

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

No. D.T.C. 11-16

PETITION OF RECIPIENTS OF COLLECT CALLS FROM  
PRISONERS AT CORRECTIONAL INSTITUTIONS IN MASSACHUSETTS  
SEEKING RELIEF FROM  
THE UNJUST AND UNREASONABLE COST OF SUCH CALLS

---

PETITIONERS' MOTION TO COMPEL RESPONSES OF  
SECURUS AND GLOBAL TEL\*LINK TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION

The Department has opened an investigation into the Massachusetts Inmate Calling Service (ICS) surcharge and the surcharge cap of \$3.00; service fees associated with ICS; quality of service issues such as line quality and disconnections; and the billing and customer service practices of respondents GTL and Securus.<sup>1</sup> Yet Global Tel\*Link (GTL) and Securus have refused to provide information that would allow the Department to determine these issues.

Most fundamentally, GTL and Securus insist that current data on ICS costs and revenue are irrelevant to these proceedings. Rather than investigate current costs, they would have the Department rely on a regulatory scheme set in place in 1998.<sup>2</sup> The Department has already refused to be limited in this manner. The Hearing Officer's Interlocutory Order notes that in the years since the 1998 Order, "there is a dispute about what has happened to the costs associated with ICS, but there is agreement that costs have changed."<sup>3</sup> This very change in ICS costs

---

<sup>1</sup> See Hearing Officer Interlocutory Ruling, Sept. 23, 2013, at 26, 27, 30 and 31.

<sup>2</sup> See *Investigation by the Dept. of Telecommunications And Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-pay Line Service, and (4) the rate policy for operator services providers, ORDER ON PAYPHONE BARIERS TO ENTRY AND EXIT, AND OSP RATE CAP, D.P.U./D.T.E. 97-88/97-18 (Phase II) (April 17, 1998) (hereinafter "1998 order")*.

<sup>3</sup> *Interlocutory Order* at 25.

“suggests that the Department should at least revisit the reasonableness of the \$3.00 maximum surcharge.”<sup>4</sup> The Department “has great latitude in determining the relevance of evidence sought.”<sup>5</sup> Whatever the rate-setting methodology chosen by the Department, costs and revenue data are key to “balancing the consumer interest and the interest of utility investors in fair return.”<sup>6</sup>

### **I. The 1998 Order Does not Restrict the Department’s Investigation.**

Both GTL and Securus argue that Petitioners cannot seek information on costs associated with the per-call surcharge because the *Interlocutory Order* and *1998 Order* establishing the per-call surcharge “acknowledged (1) that the surcharge is not directly related to such costs and (2) that ICS providers are not required to itemize their costs in order for the DTC to set a reasonable surcharge.”<sup>7</sup> Respondents grossly mischaracterize both the *Interlocutory Order* and the *1998 Order*.

### **A. The 1998 Order Does Not Preclude Consideration of the ICS Costs of Respondents.**

The *1998 Order* explicitly established the per-call surcharge and surcharge cap for ICS calls in Massachusetts in order to “provide for rate recovery of legitimate additional costs incurred in providing inmate calling services.”<sup>8</sup> The interpretation of the *1998 Order* that Respondents seek -- that the surcharge is not directly related to the unique costs allegedly covered by the per-call surcharge -- is absurd and contrary to both the plain language of the

---

<sup>4</sup> *Id.*

<sup>5</sup> *In re Verizon Service Quality in Western Massachusetts*, D.T.C. 09-1, Hearing Officer’s Ruling Regarding the Attorney General’s Motion to Compel Responses to Discovery (June 10, 2010) at 3, citing *Rate Setting Comm’n v. Baystate Med. Ctr.*, 422 Mass. 744, 752 (1996).

<sup>6</sup> Hearing Officer Interlocutory Ruling at 24, citing *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

<sup>7</sup> D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls, Responses and Objections of Securus Technologies, Inc. To Petitioners First Set of Interrogatories* at 2; and *Response and Objection of GTL to Petitioners’ First Set of Document Requests* at 3.

<sup>8</sup> *1998 Order* at 9.

1998 Order and any reasonable interpretation of it. That the Department relied on the a \$3.00 surcharge prevailing in 33 states at the time as a proxy for unique ICS costs in Massachusetts only goes to further support the relevance of costs to ICS rate-setting. The *Interlocutory Order* in no way rejects consideration of costs. Rather it is clear in affirming that the surcharge and its cap established by the *1998 Order* was created explicitly to cover the alleged non-traditional “unique” costs incurred in providing ICS.<sup>9</sup> A detailed cost-based investigation into the surcharge and surcharge cap by the Department is in no way precluded by the *1998 Order*.

**B. The rate-setting mechanisms used in the 1998 Order are inapt today and do not reflect just and reasonable rates.**

As discussed in Petitioners’ other filings<sup>10</sup>, the rate-setting mechanism used in the *1998 Order* has failed to maintain just and reasonable rates for consumers in the Commonwealth. Both the method of using other states’ surcharges as a proxy for setting a reasonable surcharge cap in Massachusetts and the incentive regulatory scheme adopted and applied to ICS providers serving the state have failed to guard consumers against oppressive rates in what is essentially a monopolistic industry.<sup>11</sup>

The *1998 Order* partially relied on the ICS costs of MCI, Sprint and AT&T in 33 other states as a proxy for setting rate caps in Massachusetts. As Petitioners stated in their initial Petition, virtually none of the 33 states referred to in the *1998 Order* maintain a \$3.00 surcharge today<sup>12</sup>, which neither GTL nor Securus refute.<sup>13</sup> This fact, in conjunction with other data already provided by Petitioners regarding the drastically decreased costs of providing ICS since

---

<sup>9</sup> *Interlocutory Order* at 20.

<sup>10</sup> See Initial Petition at 11-29 and Appendices IV and V; see also Memorandum of Petitioners Opposing Dismissal at 8.

<sup>11</sup> See Petitioners’ Appeal of Hearing Officer Interlocutory Ruling, Exhibit 2, Declaration of Coleman Bazelon in WC Docket # 12-375 at ¶¶ 7-10. (“Bazelon Affidavit”).

<sup>12</sup> See Initial Petition at 28.

<sup>13</sup> Although the Department, in its *Interlocutory Order*, states that Petitioners’ assertion is disputed by GTL, the citation in the *Order* refers to a different dispute about Petitioners’ Appendix IV. This specific point is not refuted by either GTL or Securus.

1998<sup>14</sup>, demonstrate that the use of this proxy is no longer apt. Furthermore, reliance on rates in other states, which vary drastically across the country<sup>15</sup>, would not result in a realistic assessment of what is just and reasonable in Massachusetts, especially since the variance in rates across the country is unlikely to be based on ICS providers' costs.<sup>16</sup> Since the industry is changing rapidly and consumers of ICS are demanding reasonable rates across the country (legislatively, through litigation and through state based regulation)<sup>17</sup>, using other states as a proxy for setting costs in Massachusetts will not reflect just and reasonable rates.

Similarly, the mechanism used in the *1998 Order* of treating certain ICS costs as "unique costs" warranting coverage in a separate surcharge is no longer viable. The changes in the ICS industry documented in the Petitioners' pleadings and expert affidavits<sup>18</sup> and affirmed by the 2013 FCC Order regarding ICS rates<sup>19</sup> makes this point clear.<sup>20</sup> As stated by experts Coleman Bazelon and Doug Dawson, some such costs are obsolete or no longer significant enough to warrant additional cost treatment and can easily be subsumed into a per-minute rate.<sup>21</sup> They contend that the historical dichotomy between traditional cost recovery and unique additional costs is a false one in today's telecommunications industry. The fact that surcharges have been completely dropped in many states further illustrates this point.<sup>22</sup>

Finally, the implementation of the incentive regulatory scheme to the Massachusetts ICS industry over the last 16 years has proven detrimental to ICS consumers. As the D.T.C. states in

---

<sup>14</sup> Initial Petition at 15-22.

<sup>15</sup> *In re the Matter of Rates for Interstate Inmate Calling Services*, Federal Communications Commission No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, August 9, 2013 ("FCC Order") (attached as Exh. 1 to Petitioners' Appeal), at ¶¶35-37.

<sup>16</sup> *Id.* at ¶36.

<sup>17</sup> *Id.* at ¶37.

<sup>18</sup> See Initial Petition at 15-22, Exhibits 1 and 5 and Appendix 5; see also Affidavit of Douglas Dawson attached to Petitioners' Surreply (April 20, 2012).

<sup>19</sup> FCC Order at ¶29.

<sup>20</sup> *Id.* at ¶¶29-30.

<sup>21</sup> See Bazelon affidavit at ¶¶18-28; Petitioners' Appeal of Hearing Officer Interlocutory Ruling, Exhibit 2, Second Affidavit of Douglas Dawson at ¶5; Amended Affidavit of Douglas Dawson at ¶¶21-27.

<sup>22</sup> FCC Order at ¶37.

the *Interlocutory Order*, ICS providers are regulated as dominant carriers because inmates are required to use presubscribed OSPs at a prison payphone without competitive alternatives.<sup>23</sup> Although the Department's intention in the *1998 Order* was to "encourage ICS providers to improve productivity and reduce costs through advances in technology similar to the benefit a service provider may receive in a competitive marketplace,"<sup>24</sup> this is clearly not the result achieved by the incentive regulatory scheme adopted in the *Order*. For reasons more extensively explained in the affidavit of telecommunications expert Coleman Bazelon and the 2013 FCC Order<sup>25</sup>, the prison phone industry requires rate setting based directly on cost and revenue data.<sup>26</sup> The prison phone market is non-competitive; once the provider obtains the contract, it gains a captive market, operating as a monopoly within that facility. Further, the provider naturally has a disincentive to lower rates or improve service.<sup>27</sup> This market failure is perpetuated by the fact that at the contract bidding phase (the only time there is any competition in the market), the incentive for both the provider and the prison is to keep rates high due to the kickback (percentage of profits) offered to the facility in exchange for the exclusive contract.<sup>28</sup> The only way to guard against excessive profits and, therefore, unjust and unreasonable rates, in such a unique market is to base rates on the actual costs of providing ICS.<sup>29</sup>

## II. Data Related to ICS Costs and Profitability are Relevant and Discoverable.

The Respondents have withheld all information bearing on ICS costs and profitability, asserting that "ICS providers are not required to itemize their costs in order for the DTC to set a

---

<sup>23</sup> *Interlocutory Order* at 2.

<sup>24</sup> *Interlocutory Order* at 9.

<sup>25</sup> *Bazelon Affidavit* at ¶¶6-11; FCC Order at ¶¶ 39-41.

<sup>26</sup> *Id.*; see also FCC Order at ¶45.

<sup>27</sup> *Supra* note 24.

<sup>28</sup> *Id.*

<sup>29</sup> *Bazelon Affidavit* at 9-11.

reasonable surcharge.”<sup>30</sup> They would prefer that rate-setting remain frozen in 1998. Yet in opening an investigation into the surcharge, the Department determined to “consider the Petitioners’ allegations and examine the changes to the ICS industry” since 1998.<sup>31</sup> The Department itself noted that “costs associated with ICS have changed,” and cited this as a reason for investigating the reasonableness of the surcharge and surcharge cap.

Particularized cost and revenue data are appropriate and indeed indispensable in a rate-setting proceeding such as this. “The Department has wide latitude in determining the method by which just and reasonable rates will be achieved” but “has generally evaluated the reasonableness of rates as they relate to ‘prudently incurred costs.’”<sup>32</sup> Where telecommunications “services are subject to competition sufficient to keep prices at a reasonable level” the Department can rely on market forces to produce just and reasonable rates; otherwise the DTC must act to set rates. *Re Verizon New England, Inc. dba Verizon Massachusetts*, D.T.E. 01-31-Phase II, 223 PUR4th 361,392 (April 11, 2003).

The prison telephone industry is noncompetitive, and ICS providers have been held to be dominant carriers, because consumers have no choice of provider and no ability to affect the ICS market.<sup>33</sup> Therefore, the Department found it necessary in the *1998 Order* to set a \$3.00 cap on ICS surcharges, using the prevailing \$3.00 surcharge in other states as a proxy, since it lacked detailed cost data for Massachusetts.<sup>34</sup> While GTL and Securus would prefer to continue to rely upon such a proxy, rather than provide cost data, the Hearing Officer Interlocutory Ruling makes

---

<sup>30</sup> Responses and Objections of Securus Technologies, Inc. to Petitioners’ First Set of Requests for Production of Documents (hereafter “Securus RPD Response”) at 3-4; Global Tel\*Link Corporations’ Responses and Objections to Petitioners’ First Set of Requests for Production of Documents (hereafter “GTL RPD Response”) at 2-3.

<sup>31</sup> Hearing Officer’s Interlocutory Ruling at 26.

<sup>32</sup> *Petition of Verizon New England, Inc. et al for Investigation under Chapter 159, Sec. 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order (June 22, 2009) (“Access Charge Order”) at 18, quoting *Town of Hingham v. DTE*, 433 Mass. 198, 203 (2001) and citing *New England Tel. and Tel. Co. v. D.P.U.*, 16 P.U.R.4th 346, 371 Mass. 67, 354 N.E.2d 860 (1971).

<sup>33</sup> 1998 Order at 9.

<sup>34</sup> *Id.* at 9-10.

clear the Department's intent to revisit its methodology: "[W]hen the Department establishes rate-setting mechanisms for regulated service providers, it does not adopt such rates permanently. In setting price-capped rates...the term must not be so long that price caps are maintained on assumptions that become invalid or fail to account for changes in the industry."<sup>35</sup> As discussed above in Section I. B. the proxy used in the *1998 Order* is no longer viable; ICS rates are everywhere in flux and contested. It is therefore necessary for the Department to consider the actual costs of ICS in order to assess the current reasonableness of the surcharge.

In regulating two other non-competitive telecommunications markets, the Department has stated a preference for rate-setting based on cost data. In considering the access charges of competitive local exchange carriers (CLECs), the Department found that because the end users had no ability to switch suppliers, as in the prison telephone industry, there was a market failure and need for rate regulation.<sup>36</sup> Similarly, its predecessor determined that providers of alternative operator service (AOS) were not subject to market pressures and therefore subject to rate regulation.<sup>37</sup> In both industries, the Department expressed a preference for basing rates directly on cost data.<sup>38</sup>

ICS rate-setting proceedings before the Federal Communications Commission demonstrate the limitations of using existing ICS rates as a proxy and the need instead for actual cost data. In its recent landmark decision, the FCC determined that prison telephone rates must

---

<sup>35</sup> Hearing Officer Intelocutory Ruling at 24.

<sup>36</sup> *Petition of Verizon New England, Inc. et al for Investigation under Chapter 159, Sec. 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order (June 22, 2009) ("Access Charge Order") at 13.

<sup>37</sup> *See Re Int'l Telecharge, Inc.*, D.P.U. 87-72, 88-72 97 P.U.R. 4<sup>th</sup> 349, 354 (Oct. 11, 1988); *see also Re Value-Added Communications, Inc.*, D.P.U. 91-19, 126 P.U.R. 4<sup>th</sup> 209, 217 (1991).

<sup>38</sup> Because cost data was unavailable to the Department in both industries, the Department relied instead on a proxy for costs which had been found just and reasonable. In the case of access charges, the Department used the access charge rate of the dominant carrier, Verizon, as a proxy. *See Access Charge Order* at 21. In the case of AOS, it relied upon rates offered for similar services by other carriers. *See Re Int'l Telecharge*, 97 P.U.R. 4t at 356-57. Crucially, it decided to do so in both cases *only* where the rate used as a proxy had been found just and reasonable. *See Access Charge Order* at 22; *Re Int'l Telecharge*, 97 P.U.R. 4t at 356.

be cost-based, including ancillary charges, per-call or connection charges, and per-minute rates.<sup>39</sup> In setting interim rate caps, the FCC relied on a proxy for costs, averaging interstate ICS rates charged in seven states that have eliminated site commissions, and also considering the rates charged in ten other states after commissions are deducted.<sup>40</sup> However, its decision notes the unreliability of this proxy. The FCC noted the variability in rates between states, and noted that “evidence in the record does not suggest a dramatic difference in costs among states,” suggesting that the higher rates are not justified.<sup>41</sup> However, it used existing rates as the basis for its calculation “in the interest of being conservative in setting our interim safe harbor.” *Id.* In order to set permanent rate caps, the Commission has ordered all ICS providers to file cost data including telecommunications costs and interconnection fees; equipment investment costs; equipment installation and maintenance costs; security costs for monitoring and call blocking; costs that are ancillary to the provision of ICS, including costs passed on to consumers through ancillary charges; and other relevant cost data.<sup>42</sup>

Current ICS costs and revenue are indispensable to the Department’s investigation, regardless of the rate-setting methodology it chooses. Further, the Department must consider all costs of providing ICS, and not only costs historically considered unique to ICS, especially given the economies of scale and other technological advances in the industry that are dissimilar to the traditional pay phone industry.<sup>43</sup> While the Department has determined not to investigate the per-minute rate cap of \$0.10, it cannot determine whether all ICS costs can be subsumed into the per-minute rate unless it analyzes the costs covered by the per-minute rate.

---

<sup>39</sup> See FCC Order ¶¶ 47, 50, 119.

<sup>40</sup> *Id.*, ¶¶ 63-65.

<sup>41</sup> *Id.*, ¶ 63 n. 235; see also *id.* ¶ 62 n. 230 (“the rates we set for the safe harbor and the cap reflect costs that *exceed* the cost data that any party submitted in the record”) (emphasis in original).

<sup>42</sup> *Id.* at ¶ 125.

<sup>43</sup> Petitioners’ Appeal of Hearing Officer Interlocutory Ruling, Exhibit 2, Second Affidavit of Douglas Dawson at ¶¶ 8-11.

### **III. The Department Has Authority and a Duty to Investigate Site Commissions**

Securus and GTL refuse to produce information related to the amount or reasonableness of site commissions with the argument that the DTC has no jurisdiction over these commissions, as they are set by the Department of Correction or otherwise authorized by law.<sup>44</sup> The Department has already noted the fallacy of this argument: “Petitioners do not request that the Department ban commissions, rather they ask the Department to clarify that commissions are not a legitimate additional cost associated with providing ICS, and therefore the Department should conform the per-call surcharge rate maximum accordingly.”<sup>45</sup> This is exactly correct. The Department cannot set just and reasonable rates without examining the costs contained in existing rates and determining which may be legitimately passed on to consumers. The FCC has already determined that site commissions may not be passed on to ICS consumers.<sup>46</sup> Given that site commissions exceed 50 percent of ICS revenues in most counties, to ignore these costs would be to ignore the elephant in the regulatory room.

### **IV. Particular Objections Made by Securus and GTL are Groundless**

As per the Procedural Order in this matter, the Petitioners participated in discovery conferences with GTL on May 20<sup>th</sup> and May 22<sup>nd</sup> 2014 and with Securus on May 23, 2014. The parties attempted to narrow their differences with limited success.

Because Securus and GTL maintain that no information on costs, revenue, profitability, and performance are relevant, we have been unable to narrow the scope of requests which they maintain are overbroad, vague, ambiguous or unduly burdensome. If and when the Respondents are willing to identify relevant and responsive documents and to communicate the volume of

---

<sup>44</sup> See Securus RPD Response at 4; GTL RPD response at 4.

<sup>45</sup> Hearing Officer Interlocutory Ruling at 21, citing Petitioners Memorandum Opposing Dismissal at 17-18.

<sup>46</sup> FCC Order ¶ 7. You might want to also check out paragraphs 32-38.

responsive documentation in any given area, the Petitioners are prepared to discuss narrowing and clarifying their requests.

As a general matter, Petitioners wish to clarify that the relevant time period for the requested contracts is for 2011 through the present, such that the relevant time period for all interrogatories and document requests associated with Interrogatory No. 1 is January 2011 through the present.

Finally, the Respondents object to many interrogatories and document requests on the basis that they seek confidential, competitively sensitive, proprietary, financial, and other alleged protected information. However, this is not a basis for withholding responsive documents. Rather, any responsive documents should be specifically identified and submitted to the D.T.C. pursuant to the procedural order. Privileged documents should be logged in accordance with Rule 26 of the Massachusetts Rules of Civil Procedure or in some other acceptable manner identified by the Department.

## **INTERROGATORIES**

### **Rates, Receipts and Commissions**

1. Please identify all contracts for inmate calling service (hereinafter ICS) calls in Massachusetts to which you have been a party since January 2011, naming the government authority with whom you contracted and including any modifications or amendments. For each calendar year of each contract, please provide the following information. You are not restricted to using this identical format as long as you can provide all of the requested responses.

	<b><u>Fixed</u></b>		<b><u>Rate Per</u></b>	<b><u>Site Commission</u></b>
	<b><u>Rate</u></b>	<b><u>Surcharge</u></b>	<b><u>Minute</u></b>	<b><u>Percentage</u></b>
<b><u>Collect Calling</u></b>				
Local Calling				
State IntraLATA Calling				
State InterLATA Calling				
Interstate				
<b><u>Debit Calling</u></b>				

Local Calling  
State IntraLATA Calling  
State InterLATA Calling

**Advance payment calling**

Local Calling  
State IntraLATA Calling  
State InterLATA Calling

**Total**

**GTL Response:** GTL objects on the basis of its general objections (nos. 1, 3 and 8) as well as on the grounds that the Interrogatory is overly broad, unduly burdensome and not relevant. GTL provides only a list of the facilities with which it has contracted for the time period requested and otherwise refers to information in its filed tariff.

**Argument:** This Interrogatory is relevant to the legitimacy of the surcharge as well as the impact of the surcharge on consumers. The Interrogatory is not overly broad or unduly burdensome in that it limits the information requested to only those contracts that the provider has in Massachusetts and only for the last 3 years.

2. For each year of each contract identified in response to Interrogatory Number 1, above, (hereinafter No. 1) please provide the following information. You are not restricted to using this identical format as long as you can provide all of the requested responses.

	<b>Gross receipts</b>	<b>Commissions Paid</b>
<b><u>Collect Calling</u></b>		
Local Calls		
State IntraLATA Calls		
State InterLATA Calls		
Interstate		
<b><u>Debit Calling</u></b>		
Local Calling		
State IntraLATA Calling		
State InterLATA Calling		
<b><u>Advance payment calling</u></b>		
Local Calling		
State IntraLATA Calling		
State InterLATA Calling		
<b><u>Total</u></b>		

**Securus Response:** Securus provides no response and objects to the Interrogatory on the basis of its general objections (nos. 1, 3, 5 and 10) and that it is overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks confidential, competitively sensitive, proprietary financial and other internal business information and is irrelevant.

**GTL Response:** GTL objects on the basis of its general objections (nos. 1, 3 and 8) as well as on the grounds that the Interrogatory is overly broad, unduly burdensome and not relevant. GTL further objects that the Interrogatory seeks confidential information and is not reasonably calculated to lead to the discovery of admissible evidence.

**Argument:** This Interrogatory is directly relevant to the legitimacy of the surcharge as well as the impact of the surcharge on consumers. In addition, the Interrogatory is relevant to tariffed service and other fees, which is also an open investigation in this matter. The Interrogatory is not overly broad or unduly burdensome in that it limits the information requested to only those contracts that the provider has in Massachusetts and only for the last 3 years.

3. For each year of each contract identified in response to No. 1, please provide the following information. You are not restricted to using this identical format as long as you can provide all of the requested responses.

	<b>No. of Calls Completed</b>	<b>Average Call Length</b>	<b>Total No. of Minutes Used</b>
<b><u>Collect Calling</u></b>			
Local Calls			
State IntraLATA Calls			
State InterLATA Calls			
Interstate			
<b><u>Debit Calling</u></b>			
Local Calling			
State IntraLATA Calling			
State InterLATA Calling			
<b><u>Advance payment calling</u></b>			
Local Calling			
State IntraLATA Calling			
State InterLATA Calling			
<b><u>Total</u></b>			

**Securus Response:** Securus provides no response and objects to the Interrogatory on the basis of its general objections (nos. 1, 5 and 10) and that it is overly broad and irrelevant.

**GTL Response:** GTL objects on the basis of its general objections (nos. 1, 3 and 8) as well as on the grounds that the Interrogatory is overly broad, unduly burdensome and not relevant. GTL provides a redacted response as to the number of completed calls, but fails to answer the interrogatory as to the average length of the calls and total number of minutes used.

**Argument:** This Interrogatory is directly relevant to the legitimacy of the surcharge as well as the impact of the surcharge on consumers. Call volume in Massachusetts facilities is essential to the Department's investigation of a just and reasonable rate, as it determines the marginal costs and profitability of ICS. In addition, the Interrogatory is relevant to tariffed service and other fees, which are also open investigations in this matter. The Interrogatory is not overly broad or unduly burdensome in that it limits the information requested to only those contracts that the provider has in Massachusetts and only for the last 3 years.

4. For each year of each contract identified in response to No. 1, please list any minimum commission guaranteed by the contract and state the amount paid, if any, to satisfy this guarantee.

**Securus Response:** Securus repeats its general objections nos. 1, 2 and 3 and on the basis that this Interrogatory is not relevant, reasonably calculated to lead to the discovery of admissible evidence, and outside the scope of this investigation.

**GTL Response:** GTL repeats its general objections nos 1, 3 and 8 and further objects that the Interrogatory is overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this proceeding.

**Argument:** Site Commissions are centrally relevant to this proceeding, as discussed *supra* in Section III. The interrogatory is not overly broad or unduly burdensome as it is limited only to Massachusetts facilities served by the Respondents and only to the time period since January 2011.

5. Please identify any documents demonstrating revenue that you received and commission payments made under each of the contracts identified in response to No. 1.

**Securus Response:** Securus repeats its general objections nos. 1, 2, 3, 5, 10 and 15 and on the basis that this Interrogatory is not relevant, reasonably calculated to lead to the discovery of admissible evidence, outside the scope of this investigation, and seeks confidential, competitively sensitive, proprietary financial or other internal business information.

**GTL Response:** GTL repeats its general objections nos 1, 3, 7 and 8 and further objects that the Interrogatory is overly broad, burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the subject matter of this proceeding.

**Argument:** ICS revenues and site commissions are centrally relevant to this proceeding, as discussed *supra* in Sections I- III. The interrogatory is not overly broad or unduly burdensome as it is limited only to Massachusetts facilities served by the Respondents and only to the time period since January 2011. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

6. Please list all categories of costs associated with providing ICS in Massachusetts, including but not limited to the following potential costs. For each cost, please indicate how much you spent during each calendar year of each contract identified in No. 1. To the extent that you allocate shared costs between facilities, or between Massachusetts and other jurisdictions, please so indicate and state the basis for your calculation of pro-rated costs.
- a. Call processing systems
  - b. Automated operators
  - c. Live operators
  - d. Call recording and monitoring equipment
  - e. Fraud control programs
  - f. Financial processing
  - g. Lobbying and other government advocacy
  - h. Back office administrative costs
  - i. Call centers
  - j. Database checks
  - k. Voice overlays
  - l. Customized call detail reports
  - m. Research and Development
  - n. Call control systems
  - o. Other personnel costs
  - p. Other costs not referenced in a. through o.

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 2, 5 and 10) as well as on the grounds that it is overly broad, unduly burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation and that it seeks confidential, sensitive, proprietary financial or other internal business information. Securus responds by referring to its filings at pp. 14-25 of its Response to the Petition and to pp. 9-14 of its Response to the Public Comments, which do not provide cost data for any of the categories listed.

**GTL Response:** GTL states its general objections (no. 1, 3, 7 and 8) and further objects that the Interrogatory is vague, ambiguous, overly broad and unduly burdensome, seeks confidential information, is outside the scope of the *Interlocutory Order*, and is not reasonably calculated to lead to the discovery of admissible evidence. GTL responds to the Interrogatory by adding 12 additional “unique characteristics associated with providing inmate calling services,” but provides no itemized costs.

**Argument:** This Interrogatory is directly related to the investigation regarding the surcharge and surcharge cap, customer service issues of the providers, billing practices, tariffed service and other fees and call quality. In addition, many of the costs listed by Petitioners (and the 12 added by GTL) in this Interrogatory are categorized as “unique additional costs” allegedly covered by the surcharge established by the *1998 Order* and for which cost data is unquestionably discoverable. The request is neither overly broad nor unduly burdensome in that Petitioners give Respondents the option of providing aggregated cost data if disaggregated data is unavailable

and limits the request to only the providers' contracts in Massachusetts for a three year time period. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

7. For each type of call described in No.1 (Collect, Debit and Advance Pay Calling), please provide an itemization of your expenses associated with the cost to complete such a call. To the extent that it is not possible to itemize your expenses, please describe in detail each component of the aggregate costs to you of completing such calls.

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 2, 5 and 10) as well as on the grounds that it is overly broad, unduly burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation and that it seeks confidential, sensitive, proprietary financial or other internal business information. Securus provides no further answer to this Interrogatory.

**GTL Response:** GTL states its general objections (no. 1, 3, 7 and 8) and further objects that the Interrogatory is vague, ambiguous, overly broad and unduly burdensome, seeks confidential information, is outside the scope of the *Interlocutory Order*, and not reasonably calculated to lead to the discovery of admissible evidence. GTL further answers that it does not itemize expenses associated with the cost to complete a call, but instead looks at the total cost of providing inmate calling services to a given facility based on its contract and applicable law.

**Argument:** The Interrogatory is directly related to the Department's investigation into the surcharge and surcharge cap, tariffed service and other fees and billing practices. Moreover, Securus itself has placed its costs in contention. In an effort to contradict Petitioners' claims and data submitted that industry costs are plummeting, Securus, on p. ii of its' Response to the Petition, explicitly claimed that its costs have increased by 16.3% and that its per minute costs have increased by approximately 16.5%. Securus cannot emphatically claim that its costs are increasing and provide no support whatsoever for those allegations. TThe request is neither overly broad nor unduly burdensome in that Petitioners give Respondents the option of providing aggregated cost data if disaggregated data is unavailable and limits the request to only the providers' contracts in Massachusetts for a three year time period.

8. Please describe what equipment is used to store, record and monitor inmate telephone calls in each of the Massachusetts correctional facilities listed in response to No. 1.

**Securus Response:** Securus states its general objections numbers 1 and 5 and objects on the basis of the Interrogatory being overbroad, unduly burdensome, not relevant, not reasonably calculated to lead to discovery of admissible evidence, and that it seeks information related to the availability and upkeep of telecommunications equipment at correctional facilities. Securus provides no further answer.

**GTL Response:** Similarly objects and repeats its general objections nos. 1, 3, 7 and 8.

**Argument:** The kind of equipment used to store, record and monitor inmate phone calls falls squarely within the enumerated items classified as "unique characteristics" of ICS in the 1998

*Order*. Therefore, whether or not the same type of equipment is used and what functions the equipment performs is directly relevant to the Department's investigation into the surcharge and surcharge cap. The request is neither overly broad nor unduly burdensome as the question is sufficiently narrow and discrete and Respondents have not provided a reason to support the claim that it is otherwise overly broad or unduly burdensome.

10. With respect to each year, each contract and each type of call (collect, debit and advanced payment) identified in No. 1,

- a) what dollar amount of receivables were not collectable?
- b) what dollar amount of lost revenue did this amount to?

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 2, 5 and 10) as well as on the grounds that it is overly broad, unduly burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation and that it seeks confidential, sensitive, proprietary financial or other internal business information. Securus provides no further answer to this Interrogatory.

**GTL Response:** GTL states its general objections (no. 1, 3, 7 and 8) and further objects that the Interrogatory is vague, ambiguous, overly broad and unduly burdensome, seeks confidential information, is outside the scope of the *Interlocutory Order*, and not reasonably calculated to lead to the discovery of admissible evidence.

**Argument:** The providers consistently argue that the high cost of uncollectibles is a unique cost of the provision of ICS. Moreover, the cost of uncollectibles was enumerated as a legitimate additional cost covered by the surcharge established in the *1998 Order*. Therefore, discovery of cost data related to uncollectibles is squarely within the Department's investigation into the surcharge and surcharge cap and could yield admissible evidence. Furthermore, the request is neither unduly burdensome nor overbroad in that it narrowly seeks information regarding uncollectibles for a defined time period for only the relevant facility contracts.

11. For each contract identified in No. 1, please describe:

- a) The number of pre-paid or "debit" accounts for each year from January 2011 to present;
- b) the process used to deposit funds into a pre-paid account. If the process used is different depending on the source of the funds (cash, credit card, western union, check) please explain the process for each separately;
- c) the costs attributable to processing deposits to pre-paid accounts;
- d) the costs attributable to processing refunds from pre-paid accounts;
- e) the dollar amount that was actually refunded to Massachusetts consumers for each calendar year from January 2011 to the present.

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 2, 5 and 10) as well as on the grounds that it is overly broad, unduly burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation

and that it seeks confidential, sensitive, proprietary financial or other internal business information. Securus further responds by partially answering the Interrogatory only as to 11(b).

**GTL Response:** GTL states its general objections (no. 1, 3, 7 and 8) and further objects that the Interrogatory is vague, ambiguous, overly broad and unduly burdensome, seeks confidential information, is outside the scope of the *Interlocutory Order*, and not reasonably calculated to lead to the discovery of admissible evidence. GTL further objects stating that the process used to deposit funds is publicly available.

**Argument:** The Interrogatory is directly relevant to the Department's investigation into the surcharge, surcharge cap, tariffed service and other fees, and billing and customer service practices. As noted in the *Interlocutory Order*, the *1998 Order* did not contemplate debit calling or methods for consumers to prepay for collect ICS calls with separate tariffed rates. (*Interlocutory Order* at 25). The information requested, if provided, is reasonably calculated to lead to the discovery of admissible evidence and is narrowly tailored so as not to be overbroad or burdensome to the parties.

12. Please describe the process used to refund unused funds from pre-paid accounts to consumers. If the refunds are unclaimed or otherwise not processed, please describe how these funds are accounted for (e.g. retained as income, transferred to the State's unclaimed funds program) and whether or not commissions are paid on income generated from the unclaimed funds.

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 2, 5 and 10) as well as on the grounds that it is overly broad, unduly burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation and that it seeks confidential, sensitive, proprietary financial or other internal business information. Securus further responds by partially answering the Interrogatory.

**GTL Response:** GTL states its general objections (no. 1, 3, 7 and 8) and further objects that the Interrogatory is vague, ambiguous, overly broad and unduly burdensome, seeks confidential information, is outside the scope of the *Interlocutory Order*, and not reasonably calculated to lead to the discovery of admissible evidence. GTL further objects stating that the process used to deposit funds is publicly available. GTL's only response to the request is that the information is publicly available.

**Answer:** This Interrogatory is directly relevant to the Department's investigation into billing practices, tariffed service and other fees, quality of service and customer service practices. What happens to the refunds is specifically relevant to costs (or how some costs might be offset) and is therefore also relevant to the investigation into the surcharge and surcharge cap. The request is narrow, and as Respondents state, is at least partially available. It is not unduly burdensome or overbroad. 13. For each contract identified in No. 1, please identify and describe any and all fees charged by your company to consumers of inmate calling services in Massachusetts for establishing, using, maintaining or closing a pre-paid account, including but not limited to fees for opening an account; depositing funds to an account by cash, check, western union,

moneygram, or credit card; obtaining a refund from an account; and maintaining an inactive account, stating the percentage or amount any site commission paid from these fees.

13. For each contract identified in No. 1, please identify and describe any and all fees charged by your company to consumers of inmate calling services in Massachusetts for establishing, using, maintaining or closing a pre-paid account, including but not limited to fees for opening an account; depositing funds to an account by cash, check, western union, moneygram, or credit card; obtaining a refund from an account; and maintaining an inactive account, stating the percentage or amount any site commission paid from these fees.

**Securus Response:** Securus objects on the basis of its general objections (nos. 1, 3 and 13) as well as on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence, outside the scope of the investigation and that the information is publicly available. Securus further responds by partially answering the Interrogatory.

**GTL Response:** GTL states its general objections (no. 1, 3, and 8) and further objects that the Interrogatory is not relevant, not reasonably calculated to lead to the discovery of admissible evidence and publicly available.

**Argument:** Although Securus and GTL provide partial answers by referring to information that is publicly available or, in the case of Securus, stating whether or not fees are assessed in the areas mentioned in the Interrogatory, the request also specifically asks for the percentage or amount of any site commission paid from the fees charged, which neither party responds to. The issue of commissions, as more generally argued above, is relevant to this proceeding and included in the Department's investigation as per the *Interlocutory Order*.

15. Please describe the process used for receiving, processing and closing a complaint regarding the provision of inmate calling services for each facility currently under contract with you in Massachusetts.

**Securus Response:** Securus restates its general objections nos. 1 and 5 and further objects on the basis that the Interrogatory is overly broad, burdensome, not relevant or reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Securus provides a partial response generally describing how complaints are received and responded to.

**GTL Response:** GTL repeats its general objections nos. 1, 3 and 8 and further objects that the Interrogatory is overly broad, unduly burdensome, not reasonably calculated to lead to discovery of admissible evidence and not relevant to the subject matter of the proceeding. Without waiving its objections, GTL further answers by generally describing the complaint process.

**Argument:** Although the parties provide partial answers, in the case of both GTL and Securus, it remains unclear from the description, how complaints are closed within the company. Further, the Interrogatory is not unduly burdensome or overbroad and is directly related to the Department's investigation into all areas in this matter.

16. For each year of each contract identified in No. 1, please state the number of complaints in each of the following categories. If it is not possible to break down complaints by category, please so state and give the most detailed breakdown that your records permit.

- a) Static, line noise and other problems with audibility
- b) Dropped calls
- c) Broken telephone sets
- d) Billing concerns, including but not limited to charges for dropped calls, problems with refunds, and contested fees and surcharges.

**Securus Response:** Securus restates its general objections nos. 1 and 5 and further objects on the basis that the Interrogatory is overly broad, burdensome, and not relevant or reasonably calculated to lead to the discovery of admissible evidence. Securus also objects on the basis that the Interrogatory is outside the scope of the investigation as it relates to broken telephone sets and matters unrelated to “billing practices”. Without waiving these objections, Securus provides a partial response.

**GTL Response:** GTL repeats and restates its general objections nos. 1, 3, 7, and 8 and further objects to the Interrogatory on the grounds that it seeks information that is not relevant (broken telephone sets). GTL further responds by providing a redacted list marked confidential of complaints received regarding billing complaints and dropped calls.

**Argument:** The *Interlocutory Order* is clear that complaints regarding the issues listed in (a)-(d), perhaps with the exception of (c) (broken telephone sets), are included in the scope of the Department’s investigation. Petitioners further note that GTL lists no complaints regarding static, line noise and other problems with audibility. It is unclear to Petitioners if no such complaints were received or if such complaints were left out of the response. In addition, as per Securus’ response to Interrogatory 15, some complaints from consumers do not generate a written record or response. Petitioners clarified with counsel for Securus in a discovery conference on 5/23/14 that the Securus response to Interrogatory 16 does not include complaints received directly from prisoners or other consumers of Securus ICS.

19. Please describe systems that you use to track or manage complaints about billing issues and identify any documents describing these systems.

**Securus Response:** Securus repeats its general objections nos. 1 and 15 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is outside scope of investigation. Securus further objects on the grounds that the interrogatory is ambiguous and does not define “systems” or “billing issues.” Securus, in response, refers to its answer to Interrogatories 15 and 16.

**GTL Response:** GTL restates its general objections 1, 3, 7 and 8 and objects on the grounds that the Interrogatory is vague, ambiguous, overbroad and unduly burdensome and duplicative of Interrogatory #15. GTL responds by referring to its answers to Interrogatories 15 and 16.

**Argument:** The Interrogatory is not unduly burdensome, overbroad, vague, ambiguous or duplicative of Interrogatory 15. This interrogatory requests information on how the providers account for complaints regarding billing issues and by which means they track or manage complaints about billing issues. The request further seeks identification of any documents describing such systems. The providers do not identify any such documents nor do they state whether or not such documents exist. In addition, this Interrogatory is clearly related to the Department's open investigation into the providers' billing and customer service practices.

20. Please describe systems or processes that you use to track performance by facility, state and by region, in the following categories, and identify any documents describing these systems.

- a) financial and / or margin performance (i.e. the revenue, expenses and margin you received);
- b) quality performance (i.e. how you did on completing calls);
- c) technical and network performance (i.e. how the network, equipment and software performed).

**Securus Response:** Securus repeats its general objections nos. 1, 2, 5, 10 and 15 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is outside the scope of the investigation into quality of service issues. Securus further objects on the grounds that the interrogatory is ambiguous, overbroad and unduly burdensome and seeks confidential, competitively sensitive, proprietary financial or other internal business information. Securus then responds by referring to its Response to the Initial Petition (January 12, 2012) pp. 31-33, which reports that its contracts with confinement facilities include quality of service requirements and that it conducts annual surveys with its facility customers.

**GTL Response:** GTL restates its general objections 1, 3, 7 and 8 and objects on the grounds that the Interrogatory is vague, ambiguous, overbroad and unduly burdensome, duplicative and not reasonably calculated to lead to the discovery of admissible evidence. GTL also objects that the request seeks confidential information that is irrelevant to the proceedings, specifically that financial and/or margin performance and technical and network performance issues are beyond the scope of the proceeding. GTL responds by referring to its answer to Interrogatory 16 and providing a list of redacted confidential information regarding call completion statistics.

**Argument:** This interrogatory is narrowly drafted so as not to be overbroad or unduly burdensome. It is directly relevant to the Department's investigation into the surcharge, surcharge cap, quality of services issues, and customer service practices. Financial and margin performance is directly relevant to the cost of providing ICS, which is necessary to determine the surcharge; quality performance is clearly related to dropped calls, customer service and other quality of service issues; and technical and network performance is similarly related to line quality, audibility, static, dropped calls and customer service practices.

21. Describe your budgetary process including how you set financial goals for the year, and how you compare actual results to what was budgeted.

**Securus Response:** Securus repeats its general objections nos. 1, 5, and 10 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is outside the scope of the investigation especially as it is not limited to Massachusetts. Securus further objects on the grounds that the interrogatory is vague and ambiguous and seeks confidential, competitively sensitive, proprietary financial or other internal business information.

**GTL Response:** GTL restates its general objections 1, 3, 7 and 8 and objects on the grounds that the Interrogatory is vague, ambiguous, overbroad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GTL also objects that the request seeks confidential information that is irrelevant to the proceedings.

**Argument:** This Interrogatory asks a simple and discrete question regarding how financial goals are set for the year and then evaluated. The Interrogatory is directly related to all areas the Department is investigating in this matter. How a company sets its financial goals for the year could impact what kind of contract terms it plans to agree to, its strategy regarding account management and the assessment of fees, adjustments to surcharges and rates, improvements or changes to call quality, billing practices, customer service or specific features associated with ICS.

22. Please identify and describe any reports, analysis or other documentation that is created to report profitability to management.

**Securus Response:** Securus repeats its general objections nos. 1, 5, 10 and 15 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence and outside the scope of the investigation especially as it is not limited to Massachusetts. Securus further objects on the grounds that the interrogatory is vague and ambiguous and seeks confidential, competitively sensitive, proprietary financial or other internal business information.

**GTL Response:** GTL restates its general objections 1, 3, 7 and 8 and objects on the grounds that the Interrogatory is vague, ambiguous, overbroad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GTL also objects that the request seeks confidential information that is irrelevant to the proceedings.

**Argument:** This Interrogatory asks a simple and discrete question regarding what documentation is used to report profitability to management. The Interrogatory is directly related to all areas the Department is investigating in this matter. Profitability documentation contains information regarding trends in costs versus profits across facilities and could help demonstrate what a just and reasonable ICS rate would be.

23. Please list any and all enforcement actions or investigations against [Securus] [GTL] by other public utility commissions from 2009 to the present.

**Securus Response:** Securus repeats its general objections nos. 1, 5, and 6 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of

admissible evidence and outside the scope of the investigation, specifically because it seems information unrelated to Securus' provision of ICS in Massachusetts. Securus further objects on the grounds that the interrogatory is unduly burdensome and overly broad.

**GTL Response:** GTL restates its general objections 1, 3, and 8 and objects on the grounds that the Interrogatory is overbroad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the investigation in these proceedings.

**Argument:** This Interrogatory asks a simple and discrete question regarding enforcement actions against the parties by other public utility commissions since 2009. The Interrogatory is directly related to all areas the Department is investigating in this matter. Information submitted in connections with such actions would presumably be relevant to the Department's investigation here. Such information is more easily obtainable by the Respondents than Petitioners and much of it is likely public.

24. Please state both your gross and net earnings derived from the provision of inmate calling services to the facilities in Massachusetts listed in Response to No. 1 from 2008 to the present, including a comparison of your gross and net earnings derived from your provision of inmate calling services in other states.

**Securus Response:** Securus repeats its general objections nos. 1, 2, 5, and 10 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence and outside the scope of the investigation especially as it is not limited to Massachusetts. Securus further objects on the grounds that the interrogatory is overly broad, unduly burdensome, vague and ambiguous and seeks confidential, competitively sensitive, proprietary financial or other internal business information.

**GTL Response:** GTL restates its general objections 1, 3, 7 and 8 and objects on the grounds that the Interrogatory is vague, ambiguous, overbroad and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. GTL also objects that the request seeks information that is irrelevant to the proceedings.

**Argument:** This Interrogatory is narrowly tailored and is not vague, ambiguous, unduly burdensome or overbroad. It is relevant to the Department's investigation into the surcharge and surcharge cap as well as the tariffed service and other fees. Further, Petitioners note that documentation comparing financial data between states is particularly relevant to whether or not the surcharge or surcharge cap should be maintained in Massachusetts.

25. Please state how many telephones for incarcerated ICS consumers are currently installed in each Massachusetts facility to which you provide services and how many service calls you made to each facility for each calendar year from 2011 to the present. If any telephone units were replaced in any of the facilities, please state how many, when they were replaced and why.

**Securus Response:** Securus repeats its general objections, specifically no. 1 and objects on the grounds that the Interrogatory is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and is outside the scope of the investigation because it seeks information

related to the “availability and upkeep of telecommunications equipment at correctional facilities”.

**GTL Response:** GTL restates its general objections no. 1, 3, and 8 and objects on the grounds that the Interrogatory is overly broad and unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information not relevant to the proceedings (“availability and upkeep of telecommunications equipment at correctional facilities”).

**Argument:** This Interrogatory is neither overly broad nor burdensome and is directly relevant to Petitioners’ claims on line quality, dropped calls and customer service. The request specifically asks for information on service calls to the Massachusetts facilities served by the providers from 2011 to the present. Such service calls would presumably have included responses to complaints regarding static, line quality, dropped calls and other quality of service troubleshooting. Respondents attempt to narrowly construe the request so as to pigeon hole it into an area the Department has deemed outside the scope of the investigation, but a literal reading of the request reasonably refers to the providers’ responses to quality of service issues through service calls to the facilities it contracts with.

### **DOCUMENT REQUESTS**

1. Any and all documents identified in Petitioners’ First Set of Interrogatories.

**Securus Response:** Securus objects to the document request on the basis of its general objections (nos. 1, 2, 3, 5, 11 and 14) and further states that production of any documents identified in the Petitioners’ first set of interrogatories are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, including specifically “documents relating to commission payments, detailed cost analysis or information.” Securus further objects to producing any facility contracts or related amendments, as identified in response to Interrogatory 1 (which requests three years of such documentation), because it contends that these contracts do not contain information relevant to the issues in this case. In addition, Securus objects to this document request as vague, ambiguous, overly broad and burdensome and seeks provision of protected information. Finally, Securus objects to the extent that the Request seeks publicly available documents. Securus produced no documents in response.

**GTL Response:** GTL objects to the Document request on the basis of its general objections (nos. 1, 3, 9, 10 and 11). It specifically objects that it is vague, ambiguous, overly broad and unduly burdensome, seeks provision of protected information, and seeks information irrelevant to this proceeding. GTL asserts that the copies of contracts identified in response to Interrogatory 1 are irrelevant to this proceeding. The only documents produced are GTL’s Massachusetts Tariffs Nos. 1 and 2.

**Argument:** As discussed *supra*, the broad relevance objections of GTL and Securus to providing any data related to costs, revenues or commission payments is unsustainable. The assertion that even the companies’ Massachusetts ICS contracts are irrelevant demonstrates the companies’ resistance to providing even the most basic documentation of their operations. These documents are not “publicly available” but must be requested from each facility through

the Massachusetts Public Records Act, and must be paid for in accordance with the Act's provisions. The Petitioners have paid for and obtained documents from the DOC and many counties, and went to the trouble and expense of producing all the documents they had obtained to the Respondents. However, the facilities vary in the documents they choose to produce. The Petitioners require a complete and accurate copy of each Massachusetts contract to which the Respondents are a party, any associated amendments, the Request for Proposals to which each contract corresponds, and associated documents. The relevance and discoverability of data contained in these documents relating to costs, revenues, fees and site commissions is discussed above. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

2. To the extent that any formal documentation was created in connection to the complaints listed in Interrogatory 16 please provide a copy of that documentation.

**Securus Response:** Securus objects to the document request on the basis of its general objections (nos. 1, 5, 11 and 13) and further objects that the Petitioners failed to define "formal documentation" or to specify who created this documentation. Securus also objects on grounds of relevance and customer proprietary network information. Securus nevertheless produced a redacted written summary of complaints received and resolved by telephone with its response to Interrogatory 16 and written email and surface mail correspondence in its first and supplemental response to this interrogatory. When the parties conferred, counsel for Securus confirmed that the Petitioners had been given all such documentation in the company's possession.

**GTL Response:** GTL provides no response and objects to the document request on the basis of its general objections (nos. 1, 3, 10 and 11) and objects that the request is vague and ambiguous and seeks confidential information. GTL both states that the request improperly assumes that the company received complaints, and also objects that such documents are protected by privilege, work product doctrine or some other protection or immunity making them non-discoverable.

**Argument:** Securus appears to have complied with this document request. GTL does not explain its confusion over the term "formal documentation" nor does it explain why customer complaints and GTL responses thereto could be confidential or privileged. It does not state that it has not received any complaints over the past 3.5 years (as requested in Interrogatory 16), which would strain credulity. Its relevance objection lacks substance; the DTC has opened an investigation into dropped calls, the quality of calls and billing practices, all of which are likely the subject of customer complaints. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

3. Any and all documents that define your current corporate and security quality goals.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, 7 and 11) and further objects that the request is ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is overly broad, unduly burdensome, and seeks information that is

irrelevant and protected. GTL further objects that the terms “define” and “current corporate and security quality goals” are vague and ambiguous.

**Argument:** This document request is not vague, ambiguous, overbroad or burdensome. It is limited to only “current” corporate and security quality goals. Furthermore, this request is directly relevant to the Department’s investigation into all areas in this proceeding. The defined corporate and security quality goals of the providers bear not only on call quality, but also on billing and customer service practices and the surcharge and surcharge cap.

4. Any and all documents concerning policies regarding the provision of inmate calling services including issues such as quality, security, network outages, pricing, and dropped calls.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, and 11) and further objects to the request as overly broad, unduly burdensome, ambiguous, and seeking documents that are protected and irrelevant to the proceeding. Securus produced a brochure, “Friends and Family Telephone Service Guide,” but identified no other responsive documents.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, and 11) and further objects to the request as overly broad, and unduly burdensome, seeking documents that are protected and irrelevant to the proceeding. GTL produced no documents.

**Argument:** This document request seeks the Respondents’ policies on areas specifically relevant to the investigation, including call quality, pricing and dropped calls. Any such responsive policies as to which the Respondents assert a need for protection must be submitted to the DTC under the procedures set forth in the procedural order.

5. Any and all documents concerning the amount of revenues and expenses incurred in relation to each year of each contract identified in response to Interrogatory No. 1. Such documentation would include financial statements, budget performance reports, management report, and any documentation in relation to the payment of site commissions.

**Securus Response:** Securus objects citing its general objections (nos. 1, 2, 3, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks documents that are protected and irrelevant. It produced no response.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, and 11) and further objects that the request is overly broad and unduly burdensome, and seeks documents that are protected and irrelevant. It produced no response.

**Argument:** The central relevance of cost and revenue data to this proceeding are discussed in Sections I and II, above. The request is limited to the period since January 2011 and limited to Massachusetts facilities where the Respondents have had contracts. Assertedly protected

materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

6. Any document listing or describing the costs associated with providing ICS to Massachusetts consumers.

**Securus Response:** Securus objects citing its general objections (nos. 1, 2, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks documents that are protected and irrelevant. It produced no response.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, 11 and 12) and further objects that the request is vague, ambiguous, overly broad and unduly burdensome, and seeks documents that are protected and irrelevant. It produced no response.

**Argument:** The central relevance of cost data to this proceeding are discussed in Sections I and II, above. The request is limited to the period since January 2011. As discussed *supra*, the FCC is requiring ICS providers to disclose cost data in its ICS rulemaking procedure. Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

7. Any document (a) identifying or describing fees charged by your company to consumers of inmate calling services in Massachusetts for establishing, using, maintaining or closing a pre-paid account, (b) listing amounts collected for any such fee or (c) referencing the disposition of such fees once they have been collected.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, 11 and 14) and further objects that the request is overly broad, unduly burdensome, seeks publicly available information, and that the information sought is irrelevant and protected. Securus discloses some information regarding the fees it charges in its response to Interrogatory 13 and discloses that fees are stated in the tariffs it has provided

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, 11 and 12) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is publicly available, irrelevant and protected. GTL discloses that fees are stated in the tariffs it has provided and has given websites where the fees are publicly available.

**Argument:** In essence GTL and Securus have responded to part (a) of the document request while failing to respond to parts (b) and (c). They fail to disclose documents listing total amounts of fees collected for Massachusetts ICS or the disposition of these fees. The Petitioners will limit this request to the same period covered by Interrogatory 1 and related document requests, January 2011 to the present. The relevance of these documents is clear, given that the investigation explicitly includes “tariffed service *and other fees* of ICS providers.” Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

8. Any and all documents prepared for upper management or a member or members of the Board of Directors that discusses directly or indirectly the performance of your provision of inmate services in Massachusetts. Please include any and all reports that compare such performance with that of your company's provision of inmate services in other states.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, 11 and 15) and further objects that the request is ambiguous, overly broad, unduly burdensome, and seeks information that irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is duplicative, vague, ambiguous, overly broad, unduly burdensome, and seeks information that irrelevant and protected.

**Argument:** Measures of performance are key to the investigation in this case. As discussed in Sections I and II, rates must be established in relation to the costs and revenues of ICS, making the Respondents' financial performance highly relevant. The companies' billing, dropped calls and line quality are also the direct subjects of the investigation, making performance assessments in these areas crucial to the investigation as well. The Petitioners will limit this request to the same period covered by Interrogatory 1 and related document requests, January 2011 to the present. The Respondents have made no showing as to the basis for their other objections.

9. Any and all documentation that shows the overall profitability of your operations in Massachusetts for 2011, 2012, 2013 and for 2014.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, and 11) and further objects that the request is ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, and 11) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**Argument:** As discussed in Sections I and II, rates must be established in relation to the costs and revenues of ICS, making the profitability of the Respondents' operations highly relevant. Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

10. Any and all documentation comparing the total amounts of commissions that were paid in Massachusetts in 2011, 2012, 2013 and in 2014.

**Securus Response:** objects citing its general objections (nos. 1, 3, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**Argument:** Site Commissions are central to this proceeding, as discussed *supra* in Section III. Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

11. Any and all documents, reports or analyses that track quality performance by facility, region or state that would cover Massachusetts for the years 2011, 2012, 2013, and 2014. These documents might track things like trouble reports, quantities of dropped calls, network outages, and other related quality assurance issues you might measure or track.

**Securus Response:** Securus objects citing its general objections (nos. 1 and 5) and further objects that the request is ambiguous, overly broad and unduly burdensome, and seeks information that is irrelevant.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is, overly broad, unduly burdensome, and seeks information that is irrelevant and protected. GTL further states that the terms “track,” “measure,” “quality performance,” “trouble reports,” and “other related quality assurance issues” are vague and ambiguous.

**Argument:** The investigation explicitly includes dropped calls, the quality of connected calls and billing practices, such that documents tracking performance related to these areas are vitally relevant. Network outages affect line quality and dropped calls, and are relevant as well. The words that GTL claims to find vague and ambiguous are easily understood, but the Petitioners are willing to attempt to clarify these terms when the Respondents’ relevance objections are resolved.

13. Any and all documents including cost studies, budget analysis or management reports that calculate your cost of and/or revenue derived from providing calling services in Massachusetts from 2011 to the present.

**Securus Response:** Securus objects citing its general objections (nos. 1, 2, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, and 11) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**Argument:** As discussed in Sections I and II, costs and revenues from ICS in Massachusetts is central to determining a just and reasonable rate. Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

14. Any and all documents, including cost studies, budget analysis or management reports relating to the years 2011 to the present that concern segregating your costs in Massachusetts between the call set up function that is recovered by the surcharge and the costs that are recovered by any per minute or other charges.

**Securus Response:** Securus restates its general objections nos. 1, 3, 5 and 11 and further objects that the request is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence and seeks irrelevant, confidential or protected information.

**GTL Response:** GTL restates its general objections nos. 1, 3, 9, 10 and 11 and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence or seeks information that is not relevant or protected.

**Argument:** This request is not vague, ambiguous, unduly burdensome or overly broad as it requests specific information pertaining to a limited time period. Furthermore, it is directly relevant to the issue of the surcharge and surcharge cap that is under the Department's investigation.

15. Any and all documents including reports that show completed and billed minutes by facility that would cover Massachusetts for the fiscal years of 2011, 2012, 2013 and 2014.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks information that is irrelevant and protected. Securus further states that the request is ambiguous in that it does not define "fiscal year."

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**Argument:** Call volume in Massachusetts facilities is essential to the Department's investigation of a just and reasonable rate, as it determines the marginal costs and profitability of ICS. The Petitioners stipulate that "fiscal year" may be interpreted as "calendar year." Assertedly protected materials must be filed with the DTC as specified in the procedural order. The Respondents have made no showing as to the basis for their other objections.

17. Any and all documented communications with Massachusetts governmental agencies and/or private contractors that manage or supervise prison facilities in Massachusetts concerning the provision of inmate calling services in the Massachusetts facilities listed in response to No.1.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, and 11) and further objects that the request is overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10 and 11) and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, and seeks information that is publicly available, irrelevant and protected.

**Argument:** This interrogatory is not vague, ambiguous, overly broad or unduly burdensome. It requests information pertaining to the provision of ICS in Massachusetts with the facilities listed in response to Interrogatory no. 1 and regarding a limited time period. The request is relevant to the extent there are documented communications between the providers and agencies such as the Department of Corrections regarding any of the issues under the Department's investigation in these proceedings.

19. Any and all documents including contracts and addendums concerning agreements with entities that conduct billing services for your inmate calling operations in Massachusetts.

**Securus Response:** Securus objects citing its general objections (nos. 1, 5, and 11) and further objects that the request is overly broad and unduly burdensome, and seeks information that is irrelevant and protected. Specifically, Securus asserts that the request is outside the scope of the investigation because these billing services are not regulated by the department.

**GTL Response:** GTL objects citing its general objections (nos. 1, 3, 9, 10, and 11) and further objects that the term "conduct billing services" is vague and ambiguous, and the request is overly broad, unduly burdensome, and seeks information that is irrelevant and protected.

**Argument:** The Department has opened an investigation into the billing practices of GTL and Securus. On its face, this would appear to include the practices of third parties contracted by the companies to conduct billing services. It is unclear why GTL finds the term "conduct billing services" to be vague and ambiguous. The Petitioners agree to limit the time period covered by this request to January 2011 to the present. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

20. Your promotional and marketing materials concerning any and all aspects of your provision of inmate calling services from 2011 to the present.

**Securus Response:** Securus repeats its general objections nos. 1, 5 and 14 and further objects on the basis that the Interrogatory is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and not relevant to the proceeding. Nevertheless, Securus responds referring to information on its website that is publicly available.

**GTL Response:** GTL repeats its general objections nos. 1, 3, 9, 10, 11 and 12 and further objects that the request is vague, ambiguous, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, protected from disclosure or not relevant to these proceedings.

**Argument:** This request is not vague, ambiguous, unduly burdensome or overly broad. Marketing materials the providers use to secure contracts with facilities are related to service quality, billing and customer service practices, tariffed service and other fees, and the surcharge and surcharge cap under investigation in this proceeding.

**CONCLUSION**

For the above-described reasons, the Department should grant the Petitioners' Motion and compel the responses of Securus and GTL to Petitioners' interrogatories and requests for production of documents.

Date: *May 30, 2014*

Respectfully submitted:



---

Bonita Tenneriello, Esq.  
Elizabeth Matos, Esq.  
10 Winthrop Square, 3<sup>rd</sup> Floor  
Boston, Massachusetts 02110  
(617) 482-2773 (telephone)  
(617) 451-6383 (facsimile)  
[btenneriello@plsma.org](mailto:btenneriello@plsma.org)  
[ematos@plsma.org](mailto:ematos@plsma.org)  
[jpigeon@plsma.org](mailto:jpigeon@plsma.org)