

June 25, 2014

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BY ELECTRONIC FILING AND FEDERAL EXPRESS

Ms. Catrice C. Williams
Secretary
Department of Telecommunications and Cable
1000 Washington Street, 8th Floor, Suite 820
Boston, MA 02118

Re: Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls – D.T.C. 11-16 – Opposition Of Securus Technologies, Inc. To Petitioners’ Motion To Compel Responses Of Securus To Interrogatories And Requests For Production

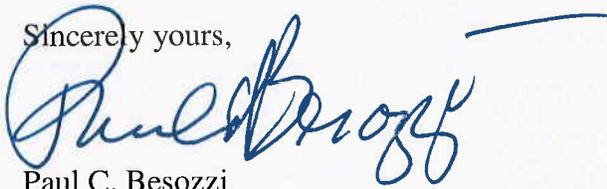
Dear Ms. Williams:

In accordance with the Procedural Order, dated February 27, 2014, as amended by the Orders On Motion For Extension Of Time, dated April 18, 2014 and June 5, 2014 (collectively “Order”), enclosed for filing is an original of the Opposition Of Securus Technologies, Inc. To Petitioners’ Motion To Compel Responses Of Securus To Interrogatories And Requests For Production (“Opposition”).

Per Section II.A. of the Order, the Opposition is being filed electronically with the original and requisite copies prescribed by Section II.A.3., and transmitted via overnight delivery.

An extra copy of the Opposition is enclosed to be stamped-in or otherwise marked as received and returned in the enclosed envelope.

Sincerely yours,



Paul C. Besozzi

cc: Service List for D.T.C. 11-16

Before The
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Recipients of Collect Calls
from Prisoners at Correctional Institutions
in Massachusetts Seeking Relief from the Unjust
and Unreasonable Cost of such Calls

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**OPPOSITION OF SECURUS TECHNOLOGIES, INC. TO PETITIONERS' MOTION
TO COMPEL RESPONSES OF SECURUS TO INTERROGATORIES AND REQUESTS
FOR PRODUCTION**

Securus Technologies, Inc. ("Securus" or "Company"), acting through the undersigned counsel and in accordance with the Procedural Order, dated February 27, 2014, as amended by the Orders On Motion For Extension Of Time, dated April 18, 2014 and June 5, 2015,¹ hereby opposes the Petitioners' Motion To Compel Responses Of Securus To Interrogatories And Requests For Production, dated May 30, 2014 ("Petitioners' Motion"). In support of its Opposition, Securus sets forth the following:

I. INTRODUCTION AND SUMMARY

Under the Department of Telecommunications and Cable ("Department" or "DTC") rules and applicable precedent, the Petitioners' right to discovery in this investigation is not an unlimited one. That right is governed by inveterate principles of relevance and the relationship of the information requested to the specific issues designated as within the scope of the investigation.² The

¹ 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*, Procedural Order (Feb. 27, 2014)(amended by the Orders On Motion For Extension Of Time, dated April 18, 2014 and June 5, 2014)(collectively, "*Procedural Order*"). Unless otherwise indicated herein, "Petitioners" refers to the Prisoners' Legal Services, which took the lead in filing the Petitioners' Motion on behalf of itself and all of the other 54 Petitioners in this investigation. The Petitioners are listed in Attachment B to Petitioners' Amendment #2 to the original Petition, subject to the recent indication that Patricia A. Nigro-Beland was incorrectly listed in Attachment B.

² See 220 CMR §1.06:(6)(c)(1).

rules and precedent do not sanction discovery requests which essentially seek the opportunity to rummage through, for example, “any and all documents” Securus might have “concerning policies regarding the provision of inmate calling services...” to see if Petitioners can find anything relevant to the Department-approved issues.³

Just as Petitioners exercised their right to seek information under the rules, Securus, acting in good faith, exercised its right to respond in part and object to the Petitioners’ broadly worded interrogatories and document requests, setting forth the specific grounds for its objections. To characterize that as Securus “refus[ing] to provide information”—in the face of requests that Petitioners themselves concede require narrowing in scope and clarification⁴—seems disingenuous when twenty one (21) of the Petitioners themselves have been unwilling or unable to respond *at all* to Securus’s request for details of Petitioners’ broad allegations.⁵

Petitioners, through their Motion, seek to justify expanding the scope of the Department’s limited investigation, rolling back the clock to require the production of extensive, confidential and proprietary financial and cost data to conduct a “rate of return,” “cost-based” rate case for ICS. Nothing in the *Interlocutory Order* initiating this investigation⁶ directs or requires such a rate of return analysis or indicates that the scope of the investigation includes the conduct of such a rate case. Nor does the *Interlocutory Order* reflect an intent to abandon the *prima facie* lawful incentive rate regulation

³ See D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Prisoners’ Legal Services’ First Set of Interrogatories and Document Requests to GTL, Securus, and ICS, Document Request No. 4 (dated Mar. 10, 2014)(“*Petitioners’ Information Requests*”).

⁴ Petitioners concede in their Motion that they “are prepared to discuss narrowing and clarifying their requests.” Petitioners’ Motion, p.10.

⁵ Actually, 19 Petitioners have yet to respond. Another 2 responded but their responses were withdrawn. See D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners’ Supplemental Response To Global Tel*Link Corporation’s First Set Of Information Requests To Petitioners, p.1 (May 23, 2014).

⁶ D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Interlocutory Ruling (Sept. 23, 2013)(“*Interlocutory Order*”).

regime (and associated rates) adopted for ICS in 1998, a form of regulation governing various providers of telecommunications services in Massachusetts.⁷

Further, as noted in Securus's (and Global Tel *Link's ("GTL")) objections, site commission requirements established by the Department of Corrections or facility administrators at municipal or county correctional facilities are not regulated by the Department. As the Hearing Officer observed at the July 19, 2012 Public Hearing, the Department does not run the Massachusetts prison system.⁸

In sum, Petitioners cannot compel the discovery of information from Securus that goes beyond the specified issues approved by the Department for investigation in this proceeding in an effort to conduct a traditional "rate of return", "cost-based" analysis. Again, as GTL observed, Petitioners are not entitled to engage in a "fishing expedition," in the hopes of finding information that might be relevant to their effort to overcome the *prima facie* lawfulness of the Department-approved rate structure to which Securus has adhered.⁹

Finally, on the issues of dropped calls, quality of connected calls and billing practices that were approved in the *Interlocutory Order*, Securus has provided responsive historical and process information about its handling of those issues.¹⁰

II. THE PETITIONERS' MOTION DOES NOT COMPLY WITH THE EXPRESS REQUIREMENTS OF THE PROCEDURAL ORDER

The *Procedural Order* states in part as follows:

⁷ By law the existing rates are and remain *prima facie* lawful until the Department finds otherwise. Mass. G.L. c. 159 §17. The burden of proving that the existing rate should be changed squarely belongs to the Petitioners. See *Metropolitan District Commission v. Department of Public Utilities*, 332 Mass. 18, 25 (1967).

⁸ 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*, Transcript of July 19, 2012 Public Hearing ("D.T.C. 11-16 Hearing Transcript"), p. 164, ll. 12-16.

⁹ See *Alphas Co., Inc. v. Kilduff*, 888 N.E.2d 1003, 1012 (Mass. Ct. App.) (2008).

¹⁰ Securus notes that in its initial January 20, 2012 Response filed in this proceeding, the Company provided information on each of the Petitioners' interaction with Securus on these and other customer service issues. 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*, Response Of Securus Technologies, Inc., January, 20, 2012, p. 31-37 and Exhibit 8.

“3. Discovery Disputes

Counsel for each of the parties shall confer in advance of filing any discovery motion in an effort to narrow areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice.”¹¹

Although the Petitioners indicate that they participated in a discovery conference with Securus on May 23, the representation does not satisfy the express requirement of the *Procedural Order* and Petitioners sought no waiver thereof.

The *Procedural Order* further requires that:

“All motions arising out of a party’s response to, or asserted failure to comply with, an information or record request, shall be accompanied by a brief. With respect to each ...information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request; (2) the opponent’s response; and (3) a specific legal and factual argument.”¹²

Petitioners affirmatively chose not to set out Securus’s actual response/objections to each of their Interrogatories and Document Requests. Rather Petitioners provided their own summary thereof. Indeed, even where Securus provided substantive responses, Petitioners chose to address them simply by stating for example, Securus “appears to have complied” or “provides a partial response.”¹³

Securus respectfully submits that failure to set forth Securus’s complete response/objections deprives the Department of the opportunity in one document to see the information request immediately juxtaposed with the response/objections and the movant’s legal and factual argument.

¹¹ *Procedural Order*, p. 4.

¹² *Procedural Order*, p. 6.

¹³ *See* Petitioners’ Motion, pp. 19, 24.

Presumably that is why the *Procedural Order* imposed that requirement. The Petitioners' editorializing is, in Securus's view, unfair and in violation of the express terms of the *Procedural Order*, which does not contemplate "a summary of the opponent's response."¹⁴ Below, Securus sets out completely its response and objections to each of the Interrogatories and Document Requests that are the subject of Petitioners' Motion.

Further, in a number of cases the "specific factual and legal argument" set forth by Petitioners consisted of summarily asserting that the information "is directly relevant to the issue of the surcharge and surcharge cap that is under the Department's investigation."¹⁵ Securus respectfully submits that this kind of bare claim is insufficient to establish the grounds for relevance.

III. DEPARTMENT DISCOVERY PARAMETERS AND STANDARDS

In general, under the Department's rules, discovery is intended to permit "the parties and the Department to gain access to all relevant information in an efficient and timely manner," in order "to ... narrow scope of issues, protect the rights of the parties and ensure that a complete and accurate record is compiled."¹⁶ However, the information sought must "relate or pertain to legal or factual issues in the case" or be "reasonably calculated to lead to the discovery of admissible evidence."¹⁷ In other words, the question is whether the information sought would "tend to prove

¹⁴ While the Department is not bound by the Massachusetts Rules of Civil Procedure, such a "summary approach" also does not comport with similar requirements in those Rules. *See Howard v. Brynwood Partners, II, L.P. et al.*, 5 Mass. l. Rep. 337, 1996 Mass. Super. Lexis 430, at *4-5 (Mass. Sup. Ct. 1996).

¹⁵ *See, e.g.*, Petitioners Motion, p.29, Document Request No. 15.

¹⁶ 220 C.M.R. §1.06:(6)(c)(1).

¹⁷ *See Fiber Technologies Networks, LLC*, Interlocutory Order on Motion of Fiber Technologies Networks for Summary Judgment and on Appeals of Fiber Technologies Networks from Hearing Officer Rulings on Motion to Compel Responses to Information Requests, 2002 WL 32101642, at *16 (Mass. D.T.E.)(Dec. 24, 2002 ("the threshold to obtaining discovery . . . is that the information sought must be relevant, that is, it relates or pertains to legal or factual issues in the case or is reasonably calculated to lead to discovery of admissible evidence"); *see also Verizon New England, Inc.*, Interlocutory Order on Verizon's Appeal of Hearing Officer's August 8, 2001 Ruling on Motions To Compel, D.T.E. 01-20, 2001 WL 1448568, at *7 (Mass. D.T.E.)(Aug. 31 2001). Information must be relevant to a material issue in the proceeding. D.P.U 94-50, *Petition of New England Telephone and Telegraph Company d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Massachusetts intrastate telecommunications services*, p.17 (May 12, 1995).

facts of consequence to issues material to the investigation.”¹⁸

Information sought that is outside the scope of the proceeding cannot be compelled to be produced, including requests seeking revenues, expenses, and rate of return information.¹⁹ Where there is no reasonable relationship between the scope of the proceeding and the discovery requested, such discovery will not be compelled.²⁰ Similarly, information not reasonably calculated to lead to discovery of admissible evidence cannot be compelled.²¹

Efforts to compel responses to overbroad and vague requests which are so open-ended as to be unlikely to elicit a useful response are subject to denial.²² So are requests that are “too broad and speculative.”²³ As are unduly burdensome requests, such as requests requiring the compiling of data or producing documents that do not exist.²⁴

¹⁸ *New England Tel. & Tel. Co.*, Interlocutory Order on Attorney General’s Appeal of Hearing Officer’s Ruling Denying Record Requests of Attorney General and NECTA, 1994 WL 714133, at *5 (Mass. D.P.U.) (Sept. 22, 1994) (“1994 NETT Order”). In this regard, the Department has applied a “reasonable mind” standard. See *Verizon Service Quality in Western Massachusetts*, Hearing Officer’s Ruling Regarding the Attorney General’s Motion to Compel Responses to Discovery, at *3 (Mass. D.T.C.) (June 10, 2010) (“2010 Verizon Hearing Officer Ruling”).

¹⁹ *Petition of City of Lowell for Approval by the Department of Public Utilities of its Municipal Aggregation Plan Pursuant to G.L. c. 164, s 134*, Order, 2013 WL 6383115, at *7 (Mass. D.P.U.) (“2013 City of Lowell Order”).

²⁰ 1994 NETT Order, at *5.

²¹ *Massachusetts Electric Company*, Order, 2010 WL 5573606, at *114 n.195 (Mass. D.P.U.) (Nov. 22, 2010) (citing Hearing Officer Ruling, Tr. 3, at 490) (“2010 MEC Order”).

²² 2010 Verizon Hearing Officer Ruling, at *5.

²³ *Id.*

²⁴ See *Berkshire Gas Company*, Order, 2002 WL 31970297, at *11 (Mass. D.T.E.) (Sept. 30, 2002) (explaining that it could “not compel the production of documents that do not exist” in denying the Attorney General’s motion to compel); see also *Dzung Dny Nguyen, as Administrator of the Estate of Han Dny Nguyen v. Massachusetts Institute of Technology, et al.*, Docket No. MICV2011-03152-J, 30 Mass. L. Rep. 57 (Apr. 30, 2012) 2012 Mass Super LEXIS 146, at *6 (stating that “[t]o the extent the university has already compiled . . . data the request is allowed. If such data does not exist, no response is required, as compiling the data would be unreasonably burdensome”).

Finally, privileged information is not subject to discovery. Relevant confidential information may be required to be subject to a non-disclosure agreement and protection from public disclosure.²⁵

IV. THE SCOPE OF THE INVESTIGATION IS DEFINED AND CONFINED

Despite Petitioners constant efforts in their Motion to recharacterize or to add issues to the scope of this investigation, the *Interlocutory Order* defines the parameters of the investigation, and confines the proceeding to those issues. The time for seeking reconsideration or expansion of that scope is long past. As much as they might like to do so, Petitioners may not use argument (or constant repetition) in their Motion to seek to expand the scope of the investigation at this juncture.

The ordering clause of the *Interlocutory Order* states with precision the following:

“The Department DISMISSES Petitioners’ requests to open an investigation into: the usage rate component of the rate setting mechanism for ICS; the frequencies of recorded warning messages; and the availability and upkeep of telecommunications equipment at correctional facilities. The Department OPENS an investigation into: the per-call surcharge; the tariffed service and other fees of ICS providers; the frequency of dropped ICS calls; the quality of connected ICS calls; and the billing practices of GTL and Securus.”²⁶

There is no mention of investigating the overall profitability or financial/margin performance of Securus. There is no mention of examining Securus’s overall budgeting process or internal financial reporting. There is no mention of examining what materials are sent to Securus Board of Directors or how it sets its overall corporate security goals. Petitioners’ attempted

²⁵ The *Procedural Order* expressly contemplates conferral on such an agreement. To Securus’s knowledge, Petitioners have yet to provide input with respect to the draft Non-Disclosure Agreement proffered by GTL. Rather, Petitioners have sought to preserve their right to challenge the confidential designation of any material that they do not believe qualifies for confidential treatment, asking the Department to make only interim determinations of confidentiality. See D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners’ Response To Global Tel* Link’s Motion For Confidential Treatment And Motion For Leave To Late-File at 1 (May 8, 2014). This matter remains pending before the Hearing Officer.

²⁶ *Interlocutory Order*, p. 33.

extrapolation of the approved issues to include such confidential and sensitive information is unreasonable.

By way of further example, Petitioners in opening their Motion state that “quality of service issues *such as* line quality and disconnections” are the subject of investigation.²⁷ That is not what the *Interlocutory Order* provides.

Further, elsewhere in their Motion, in addressing specific objections by Securus, Petitioners refer to the investigation of “quality of service” and “customer service practices.”²⁸ But the Department has not opened a general “quality of service” investigation and “customer service practices” are not listed as issues in the defined scope of the proceeding. Again, the Petitioners, by repeated recitation of these general terms, cannot expand the scope of the investigation and require Securus to produce information that relates to issues other than those expressly designated by the Department.

V. THE INVESTIGATION IS ABOUT ICS IN MASSACHUSETTS

The investigation relates to certain aspects of inmate calling service being provided in Massachusetts. Requests for information about Securus’s operations or regulatory experience in other states where it provides ICS in different settings and facilities are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. So is information requested relating to its provision of interstate ICS from Massachusetts facilities.²⁹

²⁷ Petitioners’ Motion, p.1.

²⁸ *Id.*, pp. 19-20, Argument re Interrogatory No. 19.

²⁹ Moreover, decisions by out-of-state agencies do not control Massachusetts law. See D.T.C 01-31 Phase II, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts*, Order, p. 7 (Apr. 11, 2003) (“D.T.C. 01-31 Order”). Indeed, Petitioners seem to have a difficult time deciding the relevance of such information. On the same page in their Motion they say that reliance on rates in other states would be misplaced in determining Massachusetts rates and then point to the fact that per-call charges have dropped in other states as appropriate for consideration. Petitioners’ Motion, p. 4. In any case, the *Interlocutory Order* provides that, even if taken as true, Petitioners’ assertions concerning commissions, reduced costs and

VI. PETITIONERS SEEK TO CONVERT/EXPAND THE INVESTIGATION INTO A TRADITIONAL RATE OF RETURN RATE CASE FOR ICS

The Petitioners' Motion is based on their conclusion that the Department is obligated to conduct this investigation and set ICS rates (i.e., per-call charge and related cap) "based directly on cost and revenue data" (i.e., those rates must be based on "the actual costs of providing ICS").³⁰ Thus, Petitioners' Motion claims that "particularized cost and revenue data are ...indispensable in a rate-setting proceeding such as this."³¹ And this includes obtaining/reviewing and considering "*all costs of providing ICS*", even those costs related to the "per-minute rate" – an issue which Petitioners' concede has been expressly eliminated from this investigation.³² Thus, repeatedly throughout their Motion, Petitioners assert that the Department investigation requires that "rates [for ICS now] must be established in relation to costs and revenues of ICS."³³ Therefore Petitioners contend all of the information that they seek to compel regarding Securus's financial performance, profitability, costs, expenses, and budgets is relevant and must be produced.

Securus respectfully submits that the investigation opened by the Department did not contemplate or mandate performance of a rate of return, cost-based rate case. Petitioners' arguments in their Motion are an attempt to expand the investigation far beyond what the *Interlocutory Order* contemplates and return to a rate setting mechanism that the Department could have adopted, but decided not to adopt, when it approved (in 1998) and then confirmed (in 2004) the existing ICS rate framework.

changes to rates in other states "do not entitle Petitioners to their requested relief." *Interlocutory Order*, p.23. At the same time the Department itself observed that "numerous states charge more than Massachusetts for an IntraLATA 15 minute collect call." D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Order on Appeal Of Hearing Officer's Ruling, February 26, 2014, p. 8 ("*Appeal Order*").

³⁰ Petitioners' Motion, p. 5

³¹ *Id.*, p. 6.

³² *Id.*, p. 8 (emphasis supplied).

³³ *See, e.g.*, Petitioners' Motion, p. 27 (argument regarding responses to Document Requests Nos. 8 and 9).

The *Interlocutory Order* rejected the Petitioners' arguments that the current per-call charge should have been (and should be) determined based on "rate of return regulation," because the Department decided to adopt (and has maintained in place) an incentive rate regulation scheme.³⁴ There is no indication that the Department required the production of the cost and expense information sought by Petitioners as part of a plan to turn back the clock, abandon incentive regulation, and now require the imposition of a rate of return, cost-based regulation model as part of this investigation.

As discussed in Securus's January 12, 2012 Response in this proceeding, the Department initially recognized the efficiency of using an incentive regulatory scheme and a proxy for setting rates in 1988, when it applied that approach to alternate operator service providers.³⁵ Incentive regulation was extended to AT&T's intrastate operations in 1992.³⁶ The Department then adopted incentive regulation for Massachusetts incumbent local exchange carrier (then NYNEX).³⁷ This was a prelude to the April 1998 order that established the current Department-approved ICS rate structure.³⁸ Subsequently, the Department employed the proxy concept in connection with

³⁴ *Interlocutory Order*, p. 23 ("the rate-setting mechanism adopted for ICS in the 1998 Order is an incentive regulatory scheme").

³⁵ D.P.U. 87-72/D.P.U. 88-72, *Investigation by the Department on the application of International Telecharge, Inc. under the provisions of Chapter 159 of the G.L., as amended, for a certificate of public convenience and necessity to operate as a resale, value-added or interexchange common carrier within the Commonwealth of Massachusetts* (Oct. 11, 1988). Of course, such providers were offered, and still have, the opportunity to put on a rate of return case should they so desire, but the Department approved the proxy approach in part because it recognized the time, expense and administrative burden in presenting a rate case. *Id.*, p. 17.

³⁶ D.P.U. 91-79, *Petition of AT&T Communications of New England, Inc., pursuant to G.L. c. 159, §12 and 220 C.M.R. 1.04, for an alternative mode of regulation of the Company's Massachusetts intrastate telecommunications services* (June 22, 1992).

³⁷ D.P.U. 94-50, *Petition of New England Telephone and Telegraph Company d/b/a NYNEX for an Alternative Regulatory Plan for the Company's Massachusetts intrastate telecommunications services* (May 12, 1995) ("94-50 Order").

³⁸ D.P.U./D.T.E. 97-88/97-18 (Phase II), *Investigation by the Department of Telecommunications and Energy on Its Own Motion regarding (1) Implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX's Public Access Smart-Pay Line Service, and (4) the Rate Policy for Operator Services Providers*, Order on Payphone Barriers to Entry and Exit, and OSP Rate Cap, at p. 10 (Apr. 17, 1998) ("1998 Order").

alternative rate regulation of certain interconnection and intrastate access charges.³⁹ Again, there is no indication that the Department now requires abandonment of incentive rate regulation methodology in favor of mandatory rate of return regulation for ICS.⁴⁰

Petitioners state that in 1998 the Department “partially relied on the ICS costs of MCI, Sprint and AT&T,”⁴¹ seemingly implying that those \$3.00 charges were based on some prior cost analysis that included a rate of return assessments. Petitioners offer no evidence to prove that was the case. There is no indication in the *1998 Order* to that effect.⁴² Instead of requiring a rate of return analysis, the *1998 Order* simply assumed that those per-call charges were a reasonable proxy for the set of unique ICS characteristics that generate legitimate costs in addition to traditional costs recovered by per-minute charges.

Again, the *Interlocutory Order* points out the fallacy of Petitioners’ assertion that the per-call charge must be set based on rate of return regulation, instead of the current incentive scheme.⁴³ The *Order* does not require that there now be an assessment of Securus’s profitability, financial performance and other criteria that surround such cost-based rate making. Indeed, the *Interlocutory Order* notes that to the extent additional profit might be generated under the per-call cap in effect for

³⁹ D.T.E. 00-54-A, *Petition of Sprint Communications Company L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of an interconnection agreement between Sprint and Verizon New England, Inc. d/b/a Verizon-Massachusetts*, Order on Sprint’s Motion For Reconsideration, pp. 21-22 (May 3, 2001) (interconnection); D.T.C. 07-9, *Petition Of Verizon New England, Inc., MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers*, Final Order (June 22, 2009) (access charges).

⁴⁰ The Department is under no legal obligation to employ rate of return cost based regulation in any case. *D.T.C. 01-31 Order*, p. 7.

⁴¹ Petitioners’ Motion, p. 3.

⁴² Thus, there was no justification in 1998 that in using a proxy rate the rate be based on one previously determined to be just and reasonable under a rate of return analysis. This is in contrast to the decisions cited in footnote 38 of Petitioners’ Motion.

⁴³ *Interlocutory Order*, pp. 23-24.

sixteen (16) years, while the sophistication and features of ICS services have expanded, it is at the discretion of the provider as to how such profits might be used.⁴⁴ Indeed, the Department had previously found that Massachusetts law does not require a cap on earnings for utilities.⁴⁵

As previously noted, the *1998 Order* was based on the finding that there were “unique characteristics” of ICS that generated “legitimate additional costs,” an exemplary, “non-exhaustive list” of which costs was included in that *Order*.⁴⁶ Both Securus and GTL pointed out in their responses to Petitioners’ Interrogatory No. 6 the many other categories of “legitimate additional costs” that were not included in the 1998 non-exhaustive list.

The Department has now decided to investigate whether the *assumptions* about the presence of these “legitimate additional costs” remain valid.⁴⁷ As was the case in 1998, when there was no profitability, financial performance, cost and expense data presented to justify the conclusion that these unique characteristics were present and imposed legitimate additional costs, the conduct of a rate of return, cost-based analysis, based on production of reams of confidential information relating to the finances, budgets, and profitability of Securus is not required. Nor is it mandated by the *Interlocutory Order* as Petitioners argue. Cost categories were examined and considered then, and can similarly be examined and considered now.⁴⁸

⁴⁴ *Id.*, p. 24. Petitioners assert that during this capped period there has been a “disincentive...to improve service” in Massachusetts. *Petitioners’ Motion*, p. 5. This statement ignores the millions in investments made by Securus to maintain and enhance service quality. *See* D.T.C. 11-16, Response of Securus Technologies, Inc., p.32 (Jan. 20, 2012) (“Securus commits an average of \$10 million each year ...through reinvestment in its people, platforms and products.”).

⁴⁵ *94-50 Order*, p. 186.

⁴⁶ *Interlocutory Order*, p. 3, n.4 (where the Department confirms that the list was “non-exhaustive”).

⁴⁷ *Id.*, p. 24.

⁴⁸ Petitioners contend that they have already provided “data” regarding the “drastically decreased costs” to support their position that rate of return, cost based regulation must be imposed as part of the investigation. Their “data” consists primarily of Mr. Dawson’s observations about how general developments in the telecommunications industry have inevitably caused a number of these legitimate additional cost categories to be eliminated. *See Appeal Order*, p.8, n.4 (“Mr. Dawson also made numerous general statements regarding telephone industry technology cost trends....”).

Petitioners' argue that because the FCC has ruled that interstate ICS rates must be cost-based, then the Department in this investigation must also require rate of return regulation based on actual cost data, instead of an incentive regulation regime.⁴⁹ Yet, the FCC's requirement that interstate ICS rates be cost-based has been stayed by the United States Court of Appeals for the District of Columbia Circuit and may never take effect.⁵⁰

Further, as the Petitioners concede, the FCC itself used proxies for costs.⁵¹ In any case, what the FCC might decide with respect to interstate rates, including ordering, despite the stay, the submission of cost data, does not bind the Department or mean that the Department has mandated a rate of return analysis as part of its investigation here.⁵²

The Petitioners' have oft quoted that the charges paid by inmates should be "commensurate with those charged to the general public for like services."⁵³ This is the standard that Petitioners advocate in their Petition, citing "enormous deviations in rates from those charged to the public."⁵⁴ Yet there are such per-call charges in existence today which can serve as a gauge for the continued validity of the current Department-approved per-call charge and cap. For example, the per-call charge for an intrastate interLATA automated operator service collect call in Massachusetts for a member of the "general public" would be \$6.99 (\$7.55 if made from a payphone) if handled by

⁴⁹ Petitioners' Motion, pp. 7-8.

⁵⁰ *Securus Technologies, Inc. v. Federal Communications Commission and United States of America*, No. 13-1280, Order (D.C. Cir. Jan. 13, 2014).

⁵¹ Petitioners' Motion, p. 8.

⁵² Furthermore, as Securus has pointed out, that data collection would be extremely burdensome and costly. *See In the Matter of Notice of Public Information Collection(s) Being reviewed by the Federal Communications Commission, Comments Requested – Rates for Inmate Calling*, 79 Fed Reg. 11, OMB Control No. 3060-XXXX, W.C. Docket No. 12-375, Comments of Securus Technologies, Inc. Regarding Data Collection (Feb. 19, 2014).

⁵³ *Petition Of Recipients Of Collect Calls From Prisoners At Correctional Institutions In Massachusetts Seeking Relief From Unjust And Unreasonable Cost Of Such Calls*, August 31, 2009, p.30.

⁵⁴ *Id.*

AT&T Corp. and \$4.99 for any such intrastate call handled by Verizon made from a payphone.⁵⁵ Of course, in these cases there are no “unique characteristics” that reflect “legitimate additional costs” related to ICS, yet the charges to the “general public” are materially higher. Further, presumably these carriers have benefited from the same reduction in telecommunications industry costs that Mr. Dawson ascribes to ICS providers.

VII. SITE COMMISSIONS ARE NOT RELEVANT TO THE INVESTIGATION

Again, Securus maintains its position that site commission requirements are imposed by the state and local correctional facility administrators acting fully within their authority.⁵⁶ The Department is well aware and acknowledges that they are a unique characteristic of the ICS industry. The Department does not regulate the requirements or the amount of these commissions. The dollar amounts paid of these commissions remains, in Securus’s view, irrelevant to determining whether the assumptions underlying the *1998 Order* and the current per-call charge and rate cap remain valid.⁵⁷

VIII. CONFIDENTIAL AND PRIVILEGED INFORMATION

To the extent that the Department determines that any of the internal financial, budgetary and operational information that is the subject to the Petitioners’ Motion should be produced,

⁵⁵ See AT&T Corp. – Commonwealth of Massachusetts – DTC Tariff MA No. 1, Section 5; Verizon Select Services, Inc., - Massachusetts, DPU Tariff No. 1, 3rd Revised Page 45. See also Century Link Communications, LLC – Massachusetts DTC Tariff No. 1, Section 6, Original Page 15 (per-call charge for automated collect call = \$4.99).

⁵⁶ The Petitioners’ use of the term “kickback” (Petitioners’ Motion, p. 5 (citing Mr. Bazelon)), which Webster defines as “an amount of money that is given to someone in return for providing help in a secret and dishonest business deal” is unfortunate, particularly because in Massachusetts counties at least generally deposit such “kickbacks” into inmate welfare funds designed to help the very people the Petitioners are seeking to help. See *D.T.C. 11-16 Hearing Transcript*, pp.88- 95, Testimony of Russ Homsy and Daniel Martini, Suffolk County Sheriff’s Department.

⁵⁷ Even though not relevant, Securus notes that based on a preliminary review of the materials produced by the Petitioners to Securus, it is evident that information about commission payments, including lengthy schedules and even copies of checks has been previously provided to Petitioners (along with related contract documents) and is in their possession already. See *D.T.C. 11-16, Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners Documents In Response To Requests Of Securus and GTL (Apr. 29, 2012) Securus 2 –Public Record Responses.

Securus is a privately-held company and such sensitive internal information is not made publicly available. Much of the information would be competitively sensitive in the bidding and bid preparation process. As indicated in its Responses and Objections, Securus would be seeking confidential treatment. As contemplated by the *Procedural Order*, the provision of any such information would have to be subject to a suitable non-disclosure agreement by the other parties to the proceeding. At this point, to Securus's knowledge, Petitioners have not acceded or even commented on a draft Non-Disclosure Agreement circulated by GTL counsel. Securus has done so. Any confidential information would be provided in accordance with the requirements of the *Procedural Order*.

IX. SPECIFIC SECURUS RESPONSES TO MOTION

On the pages that follow Securus submits specific responses to each of the Interrogatories and Document Production Requests to which the Petitioners' Motion applies. In doing so Securus sets forth the original Interrogatory/Request, Securus's complete initial response provided prior to the Petitioners' Motion, Petitioners' Argument and finally Securus's further response for purposes of this Opposition. Where Securus supplemented its initial responses it has referred to those supplements. Interrogatories and Document Requests not covered by the Petitioners' Motion were not included.

A. INTERROGATORIES

1. Interrogatory No. 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.

	<u>Fixed Rate</u>	<u>Surcharge</u>	<u>Rate Per Minute</u>	<u>Site Commission Percentage</u>
<u>Collect Calling</u> Local Calls State IntraLATA Calls State InterLATA Calls Interstate				
<u>Debit Calling</u> Local Calling State IntraLATA Calling State InterLATA Calling				
<u>Advance payment calling</u> Local Calling State IntraLATA Calling State InterLATA Calling				
<u>Total</u>				

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, 5, 13, and 15. More specifically, Securus objects to the foregoing interrogatory on the grounds that is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including (a) interstate calling (b) the usage rate per minute, and (c) site commission payments, which

payments are not within the jurisdiction of the Department. Finally, Securus objects on the grounds that the information is publicly-available.

Without waiving any of the foregoing objections, Securus attaches a list of the facilities that it currently serves in Massachusetts, with reference to the relevant intrastate rate tables for each facility taken from Securus's Department-approved tariff.

In January 2011 Securus also was serving Plymouth County Correctional and Hampden County Correctional (2 sites). It no longer serves those facilities.

The Barnstable County Correctional Facility contract was amended effective November 22, 2011 to add \$0.30 per call for Continuous Voice Verification where permitted under Massachusetts rate caps.

The Franklin County Jail contract was amended July 11, 2011 to change collect rate to Contract Location 7 from Contract Location 1 under the Department-approved tariff.

Securus changed its Massachusetts tariff effective June 29, 2012 to make debit rates same as collect rates.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** In their Motion, Petitioners did not set forth Securus's initial response to Interrogatory No. 1. It is not clear whether that means that Petitioners are satisfied with that response. Out of an abundance of caution, Securus repeats and incorporates its original objections and Sections I–VIII above and further responds that as noted above Securus provided detailed information regarding its per-call charge and other rates from each of the facilities where it provides service in Massachusetts. Securus's position on site commissions remains that the requirement for such payments is determined and imposed by correctional facility administrators and commissions are not within the jurisdiction of the Department and are therefore outside the limited scope of the investigation. Although the material provided included information relating to per-minute charges, the per-minute usage charge has been excluded from the investigation. Further, information relating to interstate ICS is outside the scope of the investigation. Petitioners' bare assertion or mere conclusory recitation that these competitively sensitive data are relevant to the "legitimacy of the surcharge as well as the impact of the surcharge on consumers" is insufficient to establish the relevance of the information requested or to establish that the information is reasonably calculated to lead to the discovery of admissible evidence. Petitioners' relevance claim is no doubt based on their theory that any adjustment to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which, as Securus has set forth above, is not the case.

2. Interrogatory No. 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.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, 5, and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including (a) interstate calling and (b) site commissions payments, neither of which is within the Department’s jurisdiction. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion;** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus’s gross receipts and commissions paid are not relevant to the per-call charge, which is intended to cover the “legitimate additional costs” reflective of the “unique characteristics” of ICS. Petitioners’ bare assertion or mere conclusory recitation that these competitively sensitive data are relevant to the “legitimacy of the surcharge as well as the impact of the surcharge on consumers” is insufficient to establish the relevance of the information requested or to establish that the information is reasonably calculated to lead to the discovery of admissible evidence. Petitioners’ relevance claim is no doubt based on their theory that any adjustment to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which, as Securus has set forth above, is not the case. Further, the Motion does not explain how the requested information is relevant to tariffed

service or other fees, which are not segregated in gross receipts information. Again, if this information is sought to determine “profitability,” that is not an issue in the investigation. Moreover, to the extent that Petitioners seek interstate information, such information is totally outside the scope of the investigation. With respect to site commissions, Securus’s position remains that these requirements are set and imposed by the correctional facilities, are not within the jurisdiction of the Commission, and are therefore outside the scope of this investigation. Finally, although Securus maintains that site commissions are outside the scope of the investigation, based on a preliminary review of the information provided by Petitioners in response to Securus Information Requests, Petitioners have previously obtained information on commissions, including commission payment schedules and copies of checks, from individual correctional facilities.

3. Interrogatory No. 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.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that is overly broad. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including (a) interstate calling and (b)

usage-related information. The *Interlocutory Order* expressly excluded from this investigation issues relating to per-minute usage rates. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that "marginal costs and profitability" of ICS are not an issue in this investigation. The Petitioners' relevance claim is again based on their theory that any adjustments to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. As such, "marginal costs and profitability" are not an issue in the investigation. Petitioners' bare assertion or mere conclusory recitation that completed calls, call length, and total minutes used are relevant to the "tariffed service and other fees" is insufficient to establish the relevance of the information requested or to establish that the information is reasonably calculated to lead to the discovery of admissible evidence. The fees—other than tariffed, per-minute usage fees—are not per-call fees or tied to calls or minutes. Minutes of use are related to the per-minute usage issue, which was explicitly excluded from this investigation.

4. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, and 3. More specifically, Securus objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope the limited issues involved in this investigation, specifically information related to detailed costs and site commission payments, which payments are not within the Department's jurisdiction.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus's position on commissions remains that these requirements are set and imposed by the correctional facilities, are not within the jurisdiction of the Commission, and therefore are outside the scope of the investigation. Further, Petitioners' relevance claim is again based on their theory that any adjustments to the existing ICS

rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. Moreover, Petitioners fail to explain particularly why any “minimum commission guaranteed” is relevant for purpose of any of the issues in the investigation or how the information is reasonably calculated to lead to the discovery of admissible evidence. Finally, although Securus maintains that site commissions are outside the scope of the investigation, based on a preliminary review of the information provided by Petitioners in response to Securus’s Information Requests, Petitioners have previously obtained information on commissions, including commission payment schedules and copies of checks, from individual correctional facilities.

5. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 3, 5, 10 and 15. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically detailed costs and site commission payments, which payments are not within the Department’s jurisdiction. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the requirement to “identify any documents” is overly broad and unduly burdensome. Further, as previously stated, Securus’s revenues received and commissions paid in connection with ICS at the identified facilities are not relevant because the relevance claim is again based on Petitioners’ theory that any adjustments to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. In addition, Securus’s position on commissions remains that these requirements are set and imposed by the correctional facilities, are not within the jurisdiction of the Commission, and therefore are outside the scope of the investigation. Finally, although Securus maintains that site commissions are outside the scope of the investigation, based on a preliminary review of the information provided by Petitioners in response to Securus’s Information Requests, Petitioners have previously obtained information relating to commission payments, including commission payment schedules and copies of checks, from individual correctional facilities.

6. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically because it seeks detailed cost information. Finally, Securus further objects on the grounds that the interrogatory it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

Without waiving any of the foregoing objections, in its January 20, 2012 "Response of Securus Technologies, Inc." (pp. 14-25) and its October 24, 2012 "Response Of Securus Technologies, Inc. To Public Comments" (pp. 9-14), Securus addressed the issue of cost categories relevant to its provision of ICS in Massachusetts. Securus incorporates by reference those materials here.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the categories of "legitimate additional costs" reflecting the "unique characteristics" of ICS are relevant and the assumption that those categories exist are relevant. However, Petitioners' argument that detailed cost and expenses data for each category must be produced is again based on Petitioners' theory that any adjustments to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate-of-return, cost-based rate analysis), which is not the case. Securus has previously outlined additional "unique characteristics" of ICS which generate "legitimate additional costs." So has GTL. The Department can conclude that the current proxy rate of \$3.00 remains justified based on its determination of whether the list of such legitimate additional costs warrants any adjustment. Petitioners fail to explain how detailed cost data are relevant to dropped calls, line quality and billing practices or would be reasonably calculated to lead to the discovery of admissible evidence on those issues. Further, "customer service issues" is not approved for inclusion in the investigation by the *Interlocutory Order* and reflects an attempt by Petitioners to expand the scope of the investigation. Finally, the request is unduly burdensome to the extent it would require Securus to create even aggregated data on a contract by contract basis for ambiguous, undefined categories such as "financial processing" or to allocate costs between "other jurisdictions" or interstate ICS.

7. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically because it seeks detailed expenses and cost information. Finally, Securus further objects on the grounds that the interrogatory seeks it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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. 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Petitioners' seek this detailed expense information based their theory that any adjustments to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. The fact that Securus filed in the investigation a copy of a letter that it had previously submitted to the FCC in the face of the assertions by Petitioners' expert that at least some of the legitimate additional costs had been eliminated or were drastically reduced does not convert the investigation into a rate of return case requiring Securus to provide the reams of confidential cost information that Petitioners' seek in their effort to have the Department impose a rate of return, cost-based requirement for the per-call charge. Further, to Securus's knowledge, the "data" submitted by Petitioners regarding plummeting industry costs was principally in the form of Mr. Dawson's Declarations, which themselves did not contain rate of return cost analyses. The request is unduly burdensome to the extent that it would require Securus to itemize expenses associated with the cost to complete each particular type of call. Finally, information regarding interstate calls is clearly outside the scope of the investigation.

8. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1 and 5. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically because it seeks information related to the "availability and upkeep of telecommunications equipment at correctional facilities," which was explicitly excluded from the scope of this investigation by the Department's *Interlocutory Order*.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the Department expressly eliminated from the investigation the issue of "availability of upkeep of telecommunications equipment at correctional facilities." The fact that call monitoring and recording are one of the "unique characteristics" of ICS that impose "legitimate additional expenses" does not counter that exclusion and require the production of detailed information about this equipment on a facility-by-facility basis. Not even Petitioners can claim that this "unique characteristic" has been "eliminated." As they well know, inmate calls continue to be routinely monitored and recorded for long-standing security reasons that remain.

9. Interrogatory No. 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?

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the issues involved in this investigation, specifically because it seeks detailed cost information about uncollectibles and related revenues, which are not issues in this investigation. Finally, Securus further objects on the grounds that the interrogatory seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion.** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the "profitability" and "revenue" losses that Securus might experience are not part of the issues being investigated. Contrary to Petitioner's continued assertions that any adjustments to the existing ICS rate structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), that is not the case. There is no requirement that the per-call charge be based on a rate of return, cost-based analysis. As provided in the *Interlocutory Order*, if through its efforts Securus had improved uncollectible figures and resultant profitability, under an incentive rate regulation plan that is not a reason for the per-call charge to be adjusted. Petitioners claim that their Interrogatory "could yield admissible evidence" but that is not the standard. They must show that the request is reasonably calculated to lead to the discovery of admissible evidence. Finally, the request is unduly burdensome to the extent that it would require Securus to itemize uncollectibles associated with a particular type call under a particular contract.

10. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, 10, and 13. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is unduly burdensome and overly broad. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation specifically because it seeks detailed cost and revenue information. Securus further objects on the grounds that the interrogatory seeks confidential, competitively sensitive, proprietary financial or other internal business information. Finally, Securus objects to the extent that this information is publicly available.

Without waiving any of the foregoing objections, Securus responds to No. 11(b) that standard methods for receiving payments or funding for a prepaid collect account or a debit account in Massachusetts are check, money order, or online banking. Securus also offers the option of making such payments by credit or debit card via its Website, interactive voice response system (“IVR”), or by contacting a Securus customer service representative. Payments may also be made by using outside, third-party financial processors, such as money order providers, Western Union, or MoneyGram.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it provided specific and complete explanations regarding Interrogatory Section 11b). The mere fact that the *Interlocutory Order* made reference to the existence of prepaid or debit accounts does not establish relevance for the number of accounts, costs attributable to processing deposits or refunds, and the dollar amount of refunds or establish that such information is relevant or is reasonably calculated to lead to the discovery of admissible evidence. Again, Petitioners’ relevance claim is based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. Finally, Petitioners refer to relevance to “customer service practices,” which is not an approved issue in the investigation, and is again an attempt by Petitioners to expand the scope of the investigation.

11. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, and 13. More specifically, Securus objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including site commissions, and does not relate to “tariffed service and other fees of ICS providers.” Securus further objects on the grounds that the information is publicly available.

Without waiving any of the foregoing objections, Securus provides information regarding a customer with an AdvanceConnect Account for pre-paid collect calls. Such a customer can request and receive a refund, without any charge. If such an Account remains dormant for a period of six months (i.e., not a single call is received on the account for a six month period) without a request for a refund, then and only then does the Account expire and any funds in the account are forfeit by the customer. This forfeiture policy only applies in the case of AdvanceConnect accounts. This policy is specifically authorized in Securus’s Department-approved tariff at Section 6.2.3.

b. **Petitioners’ Argument:** 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that in its Supplemental Response, dated May 29, 2014, Securus provided further information on the refund process, which is publicly available on Securus’s web site at <http://securustech.net/ac-terms-and-conditions> and at <http://apps.securustech.net/dyk.asp>. Securus also previously referred to its Department-approved tariff. Petitioners again refer to general “quality of service” and “customer service practices” as issues in this investigation, which they are not. Finally, Petitioners’ relevance claim with respect to how unclaimed refunds are accounted for is based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. In any case, Petitioners’ claim that refunds are relevant to “costs” is overly broad and speculative, and the request in that regard is not reasonably calculated to lead to the discovery of admissible evidence.

12. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, and 13. Securus objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically site commission payments, which payments are outside the jurisdiction of the Department, as are Western Union and MoneyGram charges. Securus further objects to the extent that the information requested is publicly available.

Without waving any of the foregoing objections, Securus does not charge any fee to establish or set up a prepaid account. The end-user customer may fund that account by check, money order or on-line banking and Securus will not apply any fee. Securus does not charge any fee to close an account or to issue refunds. The description, applicability, and fee amounts for (a) credit card/check-by-phone payment processing fee (b) return check charge, and (c) wireless administration fee that Securus is authorized to charge in Massachusetts are contained in Sections 5 and 6 of Securus' Department-approved tariff.

b. **Petitioners' 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*.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it provided in full information relating to fees charged or not charged. Securus's position on the relevance of site commissions to this proceeding has been previously stated and explained—commission payments are set and imposed by correctional facility administrators, are not within the jurisdiction of the Department, and thus outside the scope of this investigation. The further question of whether Securus pays correctional facilities site commissions on specific fees referenced in this Interrogatory that are charged is not relevant to the per-call charge or cap issue or the tariffed service or fees issue. Again, Petitioners are seeking to access Securus revenues or profitability based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case.

13. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, and 5. More specifically, Securus objects to

the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically because it does not relate to the specific quality of service issues in this investigation. Those issues are limited by the *Interlocutory Order* to “frequency of dropped calls, the quality of connected calls and the billing practices of GTL and Securus.”

Without waiving any of the foregoing objections, Securus describes the general process whereby it addresses complaints. It receives complaints from its Massachusetts customers, directly through its customer service center. These are resolved by telephone without written response with Securus’s Corporate Escalations Department. Securus also receives Massachusetts-related complaints through the Better Business Bureau (“BBB”), the Federal Communications Commission (“FCC”), the Department, the Massachusetts Attorney General’s Office (“AGO”) and the Office of Consumer Affairs (“OCA”). Securus investigates and provides a thorough and timely written response to each such complaint in accordance with the agency, state, and federal regulatory requirements to satisfactorily resolve the matter.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it fully explained how its addresses complaints. Securus stated that it investigates and provides a thorough and timely written response where complaints are received from the various agencies. Separately, Securus provided copies of all such complaints addressed for the period 2011-2014 for which it had provided written responses. Securus notes that the complaint process in general was not even an issue approved as part of the investigation and there is no general “customer service” issue in the investigation. Securus does not understand what Petitioners continue to find lacking in its response. Finally, Petitioners have failed to explain how the “process for closing a complaint” is relevant to assessing the per-call charge, the cap thereon, or the tariffed service and other fees or how the request for such information is reasonably calculated to lead to the discovery of admissible evidence relating to those issues.

14. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, and 5. More specifically, Securus objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically as it relates to broken telephone sets and matters unrelated to “billing practices.” Securus further objects on the grounds that the request is overly broad and unduly burdensome.

Without waiving any of the foregoing objections, Securus includes a list of 2011-2014 Massachusetts Complaints made with the organizations and agencies referred to in its response to Interrogatory No. 15.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it provided a complete list and spreadsheet of all Massachusetts-related complaints as defined and categorized in its response, going beyond just those that might have been related to issues in the proceeding, for the period 2011 through filing. Securus’s response to Interrogatory No. 16 does include those complaints received directly from prisoners or consumers which were resolved by telephone through Securus’s Corporate Escalations Department, but those complaints, as indicated in the Company’s detailed response, are resolved without written record. Complaints about broken telephone sets, contrary to Petitioners comment that “perhaps” they are the exception, are outside the scope of this investigation as prescribed by the *Interlocutory Order*. Again, separately, Securus provided documentation relating to all complaints in the response that were resolved in writing.

15. Interrogatory No. 19

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1 and 15. More specifically, Securus objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation in that complaint tracking systems are not part of the narrow issues in this investigation. Securus further objects on the grounds that the interrogatory is ambiguous in that it does not define “systems” or “billing issues.”

Without waving any of the foregoing objections, Securus refers to its response to Interrogatory No. 15.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the issue in the investigation is "billing practices", which are reflected in Securus's tariff and on its publicly available web site. As indicated in its original response, Securus does not know what is meant by "billing issues" or "systems." And in the discovery conference on May 23, 2014, Petitioners offered no further clarification. Further, there is no general issue in the investigation relating to "customer service practices" and therefore the Petitioners' assertion that the requested information is relevant to that issue or is reasonably calculated to lead to the discovery of admissible evidence relating to that issue is an attempt to extrapolate and broaden the issues. Further the broadly-worded, open-ended request to "identify any documents" describing the "systems or processes" is unduly burdensome

16. Interrogatory No. 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).

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, 10, and 15. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is ambiguous, overly broad, and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including seeking information not related to the provision of inmate calling service in the Commonwealth of Massachusetts and outside the scope of the quality of service issues (i.e., dropped calls, quality of connected calls, and billing practices) that are included in this investigation. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

Without waving any of the foregoing objections, Securus refers to its January 12, 2012 "Response of Securus Technologies, Inc." ("Response") (see pp. 31-33) in this proceeding which reports that Securus contracts with its confinement facilities customers include quality of service requirements.

Securus provides annual surveys to its facility customers nationwide to obtain their important feedback about the company's performance. The facilities are asked to rank their satisfaction with Securus's quality of service (customer satisfaction "CSAT" scores). In Massachusetts, Securus has not been called to task by its facility customers for failing to meet its quality-of-service obligations. Securus has been and is providing highly rated service. As noted in Exhibit 7 to the Response, Securus also conducts customer service surveys.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds again that there are no general issues in the investigation relating "quality of services" or "customer services practices." Securus described the process/system whereby it surveys its correctional facility customers and takes surveys of end user customers, referring to its initial response to Petitioners' request to open an investigation. Securus overall financial and margin performance are not issues in this investigation. Again, Petitioner's relevance claim is based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. Overall technical and network performance are not specified issues in the investigation and the request in that regard is not reasonably calculated to lead to the discovery of admissible evidence.

17. Interrogatory No. 21

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections No. 1, 5 and 10. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is vague and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, especially to the extent that it is not limited in any way to the Commonwealth of Massachusetts and relates to internal company processes that are not among the issues approved as part of this investigation. Finally Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus's overall internal budgetary process and how the Company sets its overall internal financial goals are issues far outside the scope of this investigation. Securus operates in over 40 jurisdictions. The Company's overall budgetary process and financial goals for countrywide operations are not relevant to whether there remain legitimate additional costs as a result of the unique characteristics of ICS in Massachusetts. Petitioners' general assertions that the budgetary process and setting of financial goals "could" contain information relevant to the limited issues in this case is speculative and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner's relevance claim is again based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. Again, the request is open-ended and is not even limited to Massachusetts.

18. Interrogatory No. 22

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, 10, and 15. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, none of which relate to Securus profitability. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion.** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus's profitability as a company is not an issue in this investigation. This request is again based on Petitioners' theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. As the *Interlocutory Order* recognizes under an incentive regulatory scheme, enhanced profits, if there are any, may be used at the discretion of the

service provider.⁵⁸ Further, the request is not limited to Massachusetts and thus seeks information clearly outside the scope of the investigation.

19. Interrogatory No. 23

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 6. More specifically, Securus objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this this investigation, specifically because it seeks information unrelated to Securus provision of ICS in the Commonwealth of Massachusetts.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that this case is about Massachusetts and the provision of ICS in Massachusetts. Enforcement actions or investigations in other states, if there were any, are wholly irrelevant to the issues in this investigation. Petitioners have not shown (and cannot show) how this information is reasonably calculated to lead to the discovery of admissible evidence. Petitioners' exhortation that such "other state" materials are "directly related to all areas of the Department's investigation" is wholly speculative. Presumably, if such proceedings were identified, Petitioners' would then seek information that might have been filed in those proceedings, which in conclusory fashion, Petitioners assert would "presumably be relevant to the Department's investigation here." Such a "presumption" is without foundation and does not satisfy the standards for compelling production of this irrelevant information.

20. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections No. 1, 2, 5, and 10. More specifically, Securus

⁵⁸ *Interlocutory Order*, p. 24.

objects to the foregoing interrogatory on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, especially to the extent to that it seeks information relating to states other than the Commonwealth of Massachusetts. Securus also objects on the grounds that it is ambiguous in that there is no definition of “gross and net earnings” provided. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that this case is about Massachusetts and information from other states is not determinative of the issues in this investigation relating to ICS in Massachusetts. More fundamentally, however, as Securus has previously stated, profitability and revenues of Securus are not at issue in this investigation. Petitioners’ relevance claim is based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case. Further, gross and net earnings figures would reflect revenues from *interstate* ICS calls, which is not relevant to the issues in this proceeding.

21. Interrogatory No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objection No. 1. More specifically, Securus objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation specifically because it seeks information related to the “availability and upkeep of telecommunications equipment at correctional facilities,” which subject was explicitly excluded by the Department’s *Interlocutory Order*.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it respectfully disagrees that the Petitioners' request, as written, "reasonably refers to the providers' responses to quality of service issues through service calls." The Interrogatory focused on telephone units at and replaced at the various correctional facilities served, with reference to "service calls" sandwiched in between. A more reasonable reading of the request is that it sought information on service calls related to telephone equipment, an issue excluded from the investigation by the *Interlocutory Order*. Further, the reference to "other quality of service troubleshooting" is another attempt to expand the issues in the investigation, which do not generally include "quality of service issues," but only those specified in the *Interlocutory Order*.

B. DOCUMENT PRODUCTION REQUESTS

1. Document Request No. 1.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 3, 5, 11 and 14. More specifically, Securus objects to the provision of any documents identified in Petitioners First Set Of Interrogatories that are neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because they are outside the scope of the limited issues involved in this investigation, including any documents relating matters to other than the specific issues approved by the *Interlocutory Order*. This includes, among others, documents relating to commission payments or detailed cost analyses or information. Securus further specifically objects to producing copies of any contracts or related amendments with the facilities Securus is currently serving as identified in response to Interrogatory No. 1 of Petitioner's First Set Of Interrogatories. As provided in the *Interlocutory Order* this investigation is expressly limited to the issues of (a) the per-call surcharge assessed by ICS providers (b) the tariffed service and other fees assessed by ICS providers, the frequency of dropped calls, the quality of connected ICS calls and the billing practices of Securus and GTL. *Interlocutory Order*, at p. 33. These agreements do not contain information pertaining to these four issues.

Securus further objects to this Request on the grounds that it is vague, ambiguous, overly broad and burdensome and seeks the provision of confidential, competitively sensitive, proprietary financial or other internal business information. Finally, Securus further objects to the extent that the Request seeks documents that are publicly available.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds again that revenues and costs are not relevant to the per-call charge or cap because contrary to Petitioners' assertion that rates must be established in relation to the costs and revenues of ICS, that is not mandated by the *Interlocutory Order*, which does not require a cost-based rate analysis based on rate of return regulation methodology. Further, although Securus does not concede the relevance of these materials, based on a preliminary review of the documents produced by Petitioners in response to Securus's Information Requests, Petitioners previously obtained copies of contracts, RFPs, and related proposals directly from the correctional facilities themselves pursuant to a number of requests since the filing of their original Petition. A review of those documents, which have also been provided to the Department, indicates that in any case the contracts do not include information relevant to the per-call charge or cap or tariffed service fees. Securus has provided information for each facility as to the rates approved by the facility to be charged as reflected in its Department-approved tariff. Securus's position on the relevance of site commissions in this matter has been previously stated—these are set or imposed by the correctional facility administrators, are outside the jurisdiction of the Department, and outside the scope of this investigation. Finally, although Securus maintains that site commissions are outside the scope of the investigation, based on a preliminary review of the information provided by Petitioners in response to Securus's Information Requests, Petitioners have previously obtained information on commissions, including commission payment schedules and copies of checks, from individual correctional facilities.

2. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, 11 and 13. More Specifically, Securus objects to the foregoing request on the grounds that it is ambiguous because Petitioners do not define "formal documentation" and do not specify who has created the "formal documentation." Securus further objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically as it relates to broken telephone sets and matters unrelated to "billing practices. Securus further objects on the grounds that the written responses contain customer proprietary network information protected by and subject to the restrictions of 47 U.S.C. §222.

Without waving any of the foregoing objections, Securus notes that the complaints listed as Friends and Family (“F&F”) in its response to Interrogatory No. 16 do not have written responses as these complaints were received and resolved by telephone with Securus’ Corporate Escalations Department. Securus provides copies of the written responses filed in connection with each of the other complaints, redacted to comply with the requirements of 47 U.S.C. §222.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it provided documentation on the complaints listed in Interrogatory 16 for which there were written materials. It is not clear why Petitioners only state that it “appears” that Securus has complied; Petitioners have not indicated in what respect, if any, Securus has not done so.

3. Document Request No. 3.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, 7, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad, unduly burdensome, and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, which do not include Securus corporate and security quality goals. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus’s companywide “current corporate policy and security quality goals,” an undefined general term for which Petitioners seek “any and all documents” defining such goals, are not an issue in this investigation. Securus submits that this request is open-ended and speculative. Petitioners’ bare assertions or mere recitation that these goals are directly relevant to the Department’s investigation “into all areas” is insufficient to establish the relevance of the information requested or to establish that the information is

reasonably calculated to lead to the discovery of admissible evidence. Securus again objects to Petitioners' claim that "customer service practices" are an issue in this proceeding when that subject is not included in the precise issues list contained in the *Interlocutory Order*.

4. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad, unduly burdensome, and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, which do not include security, network outages, and general pricing, and seeks information unrelated to the Commonwealth of Massachusetts. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that this request for "any and all documents" regarding "policies concerning the provision of ICS" including certain issues is an open-ended "catch all" that is overly broad and to which responding will be unduly burdensome. It seeks information far beyond what is relevant to this investigation and thus in part is not reasonably calculated to lead to the discovery of admissible evidence. In addition to the brochure that Petitioners refer to, Securus also provided reference to its website and a copy of its tariff which set forth the terms and conditions of its provision of service. It also provided information concerning policies addressing dropped calls. Specifically, in its Supplemental Response Securus noted that its policies and procedures concerning disconnected calls was publicly available online through Securus's Customer Solutions Center at <http://apps.securustech.net/consumersolutions.asp> the other general issues "security, network outages, pricing" and even "quality" are not specified issues in this investigation.

5. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 3, 5, and 11. More specifically, Securus

objects to the foregoing request as overly broad and unduly burdensome. Securus further objects to the foregoing request on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, which do not include detailed costs and site commission payments, which payments are not within the jurisdiction of the Department. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Securus has previously stated its position with respect to production of revenue and expense data in connection with its operations in Massachusetts. The "profitability" of Securus is not an issue in this investigation and the request again is based on the Petitioners assertion that ICS rates must be established in relation to the costs and revenues of ICS. That is not mandated by the *Interlocutory Order*, which is not requiring a cost-based rate analysis based on rate-of-return regulation methodology. As such, Securus reiterates that financial statements, budget performance reports, management reports (however defined) are not relevant to the per-call charge or cap or fee issues. Securus's position on the relevance of site commissions has previously been stated—the requirement is set and imposed by correctional facility administrators, commissions are not within the jurisdiction of the Department, and thus outside the scope of this investigation—and is applicable to this request as well. Although Securus maintains that site commissions are outside the scope of the investigation, based on a preliminary review of the information provided by Petitioners in response to Securus Information Requests, Petitioners have previously obtained information on commissions, including commission payments and copies of checks, from individual correctional facilities. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

6. Document Request No. 6.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad and unduly burdensome. Securus further objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, specifically because it seeks detailed cost information. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

Without waiving any of the foregoing objections, Securus refers to the documents, already filed in this investigation, referred to in Securus' response to Interrogatory No. 6.

b. **Petitioners' Argument:** The central relevance of cost data to this proceeding are discussed in Sections 1 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the request for "any document listing or describing costs", irrespective of the relevance of the information sought, is overly broad and unduly burdensome. Further, as Securus has previously stated, detailed cost information is based on Petitioners' assertion that the *Interlocutory Order* requires that rates must be established in relation to the costs and revenues of ICS. That is not mandated by the *Interlocutory Order*, which is not requiring a cost-based rate analysis based on rate of return regulation methodology. Further, Petitioners state that the "FCC is requiring ICS providers to disclose cost data in its ICS rulemaking procedure." That fact does not make the information sought by Petitioners (some of which requests are apparently modeled on the FCC's) in this proceeding relevant to the issues in this investigation, where the Department employs incentive rate regulation. In fact, although the FCC is apparently proceeding with the collection of data, the FCC's requirement for cost-based interstate rates has been stayed by the United States Court of Appeals for the District of Columbia Circuit. Further, Securus has indicated that the development and provision of such information to the FCC would entail a very substantial and costly burden.⁵⁹ Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

7. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, 11, and 14. More specifically, Securus objects to the foregoing document request on the grounds that it is overly broad, unduly burdensome, and requests information that is publicly available. Securus further objects to the foregoing request on the grounds that it seeks information neither relevant to the subject matter in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of this proceeding, especially as it relates to the amounts collected and disposition of such fees. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

⁵⁹ See *Comments Of Securus Technologies, Inc. Regarding Data Collection, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, WC Docket 12-375, at.9 (Feb. 19, 2014)(cost analysis required by FCC will require 41,050 hours, 31 new employees and cost \$1.9 million).

Without waiving any of the foregoing objections, with respect to the fees charged for establishing, using, maintaining, or closing a pre-paid account, Securus refers Petitioners to its response to Interrogatory No. 13 and its separately provided Massachusetts-approved tariff at Sections 5 and 6.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that it has identified its Department-approved tariff and substantively responded to the instances in which it imposes the fees addressed in the request. Information as to the revenues from fees, to the extent that they are charged or collected, and the "disposition" of such fees internally by Securus is not relevant as the profitability or use of revenues by Securus derived from ICS is not an issue in the investigation, is not relevant to the tariffed service and other fee issue in the investigation, and is not reasonably calculated to lead to the discovery of admissible evidence relating to that issue. Petitioners' relevance claim is based on their theory that any adjustment to the existing rates structure must be based on ICS costs and revenues (i.e., a rate of return, cost-based rate analysis), which is not the case.

8. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, 11, and 15. Securus objects to the foregoing request on the grounds that it is overly broad, unduly burdensome and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, which do not include information relating to Securus provision of ICS outside the Commonwealth of Massachusetts and on an interstate basis. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information and privileged information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion.** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that this request is again based on the assertion that “rates must be established in relation to the costs and revenues of ICS, making the financial performance highly relevant.” Again, Petitioners’ assertion that rates must be cost and revenue based is not mandated by the *Interlocutory Order* which is not requiring a cost-based rate analysis based on rate-of-return regulation methodology. Further, the request asks for “any and all documents prepared for upper management—an undefined term—that discuss directly or indirectly performance” of provision of ICS in Massachusetts. This request is ambiguous, overly broad, open-ended and speculative, and thus is not reasonably calculated to lead to the discovery of admissible evidence relating to the approved issues in this proceeding. Furthermore, information relating to Securus’s ICS performance in other states is irrelevant.

9. Document Request No. 9.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad, unduly burdensome and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, which do not include Securus’ overall profitability in Massachusetts or elsewhere. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners’ 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that this request is again based on the assertion that “rates must be established in relation to the costs and revenues of ICS, making the profitability highly relevant.” Again, Petitioners’ assertion that rates must be cost-based is not mandated by the *Interlocutory Order* which does not require a cost and revenue based rate analysis employing rate of return regulation methodology. Securus’s overall profitability is not an issue in this investigation. Therefore the information sought is irrelevant and is not likely to lead to the discovery of admissible evidence relating to the approved issues in the investigation. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

10. Document Request No. 10.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad and unduly burdensome. Securus further objects to the foregoing interrogatory on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, which do not include site commission payments, which payments are outside the jurisdiction of the Department. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the requirement to supply "any and all documentation" is overly broad and unduly burdensome. Further, Securus's position on site commissions is that the amount thereof is not relevant to the per-call charge or the cap because Securus's profitability is not an issue. Further, the requirement for site commissions is set and imposed by the correctional facility administrators, site commissions are outside the jurisdiction of the Department, and therefore outside the scope of this investigation. Therefore, the amount thereof is not an issue in this investigation. Finally, to the extent that Petitioners seek information relating to the provision of interstate service it is outside the scope of the investigation.

11. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1 and 5. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad, unduly burdensome and ambiguous. Securus further objects on the grounds that it seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, specifically seeking information far beyond the limited quality of service matters at issue in this investigation and includes information unrelated to the Commonwealth of Massachusetts.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the request for "any and all documents, reports or analyses" is overly broad and seeks information relating to regions and states other than Massachusetts, which information is not relevant to this investigation. Further, "network outages, trouble reports and other related quality assurance issues" go far beyond the limited service quality issues in this investigation. Furthermore, as GTL previously noted, the terms are vague and ambiguous, and the information would be competitively sensitive and protected. Petitioners concede the vagueness and express a willingness to attempt to clarify.

12. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 2, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that the request is overly broad and unduly burdensome. Securus further objects on the grounds that the request seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including detailed cost and budget information. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds again that Petitioners' assertion that "costs and revenues from ICS in Massachusetts is central to determining a just and reasonable rate" reflects the Petitioners' ongoing effort to convert the investigation into a proceeding requiring ICS rates set by a cost and revenue based analysis using rate-of-return regulation methodology. Such an exercise is not within the scope of this investigation. Therefore, cost studies, budget analyses or management reports calculating cost and or revenue are not relevant to the per-call charge or per-call cap and the request is not reasonably calculated to lead to the discovery of admissible evidence relating to those issues. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

13. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 3, 5, and 11. More specifically, Securus objects to the foregoing request on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that the request seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, including detailed cost information and such information as it relates to usage. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Petitioners' assertion that "costs and revenues from ICS in Massachusetts is central to determining a just and reasonable rate" reflects the Petitioners' ongoing effort to convert the investigation into a proceeding to require ICS rates set by a cost and revenue based analysis based on rate of return regulation methodology. Such an exercise is not within the scope of this investigation. Therefore, cost studies, budget analyses, or management reports segregating costs are not relevant to the per-call charge or cap. Petitioners repeated assertions that this tie-in is required are inconsistent with the terms of the *Interlocutory Order* and the application of incentive based regulation. Further, the request in effect seeks information relating to per-minute usage charges, which is an issue explicitly excluded from the scope of this investigation. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

14. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 11. More specifically, Securus objects to the foregoing document request on the grounds that it is overly broad, unduly burdensome and is ambiguous in that it does not define "fiscal year." Securus further objects on the grounds that the request seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this proceeding, specifically in that seeks usage-related information.

Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that "marginal costs and profitability" of Securus are not an issue within the scope of this investigation. Petitioners' request again reflects the Petitioners' ongoing effort to convert the investigation in to a proceeding requiring ICS rates set by a cost- and revenue-based analysis employing rate-of-return regulation methodology. Such an exercise is not within the scope of this investigation. The *Interlocutory Order* does not abandon the incentive rate regulation framework and therefore information relating to "marginal costs and profitability" is not relevant and the request is not likely to lead to the discovery of admissible evidence relating to the issues in the investigation. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

15. Document Request No. 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.

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5 and 11. More specifically, Securus objects to the foregoing document request on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that the request seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it seeks communications that have nothing to do with the limited issues involved in the investigation. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that, rather than being limited to the issues in this investigation, the request seeks "any and all document communications" concerning the provision of ICS in the facilities. Petitioners presumably hope that there might be information potentially relevant to the approved issues in the investigation. As such, it is overly broad and speculative, and Petitioners have not established that it is reasonably calculated to lead to the

discovery of admissible evidence. Securus respectfully characterizes the request as an impermissible fishing expedition not sanctioned by the Department's rules.

16. Document Request No. 19.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 11. Securus objects to the foregoing request on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that the request seeks information neither relevant to the limited issues involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope of the limited issues involved in this investigation, in particular specifically these billing services are not regulated by the Department and the terms of Securus's arrangements with third parties who might bill for Securus are not an issue in this investigation. Finally, Securus further objects on the grounds that it seeks confidential, competitively sensitive, proprietary financial or other internal business information.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that the investigation refers to the billing practices of Securus, the entity which is a party to the investigation, and not the billing practices of third parties with whom Securus might have contracted (e.g., Verizon). Petitioners themselves state that the issue "would appear to include the practices" of these third parties, but Petitioners are not entitled to rewrite the *Interlocutory Order* to expand the scope of the investigation beyond that which was approved in the *Interlocutory Order*. Moreover, they have failed to demonstrate that the Department has jurisdiction over third-party billing services. The request is not reasonably calculated to lead to the discovery of admissible evidence relating to the issue in the investigation regarding Securus's "billing practices."

17. Document Request No. 20.

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

a. **Complete Securus Initial Response:** Securus repeats and incorporates its General Objections, and specifically General Objections Nos. 1, 5, and 14. More specifically, Securus objects to the foregoing document request on the grounds that it is overly broad and unduly burdensome. Securus further objects on the grounds that it seeks information neither relevant to the limited issue involved in this investigation nor reasonably calculated to lead to the discovery of admissible evidence because it is outside the scope the limited issues involved in this investigation; Securus

marketing and promotional activities are not the subject of this investigation and certainly not materials unrelated to Massachusetts. Securus further objects on the grounds that the information is publicly-available.

Without waiving the foregoing objection, Securus refers Petitioners to its web site at www.securustech.net, which is accessible in Massachusetts.

b. **Petitioners' 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.

c. **Securus Further Response to Motion:** Securus restates and incorporates its original objections and Sections I-VIII above and further responds that Petitioners seek marketing materials concerning "any and all aspects of your provision of inmate calling services," which is overly broad, in that it is not related to the specific issues in the investigation and not limited to Massachusetts. Again, Petitioners presumably hope that there might be information potentially relevant to the approved issues in the investigation. As such, open-ended and speculative, and Petitioners have not established that it is reasonably calculated to lead to the discovery of admissible evidence. Securus respectfully characterizes the request as an impermissible fishing expedition not sanctioned by the Department's rules. Petitioners do not explain the basis for their bare assertion that these marketing materials are "related" to "service quality, billing and customer service practices, tariffed service and other fees and the surcharge and surcharge cap," and Petitioners' mere assertion does not make it so. Finally, to the extent that Petitioners seek information relating to the provision of interstate service, it is outside the scope of the investigation.

X. CONCLUSION

Petitioners have failed to meet their burden under the Department's rules to justify compelling the production of the additional information they seek. For all the foregoing reasons, Securus respectfully submits that Petitioners' Motion To Compel be denied.

Respectfully submitted,

SECURUS TECHNOLOGIES, INC. 

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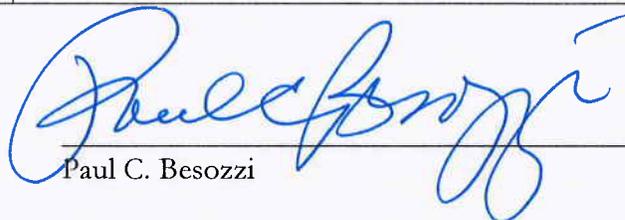
Dated: June 25, 2014

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 25th day of June, 2014, I did serve, by Federal Express or first class mail, postage prepaid or by electronic mail a copy of the foregoing “Opposition Of Securus Technologies, Inc. To Petitioners’ Motion To Compel Responses of Securus To Interrogatories And Requests For Production” on the parties listed on the Service List below issued by the Department:

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