

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

No. D.T.C. 11-16

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

**RESPONDENT INMATE CALLING SOLUTIONS, LLC's RESPONSE TO
PETITIONERS' FIRST SET OF INTERROGATORIES**

General Objections: Respondent hereby objects to Petitioner's requests on the grounds that they are overbroad, vague, overly burdensome, seeking irrelevant, immaterial or inadmissible information or information protected by privilege and/or contain multipart requests in violation of law, rule or regulation. Moreover, throughout the subject period, Respondent provided services for a single, small, county facility representing a minuscule fraction of the MA market and rendering all of its responses in this matter statistically meaningless.

Interrogatories:

Rates, Receipts and Commissions

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

Respondent reiterates its General Objections and adds that its only contract in MA for the subject period (January 2011 through March 2014) was with Hampshire County. The call rates for such contract, which were applicable to all call types (collect, prepaid & debit), were as follows:

	<u>Surcharge</u>	<u>1st Min</u>	<u>Add'l Min</u>
Local	\$2.50	\$0.10	\$0.10
Intrastate/IntraLATA	\$3.00	\$0.07	\$0.07
Intrastate/InterLATA	\$3.00	\$0.10	\$0.10

Interstate	\$3.95	\$0.89	\$0.89
International	\$0.00	\$0.50	\$0.50

Facility/site commissions throughout the subject period were 53% of gross call revenue. The contract has not been amended during the subject period. However, interstate rates were modified in response to an FCC mandate, effective as of 2/11/14, to be: Collect \$3.75 first 15 minutes, \$.25/minute thereafter; Prepaid/Debit \$3.15 first 15 minutes, \$.21/minute thereafter. The call rates otherwise remained consistent throughout the subject period.

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 [format details omitted] as long as you can provide all of the requested responses.*

Respondent reiterates its General Objections. This request is an absurd amount of minutiae-level work for which Respondent lacks available resources and, therefore, objects. Respondents contract term years run from July to June so summary information is being provided for such periods encapsulating the requested timeframe:

	<u>Revenue</u>	<u>Commissions</u>
July 2010 thru June 2011	265,501	140,715
July 2011 thru June 2012	285,003	151,052
July 2012 thru June 2013	237,384	125,813
July 2013 thru June 2014*	176,654	93,627
(* year incomplete, thru March 2014)		

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 [format details omitted] as long as you can provide all of the requested responses.*

Respondent reiterates its General Objections and adds that it does not have the requested information readily available and producing same would require a custom development effort to which Respondent objects. The intrastate call rates for its single MA contract have not changed during the subject period and are applicable to all call types. Average call durations have been consistently around 11 minutes and the jurisdictional breakdown for MA has been averaging around 56% intrastate. Based on the foregoing, Petitioner can apply its own assumptions and extrapolate the requested information.

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.*

Respondent reiterates its General Objections. Respondents contract term years run from July to June so the information is being provided for such periods encapsulating the requested timeframe:

		Min. Annual	
	<u>Commissions</u>	<u>Guarantee</u>	<u>Shortfall</u>
July 2010 thru June 2011	140,715	137,000	N/A
July 2011 thru June 2012	151,052	137,000	N/A
July 2012 thru June 2013	125,813	137,000	11,187
July 2013 thru June 2014*	93,627	137,000	TBD

(* year incomplete, only thru March 2014)

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.*

Respondent reiterates its General Objections. Respondent has monthly commission statements that are sent to its contracting clients which would show revenue and commission payments.

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.*

Respondent reiterates its General Objections. Petitioner's Request No. 6 provides a reasonable list of the types of costs applicable to the provisioning of inmate calling services. However, Respondent operates on a central, nationwide basis and, therefore does not track such costs specific to each facility. Over the basic subject timeframe of January, 2011 thru December, 2013, Respondent has operated on an average gross profit of 24.5% and an average pre-tax margin of just over 7%.

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.*

Respondent reiterates its General Objections. Petitioner's Request No. 7 is attempting to apply a forensic level of accounting down to the call level which Respondent does not do in the normal course, currently does not have the resources to do, and certainly cannot accomplish in the required response time. Respondent further objects to the vague and ambiguous nature of the phrase "costs to you of completing such calls". Respondent has, for example, spent millions of dollars, and continues to spend substantial amounts each day, to develop and support the technology used to complete calls. However, tracing such costs as they occurred over a three+ year timeframe and apportioning them back to the call level is virtually impossible. Petitioner should refer to Respondent's response to item 6, above for its aggregate operating performance.

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.*

Respondent reiterates its General Objections. Respondent uses its proprietary Enforcer® call platform for the listed functions, the configuration of which changes continually in response to market needs and available technology. Details of the features and functionality of Respondent's Enforcer® system are confidential and proprietary and Petitioners would need to establish a protective order, reasonably satisfactory to Respondent, by and among the parties to this proceeding before additional details could be released.

9. *If you currently use live operators in the provision of inmate calling services in Massachusetts, how many and in what capacity are they used at each facility for which you provide ICS?*

Respondent does not use live operators for call completion. It does use live operators for assistance with account setup, payment handling, technical support, customer service and other functions as needed.

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?*

Respondent reiterates its General Objections. Parts a) and b) of this request appear to be asking the same thing and, if there is meant to be a difference, it is unclear. Respondent does not incur uncollectable amounts on debit or prepaid services. Any refunds issued for prepaid services are already reflected in the summary revenue figures provided under the response to Request No. 2, above. Uncollectible amounts realized for the contract years provided in response to Request No. 2 are estimated to be as follows:

	<u>Uncollectable</u> <u>Amounts</u>
July 2010 thru June 2011	3,419
July 2011 thru June 2012	2,447
July 2012 thru June 2013	1,698
July 2013 thru June 2014*	1,138

(* year incomplete, only thru March 2014)

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 mount that was actually refunded to Massachusetts consumers for each calendar year from January 2011 to the present.*

Respondent reiterates its General Objections and additionally objects to the term “deposit funds” and more generally to the multipart and ambiguous nature of this request. Respondent does not accept deposits of any kind or nature and has never established funds or accounts for the purpose of holding deposits. Respondent accepts payments for its service in a variety of ways but objects to the need to describe its payment handling procedures in any detail since such effort is burdensome, provides no value to the present petition and, to the extent Petitioners wish to learn how to process payments, such knowledge could be obtained through the services of an industry consultant. Notwithstanding its objections regarding this request, Respondent is providing, attached as Exhibit I-11(b), a copy of its Call Center Payment Reference guide. Respondent has no existing tally of prepaid consumers by facility since initial sales and subsequent sales to the same consumer are treated the same for

accounting purposes. Respondent does not track refunds by facility or state and a custom query would need to be developed to accommodate that portion of this request.

Regarding parts c) and d) of this Request, Respondent does not keep its costs segregated by business function with cost centers applicable to prepayment or refund functions. Its primary direct cost for these functions is a third party call center which, based on its invoices, has been charging Respondent an average of \$1.87 per inquiry event. Such inquiries include payments and refunds and, additionally, Respondent would have network costs and system and administrative overhead to apply.

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.

Respondent reiterates its General Objections and additionally objects to the term “unused funds”. When Respondent sells services on a prepaid basis, the sale is treated as complete with the full amount paid being absorbed as income and used to provision services. As a customer service courtesy, Respondent allows consumers to cancel and obtain a refund for up to six months from the initial sale. However, no funds are ever held in any customer accounts. This is similar in concept to a return of tangible goods in a retail setting and, in such event, any refund is taken from Respondent’s general ‘returns and allowances’ account. In the event a refund is issued in the form of a check, and such check is never cashed, the amount will be designated as funds due and owing to the consumer and may escheat to the state’s unclaimed fund program where practicable.

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.

Respondent reiterates its General Objections. For its only MA contract, Respondent charges the following service fees:

Prepaid Transaction Fee	\$5.95 (on all payments less than \$50.00)
Refund Fee	\$2.99
Prepaid Service Acct Transfer	\$5.00

No commissions are paid on service fees.

14. Please identify and describe all taxes and regulatory and other surcharges charged by your company to consumers of inmate calling services in Massachusetts.

Respondent reiterates its General Objections. Respondent further objects to the relevancy of this request to the subject proceeding. For intrastate services in MA, Respondent collects and remits certain County sales tax and MD Franchise tax, where applicable. For interstate services, Respondent collects and remits Federal USF and an FCC Wireline Fee as well as a Regulatory Recovery Fee to cover tax administration, local number portability and telecom relay contributions.

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.

Respondent reiterates its General Objections. Respondent further objects to the term “complaint” as being vague and ambiguous. To the extent Petitioners request is meant to refer to consumer complaints received in tangible form, all such items are directed to Respondent’s Customer Service department in San Antonio and investigated and responded to on an individual case basis. Details regarding its procedures can be found in the Call Center Payment Reference guide provided in response to Request No. 11, above, and attached as Exhibit I-11(b). Complaints that are referred by a regulatory agency, such as the FCC or the MA Department of Telecommunications & Cable, are forwarded to Respondent’s Director of Contracts and Regulatory for handling.

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.*

Respondent reiterates its General Objections. Respondent further objects to the term “complaint” as being vague and ambiguous. Notwithstanding its objections, Respondent cannot identify any complaints received in tangible form, directly or indirectly, from a MA consumer over the subject period of January 2011 thru March 2014 for any of the listed

categories. Complaints from inmates are channeled through the jail administration and, to the extent a service call was needed, such event is included within the invoice detail provided as Exhibit D-6(a) attached to the response to Petitioner's First Set of Requests for the Production of Documents. Respondent has only logged one MA consumer complaint through any regulatory agency during the entire subject period. However, that matter involved the consumer's line being blocked in the line information database (LIDB) by the consumer's local exchange carrier and, therefore, had no basis applicable to Respondent's services or operation.

17. For each complaint received and listed in Interrogatory 16, please describe any action, if any, you took to address the complaint and how and if the complaint was resolved.

Not applicable.

18. Please describe any upgrades you made to the telephone systems in any of the facilities listed in No. 1 since 2011.

Respondent reiterates its General Objections and further objects to the Request to the extent it seeks proprietary, confidential or strategic information concerning Respondents technology. System upgrades were performed on Respondent's core call processing platform on 7/25/12, 2/25/13, 1/30/14 and 2/17/14. Details regarding these upgrades will be provided if/when Petitioner secures a protective order, reasonably satisfactory to Respondent, by and among the parties to this proceeding. In addition, Respondent conducted repairs and maintenance for on-site equipment as more fully described on the invoices provided as Exhibit D-6(a) attached to the response to Petitioner's First Set of Requests for the Production of Documents.

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

Respondent uses its proprietary internal systems and processes for managing complaints. Details regarding its procedures can be found in the Call Center Payment Reference guide provided in response to Request No. 11, above, and attached as Exhibit I-11(b).

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).*

Respondent reiterates its General Objections. Respondent uses its proprietary internal processes including financial modeling and tracking systems for the requested categories. An overview of these types of systems and processes can be found in the Sample Service Level Agreement attached to Respondents response to Petitioners First Set of Document Requests as Exhibit D-4(a). Details regarding these processes and systems are confidential and proprietary and Petitioners would need to establish a protective order, reasonably satisfactory to Respondent, by and among the parties to this proceeding before additional details could be released.

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

N/A with respect to MA.

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

None with respect to MA.

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

No enforcement actions or investigations were initiated against Respondent by any public utility commission from 2009 to present.

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.

Respondent operates on a consolidated, nationwide basis and does not do facility-specific accounting for profit and loss purposes. Respondent's gross and net earnings from the calendar years 2008 through 2013 were as follows:

	<u>Gross Revenue</u>	<u>Net Earnings</u>
2008	\$50,045,028	(29,002)
2009	49,861,025	(334,551)
2010	48,732,950	(379,468)
2011	64,257,225	1,319,500

2012	77,870,254	8,376,865
2013	90,580,949	4,118,204

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.

Respondent has been supporting 36 telephones in Hampshire County, MA during the subject period, including 1 TTY device, 1 mobile cart phone and 1 coin phone. Numerous repairs and service events occurred during the subject period. Inmates are typically rough on phone instruments and, therefore, maintenance and repairs are done relatively frequently. Copies of the Site Maintenance Invoices for the subject period are attached to Respondent's response to Petitioner's First Set of Document Requests as Exhibit D-6(a).

Respectfully submitted,



Ken Dawson,
 Director Contracts & Regulatory
 Inmate Calling Solutions, LLC
 2200 Danbury Street
 San Antonio, TX 78217
 210-581-8104
kdawson@icsolutions.com