



April 4, 2025

**VIA EMAIL AND E-FILING**

**William Lesser**

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The Honorable Alphonso Arnold III  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Commonwealth Keystone Building  
Harrisburg, PA 17120

**Re: Richard Mercaldo v. Securus Technologies, LLC  
Docket No. C-2024-3051564**

Dear Judge Arnold:

This firm represents Securus Technologies, LLC (“Securus”) in the above-referenced matter. Your Honor transmitted to counsel for Securus documents submitted by Complainant Richard Mercaldo (“Complainant” or “Mr. Mercaldo”) (the “Late Filed Exhibits”) and instructed Securus to file any objections to their admission by April 4, 2025. For the following reasons, Securus objects to the admission of the Late Filed Exhibits. Further, even if the Late Filed Exhibits are admitted into the record for this proceeding, these documents do not change the fact that Complainant is not entitled to any relief.

**Objection to the Late Filed Exhibits**

At the hearing before Your Honor on February 26, 2025, Mr. Mercaldo previewed that he had documents and letters that he wanted to submit to support the claims in his Formal Complaint. Complainant had several opportunities to submit these documents before the hearing, including as an exhibit to his Formal Complaint, an exhibit to his Reply to Securus’s Answer, and as an exhibit for the hearing pursuant to Your Honor’s instructions to submit exhibits for the hearing in advance of the hearing. However, Complainant waited until after the hearing and after he presented his case to submit the Late Filed Exhibits, after Complainant has submitted multiple filings and letters with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) and Your Honor. Admitting the Late Filed Exhibits this late in the proceeding would be prejudicial to Securus and does not comport with Pennsylvania law.

Both the PUC’s procedural rules and the General Rules of Administrative Practice and Procedure provide that additional evidence may be admitted before a final decision has been issued by the administrative agency for material changes of fact that have occurred since the conclusion of the hearing. 52 Pa. Code § 5.571; 1 Pa. Code § 35.231; *see also Shoemaker v. State Employees’ Retirement Bd.*, 688 A.2d 751, 752 (Pa. Cmwlth. Ct. 1997) (explaining that “to serve as a basis to reopen the record, the material changes of fact must not have been discoverable prior to the conclusion of the hearing”). Here, this standard to admit additional facts after the hearing has not been satisfied. The Late Filed Exhibits were discoverable before the hearing and Complainant has provided no excuse or reason for his late submission.

Even excusing Complainant's late timing, the Late Filed Exhibits should not be admitted because they constitute inadmissible hearsay evidence. It is well-established that hearsay is generally inadmissible and the Pennsylvania Rules of Evidence define "hearsay" to mean "a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statements." Pa. R.E., Rules 801-02; 225 Pa. Code §§ 801-02; *see also Skotnicki v. Ins. Dep't*, 146 A.3d 271, 282 (Pa. Cmwlth. Ct. 2016) (citing *Myers v. Unemployment Compensation Bd. of Review*, 533 Pa. 373, 377 (1993)) (explaining that hearsay evidence that has been properly objected to "is not competent evidence to support a finding of the administrative agency, whether or not corroborated by other evidence").

The Late Filed Exhibits are inadmissible hearsay. The Late Filed Exhibits are statements that were made by another party, who did not testify at the hearing, and Mr. Mercaldo is offering them into evidence to prove the truth of their contents, namely that Mr. Radons wishes to remove the phone block and has contacted Securus. Securus has no ability to ask Mr. Radons questions about these letters and statements, and in fact, Securus has no ability to determine that these documents are even what Mr. Mercaldo suggests them to be.

The reason hearsay evidence is generally inadmissible is because it "lacks guarantees of trustworthiness fundamental to our system of jurisprudence." *Commonwealth v. Manivannan*, 186 A.3d 472, 480 (Pa. Super. Ct. 2018) (citation omitted). The Supreme Court of Pennsylvania has explained that the primary deficiency in the trustworthiness of hearsay is that the evidence is not subject to cross examination.

Perhaps such a statement's most telling deficiency is it cannot be tested by cross-examination. According to Dean Wigmore, cross-examination is 'beyond any doubt the greatest legal engine ever invented for the discovery of truth.' John Henry Wigmore, 5 Wigmore on Evidence, § 1367 (3d ed. 1940). Nor is the declarant under oath when the out of court statement is uttered. This court has long recognized the oath requirement as a further assurance of reliability.

*Commonwealth v. Smith*, 545 Pa. 487, 491 (1996) (quoting *Heddings v. Steele*, 514 Pa. 569, 573 (1987)). The fact that Securus cannot cross examine Mr. Radons about the statements made in the Late Filed Exhibits renders them untrustworthy. As Securus witness Cameshia Davis testified to at the hearing, Mr. Radons placed a phone block that prevents Mr. Mercaldo from reaching him. Securus has no record of Mr. Radons reaching out to Securus to remove the phone block and nothing would prevent Mr. Radons from accessing Securus to request the phone block be removed. Moreover, Securus recently submitted a letter to Your Honor and copied Mr. Mercaldo to provide information that Mr. Mercaldo could write to Mr. Radons for Mr. Radons to request the phone block be removed by mail. Securus does not know if Mr. Radons is being truthful in the Late Filed Exhibits, if Mr. Radons intends for there to be a phone block, if Mr. Radons wants the phone block to be removed, or even if the letters are actually from Mr. Radons – and this is precisely because Securus cannot cross examine Mr. Radons. Because the Late Filed Exhibits contain inadmissible hearsay that is not subject to cross examination, the Late Filed Exhibits should not be admitted into the record for this proceeding.

## **Complainant Is Not Entitled to Relief**

Even if the Late Filed Exhibits are admitted into the record, the Late Filed Exhibits do not establish that Complainant is entitled to any relief. In honoring a valid request for a phone block, Securus has not violated any Pennsylvania law, nor has Securus violated the Public Utility Code or the Commission's regulations and orders – and Complainant has failed to show any such violation to warrant a decision in his favor.

As Securus has explained, Complainant lacks standing because Mr. Radons requested a phone block to prevent Complainant from calling Mr. Radons. The Supreme Court of Pennsylvania has explained that the hallmark of standing is that “a person who is not adversely affected in any way by the matter he seeks to challenge is not ‘aggrieved’ thereby.” *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 192 (1975). An individual is not aggrieved unless he has a “substantial, direct and immediate interest in the outcome of the litigation.” *Fumo v. City of Philadelphia*, 601 Pa. 322, 337 (2009). The doctrine of standing is designed to “protect against improper parties.” *Interest of K.N.L.*, 284 A.3d 121, 136 (Pa. 2022).

Mr. Mercaldo is an improper party because he did not institute the phone block and he cannot assert the rights of another person who is not a party to this action. Mr. Mercaldo is not aggrieved by Securus because it is Mr. Radons, not Securus, who instituted the phone block that prevents Mr. Mercaldo from reaching Mr. Radons by telephone. The relief requested in the Formal Complaint would be accomplished if Mr. Radons, not Complainant, contacted Securus to remove the phone block. Securus has no ability to remove the phone block at Complainant's request, and as Ms. Davis testified to at the hearing, there are strong public policy reasons for this policy to ensure safety and privacy for people who receive calls from inmates at correctional facilities. Over the course of this proceeding, Securus has provided Complainant with multiple methods that Mr. Radons may use to contact Securus to request the phone block be removed, but it is up to Mr. Radons and not Mr. Mercaldo to remove the phone block. Complainant is not entitled to raise claims on behalf of Mr. Radons, which is precisely what Complainant is attempting to do here. Mr. Mercaldo has no claim against Securus for instituting a phone block as requested by Mr. Radons and only Mr. Radons may request that the phone block be removed.

The Late Filed Exhibits do not change these facts and they should not alter Securus policy and practices concerning phone blocks. Ms. Davis explained at the hearing that even if an incarcerated individual had proof that the phone block was a mistake, Securus would not be able to lift the block at the request of the inmate. Securus is unable to remove a block unless the person who requested the block asks that it be removed. Securus could be subject to significant liability if it deviated from this practice. Accordingly, even accepting the Late Filed Exhibits as true, Securus should not be compelled to remove the phone block and Complainant cannot establish that Securus has violated any applicable law or policy. Complainant does not have standing to request the relief asserted in the Formal Complaint and nothing contained in the Late Filed Exhibits changes this conclusion or establishes that Complainant is entitled to any relief.

We appreciate Your Honor's time and attention to this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "William Lesser". The signature is fluid and cursive, with a long horizontal stroke at the end.

By: William Lesser

WL

cc: Richard Mercaldo, Complainant (See attached Certificate of Service)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                           |   |                           |
|---------------------------|---|---------------------------|
| Richard Mercaldo, ED-4296 | : |                           |
| Complainant               | : |                           |
|                           | : |                           |
| v.                        | : | Docket No. C-2024-3051564 |
|                           | : |                           |
| Securus Technologies, LLC | : |                           |
| Respondent                | : |                           |

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing letter upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

By First Class Mail

Richard Mercaldo, ED-4296  
Smart Communications/PADOC  
SCI Coal Township  
PO Box 33028  
St. Petersburg, FL 33733

Respectfully,

Cozen O'Connor



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Counsel for *Securus Technologies, LLC*

Date: April 4, 2025