

**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)

MOTION FOR CONFIDENTIAL TREATMENT

Global Tel*Link Corporation (“GTL”), by its attorneys, hereby respectfully requests that the Massachusetts Department of Telecommunications and Cable (“Department”) protect from public disclosure and provide confidential treatment for portions of GTL’s responses to Interrogatories Nos. 3, 16, and 20 as set forth in GTL’s Responses to Petitioners’ First Set of Interrogatories (collectively and hereinafter, “Confidential Responses”). The Confidential Responses contain confidential, proprietary, and competitively sensitive information under Massachusetts law and therefore are entitled to protection from public disclosure.

In accordance with the February 27, 2014 *Procedural Order*, GTL has conferred with representatives for Prisoners’ Legal Services of Massachusetts (“PLS”), Securus Technologies, Inc. (“Securus”), and Inmate Calling Solutions, LLC (“ICSolutions”) on the use of a non-disclosure agreement to govern access to and use of the Confidential Responses in this proceeding. On April 29, 2014, GTL provided a draft non-disclosure agreement to PLS, Securus, and ICSolutions for review and comment. If the Department affords the Confidential Responses confidential treatment as requested herein, GTL respectfully requests that the Department limit disclosure of the Confidential Responses to those parties that have executed a non-disclosure agreement with GTL.

In support of this Motion, GTL states the following:

1. All documents and data received by the Department generally are considered public records and are made available for public review. *See, e.g.*, G.L. c. 66, § 10; G.L. c. 4, § 7(26). Massachusetts law, however, permits the Department to “protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings” before the Department. G.L. c. 25C, § 5. The statute establishes a three-part standard for determining whether, and to what extent, information filed by a party may be granted confidential treatment. *See* D.T.C. 13-6, *Hearing Officer Ruling on Petitions for Intervention, Request for Limited Participant Status, Motion for Admission Pro Hac Vice, Motion for Confidential Treatment, Non-Disclosure Agreements, and the Other Party to the Agreement* at 8 (June 28, 2013) (hereinafter “June 28 Hearing Officer Ruling”).

2. Under the first component of G.L. c. 25C, § 5, the information for which confidential treatment is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information.” In determining whether information is confidential, Massachusetts courts have reviewed: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Jet Spray Cooler, Inc. v. Crampton*, 282 N.E.2d 921, 925 (1972); *see also* June 28 Hearing Officer Ruling at 9. The Department gives “considerable weight” to the fourth factor, and “specifically whether the public release of the information could expose a company to a competitive

disadvantage.” June 28 Hearing Officer Ruling at 9-10 (citing numerous other cases holding the same).

3. The Confidential Responses constitute trade secrets and confidential, competitively sensitive, proprietary information. GTL is a privately-held company. None of the information contained in the Confidential Responses is publicly available and disclosure of the information could provide GTL’s competitors with undue, unique insight into GTL’s business operations in Massachusetts and nationwide. With respect to the total number of intrastate calls completed by each of GTL’s Massachusetts correctional facility contracts (Interrogatory Response No. 3) and the number of completed calls nationwide (Interrogatory Response No. 20), the Department previously has found that confidential treatment should be afforded to subscriber counts and service-specific information, such as revenue per-subscriber. *See, e.g.*, D.T.C. 11-12, Hearing Officer Ruling at 10, 11 (Dec. 19, 2012). With respect to the complaint information (Interrogatory Response Nos. 16 and 20), the Department has limited disclosure of information that would give competitors insight into business operations, strategy, and expenses, which could be used to unfairly undermine a company’s market position. *Id.* at 12. Public disclosure of the information contained in the Confidential Responses could provide an opportunity for GTL’s competitors to use the proprietary information to unfairly undermine GTL’s market position given that such information is not otherwise publicly available. *Id.*

4. Under the second component of G.L. c. 25C, § 5, the party seeking confidential treatment must overcome the statutory presumption that all information is public information by “proving” the need for non-disclosure. June 28 Hearing Officer Ruling at 8. The Department “must balance the moving party’s proof against the presumption in favor of disclosure, and the specific reasons that disclosure of the information benefits the public interest.” June 28 Hearing

Officer Ruling at 12; *see also* D.T.C. 08-11, *Order* at 8 (2009); D.T.C. 09-9, *Order* at 10-11 (2010). This requires an evaluation of the measures the moving party has taken to protect the confidentiality of the information for which it seeks protection, and the extent to which the Department previously has protected similar information. June 28 Hearing Officer Ruling at 12-13.

5. The Department routinely has afforded confidential treatment to certain categories of materials such as marketing expenses, employee compensation, internal policies and procedures, internal training materials, corporate financial information of private companies, and the number of employees at a particular location. *See, e.g.*, D.T.C. 11-12, Hearing Officer Ruling at 8, 14, 15 (Dec. 19, 2012). The Department also has determined that non-public data of a telecommunications company that could provide its competitors with “undue, unique insight into the Company’s business model” should be deemed confidential. *Id.* (granting confidential treatment to the number of wireless subscribers by state). Moreover, the Department has found “service-specific revenues are competitively sensitive because disclosure might give competitors undue insight into a company’s proprietary financial operations.” *Id.* at 11 (protecting revenue per subscriber for individual wireless plans). The Department also has limited disclosure of information that would give competitors insight into business operations, strategy, and expenses, which could be used to unfairly undermine a company’s market position. *Id.* at 12.

6. GTL satisfies the second prong of G.L. c. 25C, § 5. The information contained in the Confidential Responses has been compiled based on GTL’s internal databases and records, and GTL has maintained the information as confidential. GTL engages in practices to prevent the disclosure of the information in the Confidential Responses to third parties, and the Confidential Responses have not been publicly disclosed outside of the company. Further, the

Confidential Responses reflect the type of information the Department routinely protects from public disclosure.

7. Under the third component of G.L. c. 25C, § 5, even where a party proves a need for non-disclosure, the Department may grant confidential treatment to only so much of that information as is necessary to meet the established need, and may limit the term or length of time such protection will be in effect. June 28 Hearing Officer Ruling at 8.

8. GTL's request for non-disclosure of the Confidential Responses is limited. GTL has sought protection for only the specific pieces of information that is proprietary, confidential, and competitively sensitive. There is no compelling need for public disclosure of the Confidential Responses, and the harm that would result from disclosure of the Confidential Responses far outweighs the public interest in accessing the information. Further, protection of the Confidential Responses will not restrict the parties to this proceeding from participating in the administrative process as they may seek access to the Confidential Responses via an executed non-disclosure agreement as discussed below.

9. If the Department protects the Confidential Responses from public disclosure under G.L. c. 25C, § 5, GTL respectfully requests the Department also limit disclosure of the Confidential Responses to those parties that have executed a non-disclosure agreement with GTL. In Department proceedings involving confidential information, the Department routinely allows the parties to utilize mutually acceptable non-disclosure agreements to govern access to and use of confidential information, and then submit such agreements to the Department. *See, e.g. D.T.C. 97-95, Interlocutory Order on: (1) Motion for Order on Burden of Proof; (2) Proposed Nondisclosure Agreement; and (3) Requests for Protective Treatment* at 9 (July 2, 1998); June 28 Hearing Officer Ruling at 14-15. The non-disclosure agreement proposed by

GTL balances the need to protect GTL's confidential information with the parties' need to access the Confidential Responses to participate in this proceeding. *Cf.* June 28 Hearing Officer Ruling at 15.

10. In the event GTL's request for confidential treatment is denied in whole or in part, GTL requests that the Hearing Officer provide counsel for GTL with notice of that determination prior to making the Confidential Responses available to the public. GTL further requests that the release of the Confidential Responses be stayed until such time as an appeal of the Hearing Officer's ruling is resolved. Disclosure of the Confidential Responses without affording GTL an opportunity to contest a finding against confidentiality would prejudice GTL and render moot any successful appeal.

Accordingly, GTL respectfully requests that the Department (1) afford confidential treatment to the Confidential Responses identified herein and exclude those Confidential Responses from the public record of this case, and (2) limit disclosure of the Confidential Responses to those parties that have executed a non-disclosure agreement with GTL. If GTL's request for confidential treatment is denied, GTL respectfully requests that the release of the Confidential Responses be stayed pending an appeal of that decision.

Respectfully submitted,

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Dated: April 29, 2014

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CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 29th day of April 2014, I served a copy of the foregoing Motion for Confidential Treatment on the following via the method indicated:

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CERTIFICATE OF SERVICE

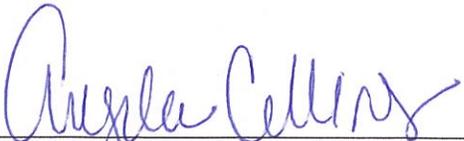
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