

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
T-NETIX, Inc.: Joint Application for)	WC Docket No. 13-79
Streamlined Consent to)	
Domestic and International Transfer of Control)	
)	
T-NETIX Telecommunications Services, Inc.:)	
Application for Streamlined Consent to)	
Domestic Transfer of Control)	
)	
Securus Technologies, Inc.: Joint Application)	
for Streamlined Consent to Domestic and)	
International Transfer of Control)	
_____)	

**PUBLIC KNOWLEDGE, UNITED CHURCH OF CHRIST, OFFICE OF
COMMUNICATION INC., FREE PRESS, AND RAINBOW/PUSH COALITION
PETITION TO DENY APPLICATIONS**

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Public Knowledge, United Church of Christ, Office of Communications, Inc., Free Press, and Rainbow/PUSH Coalition (collectively, the “Petitioners”) hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to deny the above-captioned Applications for Streamlined Consent to Domestic Transfer of Control (the “Applications”) filed by T-NETIX, Inc. (“T-NETIX”), T-NETIX Telecommunications Services, Inc. (“T-NETIX Telecom”) and Securus Technologies, Inc. (“STI”) (collectively, the “Applicants”). As set forth in greater detail below, the Applicants fail to meet their affirmative burden to demonstrate the contemplated transfer of control is required for public convenience and necessity. The Applications are similarly devoid of information sufficient to evaluate the potential competitive harm resulting from the proposed transfer. Unless the Applicants make the necessary showings,

the Commission must deny the Applications. The FCC should also deny the Applications because the Applicants charge usurious rates that are neither just nor reasonable. In opposition to the Applications, the following is respectfully shown:

I. PETITIONERS HAVE STANDING TO SUBMIT THIS PETITION

The Office of Communication, Inc. is the media justice ministry of the United Church of Christ, which is a Christian congregation with more than 1 million members in more than 5,000 congregations. The United Church of Christ has many members who regularly use prison telecommunications systems. Public Knowledge is a not-for-profit institution dedicated to preserving and protecting consumer rights. It has worked extensively to improve affordable, non-discriminatory access to broadband and telecommunications services. Both UCC OC Inc. and Public Knowledge have actively opposed unreasonable prison telephone charges before the Commission.¹ Free Press is a nationwide, nonpartisan nonprofit that advocates for universal and affordable Internet access and diverse media ownership. It has more than 600,000 e-mail list members throughout the United States and around the world. Rainbow/PUSH Coalition is a multi-racial, multi-issue, international membership organization dedicated to advocating for civil rights. As such, the Petitioners are parties in interest with standing to submit this Petition to Deny.² This Petition was filed timely within the period set forth in the *Public Notice*, DA-13-578 released on March 28, 2013.

II. APPLICANTS FAILED SHOW THE TRANSACTION IS REQUIRED FOR PUBLIC CONVENIENCE AND NECESSITY

¹ Comments of Asian American Justice Center et al., Rates for Interstate Inmate Calling Services, WC Docket 12-375.

² See 47 C.F.R. § 1.939.

The Commission should deny the Applications because they are virtually devoid of any showing that the contemplated transaction is required for public convenience and necessity. Under the legal standard set by 47 U.S.C. § 214(a), the Application must demonstrate to the Commission that “present or future public convenience and necessity require or will require the [transaction].”³ In this inquiry, “[t]he Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.”⁴

The Applicants fail to meet this affirmative burden of proof. The lengthy Applications contain a bare two sentences explaining the transaction’s affirmative public interest rationale. Repeated in all three applications, the Applicants state, in full, that “[t]he proposed transaction is non-controversial and will serve the public interest by providing [the Applicants] with access to the substantial financial assets of ABRY. Consummation of the proposed transaction will help [the Applicants] to continue to provide services to its customers and potentially expand or enhance those services at new facilities.”⁵ The Applicants continue to state that the proposed transactions will have no effect on the prices, services, or management of the merged companies but provide no other positive logic for how the transaction is required for public convenience and necessity.

³ 47 U.S.C. § 214(a).

⁴ *In re Echo Star Communications Corp.*, 17 FCC Rcd 20559 (2002).

⁵ T-NETIX, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4853-0680-9875, Public Interest Reasons for Grant; T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control, File No. 4829-5131-3939, Public Interest Statement; Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4841-7637-0451, Public Interest Reasons for Grant.

Such conclusory statements are inadequate to meet the Applicant's affirmative burden of proof. The Applicants provide no rationale whatsoever for why the additional financial assets of ABRY will be beneficial and provide no hint of how these new resources would be deployed, instead merely stating that access to them will be in the public interest. Indeed, given the Applicant's assertions that there will be no change in services, prices, or management at the affected companies, it is difficult to picture how the public convenience will be served by the mere fact of access.

Nor are the Applicants convincing in their assertion that the transaction will help continue to provide services. Access to the services is doubtlessly required for public convenience and necessity, but the Applicants make no showing of why this transaction is necessary to continue such services. They have not demonstrated or even asserted that absent this transaction the services would be discontinued by the Applicants or that another service provider could not replace the Applicants if they were to cease their services. Finally, the Applicants rely on the abstract "potential[] [of] expand[ing] or enhanc[ing] those services at new facilities." Notably, the Applicants do not detail any concrete plans to expand or provide any evidence to suggest that such expansions are imminent or even likely. More broadly, they fail to demonstrate how the consummation of the transaction will make such transactions more likely. Such nebulous possibilities and unsupported statements cannot meet the Applicant's affirmative responsibility to prove "by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest."⁶

⁶ In re Echo Star Communications Corp., 17 F.C.C.R. 20559 (2002).

III. APPLICANTS DO NOT PROVIDE SUFFICIENT INFORMATION TO EVALUATE COMPETITIVE HARM FROM THE TRANSACTION

The Commission should perform a market analysis of the proposed transactions because the Applicants have provided insufficient information to assess the competitive impact of the transactions. As a part of the FCC's public interest review, the Commission examines the competitive impact of the proposed transaction. This evaluation is informed by traditional anti-trust principles, but is broader, establishing "not merely that the merger will not 'substantially . . . lessen competition . . . [or] . . . tend to create a monopoly,' but that the merger actually 'will enhance competition.'"⁷ In this case, it is currently impossible to know.

As an initial matter, the Applications do not adequately detail the market in which they operate. The Applicants assert that they will hold less than 10% share of the interstate, interexchange market and that they will not be a dominant local carrier in any of the geographic areas in which they operate.⁸ However, they do not address the unique features of providing inmate calling services, namely that prison-phone providers have a de facto monopoly in the facilities they serve. The prisoners are inherently not mobile and an incarceration facility may only contract with a single provider. As such, the Applicants' consumers have no ability

⁷ In the Matter of the Merger of MCI Communications Corp. and British Telecommunications PLC, GN Docket No. 96-245, Memorandum Opinion and Order, 12 FCC Rcd 15351 (1997) (BT/MCI Order) (quoting NYNEX Corp. and Bell Atlantic Corp., Memorandum Opinion and Order, File No. NSD-L-96-10, FCC 97-286, at ¶ 2 (rel. Aug. 14, 1997)).

⁸ T-NETIX, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4853-0680-9875, Description of Geographic Service Area and Services in Each Area & Presumption of Non-Dominance and Qualification for Streamlined Proceedings; T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control, File No. 4829-5131-3939, Description of Geographic Service Area and Services in Each Area & Presumption of Non-Dominance and Qualification for Streamlined Proceedings; Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control, File No. 4841-7637-0451, Description of Geographic Service Area and Services in Each Area & Presumption of Non-Dominance and Qualification for Streamlined Proceedings.

whatsoever to select alternative carriers. It is therefore unclear if the Applicants' market should appropriately be considered a national market or a local market.

If the Applicants are understood to be competing in a national market, the Applications do not provide enough information to properly assess the competitive impact of the transaction. Specifically, they do not detail the other, potentially complementary holdings of ABRY, Inc., the hedge fund ultimately coordinating the transaction. The Applications describe which FCC-regulated entities each Applicant would be affiliated with as a result of this transaction. This disclosure, and the certification that the Applicants will hold less than 10% market share and that they will not be a dominant local carrier, though, are insufficient to give the complete competitive picture. If ABRY has significant other holdings, it would have strong incentive to orchestrate activities among its interested companies that could cause significant competitive harm. However, without a more detailed disclosure of ABRY's other interests, it is impossible to assess this possibility.

On the other hand, if the Applicants are competing in a series of local markets, it is important to assess the implications of the terminating and originating monopoly at the correctional facility. As discussed above, the Applicants have functional monopolies over the inmates at facilities they serve. Prior to approving the transaction, the Commission should conduct a market analysis to better understand if continuing to allow these companies to exercise monopolistic power is in the public interest.

IV. APPLICANTS' CHARGES ARE NEITHER JUST NOR REASONABLE

The Commission should deny the Application because of the usurious rates the Applicants charge a captured, severely disadvantaged consumer base. All carriers have a statutory obligation to ensure that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable.”⁹ Any charge or practice “that is unjust or unreasonable is declared to be unlawful.”¹⁰

The Applicants’ charges are neither just nor reasonable. For prisoners and their families, often among the poorest and most disadvantaged members of society, the Applicants charge exorbitant fees. Securus’s calls are priced based on where the caller lives and the originating facility with variations in pricing by the time of day.¹¹ The rates vary, but are priced greatly in excess of competitive market conditions prevailing in other areas of the country. For example, Securus’s online rate calculator indicates that a ten minute call at 8 p.m. from Virginia to Alabama’s Eufaula City Jail would cost a caller \$12.95. A thirty minute call at 8 p.m. from Washington, DC to New Mexico’s Vigil Maldonado Detention Center would cost \$30.65. And a sixty minute call from Washington, DC to Michigan’s Wayne County William Dickerson Detention Facility would cost \$57.82. Further detailed evidence of Securus’ unreasonable rates

⁹ 47 U.S.C. § 201(b).

¹⁰ Id.

¹¹ Securus, Rate My Call, <http://www.securustech.net/ratemycall.asp> (entries calculated using an 8:00 p.m. time under the “AdvanceConnect” plan provided as the search default).

and practices have been filed in the rulemaking proceeding the Commission recently opened on this issue.¹²

These rates – each near or more than one dollar per minute – are hardly the highest Securus charges; but they appear representative of charges greatly in excess of commercial practices in more competitive markets where prices for the general public are flat-rated or cost pennies a minute and are steadily falling.

The burden rests upon Applicants to demonstrate that continuation of this disparity is associated with expenses incurred rather than a result of prisoner’s lack of competitive alternatives. The Applicants do not provide sufficient information to conclude that these charges are just or reasonable and the Commission should therefore reject the Applications.

V. CONCLUSION

In view of the foregoing, the Petitions respectfully request that the Commission deny the Applications. The Applicants fail to meet their affirmative burden to demonstrate the contemplated transfer of control is required for public convenience and necessity. The Applications also provide insufficient information to evaluate the potential competitive harm

¹² Human Rights Defense Center Comments, WC Docket 12-375 (filed March 25, 2013); see also John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 *Prison Legal News* 1, 1 (2011) (explaining that, in some cases, Securus Technologies charges a monthly bill statement fee of up to \$2.99 plus a “processing fee” of up to \$6.95 for credit or debit card payments made online or by phone).

resulting from the proposed transfer. The FCC should also deny the Applications because the Applicants charge excessive rates that are neither just nor reasonable.

Respectfully submitted,

/s/ Harold Feld _____

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CERTIFICATE OF SERVICE

I, Harold Feld, hereby certify that on this 11th day of April, 2013, I have caused a copy of the foregoing Petition to Deny of Public Knowledge, United Church of Christ, Office of Communications, Inc., Free Press, and Rainbow/PUSH Coalition to be served as specified upon the parties below:

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DECLARATION OF HAROLD FELD

I, Harold Feld, declare under penalty of perjury on this 11th day of April, 2013 that:

1. I have read the foregoing Petition to Deny of Public Knowledge, United Church of Christ, Office of Communications, Inc., Free Press, and Rainbow/PUSH Coalition.

2. This declaration is submitted in support of the Petition to Deny applications in FCC Docket Number WC 13-79.

3. I am the Senior Vice President for Public Knowledge, an advocacy organization that has worked extensively to improve affordable, non-discriminatory access to broadband and telecommunications services.

4. The allegations of fact contained in the petition are true to the best of my personal knowledge and belief.

/s/Harold Feld

Harold Feld
Senior Vice President
Public Knowledge