

May 23, 2016

Ms. Sara Clark
Department Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Sent via Fed Ex & Email

RE: D.T.C. Docket No. 11-16

Dear Ms. Clark,

Enclosed please find an original and seven copies of the Inmate Calling Solutions, LLC's Reply Brief in Response to Hearing Officer's Notice Dated March 18, 2016.

Respectfully,



Ken Dawson,
Director Contracts & Regulatory

**Before the
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the matter of: Petition of Recipients of)	
Collect calls from Prisoners at Correctional)	
Institutions in Massachusetts Seeking relief)	D.T.C. 11-16
From the Unjust and Unreasonable Cost of)	
Such Calls)	

**INMATE CALLING SOLUTIONS, LLC
REPLY BRIEF
IN RESPONSE TO HEARING OFFICER'S NOTICE DATED MARCH 18, 2016**

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May 23, 2016

SUMMARY OF ARGUMENT

Inmate Calling Solutions, LLC (“ICSolutions”), as a party to D.T.C. 11-16, hereby submits its Reply Brief in Response to Hearing Officer’s Notice Dated March 18, 2016, in accordance with the Ruling issued by the Hearing Officer on March 28, 2016.

In their *Initial Brief*, the Petitioners request that the Department of Telecommunications and Cable (“Department”) continue to put valuable resources toward this case, despite the recognized potential for preemption. The Petitioners advise that, so long as the Department adopts the FCC’s practices and finds a rate equal to or lower than the rates that the FCC has in its *2015 Rate Order*,¹ then the Department’s determinations will not be preempted.² But, the Petitioners’ assertions are based on unsupported assumptions. In addition, the Petitioners want the Department to continue investigating quality issues and billing issues because the Prisoners’ Legal Services Paralegal, Alphonse Kamanzi, has received complaints. The complaints themselves were not provided, nor is there indication that these complaints were first reported to the inmate calling service (“ICS”) providers for proper investigation and timely resolution, as required by the Department’s Rules.³ ICS providers cannot resolve customer issues if they are not first notified an issue exists.

For the reasons provided herein, ICSolutions recommends the Department deny the Petitioners’ requests for continued investigation and, instead, close the investigation.

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, 30 FCC Rcd 12763 (Rel. Nov. 5, 2015) (“*2015 Order*”).

² *Petitioners’ Brief in Response to Hearing Officer’s Notice of March 18, 2016*, pgs. 2-3 (Apr. 25, 2016).

³ *Rules & Practices Relating to Tel. Serv. To Residential Customers*, D.P.U. 18448, Rule 6 (Dec. 19, 1977).

ARGUMENT

I. The Department should close the investigation because the risk of wasting resources is great, while the potential benefits of continuing the investigation appear, at best, negligible.

The Petitioners want the Department to continue with the investigation in order to secure some of the rules in the FCC's *2015 Rate Order*, which has been appealed.⁴ But, the rules the Petitioners request the Department investigate are already going into effect since they have not been stayed, namely the prohibition of per-call surcharges and any unauthorized ancillary fees. Therefore, any investigation into the just and reasonableness of per-call surcharges or ancillary charges other than those permitted by the FCC would have no impact whatsoever on the consumers or the ICS providers' billings. Indeed, even the Petitioners concede that the continued investigation's only benefit is to provide State-level rules in the possible event the *2015 Rate Order* is reversed or vacated on appeal, stating: "Given the possibility that the FCC's prohibition of surcharges could be overturned on appeal, the Department should not close that portion of its investigation."⁵

If the *2015 Rate Order* is reversed or vacated on appeal, the Department can always decide to investigate the matter further at that time. Currently, however, there is no need for the Department to expend the resources that would be necessary to properly investigate the issues requested by the Petitioners. At this point, any further investigation would be undeniably a waste of time and resources.

As for the alleged quality of service and billing issues, the Petitioners have continuously failed to provide adequate support for their allegations, as aptly pointed out

⁴ *Global Tel*Link v. FCC*, Case No. 15-1461 (D.C. Cir.) (appeal of the *2015 Order*).

⁵ *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016*, pgs. 3-4 (Apr. 25, 2016).

by both Securus and GTL in their initial briefs, and they should be therefore dismissed in their entirety.⁶

The Petitioners have submitted an affidavit with their *Initial Brief* stating that a paralegal at Prisoners' Legal Services has received complaints about billing and quality of service in the last two months.⁷ These new complaints should not be considered by the Department. No information about the complaints has been provided to the Respondents to allow a meaningful response about them in this *Reply Brief*. Moreover, the most expeditious resolution of customer complaints on quality of service and billing issues would be to first raise the issue with the Respondents. This process is consistent with the Department's Rules,⁸ and it is the only way to ensure fairness to the ICS provider, as well as to help ensure judicial economy by encouraging consumers and providers to try to work out issues before raising them to the Department.

For all of the above reasons, it is warranted for the Department to close the investigation.

II. It is unnecessary and unwarranted to modify the current State law to address the impact of the FCC's 2015 Rate Order in this Docket.

ICSolutions wants to clarify that any requests or concerns about the per-minute rate is not intended to raise the issue in this Docket and hereby withdraws any statements that could be construed as recommending the Department set interim rates in this Docket.

ICSolutions joins the other respondents, GTL and Securus, to the extent of taking the position that considering the applicable per-minute rates in this Docket is

⁶ *Brief of Global Tel*Link Corp.*, D.T.C. 11-16, pgs. 10-18 (Apr. 25, 2016); *Initial Brief of Securus Technologies, Inc.* D.T.C. 11-16, pgs. 8-13 (Apr. 25, 2016).

⁷ *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016*, Ex. 2 (Apr. 25, 2016).

⁸ *Rules & Practices Relating to Tel. Serv. to Residential Customers*, D.P.U. 18448, Rule 6 (Dec. 19, 1977).

unnecessary. There is no credible evidence provided in this Docket that would increase the efficiency of determining new just and reasonable rates. Even in the Petitioner's *Initial Petition*, it appears they limited their research of rates to mostly prisons nationwide, which could hardly be considered a representative sample.⁹ Indeed, the FCC recognized ICS providers incur more costs serving jails than state prisons.¹⁰ Notably, the Petitioners provided only two facilities that charged less than \$0.10 – prisons in Rhode Island and New Mexico.¹¹ The per-minute rate in New Mexico, as passed by the State Public Regulation Commission on August 15, 2013, is \$0.15 per minute, with a \$1.00 surcharge available for collect calls.¹² As for Rhode Island rates, Global Tel*Link's tariff has several per-minute rates, including charging up to \$0.69 per minute, plus \$3.95 per-call surcharge for collect calls.¹³ Thus, it appears that rates may be increasing in at least some of the States that the Petitioners attempt to rely on for their arguments about just and reasonable rates. The remaining forty-five jurisdictions provided show \$0.117 per minute or more, based on a 15-minute call. This alone should provide a red flag to the Department as to the soundness of the Petitioners' position.

⁹ ICSolutions assumes that only the italicized facilities are County jails, based on the title of the first column in Appendix IV of the Petitioners' *Initial Petition. Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, Initial Petition, DTC Docket No. 11-16, App. IV (Aug. 31, 2009).

¹⁰ See 46 C.F.R. 64.6010 (stayed); see also *2015 Rate Order*, pg. 18, ¶ 33 (finding "the costs to serve prisons are lower than to serve jails," because jails have a 58% churn rate, compared to prisons' 1% churn rate, and prisons have longer calls and fewer bad debts).

¹¹ *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, Initial Petition, DTC Docket No. 11-16, App. IV (Aug. 31, 2009). ICSolutions does not concede the accuracy of the data in Petitioners' Appendix IV, nor does it concede that it is a representative sample of various facilities within the states, which in our experience can vary greatly from the information provided therein, particularly in the states that have deregulated telecommunications.

¹² Institutional Operator Service Providers Rules, New Mexico Public Regulation Commission, 17.11.28.17 NMAC, <http://164.64.110.239/nmac/parts/title17/17.011.0028.htm> (Aug. 15, 2013).

¹³ Global Tel*Link's Rhode Island Tariff (updated April 20, 2016), available at <http://tariffs.net/tariffs/10094bvbq5/tempRI%20TRF%20INMATE%2004%2020%2016%20Globe1%20Tel%20CUR02%20%28Revised%29.pdf>.

More recently, in the *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016* (“*Initial Brief*”), the Petitioners state that ICS providers are “willing and able” to charge \$0.048 to \$0.06 per minute in New York, Ohio, New Jersey, Pennsylvania, and New Hampshire.¹⁴ This statement provides no support for a per-minute rate in Massachusetts, however. Being “willing and able” to provide service at a lower rate is much different than being compelled to charge those rates by State tariffs or statutes, rules, tariffs, or other binding rate schedules.¹⁵ Indeed, the Petitioners failed to mention that the maximum rates permitted in those States are higher than the rates charged. For example, Ohio has a cap of \$0.36 per minute for intrastate calls, with a maximum per-call surcharge of \$2.75.¹⁶ Thus, the ICS providers are not compelled to charge those low rates, rather those low rates are a reflection that the competitive bidding process is working to maintain low rates.

Additionally, even though the Petitioners claimed that ancillary charges in Massachusetts are an additional source of costs for inmates and revenue for ICS

¹⁴ *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016*, pgs. 3-4 (Apr. 25, 2016). The Petitioners also state that the FCC's rate caps were intended to be a ceiling, and lower rates were encouraged. *Id.* However, these rates were stayed. Although it is uncertain why the FCC's average rates were stayed, the FCC's imposition of an average rate while simultaneously allowing states to impose lower rates prevents ICS providers from subsidizing calls that cost more than the average rate with calls that cost less than the average rate, which arguably violates the Telecommunications Act's requirement that “providers are fairly compensated for each and every completed intrastate and interstate call” 47 U.S.C. 276(b)(1)(A). Because the rates were stayed, the Department cannot reasonably rely on the rates in the *2015 Rate Order* as a proxy or a starting point.

¹⁵ “[W]hile it may be that the Commission may not normally impose upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return” *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

¹⁶ OHIO ADMIN. CODE 4901:1-6-22, available at <http://codes.ohio.gov/oac/4901%3A1-6>. Ohio law requires the review of all rules at least every five years. R.C. 106.03; R.C. 111.15. The Ohio Public Utilities Commission issued proposed rule changes to reduce the rates to \$0.25 per minute for collect calls and \$0.21 per minute for debit and prepaid calls, with no surcharges. The proposed rules are still in the comment stage. See Ohio PUC Docket No. 14-1554-TP-ORD, available at <https://dis.puc.state.oh.us/CaseRecord.aspx?Caseno=14-1554&link=PDC>. Notably, no ICS providers submitted comments disputing the proposed rates.

providers,¹⁷ the Petitioners failed to provide the ancillary fees charged at any of the facilities they provided the per-minute rates for in their *Petition* or their *Initial Brief*.¹⁸ While the ancillary charges are now capped by the FCC's *2015 Rate Order*, they may not have been at the time the ICS providers agreed to charge the lower rates referenced by the Petitioners.

With no Respondent-Providers raising the issue in this Docket, considering the applicable per-minute rates in this Docket is not only unnecessary, it is also unwarranted and inappropriate, particularly in light of the Hearing Officer's Interlocutory Order dismissing the per-minute rate as an issue.¹⁹

Indeed, if the issue of the per-minute rates is to be raised, it should be raised by an ICS provider, all of whom appear to agree that a rulemaking or a waiver process is the appropriate, lawful approach to considering such matters.²⁰

¹⁷ *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016*, pg. 4 (Apr. 25, 2016); *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, Initial Petition, DTC Docket No. 11-16, pgs. 22-23 (Aug. 31, 2009).


¹⁸ *See generally*, *Petitioners' Brief in Response to Hearing Officer's Notice of March 18, 2016*, pgs. 3-4 (Apr. 25, 2016); *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, Initial Petition, DTC Docket No. 11-16, App. IV (Aug. 31, 2009).

¹⁹ *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, DTC Docket No. 11-16, pg. 33 (Sept. 23, 2013) (citations omitted); *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 [Interlocutory] Ruling, DTC Docket No. 11-16 (Feb. 26, 2014) (affirming Hearing Officer Interlocutory Ruling, DTC Docket No. 11-16, pgs. 19-20 (Sept. 23, 2013)).

²⁰ *Brief of Global Tel*Link Corp.*, D.T.C. 11-16, pgs. 7-8 (Apr. 25, 2016); *Initial Brief of Securus Technologies, Inc.* D.T.C. 11-16, pgs. 6-7 (Apr. 25, 2016).

Respectfully submitted,

Inmate Calling Solutions, LLC,
d/b/a ICSolutions

A handwritten signature in cursive script that reads "Charlena S. Aumiller".

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May 23, 2016

CERTIFICATE OF SERVICE

I, Charlena S. Aumiller, certify that on this 23rd day of May 2016, I served a copy of the foregoing on the following by Federal Express (as indicated) or by electronic mail, as agreed to by the parties:

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