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*ADMITTED IN DC ONLY

April 25, 2016

Via Electronic Mail and Federal Express

Sara Clark
Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118

Re: D.T.C. 11-16, Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts

Dear Secretary Clark:

Global Tel*Link Corporation ("GTL"), by its attorneys, respectfully submits the enclosed Brief. In accordance with the Procedural Order issued in the above-referenced matter, three (3) copies of this submission also have been sent to the Hearing Officer, and one copy has been sent to each Department staff member listed on the service list.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

Chérie R. Kiser
Counsel for Global Tel*Link Corporation

Enclosures
cc: Service List

Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Recipients of Collect Calls from	)	
Prisoners at Correctional Institutions in	)	**D.T.C. 11-16**
Massachusetts Seeking Relief from the	)	
Unjust and Unreasonable Cost of such Calls	)	

BRIEF OF GLOBAL TEL*LINK CORPORATION

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Dated: April 25, 2016

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Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls	))))	**D.T.C. 11-16**

BRIEF OF GLOBAL TEL*LINK CORPORATION

Global Tel*Link Corporation ("GTL"),[1] by its attorneys and pursuant to the *Notice of Briefing Schedule* issued by the Massachusetts Department of Telecommunications and Cable (the "Department"),[2] hereby submits its Brief with respect to the status of the above-captioned proceeding.

PRELIMINARY STATEMENT

The Department identified four (4) issues for investigation in its *September 2013 Ruling*.[3] Each of those issues has been addressed by the Federal Communications Commission ("FCC") in its recent inmate calling service ("ICS") orders or the issues are no longer ripe for review based on existing law and the record. Accordingly, the Department should close this proceeding.

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[1] Although not specifically included as a named party, some of Petitioners' claims concern DSI-ITI, LLC ("DSI"), which serves the Norfolk County Correctional Center in Massachusetts. DSI is a wholly owned subsidiary of GTL. Thus, to the extent necessary, GTL submits this Brief on behalf of DSI as well.

[2] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Notice of Briefing Schedule (Mar. 18, 2016) ("*Notice*"). The Hearing Officer subsequently extended the time for filing briefs to April 25, 2016. D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Ruling Securus Technologies Inc. Motion for Extension of Time (Mar. 28, 2016).

[3] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Interlocutory Ruling, at 1-2 (Sept. 23, 2013) ("*September 2013 Ruling*").

BACKGROUND

In 1998, the Department adopted the current rate caps applicable to intrastate Massachusetts ICS calls.[4] Specifically, the Department determined that it was "reasonable and appropriate" to cap ICS per-minute usage rates at those charged by Bell Atlantic (now known as Verizon).[5] The Department also found that inmate calling service providers have "legitimate additional costs" due to "the unique characteristics of inmate calling services."[6] In light of these "additional costs," the Department adopted a maximum surcharge of $3.00 per call in addition to the per-minute usage rates.[7] The Department reaffirmed its rate cap policy in 1999[8] and again in 2004.[9]

The Department commenced this investigation in November of 2011[10] in response to a Petition seeking relief from practices by a defined group of ICS providers – GTL, Securus

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4 D.P.U./D.T.E. 97-88/97-18 (Phase II), *Investigation by the Department of Telecommunications and Energy on Its Own Motion regarding (1) Implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the Rate Policy for Operator Services Providers*, Order on Payphone Barriers to Entry and Exit, and OSP Rate Cap (April 17, 1998) ("*1998 Rate Cap Order*").

5 *1998 Rate Cap Order* at 9, 10. The Department concluded that "capping usage rates at the level of Bell Atlantic's rates provides an administratively efficient way for the Department to ensure that these rates remain reasonable. *See id.* at 10-11.

6 *1998 Rate Cap Order* at 9. The Department determined that inmate service providers' "additional costs" include "(1) costs associated with call processing systems, automated operators, call recording and monitoring equipment, and fraud control programs that are required to ensure security and to deter abuses; (2) higher levels of uncollectibles; and (3) higher personnel costs." *See id.* at 9-10.

7 *1998 Rate Cap Order* at 10.

8 D.P.U./D.T.E. 97-88/97-18 (Phase II), *Investigation by the Department of Telecommunications and Energy on Its Own Motion regarding (1) Implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the Rate Policy for Operator Services Providers*, Motion for Reconsideration of AT&T, and Motions for Reconsideration, Clarification, and Extension of Appeal Period of Bell Atlantic (Oct. 8, 1999).

9 Industry Notice, *Collect Inmate Calls - Rate Cap* (Sept. 3, 2004).

10 D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Letter from Kalun Lee, Hearing (Nov. 11, 2011).

Technologies, and Inmate Calling Solutions (ICSolutions) (the "Respondents").[11] In September 2013, the Department determined the proceeding would be limited to: "the per-call surcharge assessed by ICS providers; the tariffed service and other fees assessed by ICS providers; the telephone service quality provided by Respondents, including the frequency of dropped calls and line noise; and Respondents' billing practices."[12] The Department "dismiss[ed] Petitioners' request to investigate: the usage rate component of the ICS rate-setting mechanism; the frequency and content of recorded warning messages; and the availability and upkeep of telecommunications equipment at correctional facilities."[13] The dismissal of Petitioners' claims regarding the per-minute usage rate was upheld on appeal in February 2014.[14]

During the pendency of this proceeding, the FCC issued two orders addressing ICS matters.[15] The FCC's *First ICS Order* was issued in September 2013. While the majority of the *First ICS Order* was stayed pending judicial review, the interim interstate rate caps adopted in the *First ICS Order* were permitted to take effect on February 11, 2014.[16]

In November 2015, the FCC issued its *Second ICS Order*, which adopted permanent rate caps and ancillary fee caps applicable to both interstate and intrastate ICS, as well as other rules

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[11] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Order on Motions to Extend Time for Responses (Nov. 18, 2011) (noting "the Department directed three parties, Global Tel*Link Corporation ("GTL"), Securus Technologies, Inc. ("Securus"), and Inmate Calling Solutions, LLC ("ICSolutions"), to respond").

[12] *September 2013 Ruling* at 1-2.

[13] *September 2013 Ruling* at 2.

[14] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Order on Appeal of Hearing Officer's Ruling (Feb. 26, 2014).

[15] *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*First ICS Order*"), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan.13, 2014), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases); *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) ("*Second ICS Order*"), *pets. for stay granted in part sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016), *pets. for review pending sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461 (D.C. Cir. filed Dec. 18, 2015) (and consolidated cases).

[16] *Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan.13, 2014).

pertaining to both interstate and intrastate ICS. The FCC's *Second ICS Order* new rules take effect March 17, 2016 for prisons and June 20, 2016 for jails. Numerous parties appealed the *Second ICS Order* to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit").[17] The National Association of Regulatory Utility Commissioners (or "NARUC"), of which the Department is a member, has asked the D.C. Circuit to vacate the FCC's decision on the basis that the FCC has no authority over intrastate inmate calling rates.[18] Several parties also asked the D.C. Circuit to stay implementation of the FCC's rules pending the D.C. Circuit's full review of the decision on the merits.[19] As the *Notice* indicates,[20] the D.C. Circuit stayed the implementation of the FCC's new rate caps and the rule addressing single-call services on March 7, 2015.[21] After issuance of the *Notice*, the D.C. Circuit issued a second order staying implementation of the FCC's new rate caps as applied to intrastate ICS.[22]

As a result of these decisions, the FCC's interim rate caps of $0.21/$0.25 adopted in the *First ICS Order* apply to interstate ICS calls and intrastate ICS *per minute of use rates* remain

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[17] *See, e.g.*, No. 15-1461, *Global Tel*Link Corporation v. FCC*, Petition for Review (D.C. Cir. filed Dec. 18, 2015) (and consolidated cases Nos. 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, and 16-1057). In addition, petitions for review were filed by Securus Technologies, CenturyLink, Telmate, the National Association of Regulatory Utility Commissioners, Pay Tel Communications, and the State of Oklahoma. A request to intervene (*i.e.*, participate in the case) in support of the state of Oklahoma also was filed by the states of Wisconsin, Nevada, Arkansas, Arizona, Louisiana, Missouri, Kansas, and Indiana, and the Indiana Sheriffs' Association, Marion County Sheriff's Office, and Lake County Sheriff's Department. All appeals have been consolidated under the lead case of No. 15-1461.

[18] No. 16-1038, *National Association of Regulatory Utility Commissioners v. FCC*, Petition for Review, at 2 (D.C. Cir. filed Feb. 5, 2016); *see also id.* at 6 (indicating that "NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the telecommunications within their respective borders").

[19] *See, e.g.*, No. 15-1461, *Global Tel*Link Corporation v. FCC*, Motion of Global Tel*Link for Partial Stay Pending Judicial Review (D.C. Cir. filed Jan. 27, 2016). In addition, motions to stay implementation of the FCC's rules were filed by Securus Technologies, CenturyLink, Telmate, and the State of Oklahoma.

[20] *Notice* at 1.

[21] *Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016).

[22] *Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 23, 2016). This decision stayed the FCC's public notice issued on March 16, 2016, which said the interim rate caps applied to both interstate and intrastate calls as referenced in the *Notice*. *See Notice* at 2.

unchanged by the FCC's orders.[23] In addition, the FCC's new ancillary fee caps and other ICS reforms (with the exception of the rule addressing single-call arrangements) are applicable to both interstate and intrastate ICS as of March 17 for prisons or June 20 for jails. In Massachusetts, the currently effective rate cap on intrastate ICS is $0.10 per-minute, and the $3.00 per call surcharge is no longer permissible as explained below. The current Massachusetts per-minute rate is lower than the FCC's interim interstate rate caps adopted in the *First ICS Order* and lower than the permanent interstate/intrastate rate caps adopted in the *Second ICS Order* (which are now stayed).[24]

ISSUES RAISED BY THE *NOTICE*

The *Notice* raises six (6) issues for briefing, and for each issue asks whether that portion of the Department's investigation has been resolved. Each of the issues designated by the Department for investigation has been resolved, either because they have been addressed by the FCC or the issues are no longer ripe for review based on existing law and the record. Accordingly, the Department should close this proceeding.

1. Whether the elimination of the per-call surcharge resolves all concerns regarding the just and reasonableness of the per-call surcharge rate and warrants the Department closing that portion of its Investigation.

Yes, the elimination of the per-call surcharge resolves all concerns regarding the just and reasonableness of the per-call surcharge and warrants the Department closing this portion of the

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[23] WC Docket No. 12-375, *Wireline Competition Bureau Updates Applicable Rates for Inmate Calling Services*, Public Notice, DA 16-332 (rel. Mar. 29, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0329/DA-16-332A1.pdf.

[24] The FCC has indicated that the rate caps adopted in the *Second ICS Order* were based on ICS provider cost information. *See Second ICS Order* ¶ 58. That information included costs for both interstate and intrastate ICS across all 50 states and the data collection requirements did not include site commission's payments as one of the categories of costs to be included in the data. *See First ICS Order* ¶¶ 124-25. The FCC's interim interstate ICS rate caps also based on data from states that eliminated site commissions. *See First ICS* ¶ 62; *see also id.* at n.273 ("Because we conclude site commissions are not part of the cost of ICS, we do not include the site commission profits in setting either the debit, prepaid or collect rate caps.").

investigation.

The *Second ICS Order* adopted new Rule 64.6080, which states: "No Provider shall impose a Per-Call or Per-Connection Charge on a Consumer."[25] A "Per-Call or Per-Connection Charge" is defined as "a one-time fee charged to a Consumer at call initiation."[26] The *Second ICS Order* also preempted any state requirements that are inconsistent with the FCC's new rules.[27] This rule was not stayed by the D.C. Circuit, and applies to both interstate and intrastate ICS. The rule currently is in effect for prisons, and will take effect for jails on June 20, 2016.

As a result of the FCC's *Second ICS Order*, the per-call surcharge established as reasonable by the Department is no longer permissible.[28] The FCC's action to prohibit per-call surcharges moots Petitioners' request that the Department revisit the $3.00 surcharge, and eliminates the need for the Department to "consider Petitioners' allegations and examine the changes to the ICS industry and whether to maintain the per-call surcharge and/or adjust the maximum rate permitted per call."[29] Accordingly, this portion of the Department's investigation should be closed.

2. Whether the elimination of the per-call surcharges and the establishment of interim and final rate caps for ICS service necessitates that the Department investigate whether the $0.10 per-minute rate cap for all intrastate ICS in Massachusetts remains just and reasonable.

The $0.10 per-minute rate cap is not under review in this proceeding. In its earlier ruling, the Department determined that "Petitioners' allegations regarding existing usage rates, taken as true, provide no basis for relief because the current usage rate cap is equivalent to the per-minute cost

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25 *Second ICS Order* at p.162 (setting forth new rule 47 C.F.R. § 64.6080).

26 *Second ICS Order* at p.159 (setting forth revised rule 47 C.F.R. § 64.6000(o)).

27 *Second ICS Order* ¶ 204.

28 *1998 Rate Cap Order* at 9-10.

29 *September 2013 Ruling* at 26.

accepted by Petitioners as just and reasonable."[30] As a result, the Department explicitly "decline[d] to investigate the appropriateness of allowing ICS providers to recover [the] traditional cost of providing conventional collect call services through usage rates or its determination to cap usage rates at the ILEC's tariffed rates."[31] The Commissioner of the Department reaffirmed this decision on appeal.[32]

Furthermore, the appropriate vehicle for consideration of any change to the per-minute usage rate is a generic rulemaking proceeding or a waiver request.[33] As the Department previously has found:

> There are fundamental distinctions between an adjudication and a generic proceeding. In an adjudication, the Department performs its judicial function by affording rights to named petitioners and intervenors, considering evidence, and making specific findings that are binding upon the parties to the proceeding, which can be subsequently appealed by any aggrieved party. G.L. c. 30A, §§11, 14. In contrast, in generic proceedings, the Department proposes policies, invites participation and input from interested persons, and adopts final policies that will be generally applied in future adjudications.[34]

There is no question that administrative agencies are permitted to "adopt policies through adjudication as well as through rule-making," but cognizable boundaries do exist between the two.[35] The Massachusetts Supreme Judicial Court has recognized a "regulation" as a "rule of general application and future effect which may be adopted by an agency to implement or

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30 *September 2013 Ruling* at 19.

31 *September 2013 Ruling* at 20.

32 D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Order on Appeal of Hearing Officer's Ruling (Feb. 26, 2014).

33 *Second ICS Order* ¶¶ 217, 219; *see also, e.g.*, D.P.U. 12-80, *Petition of Borrego Solar Systems, Inc. for an Exception to the Net Metering Regulation* (Nov. 27, 2012) (applying "a good cause standard in considering exceptions or waivers from our regulations").

34 D.P.U. 07-50-B, *Promote Efficient Deployment of Demand Resources* (Oct. 19, 2008).

35 *Arthurs v. Bd. of Registration in Medicine,* 418 N.E.2d 1236, 1246 (Mass. 1981) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)).

interpret the law administered by it," and an adjudicatory decision "as one in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing."[36] The Department and Commissioner have ruled on this issue and there are no legal grounds to support the review of the per-minute usage rate in this adjudicatory proceeding.[37]

3. Whether the FCC's establishment of specific taxes and ancillary service charges with price caps sufficiently resolved all concerns regarding the service and other fees contained in ICS providers' tariffs and warrants the Department closing that portion of its Investigation.

Yes, the FCC's establishment of rules regarding taxes and ancillary fee caps resolve all concerns regarding the service and other fees in ICS providers' tariffs and warrants the Department closing this portion of its investigation.

The issue designated for investigation in the *September 2013 Ruling* was "whether it is just and reasonable to allow ICS providers to assess service or other fees in addition to the per-call surcharge and per-minute usage rate."[38] The FCC's *Second ICS Order* has resolved this question. The FCC has established a defined set of ancillary fees and fee caps that ICS providers may charge for both interstate and intrastate ICS.[39] The FCC also has adopted rules governing the pass-through of both mandatory and authorized taxes and regulatory fees in connection with the provision of

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[36] *Cambridge Elec. Light Co. v. Dep't of Pub. Utils.,* 295 N.E.2d 876, 883-84 (Mass. 1973) (internal quotation marks omitted).

[37] In addition, "the application of new principles or standards announced in a decision may be so unfair as to amount to an abuse of discretion." *Town of Brookline v. Comm'r of Dep't of Environmental Quality Eng'g,* 439 N.E.2d 792, 799 (Mass. 1982); *accord Bell Aerospace Co.,* 416 U.S. at 294. Policy adoption via adjudication will not be upheld in instances where it "suffers from any constitutional defect or statutory bar" or is not "rationally related to furthering the [agency's] purpose." *Anusavice v. Bd. of Registration in Dentistry,* 889 N.E.2d 953, 961 (Mass. 2008); *see also Attorney Gen. v. Dep't of Pub. Utils.*, 900 N.E.2d 862, 864 (Mass. 2009) ("although the department may establish a policy in an adjudicatory proceeding, the application of that policy to other parties may, depending on the nature of the policy at issue, require an additional process, as it does here").

[38] *September 2013 Ruling* at 28.

[39] *Second ICS Order* ¶ 9.

ICS.[40] The FCC's determination of the permissible ancillary fees, taxes, and regulatory surcharges that ICS providers may assess eliminates the need for the Department to address Petitioners' concerns regarding ICS provider fees. These fee caps and practices must be implemented on the respective effective dates with respect to both the interstate and intrastate ICS.

In addition, Petitioners will continue to have the same recourse if issues arise regarding ICS providers' intrastate tariffed rates and fees. GTL and other ICS providers are required to maintain and file schedules and tariffs with the Department for intrastate telecommunications services.[41] Those tariffs are subject to Department review and approval to ensure they are just and reasonable,[42] as required by Massachusetts law.[43] Any rates approved by the Department, "must be reasonable as determined by the [Department] in the first instance."[44] Once a provider's rates are "examined and approved by the Department," they are "ipso facto just and reasonable."[45] There is no need for the Department to take any further action in this proceeding with respect to ICS provider fees.

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40 *Second ICS Order* ¶¶ 190-192.

41 Mass. Gen. Laws c.159, § 19.

42 Mass. Gen. Laws c.159, § 19 ("Unless the department otherwise orders, no change shall be made in any rate, joint rate, fare, telephone rental, toll, classification or charge, or in any rule or regulation or form of contract or agreement in any manner affecting the same as shown upon the schedules filed in accordance with this chapter, except after thirty days from the date of filing a statement with the department setting forth the changes proposed to be made in the schedule then in force and the time when such changes shall take effect.").

43 Mass. Gen. Laws c.159, § 17.

44 *See, e.g.*, *Am. Tel. & Tel. Co. v. IMR Capital Corp.*, 888 F. Supp. 221, 246 (D. Mass. 1995) ("Any rate approved by the DPU is considered to be *prima facie* lawful until it has been changed or modified by the DPU. . . . It is thus clear that the requirement of Section 17 that rates be reasonable means that they must be reasonable as determined by the DPU in the first instance.") (citing Mass. Gen. Laws c.159, § 17).

45 Mass. Gen. Laws c.159, § 17; D.T.E. 04-33, *Verizon New England, Inc. dba Verizon Massachusetts*, Arbitration Order (July 14, 2005) ("Because those rates were examined and approved by the Department in our last TELRIC case, D.T.E. 01-20, which was not appealed, those rates are ipso facto just and reasonable and do not provide double recovery; as such, Verizon may charge those rates when it begins performing the associated [routine network modification] activities for CLECs.") (citing Mass. Gen. Laws c.159, § 17).

4. Whether the FCC's Order resolves concerns about dropped calls and other service quality issues and warrants the Department closing all or part of that portion of its Investigation.

The Department should close its investigation regarding dropped calls and other service quality issues for the following reasons:

First, while the FCC's *Second ICS Order* does not specifically address service quality issues, the FCC's elimination of per-call surcharges effectively moots Petitioners' concerns about dropped calls and warrants closing this portion of the Department's investigation. Petitioners' primary concern regarding dropped calls was the requirement to "pay an additional connection surcharge of up to $3.00 when the call is reconnected."[46] The elimination of the per-call surcharge eliminates any additional charges for reconnecting a dropped call

Second, Petitioners admit that the vast majority of "dropped calls" are due to the detection of three-way calling, third-party calls, call forwarding, and the like.[47] Under Massachusetts law, any attempt to access a three-party line or conference call triggers an automatic disconnection.[48] As a result, GTL's system is engineered to minimize false disconnects while complying with this requirement. In addition, corrections personnel may monitor inmate calls in real-time and may disconnect a call-in-progress based on their discretion.[49] Accordingly, a disconnected or dropped

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[46] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls, at 5 (filed Aug. 31, 2009).

[47] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Amendment #1 and Supplement on Quality of Service, at 12-14 (filed May 18, 2010) ("First Petition Amendment").

[48] 103 Mass. Code Regs. 482.06(3)(b).

[49] Corrections authorities have broad discretion over the management of their correctional facilities, especially in the context of regulations that concern institutional security issues. *See, e.g.*, Mass. Gen. Law c.124, § 1(b), (c), (q) (providing the Massachusetts DOC with the statutory authority to (1) establish and enforce standards for all state correctional facilities; (2) maintain security, safety, and order at all state correctional facilities; and (3) make and promulgate necessary rules and regulations incident to the exercise of powers and the performance of duties for things such as communication privileges); Mass. Gen. Law c.124, § 1(q) (requiring the DOC to establish standards for county correctional facilities); *Cacicio v. Secretary of Public Safety*, 422 Mass. 764 (1996) (approving regulations because the DOC "enacted the regulations for the legitimate purpose of improving the security of the

call does not necessarily suggest a "service quality" issue.

Third, the Department should close the investigation into service quality because Petitioners have ignored the established procedures for addressing complaints. Only two (2) of the 47 original Petitioners previously contacted GTL regarding service quality issues, and in those 2 cases where they did, the complaint was reviewed by GTL and resolved, with refunds issued as appropriate.[50] None of the other original Petitioners complied with the Department's long-favored complaint policy, which is to first contact the telephone provider to resolve any problem.[51] Filing a complaint with the Department is appropriate only if the telephone provider is unable to resolve the problem in the first instance.[52] Individuals using GTL's services have numerous ways to contact GTL. GTL's contact information for its billing and customer service departments is included on customer bills for those customers placing collect call charges on their local exchange carrier bill, and is also available on GTL's website. To ensure inmates have access to information regarding GTL's services, GTL makes posters available to correctional facilities, which can be hung in each individual inmate calling location. The poster provides detail on the applicable call rates, instructions on how to place a call, and contact information for lodging complaints and inquiries. This information is provided in both English and Spanish. In

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Massachusetts correctional system, and they logically advance that goal"); *Grand Jury Subpoena*, 454 Mass. 685 (2009) (upholding county correctional facility regulations governing inmate telephone use). The Department has no jurisdiction over correctional facility policies. *See, e.g.*, *Breest v. Dubois*, No. 94-1665H, 1997 WL 449898 (Mass. Super. 1997) (holding that the Massachusetts DOC has the authority to enter into contracts requiring commissions on inmate calls because the DOC is responsible for making and entering into any contracts and agreements necessary for the performance of its duties, which includes maintaining security, safety and order at all state correctional facilities).

[50] D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Global Tel*Link Corporation Response to Petition, at 19-20 (dated Jan. 20, 2012).

[51] These instructions are found at: http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/consumer-dtc/file-a-complaint.html.

[52] *See id.*; *see also* D.P.U. 18448, Rules and Practices Relating to Telephone Service to Residential Customers (for residential telephone complaints, requiring the customer to first notify the provider and then contact the Department if the customer is not satisfied with the resolution).

some cases, GTL also employs an on-site administrator who is available to provide inquiring inmates with additional information to resolve complaints regarding the inmate calling system.

Fourth, this portion of the investigation should be closed as Petitioners have not substantiated or supported any of their so-called service quality claims. Petitioners consistently have been unable to provide affidavits, discovery responses, or other verifiable information regarding their service quality allegations.[53] GTL takes complaints regarding the quality of its inmate calling services seriously. When issues regarding the service quality of an inmate call are brought to GTL's attention (either from the correctional facility, the prisoner, or the prisoner's family and friends), GTL reviews the call detail record and/or the recording of the telephone call at issue. Based on that investigation, GTL determines whether a credit or refund is warranted for that particular call or whether there is a larger service issue to be remedied. Petitioners, however, have never offered sufficient detail that would allow GTL to conduct an investigation. Petitioners' non-specific and generalized claims made in 2010 do not provide adequate information that would allow GTL to address a specific service quality issue with a particular telephone call. Petitioners' original affidavits offered only generalities in terms of "sometimes" and "often," which do not provide any concrete information from which GTL could determine whether a service quality issue in fact existed during a particular call. GTL also has been unable to obtain additional information regarding Petitioners service quality claims during the discovery

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[53] Several of the original Petitioners failed to include an affidavit. *See* D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Global Tel*Link Corporation Response to Petition, at 19-20 (dated Jan. 20, 2012). Further, roughly 40% of all the Petitioners failed to respond to GTL's discovery requests, and counsel for Petitioners offered no reasonable justification for the failure to respond or any assurances of when, or even if, responses would be forthcoming. *See* D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Global Tel*Link Corporation's Motion to Compel Responses to Discovery Requests, at 3 (dated May 30, 2014).

process.[54]

Accordingly, this portion of the Department's investigation should be closed. Petitioners' concerns regarding additional charges have been resolved with the elimination of the per-call surcharge, and they have not provided sufficient or credible evidence to support their service quality allegations after numerous opportunities to do so.[55] To the extent Petitioners can identify any ICS service quality issues with specificity, those concerns should be addressed through the normal complaint channels, not through this adjudicatory proceeding. There is no need for the Department to take any further action in this proceeding with respect to service quality issues.

5. Whether the FCC's Order resolves concerns about the adequacy of billing details and warrants the Department closing that portion of its Investigation.

Existing law and the new requirements adopted in the *Second ICS Order* resolve concerns about the adequacy of billing detail and warrant the Department closing this portion of its investigation.

GTL is subject to the FCC's truth-in-billing rules, which apply to "all bills containing charges for intrastate and interstate services."[56] GTL also is subject to the new disclosure rules adopted by the FCC in the *Second ICS Order*, which require ICS providers to disclose their interstate, intrastate, and international rates and ancillary service charges to consumers and to ensure consumers "have accurate and accessible information about ICS providers' services."[57]

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[54] *See generally* D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Global Tel*Link Corporation's Motion to Compel Responses to Discovery Requests (dated May 30, 2014).

[55] D.T.E./D.P.U. 06-53, *Investigation as to the propriety of the rates and charges set forth in M.D.T.E. No. 5* (Apr. 30, 2007 ("the Company would be expected to present to the Department credible evidence and explanation"); D.P.U. 15576, *Maynard Lender v. New England Telephone & Telegraph Company* (Sept. 7, 1967) (finding there was not "sufficient evidence" to make a finding).

[56] 47 C.F.R. § 64.2400 *et seq.*

[57] *Second ICS Order* ¶¶ 278-81.

GTL also has legal requirements to maintain call detail records.[58] The *Second ICS Order* specifically contemplates that consumers may request an optional paper billing statement from ICS providers, and allows an ICS provider to impose a fee for this optional service.[59] GTL customers are able to access their call detail information via GTL's website and through GTL's customer service representatives subject to compliance with the FCC's customer proprietary network information ("CPNI") rules.[60] Under those FCC rules, GTL may only release call detail information under certain circumstances and subject to specific precautions.[61]

The Massachusetts Department of Correction ("DOC") also informs prepaid and debit account users of their options with respect to call records: "Monthly statements are not mailed. Call records will be provided by request. As with all collect call types, we suggest customers keep a log of calls accepted for personal verification."[62] For inmate call detail inquiries related to inmate debit accounts, GTL employs an on-site administrator at Massachusetts DOC facilities who provides inquiring inmates with the numbers called, the times of the calls, the duration of the calls, and the cost of the calls.

In addition, the Department already has adopted rules and practices regarding the provision of intrastate telecommunications services to residential customers, including the type of information

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[58] 47 C.F.R. § 42.6 ("Each carrier that offers or bills toll telephone service shall retain for a period of 18 months such records as are necessary to provide the following billing information about telephone toll calls: the name, address, and telephone number of the caller, telephone number called, date, time and length of the call.").

[59] *Second ICS Order* ¶ 169.

[60] 47 C.F.R. § 64.2010.

[61] *See, e.g., Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* 22 FCC Rcd 6927, ¶ 13 (2007) ("We find that the release of call detail over the telephone presents an immediate risk to privacy and therefore we prohibit carriers from releasing call detail information based on customer-initiated telephone contact except under three circumstances. First, a carrier can release call detail information if the customer provides the carrier with a pre-established password. Second, a carrier may, at the customer's request, send call detail information to the customer's address of record. Third, a carrier may call the telephone number of record and disclose call detail information. A carrier may disclose non-call detail CPNI to a customer after the carrier authenticates the customer.").

[62] These instructions can be found at: http://www.mass.gov/eopss/law-enforce-and-cj/prisons/offender-progs/advancepay-faq.html.

appearing on customer bills, security deposit procedures, disconnection notices, resolution of disputed claims, deferred payment arrangements, and the discontinuance of service.[63] In 2006, the Department opened a proceeding to review potential changes to these rules, but no final rules were adopted.[64] There is no need for the Department to take any further action in this proceeding with respect to billing issues.

6. Whether any changes to the scope of the proceeding would moot any of the pending discovery requests.

For the reasons explained above, this proceeding should be closed, which would eliminate the need for the Department to address the pending discovery motions. Review of the pending discovery motions is no longer necessary in light of the *Second ICS Order*. For example, elimination of the per-call surcharge moots much of Petitioners' outstanding discovery motion relating to Petitioners' need for ICS costs, revenue, and profitability.[65] Similarly, the *Second ICS Order* undermines Petitioners' outstanding discovery motion relating to information on correctional facility site commissions[66] as the FCC specifically declined to prohibit the payment of site commissions by ICS providers.[67] Further, site commission payments are outside the scope of this proceeding. As the Department has acknowledged,[68] it has no jurisdiction over

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63 D.P.U. 18448, *Rules and Practices Relating to Telephone Service to Residential Customers* (1977).

64 D.T.E. 06-8, *Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers*, Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers (Apr. 7, 2006).

65 *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners' Motion to Compel Responses of Securus and Global Tel*Link to Interrogatories and Requests for Production, at 5 (dated May 30, 2014).

66 *Id.* at 9.

67 *Second ICS Order* ¶ 128.

68 During the July 2012 hearing in this matter, a member of the public asked a question about commissions, and the hearing officer responded: "It is not appropriate for me to answer that question particularly since the Department of Telecommunications and Cable does not issue rules and does not run the prison system." *See* D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable cost of such Calls*, Hearing Transcript, at 164 (July 19, 2012).

correctional facilities' right to seek site commissions.[69]

In addition, the purpose of discovery is to permit the parties and the Department 'to gain access to all *relevant* information in an efficient and timely manner.'"[70] "Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled."[71] Petitioners' failure to respond to GTL's information requests frustrates this purpose. For example, GTL's pending motion requests the Department to compel Petitioners to provide information to support their alleged service quality issues.[72] There must be "sufficient evidence" in the record to support Petitioners' allegations,[73] and that simply does not exist here. Accordingly, the issues related to additional discovery are moot or beyond the scope of the Commission's jurisdiction.

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[69] *Breest v. Dubois*, Civ. A. No. 94-1665H, 1997 WL 449898 (Mass. Super. Ct. July 28, 1997) (holding that the Massachusetts DOC has the authority to enter into contracts requiring commissions on inmate calls because the DOC is responsible for making and entering into any contracts and agreements necessary for the performance of its duties, which includes maintaining security, safety and order at all state correctional facilities).

[70] D.T.E. 01-70, *In re Fiber Technologies Networks, L.L.C.*, 2002 WL 32101642, at *15 (Dec. 24, 2002) (quoting 220 C.M.R. § 1.06(6)(c)(1)).

[71] 220 C.M.R. § 1.06(6)(c)(1).

[72] *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Global Tel*Link Corporation's Motion to Compel Responses to Discovery Requests (dated May 30, 2014).

[73] D.P.U. 94-50, *Petition of New England Telephone and Telegraph Company d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Massachusetts Intrastate Telecommunications Services* (May 12, 1995).

CONCLUSION

For the foregoing reasons, the Department should close this proceeding. The issues identified for investigation in the *September 2013 Ruling* have been addressed by the FCC or are no longer ripe for review based on existing law and record.

Respectfully submitted,

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