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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Consider Regulating
Telecommunications Services Used by
Incarcerated People

Rulemaking 20-10-002

**ADMINISTRATIVE LAW JUDGE'S RULING ORDERING
CORRECTION OF SUBMITTALS**

Summary

This ruling directs Global Tel*Link Corporation d/b/a ViaPath Technologies (Global Tel*Link/ViaPath), Securus Technologies, LLC (Securus) and Inmate Calling Solutions, LLC d/b/a ICSolutions (ICSolutions) to resubmit testimony in response to the May 20, 2022, *Assigned Commissioner's Ruling Amending Phase II Scope and Schedule and Directing Testimony* (ACR) as outlined in this ruling no later than 10 days from issuance of this ruling.

1. Background

The May 20, 2022 ACR directed providers of incarcerated persons' calling services (IPCS) to file testimony responsive to questions contained in the ACR no later than July 19, 2022. On June 22, 2022, an *Administrative Law Judge's (ALJ) Ruling Directing Submittal of Contracts to Provide Incarcerated Person's Calling Services in California* (ALJ Ruling) directed IPCS providers to submit all California IPCS contracts to the Commission no later than July 26, 2022.

The ALJ Ruling directed the IPCS providers to use the California Public Utilities Commission's (Commission) Kiteworks File Transfer Protocol (FTP) system to submit the documents. The ALJ Ruling ordered the IPCS providers, when submitting the contracts, to "limit their claims of confidentiality to the paragraph or sentence scale, rather than asserting that entire pages or entire documents are confidential."¹

On or before July 19, 2022, Global Tel*Link/ViaPath, Securus, and ICSolution submitted testimony to this Commission as ordered in the ACR. On July 19, 2022 and July 20, 2022, Network Communications International Corporation (NCIC) served and filed a Brief on Amended Phase II Scoping Memo and a Supplemental Brief on Amended Phase II Scoping Memo, respectively.

The next several sections review a subset of relevant Commission requirements pertaining to the testimony ordered and then review deficiencies in the IPCS providers' submittals.

1.1. Partial Review of Commission Requirements

- Rule 1.7(b) of the Commission's Rules of Practice and Procedure (Rules) requires that prepared testimony must not be filed or tendered to the Commission's docket office. Instead, it must be served (i) on the service list, and (ii) on the ALJ.
- Rule 13.7(a) summarizes the physical and other requirements for submittal of exhibits, including testimony. These include the requirement that the top sheet of an exhibit must have a blank space two inches high by four inches wide to accommodate the Commission's exhibit stamp.

¹ ALJ Ruling at 4.

- Rule 13.7(e) requires documents offered into evidence, including testimony, to be “certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct...”
- Rule 13.7 (f) and 13.8 require prepared testimony to be submitted as a “Supporting Document” using the Electronic Filing System on the Commission’s website at: <https://www.cpuc.ca.gov/PUC/efiling> on the same day the testimony is served.
- Rule 11.5(a) requires motions to seal the evidentiary record or portions thereof to be made at the hearing unless the presiding officer directs otherwise.

1.2. General Order 66-D

The Commission’s General Order (GO) 66-D sets forth procedures for parties to submit a claim of confidentiality for information submitted to the Commission. Article 3.2(a) requires:

If confidential treatment is sought for any portion of information, the information submitter must designate each page, section, or field, or any portion thereof, as confidential. If only a certain portion of information is claimed to be confidential, then *only that portion rather than the entire submission should be designated as confidential.*²

Article 3.2(b) indicates that parties making confidentiality claims pursuant to GO 66-D must specify the basis for the Commission to provide confidential treatment with specific citation to an applicable provision of the California Public Records Act (CPRA), noting that “a citation or general marking of confidentiality... without additional justification... does not satisfy the

² GO 66-D at 3.2(a).

information submitter's burden to establish a basis for confidential treatment..."³

GO 66-D also states:

If the information submitter cites Government Code Section 6255(a) (commonly known as the public interest balancing test) as the legal authority for the Commission to withhold the document from public release, then the information submitter must demonstrate with granular specificity on the facts of the particular information why the *public* interest served by not disclosing the record clearly outweighs the *public* interest served by disclosure of the record. A *private* economic interest is an inadequate interest to claim in lieu of a *public* interest. Accordingly, information submitters that cite Section 6255(a) as the basis for the Commission to withhold the document and rest the claim of confidentiality solely on a *private* economic interest will not satisfy the requirements of this Section...⁴

1.3. R.20-10-002 Protective Order

The November 29, 2021 *Assigned Commissioner's Phase II Scoping Memo and Ruling Extending Statutory Deadline* (Scoping Memo) appended a Protective Order for use in R.20-10-002. The Scoping Memo ordered parties seeking access to stamped confidential documents and confidential information for use in R.20-10-002 to sign, date, and file the Protective Order. The Scoping Memo reminds parties submitting confidential information in R.20-10-002 that they also remain bound by GO 66-D. The Protective Order outlines requirements for IPCS providers as "Submitting Parties," as well as for intervenors as "Reviewing Parties."

Article 5 of the Protective Order regarding "Submitting Party's Obligations in Designating Documents," states that "[t]he designation of any document or

³ GO 66-D at 3.2(b).

⁴ *Ibid.*

information as Confidential shall constitute a representation by the Submitting Party, subject to the Commission's Rule 1.1 and GO 66-D, that the Confidential Information meets the requirements set forth therein for such designations. *Only those portions of a document containing Confidential Information should be so designated consistent with guidance provided in this Protective Order.*"⁵

Article 4(c) of the Protective Order observes that "[c]laims by the Submitting Party that submitted information should qualify for confidential treatment may be subject to review and may either be approved or denied by the assigned ALJ or the Commission pursuant to the Commission's Rules of Practice and Procedure, GO 66-D, and Pub. Util. Code §583."

2. Party Submittals in Response to the ACR

2.1. NCIC

NCIC filed an Opening and Supplemental Brief⁶ in response to the ACR rather than testimony. Although filed as a brief, NCIC's response appears to be complete. NCIC did not claim any information in the filings as confidential, including per minute fees for video calling at individual facilities served by NCIC, data on average voice and video calling usage times, and information on services and the bundling of contracts. The filings contained a certification under penalty of perjury signed by NCIC President, William Pope.

Although NCIC filed the information required in the ACR as a brief rather than submitting it as testimony pursuant to the Commission's Rules, no party appears harmed by this. The information requested appears to have been

⁵ Scoping Memo, Appendix 2, Protective Order for Rulemaking 20-10-002, Article 5, emphasis added.

⁶ The Supplemental Brief, filed July 20, 2022, includes average video calling usage information not included in the Brief filed July 19, 2022. No other information appears to differ.

provided in full and was certified. I therefore do not require any additional action on the part of NCIC at this time to supplement its filing. If another party to R.20-10-002 wishes raise concerns or objections to the NCIC filing, it may do so via motion.

2.2. ICSolutions

ICSolutions submitted testimony in response to the ACR by providing it to Commission Staff via Kiteworks. The testimony was not served on the ALJ. The document did not conform to the requirements of Rule 13.7(a) or Rule 13.7(e).

The document was stamped confidential but contained no further identification of claimed confidential material as required in the Protective Order Article 5 and GO 66-D Article 3.2(a). The submittal did not provide a rationale for its claim of confidentiality, as required in GO 66-D Article 3.2(b).

ICSolutions is ordered to resubmit testimony in response to the ACR that conforms with all Commission requirements, including the Commission Rules, GO 66-D and Protective Order discussed in this ruling no later than 10 days from issuance of this ruling.

If ICSolutions continues to claim confidential treatment of certain information in its resubmitted testimony, it shall clearly and specifically identify information it claims to be confidential and shall do so only at the paragraph or sentence scale, not at the page or document scale. ICSolutions shall provide a cover statement to its testimony that contains a clear and detailed explanation for each instance of a claim of confidential information, according to the requirements of GO 66-D. If claiming confidential treatment of certain information, ICSolutions shall concurrently file a motion to seal the evidentiary record pursuant to Rule 11.5.

ICSolutions shall submit a public version of its testimony, with redactions, if it continues to claim any information as confidential, to the Commission's Supporting Documents page, no later than 10 days from issuance of this ruling.

2.3. Securus

Securus served its public testimony to parties to R.20-10-002 and the ALJ and filed the public testimony with the Commission's Supporting Documents. Two Securus officers, Russell Roberts, Chief Growth Officer, and Michael Eric Williams, Senior Director of Telecommunications, submitted the testimony. Securus served a confidential version of the testimony of Russel Roberts to parties to R.20-10-002 with filed acknowledgements of the Protective Order as of July 19, 2022 and to the ALJ. The submitted testimony did not comply with Rule 13.7(e).

The public testimony of Russell Roberts included pricing and bundling information for individual facilities served by Securus. However, the Roberts testimony marked as confidential average voice and video calling usage data for the facilities served by Securus.

Securus shall resubmit the testimony of Russel Roberts in compliance with Rule 13.7(e) no later than 10 days from issuance of this ruling. If Securus continues to claim in its resubmitted testimony that certain information is confidential, it shall include a cover statement that contains a clear and detailed explanation, pursuant to the requirements of GO 66-D, for each instance of a claim of confidential information. If claiming confidential treatment of certain information, Securus shall concurrently file a motion to seal the evidentiary record pursuant to Rule 11.5.

Securus shall likewise resubmit the testimony of Michael Eric Williams in compliance with Rule 13.7(e) no later than 10 days from issuance of this ruling.

2.4. Global Tel*Link/ViaPath

Global Tel*Link/ViaPath submitted testimony on behalf of Pelicia E. Hall, Senior Vice President. The testimony complied with Rule 13.7(e). Global Tel*Link/ViaPath did not appear to serve its public testimony to parties to R.20-10-002 or the ALJ but it did file it as a Supporting Document. Global Tel*Link/ViaPath appears to have submitted a confidential version of its testimony to certain individuals, but it is not clear to whom. It did not provide the ALJ with a confidential version of its testimony.

Global Tel*Link/ViaPath claims a range of information as confidential in its testimony, including the services provided in contracts, linkages and interrelationships between and incentives to deploy services, video calling rates and fees, and usage maximum or minimum for correctional facilities that house minors. Global Tel*Link/ViaPath claimed this information to be market-sensitive and further claimed that the information is confidential simply because the ALJ Ruling limited access to the IPCS contracts it ordered submitted to parties that have filed acknowledgements of the R.20-10-002 Protective Order.

The rationales asserted in Global Tel*Link's testimony for confidential treatment of the redacted information are insufficient. As required in GO 66-D and in the R.20-10-002 Protective Order, only those portions of a document containing confidential information should be so designated. No Assigned Commissioner or ALJ Ruling in R.20-10-002 has designated the entirety of California IPCS contracts submitted to this Commission as confidential. Instead, the ALJ Ruling explicitly states, "[w]hen submitting the contracts, incarcerated person's calling services providers shall limit their claims of confidentiality to the

paragraph or sentence scale, rather than asserting that entire pages or entire documents are confidential.”⁷

Global Tel*Link/ViaPath is ordered to resubmit testimony responsive to the ACR no later than 10 days from issuance of this ruling. If Global Tel*Link / ViaPath continues to claim certain information in the testimony as confidential, it shall include a cover statement to the testimony that contains a clear and detailed explanation, pursuant to the requirements of GO 66-D, for each instance of a claim of confidential information. If claiming confidential treatment of certain information, Global Tel*Link/ViaPath shall concurrently file a motion to seal the evidentiary record pursuant to Rule 11.5.

IT IS RULED that:

1. ICSolutions, Securus, and Global Tel*Link/ViaPath shall resubmit testimony in response to the ACR as outlined in this ruling no later than 10 days from issuance of this ruling.

Dated August 5, 2022, at San Francisco, California.

/s/ CATHLEEN A. FOGEL

Cathleen A. Fogel
Administrative Law Judge

⁷ ALJ Ruling at 4.