



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-16

July 31, 2024

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

FINAL ORDER

I. INTRODUCTION

In this longstanding docket, the Department of Telecommunications and Cable (“Department”) investigated a Complaint filed by the family members, loved ones, legal counsel, and others residing in Massachusetts who receive and pay for telephone calls from prisoners who live in the Commonwealth’s prisons, jails, and houses of correction (collectively, the “Petitioners”). As further explained below, the Department finds that the issues raised in the Complaint are now either 1) moot due to statutorily mandated free inmate calling, 2) beyond the scope of the Department’s present jurisdiction, or 3) better addressed by the Department of Correction (“DOC”). In this Final Order, the Department therefore denies the Complaint and closes this docket.

II. PROCEDURAL HISTORY

Petitioners filed a petition with the Department requesting relief from allegedly unjust and unreasonable rates for inmate calling services (“ICS”) and poor quality of service, pursuant to M.G.L. c. 159, §§ 14, 17 and 24. *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust & Unreasonable Cost of such Calls* at 3 (“In re Inmate Calls”), D.T.C. 11-16 (August 31, 2009) (“Initial Petition”).

The Department was unable to determine whether the Initial Petition provided legally and factually sufficient bases to support an investigation or other action, and the Department’s Competition Division Director requested additional information from Petitioners. *Letter from Michael Isenberg to Bradley W. Brockmann, Esq.* at 1-2 (September 29, 2009). Specifically, the Petitioners were requested to clarify each Petitioner’s status, identify the ICS providers providing service to each petitioner, explain the payment method for calls that the inmates listed were responsible for, and supplement the scope and nature of their quality of service allegations. *Id.*

The Petitioners amended their Initial Petition and further clarified that they were asking the Department to “investigate the pervasive quality of service issues Petitioners encounter in connection with prisoner telephone calls.” *In re Inmate Calls*, D.T.C. 11-16, *Amendment 1 & Supplement on Quality of Service* at 1 (May 18, 2010) (“First Amendment”). Petitioners alleged quality of service issues with the service providers Evercom Systems Inc., now doing business as Securus Technologies Inc. (“Securus”), and Global Tel*Link Corporation (“GTL”). *First Amendment* at 5. Subsequently, Petitioners filed a second amendment to the Initial Petition on April 27, 2011, increasing the number of petitioners to 56. *In re Inmate Calls*, D.T.C. 11-16, *Amendment 2, Additional Petitioners* at 1 (April 27, 2011) (“Second Amendment” together with the Initial Petition and the First Amendment, the “Complaint”).

In their Complaint, Petitioners asked the Department to open an investigation pursuant to M.G.L. c. 159, §§ 14, 17, and 24, and to determine just and reasonable rates for ICS. *Initial Petition* at 3. In support of their request, Petitioners requested that the Commission find that:

“(1)(i) in accordance with FCC and other regulatory rulings, commissions paid by telephone service providers to correctional institutions are shared service provider profits, not an actual, necessarily incurred cost of service; (ii) per call surcharges are unnecessary for service providers to recover the actual costs of their calls plus a reasonable profit; and (iii) per call surcharges on all intrastate and local telephone calls originated by prisoners incarcerated in the Commonwealth's correctional institutions are unjust and unreasonable and should be eliminated; (2) per minute rates must be lowered to reflect just and reasonable rates that permit providers to recover necessarily incurred costs of providing service plus a reasonable rate of return; (3) all service, maintenance, recharge and other fees incurred by Petitioners and other telephone company customers in connection with the use of prepaid accounts must be included in the calculation of just and reasonable rates for prisoner phone calls; and (4) prisoner telephone service providers must improve the quality of service they offer their customers.” *Id.* at 3-4.

On November 10, 2011, the Department opened a docket for the Complaint and set a deadline of November 21, 2011, for Answers. *Letter from Hearing Officer Kalun Lee to Parties Re: Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Mass. Seeking Relief from the Unjust & Unreasonable Cost of such Calls*, D.T.C. 11-16 (November 10, 2011). Securus and GTL provided responses to the Complaint. The Department scheduled a public hearing for July 19, 2012, and received extensive public comments.

The Department issued a ruling on Petitioners’ Complaint on September 23, 2013. In the ruling, the Hearing Officer opened an investigation into the per-call surcharge assessed by ICS providers, the tariffed service and other fees assessed by ICS providers, the telephone service quality provided by ICS providers, and the billing practices of ICS providers. *In re Inmate Rates*, D.T.C. 11-16, *Hearing Officer Interlocutory Ruling* at 1-2 (September 23, 2016)

(“Hearing Officer Interlocutory Ruling”). The Hearing Officer declined to open an investigation into the usage rate, the frequency and content of recorded warning messages, and the availability and upkeep of telecommunications equipment at correctional facilities. *Id.* Between March 2014 and September 2014, the parties engaged in discovery.

On November 5, 2015, the Federal Communications Commission released an order concerning ICS rates that would potentially directly affect the investigation in D.T.C. 11-16. *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, *Second Report and Order and Third Further Notice of Proposed Rulemaking*, 30 FCC Rcd 12763, (rel. Nov. 5, 2015) (“ICS Rate Order”). Following this ICS Rate Order and a telephonic conference with the parties concerning the order, the Department amended the scope and procedure of its investigation to (1) establish just and reasonable ICS rates, including ancillary service charges, taxes, and fees and (2) continue its service quality investigation for ICS providers regarding frequency of dropped calls, line static, voice quality, and billing practices. *In re Inmate Rates*, D.T.C. 11-16, *Interlocutory Order* at 1-2 (June 14, 2016) (“Interlocutory Order”). Further, the Department stayed the investigation pending the result of the ICS Rate Order. *Id.* at 2.

Effective December 1, 2023, Chapter 64 of the Acts of 2023 mandated the provision of voice communication services free of charge to any person committed to a state correctional facility, state prison, or county correctional facility. *See* M.G.L. c. 127, § 87A.

On February 28, 2024, the Department requested comments from the parties concerning ICS rates and billing, ICS service quality, removal of payphones in public areas at correctional institutions, and recent ICS developments. *In re Inmate Rates*, D.T.C. 11-16, *Request for Comments and Notice of Cancellation of Case Status Conference* (February 28, 2024) (“Request for Comments”). Parties were directed to provide comments and reply comments.

Petitioners provided initial comments on March 27, 2024 (“Petitioners Initial Comments”) and Securus and GTL provided initial comments on March 28, 2024 (“Securus Initial Comments” and “GTL Initial Comments”) and reply comments on April 30, 2024 (“Securus Reply Comments” and “GTL Reply Comments”).

III. DEPARTMENT JURISDICTION AND STANDARD OF REVIEW

The Department’s jurisdiction for regulation of telecommunications common carriers within the Commonwealth is provided under M.G.L. c. 159. The Department has broad general supervisory power over the provision of telecommunications services. *See* M.G.L. c. 159, § 12; *see also* M.G.L. c. 166. M.G.L. c. 159, §§ 14, 20 provide the Department authority over the rates of common carriers subject to the Department’s jurisdiction. *See also* M.G.L. c. 159, § 17 (“All charges made . . . by any common carrier for any service rendered . . . shall be just and reasonable . . . and every unjust or unreasonable charge is hereby prohibited and declared unlawful”). Thus, under M.G.L. c. 159, the Department is responsible for ensuring a “just and reasonable” standard for ratemaking purposes. *See 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 at 318, D.T.E. 01-31 Phase I (May 8, 2002).

Further, if the Department determines after hearing that:

“the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the [D]epartment shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby... Before making such order, the [D]epartment shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of any other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith upon its financial ability to make such other changes, if any, as may be deemed by the [D]epartment of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public.” *See Petition of the Board of Selectmen of the Town of Middlefield, Massachusetts, pursuant to G. L. c. 159, s. 24, regarding the quality of Verizon Massachusetts' telephone service* at 3-4, D.T.C./D.T.E. 06-6 (April 29, 2008) (citing to M.G.L. c. 159, § 16).

IV. ANALYSIS AND FINDINGS

A. Just and Reasonable ICS Rates and Billing Practices

As modified by the Interlocutory Order, the Department continued its investigation regarding establishing just and reasonable ICS rates, including ancillary service charges, taxes, fees, and billing practices. *Interlocutory Order* at 1-2. Recent legislative changes, however, have mandated that voice communication services must be provided to inmates at no charge. *See* M.G.L. c. 127, § 87A. Accordingly, ICS must be provided at no charge.

The Petitioners concede that to their knowledge “pursuant to this law end users are no longer paying ICS rates or ancillary service costs and receive no bills for telephone service.” *Petitioners Initial Comments* at 1.

Securus notes that it has implemented free calling in Massachusetts and that “[t]here are no billing statement issues because Securus does not send billing statements for free services to incarcerated people or the persons they call.” *Securus Initial Comments* at 3. Securus states that

as legislative changes have resolved ICS rate and billing issues, this portion of the investigation should be closed. *See Securus Reply Comments* at 2-3.

GTL stated that the “legislative mandate in Chapter 64 eliminates any concern about IPCS rates and fees in Massachusetts because all voice communication services (and certain other communication services if offered) are to be provided free of charge.” *GTL Initial Comments* at 5. GTL notes that as legislative changes have resolved ICS rate and billing issues, this portion of the proceeding should be closed. *See GTL Reply Comments* at 2.

As Petitioners are not aware of any ICS rates or other charges or aware of any improper billing practices, and as Securus and GTL have stated that these concerns have been addressed by M.G.L. c. 127, § 87A, the Department finds that this issue is moot, and this portion of the investigation shall be closed.

B. Service Quality

As modified by the Interlocutory Order, the Department continued its service quality investigation for ICS providers regarding frequency of dropped calls, line static, and voice quality. *Interlocutory Order* at 1-2.

Securus claims that “[f]ew of the original Petitioners have active accounts with Securus, and Securus is not aware of any service quality complaints received from any of the Petitioners since those lodged back at that time” and that “Securus does not experience as many service quality issues that Securus customers may have experienced over a decade ago with individual premise platforms employing analog systems and technologies.” *Securus Initial Comments* at 4. Further, the “IP-enabled network is more resilient and less subject to disruption than the analog, premise-based system.” *Id.* Securus states that it “has continued to invest in service quality and affords even more robust customer service capacity than it did at the time of the 2016 *Interlocutory Order.*” *Id.* at 5. Concerning the Petitioners Initial Comments, Securus stated that Petitioners’ claims concerning service quality were not verified and the Department does not regulate Wi-Fi. *See Securus Reply Comments* at 3-4. Securus states that it made significant investments in phone and network equipment and the DOC is the state agency best situated to resolve issues related to the performance of the DOC contract with Securus. *Id.* at 4.

GTL states “there has been no recent evidence of systematic service quality issues in Massachusetts correctional facilities.” *GTL Reply Comments* at 2. Petitioners “do not provide information on an actionable service quality issue that could be addressed by an IPCS provider. Non-specific and generalized claims do not provide adequate information that would allow ViaPath or any other IPCS provider to address a specific service quality issue with a particular communication.” *Id.* at 2-3. Further, GTL states that “Petitioners’ allegations regarding the quality of WiFi service and headphones offered in Massachusetts correctional facilities are beyond the scope of this proceeding and the Department’s oversight authority.” *Id.* at 3.

The Department previously stated that the “DOC has broad statutory authority to establish and maintain the prison facilities in Massachusetts.” *Hearing Officer Interlocutory Order* at 31. The DOC is also tasked with providing calling services and ensuring adequate infrastructure for voice communications services. *See* M.G.L. c. 127, § 87A.

Petitioners have not provided data concerning service quality issues for telephone calls in their initial comments and have not provided reply comments. Securus claims it increased its investment to resolve potential service quality issues, and GTL states there is no recent evidence of service quality issues. Based on this record, the Department agrees that there is little evidence suggesting service quality issues for ICS by Securus or GTL in Massachusetts. Further, any complaints concerning Wi-Fi services are out of the scope of this proceeding as the Department is prohibited from regulating Voice over Internet Protocol services under M.G.L. c. 25C, § 6A. In this instance, the Department defers to the DOC in regards to maintaining infrastructure and providing equipment as needed to fulfill the terms of its contracts with Securus and/or GTL. Accordingly, the Department finds that this portion of the investigation shall be closed.

C. Payphones

Petitioners have not received direct complaints concerning the provision of payphones in public areas at correctional institutions but affirm the importance of maintaining such services. *See Petitioners Initial Comments* at 1.

Securus states that the use of traditional payphones is in “steep decline,” and it does not provide payphones at correctional institutions. *Securus Initial Comments* at 6-7. Further, Securus notes that usage is minimal for these services, current IP-technology is incompatible with older payphone equipment, and it has not been informed of any issues with the lack of public payphones following its decision to remove the equipment. *Id.* at 7. Securus also states that Petitioners have not provided examples of “undue burdens imposed on newly released individuals and/or visitors or families” in connection with a lack of payphones in public areas. *Securus Reply Comments* at 6.

GTL stated that it does not currently offer payphones at public areas in correctional institutions and provides several data points stating that traditional payphones are no longer widely used. *See GTL Initial Comments* at 10-11. Further, GTL states that Petitioners have indicated that they are not aware of any complaints relating to payphones. *See GTL Reply Comments* at 3.

In this proceeding, the Department previously ruled that it “defers to the DOC’s regulations and its contractual terms with GTL concerning the number and condition of payphones in its facilities.” *Hearing Officer Interlocutory Order* at 32. As Petitioners have not provided specific complaints concerning the lack of availability of payphones, the Department continues to defer to the DOC on this issue. Accordingly, the Department will not open an investigation on this matter at this time.

V. ORDER

As stated above, the Department finds that the issues raised by the Complaint are now either 1) moot due to statutorily mandated free inmate calling, 2) beyond the scope of the Department’s present jurisdiction, or 3) better addressed by the DOC.

Accordingly, after due notice, opportunity to be heard, and consideration, it is hereby
ORDERED: that Petitioners' Complaint is DENIED and this docket is closed.

By Order of the Department,



Karen Charles, Commissioner

RIGHT OF APPEAL

Pursuant to M.G.L. c. 25, § 5, and M.G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.