of the Fund among all consumers in the United States, and the programs supported by the Fund are designed to protect consumers’ access to communications services. In other words, forbearing as NCIC requests would remove protections from consumers that NCIC does not adequately address.

26. In sum, we conclude that NCIC has not met that statutory criteria for forbearance under section 10 of the Act. Accordingly, we deny NCIC’s petition for forbearance.

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<sup>69</sup> OTI et. al. Comments at 2.

<sup>70</sup> Worth Rises Reply at 1.

<sup>71</sup> NCIC Petition at Appendix B.

<sup>72</sup> Petition at 6-7.

<sup>73</sup> Worth Rises Reply at 1 (arguing that incarcerated people and their families have “struggled to pay [ICS] rates with nearly one third falling into debt while trying to stay connected”).

<sup>74</sup> Petition at 7.

**IV. ORDERING CLAUSES**

27. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, and section 1.54(b) of the Commission's rules, 47 CFR § 1.54(b), Network Communications International Corporation's Petition for Forbearance is DENIED to the extent discussed herein.

28. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i) and 254(d) of the Communications Act, 47 U.S.C. §§ 154(i), 254(d), and section 1.3 of the Commission's rules, 47 CFR § 1.3, Securus Technology LLC's Request for Waiver is DENIED.

29. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Commenters in WC Docket No. 19-232

Comments in response to the NCIC Forbearance Petition:

- Human Rights Defense Center (HRDC)
- Inmate Calling Solutions, LLC (ICSolutions)
- Pay Tel Communications, Inc. (Pay Tel)
- Prison Policy Initiative
- Securus Technologies, Inc. (Securus)
- The Wright Petitioners
- Worth Rises

Reply comments in response to the NCIC Forbearance Petition:

- Global Tel\*Link Corporation (Global Tel\*Link)
- Network Communications International Corporation (NCIC)
- Securus Technologies, Inc. (Securus)

Comments in response to the Securus Waiver Request:

- Inmate Calling Solutions, LLC (ICSolutions)
- Network Communications International Corporation
- New America's Open Technology Institute, Common Sense Media, National Consumer Law Center, United Church of Christ, OC Inc. (OTI et. all)
- Pay Tel Communications, Inc. (Pay Tel)
- Secured Perimeters International
- Worth Rises

Reply Comments in response to the Securus Waiver Request

- Securus Technologies LLC (Securus)
- Worth Rises