

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)

**RESPONSE OF GLOBAL TEL*LINK CORPORATION TO PETITIONERS’
EMERGENCY MOTION TO REQUIRE COMPLIANCE WITH MASSACHUSETTS
INMATE CALLING RATE CAP**

Global Tel*Link Corporation (“GTL”), by its attorneys and pursuant to 220 C.M.R. 1.04(5), respectfully submits this response to Petitioners’ Emergency Motion to Require Compliance with Massachusetts Inmate Calling Rate Cap. The Department should deny the motion. First, Petitioners’ motion is improperly filed under this matter. The Department has excluded the investigation into the propriety of the per-minute usage rate cap in this proceeding and the Petitioners do not have standing to seek relief as the motion fails to allege that Petitioners have suffered any harm. Second, GTL is in compliance with the rate cap. It is charging no more than \$0.10 per minute for intrastate inmate calls and any briefly applied over charges were fully refunded before this motion was filed, making any request for relief moot. Finally, Petitioners have filed a meritless and wasteful motion that alleges no harm and makes assumptions based on Petitioners’ counsel’s review of the Massachusetts Department of Correction (“MA DOC”) contract with GTL.¹ For these reasons, the Department should deny the motion in its entirety.

¹ See Letter dated April 1, 2016, from Ms. Bonita Tenneriello to Cahill Gordon & Reindel, LLP, attached hereto as Exhibit 1. The letter was sent on a Friday and demanded a response by the following Monday.

ARGUMENT

I. Petitioners' Motion Is Improperly Filed In This Matter and They Do Not Have Standing to Assert the Requested Relief

Petitioners' have improperly filed this motion in docket D.T.C. 11-16. Petitioners allege that it is related to D.T.C. 11-16 because "the adequacy of the \$0.10 per minute rate is at issue in this case." Petitioners are wrong. The Department has twice rejected Petitioners' attempts to have the per minute rate investigated as part of Petitioners' complaint proceeding. *Pet. of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls* ("In re Inmate Calls"), Hearing Officer Interlocutory Ruling at 18-20 (Sept. 23, 2013); *In re Inmate Calls*, Order on Appeal of Hearing Officer's Ruling (Feb. 26, 2014) (finding that hearing officer did not abuse discretion in declining to open investigation into usage rate cap). The Department should reject Petitioners' conspicuous attempt to skirt the Department's previous orders.²

This motion, if anything, is a pleading seeking separate and unique relief from the issues in D.T.C. 11-16. Therefore, it should be dismissed for failing to comply with the requirements of 220 C.M.R. 1.04(1).

Finally, Petitioners lack standing. In order to be a party to an action, Petitioners must be "specifically named persons whose legal rights, duties or privileges are being determined in an adjudicatory proceeding." 220 C.M.R. 1.03(2). *See also* Mass. Gen. Laws ch. 30A, § 1(3)(a); *Burlington v. Bedford*, 417 Mass. 161, 164 (1994) ("Only persons who have themselves suffered, or who are in danger of suffering" have standing); *Bonan v. Boston*, 398 Mass. 315, 320 (1986)

² Furthermore, if Petitioners were seeking to add these new claims to their initial petition, they were required to first seek leave to amend from the Department, as required by 220 C.M.R. 1.04(3). Their failure to do so is another ground for denying the motion.

(standing requires “a definite interest in the matters in contention in the sense that [a plaintiff’s] rights will be significantly affected by [the] resolution of the contested point”). Not only is the complained of conduct outside the scope of this adjudicatory proceeding, Petitioners have failed to allege that any of them have suffered any harm because of the alleged wrongdoing or that they would benefit in some way from the relief sought. Nowhere in their motion do Petitioners allege that they themselves paid higher than \$.10 per minute in violation of the rate cap or that they would be entitled to a refund. For this reason alone this motion should be denied.

II. GTL Is In Compliance with the Inmate Calling Service Rate Cap

Petitioners request that the Department “declare unlawful the rates charged under GTL’s amended contract with the [MA DOC] and order GTL to refund payments in excess of its tariffed per-minute rate.” This hastily filed motion must be denied because GTL is in compliance with the rate cap and any briefly applied over charges were refunded prior to the filing of Petitioners’ motion. There is no relief for the Department to grant.

Under the *2015 FCC Order*,³ inmate calling service providers had until March 17, 2016 to modify any existing contracts for prisons to comply with, *inter alia*, new inter- and intrastate rate caps. *2015 FCC Order* ¶ 251. However, on March 7, 2016, the D.C. Circuit issued a partial stay of the *2015 FCC Order*, which appeared to stay the implementation of the *2015 FCC Order* rate caps for intrastate rates.⁴ This order caused confusion about the scope of its ruling, leading an inmate calling service provider, Telmate, LLC, to seek clarification as to whether certain interim FCC-mandated rate caps would apply to intrastate, as well as interstate calls.⁵ In

³ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (“*2015 FCC Order*”).

⁴ Order, *Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 7, 2016).

⁵ See Letter from Brita Strandberg, Counsel to Telmate, LLC, to Matthew DelNero, Chief,

response, on March 16, a day before the rate caps were to take effect for prisons, the FCC issued a public notice asserting that the interim rate caps applied to both inter- and intrastate calls.⁶ This public notice caused more confusion and marketplace chaos, leading to an emergency petition the following day to the D.C. Circuit to enforce its March 7, 2016 stay. The D.C. Circuit responded to this petition by issuing an order on March 23, 2016, further staying a portion of the *2015 FCC Order* regarding the application of the FCC interim rate caps to intrastate ICS. *See Order, Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 23, 2016).⁷

In the midst of all of this confusion and in order to comply with the March 17th deadline, GTL and MA DOC amended their inmate calling systems contract to permit per-minute calling rates of up to \$0.11 for pre-paid calls, \$0.14 for collect calls, and \$0.1075 for debit calls. *See Exhibit 1 to Petitioners' Emergency Motion ("MA DOC Contract Amendment")*. At that moment in time, the parties believed that the rates in the MA DOC contract amendment, executed on March 17, were well within the range of permissible rates.

However, upon the release of the March 23, 2016 stay, GTL reexamined all contracts negotiated up to that point, including the MA DOC contract. GTL realized that the contract needed to be amended to apply the \$0.10 per-minute rate cap. Furthermore, upon realizing that customers were being charged rates higher than the \$0.10 per-minute rate cap, GTL immediately

Wireline Competition Bureau, FCC, WC Docket No. 12-375 (filed Mar. 11, 2016).

⁶ *See FCC Public Notice, Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for the Provisions of the Inmate Calling Services Second Report and Order* (March 16, 2016), attached hereto as Exhibit 2.

⁷ The level of confusion was so extreme that the FCC issued a second public notice on March 29, 2016 attempting to untangle these rulings. *FCC Public Notice, Wireline Competition Bureau Updates Applicable Rates for Inmate calling Services* (March 29, 2016), attached as Exhibit 3.

took steps to modify its billing systems and identify any customers that were overcharged.⁸ The company corrected the billings, identified all of the customers entitled to a refund, and issued all of the refunds by April 4, 2016 -- the day before Petitioners filed their motion. *See* Declaration of Steve Montanaro, ¶¶ 3-6, 8 attached hereto as Exhibit 4 (“Montanaro Decl.”). All of the overcharges were automatically refunded back to affected customers and no action was needed on the part of any customer to receive a refund. *Id.* at ¶ 7.

All of these steps have been reported to MA DOC customers. GTL has placed a notice on the home page of its website notifying customers of possible overcharges for a brief period of time and that refunds have been issued. In addition, GTL has emailed those refunded MA DOC customers who have supplied an email address a copy of this notice. Montanaro Decl. at ¶ 9. Consequently, GTL is in compliance with the Department’s per-minute rate cap and there is no relief to be granted. Petitioners’ motion should be denied. *See, e.g., Motion of Alternate Power Source, Inc. for the Dep’t of Pub. Utilities to Open A New Investigation Regarding the Allocation of Congestion Charges by W. Massachusetts Elec. Co. or, in the Alternative, to Reopen W. Massachusetts Elec. Co., D.T.E. 01-36/02-20, & W. Massachusetts Elec. Co., D.T.E. 97-120, Pursuant to G.L. C. 164 Ss 76, 78, 93, & 94 & 220 C.M.R. S 1.11(8), D.P.U. 08-3-A, 2011 WL 7110761, at *11 (Dec. 30, 2011) (dismissing motion as moot where no relief could be granted).*

⁸ Even though the rates were slightly higher than the rate cap, because the FCC order prohibited the up to \$3.00 per-call surcharge permissible under the Department’s regulations, the rates agreed to under this contract were still more than 50% lower than the maximum permitted under the Department’s regulations for a 15-minute call. Furthermore, it was also a reduction from GTL’s already lower rates for a 15-min call, as GTL previously only charged a \$.86 per-call surcharge. *See* MA DOC Contract Amendment.

III. Petitioners Have Failed to Follow or Adhere to the Department's Preferred Complaint Process

GTL takes complaints regarding its inmate calling services very seriously. When issues regarding inmates' calls are brought to GTL's attention (whether by the MA DOC, the prisoner, the prisoner's family and friends, or the Department), GTL reviews the call detail record and/or the recording of the telephone call to evaluate the issue. Based on that investigation, GTL determines whether a credit or refund is warranted for the particular call or whether there is a larger issue to be remedied.

The Department has long preferred using informal complaints to the telecommunications provider as a first step for solving potential issues.⁹ The reason for such preference is exemplified in Petitioners' motion, hastily filed, lacking sufficient information or facts to warrant the requested relief, and imposing the needless expenditure of resources on the Department, GTL and possibly their own clients.¹⁰

⁹ See <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/consumer-dtc/file-a-complaint.html> (Last Accessed Apr. 5, 2016) ("First, try to contact your telecommunications or cable company.... If contacting your utility does not resolve the problem, then let us know...") 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).

¹⁰ GTL is unaware of any customers complaining regarding the change in rates. Montanaro Decl. at ¶ 8. GTL was aware of and addressed this issue based on its own internal analysis and review and addressed it before any complaint was received.

CONCLUSION

For the foregoing reasons, Petitioners' motion should be denied in its entirety.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION



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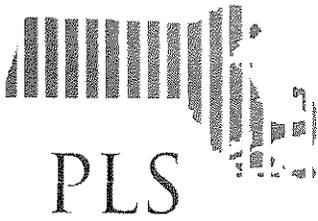
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Dated: April 7, 2016

Its Attorneys

*Practices out of Cahill's New York Office

EXHIBIT 1



PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

10 Winthrop Square, 3rd Floor • Boston, MA 02110 www.plsma.org
fb.me/prisonerslegalservices @PLSMA
Main: 617-482-2773 Fax: 617-451-6383

State prisoner speed dial: *9004# • County prisoner collect calls: 617-482-4124

April 1, 2016

Chérie R. Kiser, Esq.
Angela F. Collins, Esq.
Cahill Gordon & Reindel LLP
1990 K Street, NW, Suite 950
Washington, DC 20006

RE: DTC 11-16

Dear Attorneys Kiser and Collins,

We have just received a copy of a recent amendment to GTL's contract with the Massachusetts Department of Correction, which I attach for your convenience. On its face, this contract appears to modify rates to \$0.11 per minute for pre-paid collect calls, \$0.14 per minute for other collect calls, and \$0.1075 for pre-paid debit calls.

Massachusetts law currently limits Inmate Calling Service rates to \$0.10 per minute. See D.P.U./D.T.E. 97-88/97-18, *Order on Payphone Barriers to Entry and Exit, & OSP Rate Cap* (April 17, 1998); *Dep't of Telecomms. & Energy Industry Notice, Collect Inmate Calls – Rate Cap* (rel. Sept. 3, 2004) (clarifying that the per-minute cap is separate and distinct from the then-authorized per-call surcharge).

I would appreciate learning at your earliest convenience whether you have authorization from the Department of Telecommunications and Cable to charge rates higher than those authorized by state law or any other legal basis for exceeding the state rate cap. Otherwise, PLS intends to contact the DTC by Monday regarding our concerns.

Many thanks for your attention to this important matter.

Sincerely,

Bonita Tenneriello, Esq.
Staff Attorney

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under Guidance For Vendors - Forms or www.mass.gov/osd under OSD Forms.

CONTRACTOR LEGAL NAME: Global Tel*Link Corporation (and d/b/a): Global Tel*Link (GTL)		COMMONWEALTH DEPARTMENT NAME: Department of Correction MMARS Department Code: DOC	
Legal Address: (W-9, W-4,T&C): 12021 Sunset Hills Rd. Suite 100, Reston VA 20190		Business Mailing Address: 50 Maple Street, Suite 3, Milford, MA 01757	
Contract Manager: John Canny		Billing Address (if different):	
E-Mail: jcanny@gtl.net		Contract Manager: Brian J. Kearnan	
Phone: 732-560-0006	Fax: 317-558-3152	E-Mail: brian.kearnan@massmail.state.ma.us	
Contractor Vendor Code: VC0000400764		Phone: 508-422-3314	Fax: 508-422-3382
Vendor Code Address ID (e.g. "AD001"): AD		MMARS Doc ID(s): N/A	
(Note: The Address Id Must be set up for EFT payments.)		RFR/Procurement or Other ID Number: 13-DOC-Inmate Phone	
<p style="text-align: center;"><u>NEW CONTRACT</u></p> <p>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</p> <p><input type="checkbox"/> <u>Statewide Contract</u> (OSD or an OSD-designated Department)</p> <p><input type="checkbox"/> <u>Collective Purchase</u> (Attach OSD approval, scope, budget)</p> <p><input type="checkbox"/> <u>Department Procurement</u> (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation)</p> <p><input type="checkbox"/> <u>Emergency Contract</u> (Attach justification for emergency, scope, budget)</p> <p><input type="checkbox"/> <u>Contract Employee</u> (Attach <u>Employment Status Form</u>, scope, budget)</p> <p><input type="checkbox"/> <u>Legislative/Legal or Other:</u> (Attach authorizing language/justification, scope and budget)</p>		<p style="text-align: center;"><u>CONTRACT AMENDMENT</u></p> <p>Enter Current Contract End Date <u>Prior</u> to Amendment: <u>9/2/17</u></p> <p>Enter Amendment Amount: \$ <u>N/A</u> (or "no change")</p> <p>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</p> <p><input checked="" type="checkbox"/> <u>Amendment to Scope or Budget</u> (Attach updated scope and budget)</p> <p><input type="checkbox"/> <u>Interim Contract</u> (Attach justification for Interim Contract and updated scope/budget)</p> <p><input type="checkbox"/> <u>Contract Employee</u> (Attach any updates to scope or budget)</p> <p><input type="checkbox"/> <u>Legislative/Legal or Other:</u> (Attach authorizing language/justification and updated scope and budget)</p>	
The following COMMONWEALTH TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract.			
<input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.			
<input checked="" type="checkbox"/> <u>Rate Contract</u> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)			
<input type="checkbox"/> <u>Maximum Obligation Contract</u> Enter Total Maximum Obligation for total duration of this Contract (or <u>new</u> Total if Contract is being amended). \$ <u>N/A</u>			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through <u>EFT</u> 45 days from invoice receipt. Contractors requesting <u>accelerated</u> payments must identify a PPD as follows: Payment issued within 10 days <u> </u> % PPD; Payment issued within 15 days <u> </u> % PPD; Payment issued within 20 days <u> </u> % PPD; Payment issued within 30 days <u> </u> % PPD. If PPD percentages are left blank, identify reason: <u> </u> agree to standard 45 day cycle <u> </u> statutory/legal or Ready Payments (G.L. c. 29, § 23A); <u> </u> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) <u>Amendment to inmate calling rates, (Calls within Massachusetts and Calls outside Massachusetts). See Attached.</u>			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:			
<input checked="" type="checkbox"/> 1. may be incurred as of the <u>Effective Date</u> (latest signature date below) and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u> .			
<input type="checkbox"/> 2. may be incurred as of <u> </u> , 20 <u> </u> , a date <u>LATER</u> than the <u>Effective Date</u> below and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u> .			
<input type="checkbox"/> 3. were incurred as of <u> </u> , 20 <u> </u> , a date <u>PRIOR</u> to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>9/2/17</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable <u>Commonwealth Terms and Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR:		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:	
X: <u>[Signature]</u> Date: <u>7/16/16</u>		X: <u>[Signature]</u> Date: <u>8-17-16</u>	
(Signature and Date Must Be Handwritten At Time of Signature)		(Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: <u>Jeffrey B. Haidinger</u>		Print Name: <u>Carol Higgins O'Brien</u>	
Print Title: <u>President and COO</u>		Print Title: <u>Commissioner</u>	



INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

CONTRACTOR LEGAL NAME (AND D/B/A): Enter the Full Legal Name of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions. If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions, which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on COMMBUYS, the name of the Contract Manager must be included in the Contract on COMMBUYS.

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the MMARS Vendor Code assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9 policies.

COMMONWEALTH DEPARTMENT NAME: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (left side of Form):

Complete this section ONLY if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

Statewide Contract (OSD or an OSD-designated Department): Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD: Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

Department Contract Procurement: Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

Emergency Contract: Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee: Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Legislative/Legal or Other: Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See Amendments, Suspensions, and Termination Policy.)

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

AMENDMENT TYPE: Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget:** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts: Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee: Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Legislative/Legal or Other: Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly

COMMONWEALTH OF MASSACHUSETTS - STANDARD CONTRACT FORM



posted.

COMMONWEALTH TERMS AND CONDITIONS

Identify which Commonwealth Terms and Conditions the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See Vendor File and W-9s Policy.

COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as available and encumbered prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth Bill Paying Policy for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under G.L. c. 29, s. 23A). See Prompt Pay Discounts Policy. PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments (G.L. c. 29, s. 23A); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for all payments under a Contract. Initial grant or contract payments may be accelerated for the *first* invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the Expenditure Classification Handbook) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the Effective Date for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to G.L. c.4, s.9.

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here. A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to G.L. c.4, s.9.

CERTIFICATIONS AND EXECUTION

See Department Head Signature Authorization Policy and the Contractor Authorized Signatory Listing for policies on Contractor and Department signatures.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Contract Start Date". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a Contractor Authorized Signatory Listing may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the Contractor Authorized Signatory Listing.

Authorizing Signature For Commonwealth/Date: The Authorized Department Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Start Date". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See Department Head Signature Authorization. The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an approved Interdepartmental Service Agreement (ISA). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

Commonwealth and Contractor Ownership Rights. The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11, s.12 seven (7) years beginning on the first day after the final payment

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under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 1417; G.L. c. 29, s. 29F; G.L. c. 30, s. 39R; G.L. c. 149, s. 27C; G.L. c. 149, s. 44C; G.L. c. 149, s. 148B and G.L. c. 152, s. 25C.

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); 801 CMR 21.00 (Procurement of Commodity and Service Procurements, Including Human and Social Services); 815 CMR 2.00 (Grants and Subsidies); 808 CMR 1.00 (Compliance, Reporting and Auditing for Human And Social Services); AICFA Standards; confidentiality of Department records under G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15th or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

Payments Subject To Appropriation. Pursuant to G.L. c. 29, s. 26, s. 27 and s. 29, Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by G.L. c. 29, s. 9C. A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to G.L. c. 7A, s. 3 and 815 CMR 9.00. Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal

services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

Protection of Personal Data and information. The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

Corporate and Business Filings and Reports. The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 27 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance; child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 815 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 26 and the Federal Family and Medical Leave Act.

Federal And State Laws And Regulations Prohibiting Discrimination including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 USC Sec. 12101, et seq., the Rehabilitation Act; 29 USC c. 16, s. 794; 29 USC c. 16, s. 701; 29 USC c. 14, s. 2; the 42 USC c. 48; (Federal Fair Housing Act); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 97A; G.L. c. 272, s. 98 and 98A; Massachusetts Constitution Article CXIV and G.L. c. 93, s. 108; 47 USC c. 5, sc. 11, Part 1, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 97A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized). The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11, Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term

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"other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to G.L. Chapter 29, s. 29A). Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

Attorneys. Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to G.L. c. 30, s. 65, and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts. For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

Executive Order 120. Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. Hiring of State Employees By State Contractors Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed

to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. Disclosure of Family Relationships With Other State Employees. Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Executive Order 504. Regarding the Security and Confidentiality of Personal Information. For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth Information Technology Division's Security Policies. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A, Executive Orders 523, 524 and 525, Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478), Executive Order 524 (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390), Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

**FIRST AMENDMENT TO THE CONTRACT FOR A SECURE INMATE
CALLING SYSTEM AND RELATED SERVICES**

RFR # 13-DOC-INMATE PHONE

This First Amendment to the Contract for a Secure Inmate Calling System and Related Services, Request For Response ("RFR") 13-DOC-Inmate Phone dated March 17, 2016, ("First Amendment"), amends and revises the Contract between the Massachusetts Department of Correction, with an address at 50 Maple Street, Suite 3, Milford, MA 01757 ("MA DOC") and Global Tel*Link Corporation, an Idaho corporation, having its principle place of business at 12021 Sunset Hills Road, Suite 100, Reston Virginia 20190, ("GTL").

MA DOC and GTL hereby agree to amend and revise the Contract as follows:

Section 9.1 of the RFR which currently reads:

The Bidder shall comply with the current DOC inmate calling rates for all local, intra-LATA and inter-LATA calling within the continental United States. These calling rates are as follows:

Calls within Massachusetts		
Call Type	Per Call Surcharge	Cost Per Minute
Collect	\$0.86	\$0.10
Pre-Paid Collect	\$0.86	\$0.10
Pre-Paid Debit	\$0.65	\$0.075

Calls Outside of Massachusetts		
Call Type	Per Call Surcharge	Cost Per Minute
Collect	\$0.86	\$0.10
Pre-Paid Collect	\$0.86	\$0.10
Pre-Paid Debit	\$0.65	\$0.075

is hereby stricken, and **Section 9.1** of the RFR is replaced in its entirety, with the following:

The Bidder shall comply with the current DOC inmate calling rates for all local, intra-LATA and inter-LATA calling within the continental United States. These calling rates are as follows:

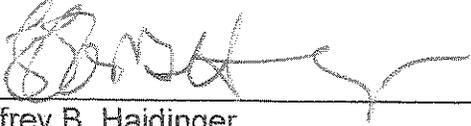
Calls within Massachusetts	
Call Type	Cost Per Minute
Collect	\$0.14
Pre-Paid Collect	\$0.11
Pre-Paid Debit	\$0.1075

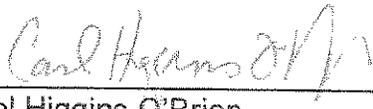
Calls Outside of Massachusetts	
Call Type	Cost Per Minute
Collect	\$0.14
Pre-Paid Collect	\$0.11
Pre-Paid Debit	\$0.1075

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment as of the date first written above, which is entered by the second party to sign.

Global Tel*Link Corporation

Massachusetts Department of Correction

By: 
 Jeffrey B. Haidinger
 President and COO

By: 
 Carol Higgins O'Brien
 Commissioner

Date: 3/16/16

Date: 3-17-16

EXHIBIT 2



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 16-280

Released: March 16, 2016

WIRELINER COMPETITION BUREAU ADDRESSES APPLICABLE RATES FOR INMATE CALLING SERVICES AND EFFECTIVE DATES FOR PROVISIONS OF THE *INMATE CALLING SERVICES SECOND REPORT AND ORDER*

WC Docket No. 12-375

With this Public Notice, we remind providers of Inmate Calling Services (ICS) of the applicable rates for ICS and effective dates for provisions of the Federal Communications Commission's (Commission) 2015 order governing ICS.¹

Background. On November 5, 2015, the Commission released the *2015 ICS Order*, which undertook comprehensive reform of the ICS marketplace and, among other things, established new rate caps for both interstate and intrastate ICS calls, limited ancillary service charges, and adopted other measures designed to ensure that ICS rates are fair, just, and reasonable. Several parties filed motions asking the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to stay many of the rules adopted in the *2015 ICS Order*.² On March 7, 2016, the D.C. Circuit stayed two individual provisions of the Commission's ICS rules: 47 CFR § 64.6010 (setting caps on ICS calling rates that vary based on the size and type of facility being served) and 47 CFR § 64.6020(b)(2) (setting caps for single-call services).³ The D.C. Circuit's *March 7 Order* left the Commission's order and adopted rules undisturbed "in all other respects."⁴

Effective Dates of Rules. In accordance with the *2015 ICS Order*, the rules limiting charges for ancillary services – other than the rule related to single-call services, which the D.C. Circuit stayed – will take effect on March 17, 2016 for all ICS calls from prisons, and on June 20, 2016 for all ICS calls from

¹ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*2015 ICS Order*). This Public Notice supersedes the information in the previous Public Notice regarding the effective dates of the Commission's ICS rules and requirements. *Wireline Competition Bureau Announces the Comment Cycle and Effective Dates for the Inmate Calling Second Report and Order and Third FNPRM*, Public Notice, 30 FCC Rcd 14507 (WCB 2015).

² See Opposition of Respondent the Federal Communications Commission to Motions for Partial Stay at 2, *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Feb. 12, 2016) (summarizing the motions ICS providers filed with the D.C. Circuit).

³ See *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016) (*March 7 Order*).

⁴ *Id.* at 2.

jails.⁵ Those same effective dates also apply to the rates for ICS calls involving TTY devices,⁶ the rule governing the treatment of taxes and fees,⁷ the rule prohibiting per-call or per-connection charges,⁸ the rule prohibiting flat-rate calling,⁹ and the rules governing minimum and maximum calling account balances.¹⁰ In addition, as noted below, the interim rate caps – \$0.21 per-minute for debit and prepaid ICS calls and \$0.25 per-minute for collect ICS calls – first established in the *2013 ICS Order*¹¹ and extended in the *2015 ICS Order*¹² remain in effect for interstate ICS calls, and will take effect for intrastate calls from prisons on March 17, 2016, and for intrastate ICS calls from jails on June 20, 2016.¹³

The rules requiring annual reporting and certification are subject to the Paperwork Reduction Act, as is the rule requiring consumer disclosure of ICS rates.¹⁴ Those rules will take effect upon publication in the Federal Register of a notice of Office of Management and Budget (OMB) approval.¹⁵ All other rules and requirements adopted in the *2015 ICS Order* are either in effect, or will take effect on March 17, 2016, except for the one-time Mandatory Data Collection, which is to occur two years after it is approved by OMB.¹⁶

Telmate Request. On March 11, 2016, Telmate, LLC (Telmate) sought clarification from the Wireline Competition Bureau as to the effectiveness of the interim rate caps with respect to intrastate calls.¹⁷ Contrary to certain statements made by Telmate, the interim rate caps will apply to all interstate

⁵ 47 CFR § 64.6020(a), (b)(1), (3)-(5). As noted above, 47 CFR § 64.6020(b)(2) has been stayed by the D.C. Circuit. *See March 7 Order.*

⁶ 47 CFR § 64.6040(a)-(b).

⁷ 47 CFR § 64.6070.

⁸ 47 CFR § 64.6080.

⁹ 47 CFR § 64.6090.

¹⁰ 47 CFR § 64.6100.

¹¹ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*2013 ICS Order*).

¹² *See* 47 CFR § 64.6030 (stating that “[n]o Provider shall charge a rate for Collect Calling in excess of \$0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of \$0.21 per minute”). Under the Commission’s rule, the interim caps will “sunset upon the effectiveness of the rates established in section 64.6010.” 47 CFR § 64.6030. The D.C. Circuit has, for the time being, stayed the rates established under section 64.6010. *See March 7 Order* at 1-2. Thus, the interim caps have not sunset.

¹³ *See 2015 ICS Order*, 30 FCC Rcd at 12918, para. 336 (indicating that the definitions adopted in 47 CFR § 64.6000 take effect 90 days from publication in the Federal Register, but that rules and requirements governing the rates and fees for ICS in jails take effect 6 months from the date of publication); *see also infra*, addressing Telmate, LLC’s request for clarification.

¹⁴ 47 CFR § 64.6060 (imposing annual reporting and certification requirements); 47 CFR § 64.6110 (requiring disclosure of ICS rates).

¹⁵ *2015 ICS Order*, 30 FCC Rcd at 12918, para. 338.

¹⁶ *See id.* at 12862, 12918-19, paras. 198, 336, 339.

¹⁷ Letter from Brita Strandberg, Counsel to Telmate, LLC, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 (filed Mar. 11, 2016) (Telmate Letter); *see also* Letter from Marcus Trathen, Counsel to Pay Tel Communications, Inc., to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC

(continued...)

and intrastate ICS calls. The interim rate caps apply to intrastate ICS calls by operation of the rules adopted in the *2015 ICS Order* and the terms of the D.C. Circuit's *March 7 Order*.¹⁸ Rule 64.6000(j) defines "Inmate Calling Service" as "a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service."¹⁹ The definition does not distinguish between interstate or intrastate calls, and thus the "Inmate Calling Services Interim Rate Cap" set forth in rule 64.6030 applies to both interstate and intrastate calls. More specifically, rule 64.6030 prohibits any "Provider" from charging rates for "Collect Calling . . . Debit Calling, Prepaid Calling, or Prepaid Collect Calling" in excess of the interim rate caps.²⁰ The terms "Provider," "Debit Calling," "Prepaid Calling," and "Prepaid Collect Calling" all incorporate the definition of "Inmate Calling Service" and thus apply to both interstate and intrastate calls.²¹ Likewise, the Commission's definition of "Collect Calling" encompasses both interstate and intrastate calls.²² Accordingly, and as discussed above, the interim rate caps will remain in effect for interstate ICS calls and will take effect for intrastate calls in accordance with the schedule adopted in *2015 ICS Order*.

For further information, please contact Gil Strobel, Wireline Competition Bureau, Pricing Policy Division, at 202-418-7084 or via e-mail at gil.strobel@fcc.gov.

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Docket No. 12-375 at 1 (filed Mar. 15, 2016) (contending that clarification is not necessary but agreeing with Telmate that the interim rate caps should not be construed to reach intrastate calls). The Wright Petitioners filed an "initial response" to the Telmate Letter later that same day. Letter from Andrew Jay Schwartzman, Counsel to the Wright Petitioners, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 at 1 (filed Mar. 11, 2016) (Wright Petitioners' Response).

¹⁸ Contrary to Telmate's contention (Telmate Letter at 3), it is not a "bizarre result" of the *March 7 Order* that ICS providers will, for the time being, be unable to charge as much for some categories of calls (calls from small jails, and collect calls from medium- and large-sized jails) as the permanent rate caps would have permitted. The Commission found that the cost of providing both interstate and intrastate ICS for most calls and facilities is much less than what providers are permitted to charge under the interim rate caps. *See 2015 ICS Order*, 30 FCC Rcd at 12775, para. 22 (adopting rate caps that are lower than the interim rate caps for the vast majority of calls). In view of that finding – and when for most calls, the interim rate caps permit ICS providers to charge much higher rates than would the permanent rate caps – the *March 7 Order* reasonably ensures that intrastate calls will not go unregulated while the *2015 ICS Order* is appealed. Insofar as Telmate contends that the interim rate caps cannot reasonably apply to intrastate calls because, "read literally," the definition of Inmate Calling Services "would also apply to international calls," *see* Telmate Letter at 3, the Commission made clear in the *2015 ICS Order* that "international calls are not subject to [the Commission's] rate caps" – a point that Telmate acknowledges. *See* Telmate Letter at 3 (quoting *2015 ICS Order*, 30 FCC Rcd at 12798, para. 69).

¹⁹ 47 CFR § 64.6000(j); *see also* Wright Petitioners' Response at 2-3 (discussing the effect of the Commission's revision of 47 CFR § 64.6000(j)).

²⁰ 47 CFR § 64.6030.

²¹ *See* 47 CFR § 64.6000(g), (p), (q), (s).

²² *See* 47 CFR § 64.6000(d) (defining Collect Calling as "an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone"); *see also* 47 CFR § 64.6000(k) (defining "Inmate Telephone" as "a telephone instrument, or other device capable of initiating calls" – not limited to interstate calls – "set aside by authorities of a Correctional Facility for use by Inmates").

EXHIBIT 3



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 16-332

Released: March 29, 2016

WIRELINE COMPETITION BUREAU UPDATES APPLICABLE RATES FOR INMATE CALLING SERVICES

WC Docket No. 12-375

With this Public Notice, we notify providers of Inmate Calling Services (ICS) of the applicable rates for ICS and effective dates for provisions of the Federal Communications Commission's (Commission) 2015 Order governing ICS.¹

On March 7, 2016, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stayed two provisions of the Commission's ICS rules: 47 CFR § 64.6010 (setting caps on ICS calling rates that vary based on the size and type of facility being served) and 47 CFR § 64.6020(b)(2) (setting caps for single-call services).² The D.C. Circuit's *March 7 Order* denied motions for stay of the Commission's ICS rules "in all other respects."³ On March 23, 2016, the D.C. Circuit modified the stay imposed in the *March 7 Order* to provide that "47 CFR § 64.6030 (imposing interim rate caps)" be stayed as applied to "intrastate calling services."⁴

In accordance with the *2015 ICS Order*, the rules limiting charges for ancillary services—other than the rule related to single-call services, which the D.C. Circuit stayed—took effect on March 17, 2016 for all ICS calls from prisons, and will take effect on June 20, 2016 for all ICS calls from jails (see chart below).⁵ Those same effective dates also apply to the rates for ICS calls involving TTY devices,⁶ the rule governing the treatment of taxes and fees,⁷ the rule prohibiting per-call or per-connection charges,⁸ the

¹ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*2015 ICS Order*). This Public Notice supersedes the information in the previous Public Notice regarding the effective dates of the Commission's ICS rules and requirements. *Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, Public Notice, DA 16-280 (WCB Mar. 16, 2016).

² See *Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 7, 2016) (*March 7 Order*).

³ *Id.* at 2.

⁴ See *Global Tel*Link v. FCC*, No. 15-1451 (D.C. Cir. Mar. 23, 2016) (*March 23 Order*).

⁵ 47 CFR § 64.6020(a), (b)(1), (3)-(5). As noted above, 47 CFR § 64.6020(b)(2) has been stayed by the D.C. Circuit. See *March 7 Order*.

⁶ 47 CFR § 64.6040(a)-(b).

⁷ 47 CFR § 64.6070.

⁸ 47 CFR § 64.6080.

rule prohibiting flat-rate calling,⁹ and the rules governing minimum and maximum calling account balances.¹⁰

Permitted Ancillary Service Charges and Taxes	Monetary Cap Per Use / Instruction
Applicable taxes and regulatory fees	Provider shall pass these charges through to consumers directly with no markup
Automated payment fees ¹¹	\$3.00
Live agent fee, i.e., phone payment or account set up with optional use of a live operator	\$5.95
Paper bill/statement fees (no charge permitted for electronic bills/statements)	\$2.00
Prepaid account funding minimums and maximums	Prohibit prepaid account funding minimums and prohibit prepaid account funding maximums under \$50
Third-party financial transaction fees, e.g., MoneyGram, Western Union, credit card processing fees and transfers from third party commissary accounts	Provider shall pass this charge through to end user directly, with no markup

In addition, the interim rate caps – \$0.21 per-minute for debit and prepaid ICS calls and \$0.25 per-minute for collect ICS calls – set forth in the Commission’s rules are in effect for all interstate ICS calls.¹²

The rules requiring annual reporting and certification are subject to the Paperwork Reduction Act, as is the rule requiring consumer disclosure of ICS rates.¹³ Those rules will take effect upon publication in the Federal Register of a notice of Office of Management and Budget (OMB) approval.¹⁴ All other rules and requirements adopted in the *2015 ICS Order* are in effect, except for the one-time Mandatory Data Collection, which is to occur two years after it is approved by OMB.¹⁵

For further information, please contact Christine Sanquist, Wireline Competition Bureau, Pricing Policy Division, at 202-418-7084 or via e-mail at christine.sanquist@fcc.gov.

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⁹ 47 CFR § 64.6090.

¹⁰ 47 CFR § 64.6100.

¹¹ Automated payments include payments by interactive voice response (IVR), web, or kiosk.

¹² See 47 CFR § 64.6030 (stating that “[n]o Provider shall charge a rate for Collect Calling in excess of \$0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of \$0.21 per minute”). Under the Commission’s rule as modified in the *2015 ICS Order*, the interim caps will “sunset upon the effectiveness of the rates established in section 64.6010.” 47 CFR § 64.6030. The D.C. Circuit has, for the time being, stayed the rates established under section 64.6010. See *March 7 Order* at 1-2. Thus, the interim caps have not sunset. Under the *March 23 Order*, however, the interim caps are stayed as applied to intrastate ICS.

¹³ 47 CFR § 64.6060 (imposing annual reporting and certification requirements); 47 CFR § 64.6110 (requiring disclosure of ICS rates).

¹⁴ *2015 ICS Order*, 30 FCC Rcd at 12918, para. 338.

¹⁵ See *id.* at 12862, 12918-19, paras. 198, 336, 339.

EXHIBIT 4

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)

DECLARATION OF STEVE MONTANARO
IN SUPPORT OF GLOBAL TEL*LINK CORPORATION'S RESPONSE TO
PETITIONERS' EMERGENCY MOTION TO REQUIRE COMPLIANCE WITH
MASSACHUSETTS INMATE CALLING RATE CAP

I, Steve Montanaro, state as follows:

1. I am the Vice President – Consumer Channels for Global Tel*Link Corporation (“GTL”) and its affiliates. GTL and its affiliates provide inmate calling service (“ICS”) to approximately 2400 correctional facilities throughout the United States, including in Massachusetts, such as those operated by the Massachusetts Department of Correction (“MA DOC”).

2. I provide this Declaration in support of GTL’s response that the Petitioners’ motion should be denied.

3. The per minute rates for GTL inmate calling services set forth in GTL’s M.D.T.C. Tariff No. 2 have been and are \$0.10 as required by the DTC.

4. Between March 17, 2016 and April 1, 2016, GTL’s intrastate rates for MA DOC calls were in some instances higher than \$0.10 per minute and some customers were charged more than \$0.10 per minute during this time period.

5. All MA DOC intrastate rates were re-rated in the GTL billing system to \$0.10 per minute on April 1, 2016.

6. After the changes were made to GTL's billing software, GTL began the process of issuing refunds to any customer who was charged more than \$0.10 per minute. GTL processed and applied all refunds by April 4, 2016.

7. The refunds were processed and applied automatically.

8. There are no outstanding refunds that need to be processed or applied and I am aware of no customer complaints regarding these charges.

9. In addition to automatic refunds and the notice to Massachusetts DOC customers on the GTL website, customers for whom GTL has provided a refund and for whom GTL has an email address, have received an email notifying them of the refund.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on April 7, 2016



Steve Montanaro
Vice President – Consumer Channels
Global Tel*Link Corporation

CERTIFICATE OF SERVICE

I, Angela S. Fleming, certify that on this 7th day of April 2016, I served a copy of the foregoing Response to Petitioners' Emergency Motion to Require Compliance with Massachusetts Inmate Calling Rate Cap on the following via the method indicated:

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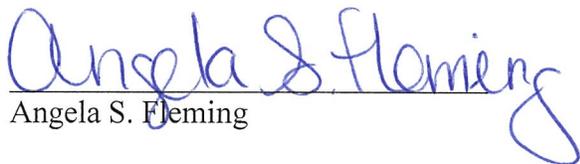
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