

**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**

**REPLY IN SUPPORT OF PETITIONERS' MOTION TO COMPEL
RESPONSES OF INMATE CALLING SOLUTIONS**

Inmate Calling Solutions (“ICS”) and the Petitioners reached agreements during their discovery conference on June 13, 2014 on most of the discovery sought by Petitioners’ Motion to Compel Responses from ICS. As is appropriate in a discovery conference, the parties discussed what was reasonable for ICS to produce, and in many instances the Petitioners substantially narrowed the scope of their requests in order to reach agreement. For example, because ICS persuaded the Petitioners that it does not account for costs and revenues by facility or by state, and that due to its size it could not afford to generate such data, the parties agreed that ICS would produce only company-wide financial statements and a general ledger (subject to a satisfactory protective order) in response to particular interrogatories and document requests.¹ As outlined in Petitioners’ motion, the parties reached full agreement on seven interrogatories and five document requests, partial agreement on two interrogatories and one document request, and there were only one interrogatory and three document requests which Petitioners sought to compel in their entirety.

¹ See Petitioners’ Motion to Compel ICSolutions, discussion of Interrogatories 2, 6, 7 and Document Requests 1, 4, 5, and 14. The logic of this agreement does not apply to Securus and GlobalTel*Link, which have many sizeable contracts in Massachusetts and corporate resources more than ample to generate state- and facility-specific data.

ICS believes that by compromising on some interrogatories and document requests, the Petitioners “agreed to forego further discovery from ICS on this matter.”² The Petitioners believe that this sincerely held understanding of ICS, which is not represented by counsel, is predicated on a misunderstanding of the discovery process. A requesting party may agree to accept a narrower response to any interrogatory or document request and thereby reduce the burden on the producing party. But by so agreeing, the Petitioners never stated that they would forgo the rest of the discovery they sought. Indeed, when the parties conferred, counsel for Petitioners on several occasions remarked that since the two sides could not agree on a particular issue it would have to be left for the Department to decide. In an effort to be reasonable, where the parties did reach agreement the Petitioners now seek only to compel the agreed response, rather than a full response.

ICS argues that its participation in this matter is “unfair” given its small market share and income from Massachusetts.³ However, as an ICS provider in Massachusetts it is subject to the DTC’s regulatory authority. ICS, like GTL and Securus, has an obligation to respond to discovery, which is necessary for a full presentation of relevant facts. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.”⁴ The Petitioners were careful to check with ICS so as not to misrepresent agreements reached, and ICS does not disavow any of those agreements. Therefore ICS should be required to produce those responses which it agreed it could reasonably produce. ICS has presented no legal argument with regard to those interrogatories and document requests that the Petitioners have presented to the Department for resolution in their Motion to Compel Responses from ICS, and therefore ICS should be compelled to respond to those requests.

² ICS Br. at 1

³ ICS br. at 2.

⁴ Mass.R.Civ.P. 26(b)(1).

Date:

Respectfully submitted:

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