

**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**

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**PETITIONERS' PROPOSED MOTION TO COMPEL RESPONSES OF  
INMATE CALLING SOLUTIONS' TO PETITIONERS'  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Inmate Calling Solutions (ICSolutions) raises general objections that the Petitioners' interrogatories and document requests are overbroad, vague, and overly burdensome, and that they seek irrelevant, immaterial or inadmissible information. The petitioners will address these objections insofar as they are specifically made with regard to any interrogatory or document request. With regard generally to the burdensomeness and overbreadth of their requests, the Petitioners note that most apply only to the sole Inmate Calling Service (ICS) contract that ICSolutions holds in Massachusetts, with Hampshire county. As they did with regard to the responses of GTL and Securus, Petitioners wish to clarify that the relevant time period for the requested contracts is 2011 through the present, such that the relevant time period for all interrogatories and document requests associated with Interrogatory No. 1 is January 2011 through the present.

ICSolutions also objects generally that the Petitioners requests "contain multipart requests in violation of law, rule or regulation," without citing any legal authority. There is no such restriction in the Procedural Order governing this case, or in the Department's Procedural Rules, 220 C.M.R. 1.00 *et seq.* The Procedural Rules indicate that the presiding officer "shall be

guided by the principles and procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.*, which contain no prohibition on multipart questions.

The parties conferred on June 13, 2014 and were able to substantially narrow their differences, as reflected in the agreements listed below. ICSolutions agreed to provide certain documents and information pursuant to a protective order, once such an order is in place limiting disclosure to PLS, the DTC, and outside counsel for GTL and Securus, and for use in this case only. ICSolutions has not provided this information to the DTC pursuant to the terms of the Procedural Order. As argued in the Petitioners' Response to GTL's Motion for Confidential Treatment, an interim designation of confidentiality for any materials the parties wish to have protected would facilitate discovery by allowing ICSolutions (and other parties) to produce documents and information under a protective order without first having to obtain a determination from the Department.

The Petitioners have agreed to accept cost data from ICSolutions based on its assertion that it cannot produce Massachusetts-specific data for several reasons, namely: it only accounts separately for each facility it serves at the bidding stage, and the one Massachusetts facility with which it contracts, having approximately 200 beds, is only about four-tenths of one percent of its business. This is clearly not true of Securus and GTL, which are likely to have the ability to provide more detailed accounting for their Massachusetts operations.

### **INTERROGATORIES**

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.

|                               | <b>Gross<br/>receipts</b> | <b>Commissions<br/>Paid</b> |
|-------------------------------|---------------------------|-----------------------------|
| <b><u>Collect Calling</u></b> |                           |                             |
| Local Calls                   |                           |                             |
| State IntraLATA Calls         |                           |                             |

State InterLATA Calls  
Interstate

**Debit Calling**

Local Calling  
State IntraLATA Calling  
State InterLATA Calling

**Advance payment calling**

Local Calling  
State IntraLATA Calling  
State InterLATA Calling

**Total**

**Response:** ICSolutions partially responded, providing total revenue and commissions paid for each contract year, but not providing any of the additional detail required by the interrogatory. The Respondent cites its General Objections and states, “This request is an absurd amount of minutia-level work for which the Respondent lacks available resources.”

**Agreement:** ICSolutions agreed to produce a breakdown of its revenue data according to debit versus prepaid calls.

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.

**Response:** IC Solutions cites its general objection. While it says that this is a “reasonable lists of the types of costs applicable” to ICS, it indicates that it does not track such costs specific to each facility, and provides only average gross profit and pre-tax margin for the requested period.

**Agreement:** ICSolutions agreed to provide financial statements for the three years of 2011 through 2013 plus the first quarter of 2014 along with its general ledger account detail in support thereof ,once a satisfactory protective order is in place.

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.

**Response:** ICSolutions cites its general objections and states that it does not have the resources to account for costs associated with each of the requested categories.

**Agreement:** ICSolutions does not account for costs by facility and states that it cannot provide cost data for Massachusetts. It will provide data as indicated in the agreement on interrogatory number 6, above.

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.

**Response:** IC Solutions cites its general objections. It indicates that it uses an “Enforcer” call platform, which it says it uses for the listed functions, and asserts that details are confidential and proprietary and would only be disclosed pursuant to a protective order.

**Agreement:** ICSolutions agreed to provide details describing the Enforcer platform when a protective order is in place limiting disclosure to outside counsel for GTL and Securus, PLS and the DTC.

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.

**Agreement:** ICSolutions' initial response included Exhibit 1-11(B), Call Center Payments User Reference, which partially answered this interrogatory. ICSolutions states that it does not account for costs in the manner requested. The company agreed to provide a breakdown of the number of pre-paid versus debit accounts.

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

**Response:** ICSolutions cites its general objections, objects to the extent the question seeks protected information, and states that system upgrades were performed on four dates in 2012-2014. ICSolutions states that details regarding these upgrades will be provided only pursuant to a protective order.

**Agreement:** In July 2012 ICSolutions put in place a system generating reports on upgrades in Hampshire County. It will produce reports generated on the four upgrades conducted since that date only under a protective order limiting disclosure to outside counsel for GTL and Securus, PLS and the DTC.

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).

**Response:** ICSolutions cites its general objections and states that it uses proprietary internal processes to track the requested categories. It provides a generic "Service Level Agreement" describing the support that ICSolutions provides to facilities in installation and maintenance of systems, and setting forth performance standards in some areas. *See* ICSolutions Exh. D-4(a). This document is not attributed to Hampshire County. The Hampshire County version should be produced, following the Protected Material provisions of the Procedural Order if the Respondent deems necessary.

**Argument:** While the document lists "tools used to track performance," *see* ICSolutions Exh. D-4(a) p. 2, it nowhere describes how these tools track performance at the facility. Neither does this document mention or describe tools used to track financial performance. ICSolutions should be compelled to fully respond to the interrogatory. It 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. Assertedly protected information should be disclosed pursuant to the Procedural Order.

**Partial agreement:** ICSolutions stated that if a service-level agreement exists for Hampshire County it will produce this. In addition, Exh. D-4(a) p. 2 references “tools used to track performance,” and if such tools are used in Hampshire County ICSolutions will produce any reports generated by these tools once a protective order is in place.

As regards the tracking of financial performance, ICSolutions stated that because Massachusetts is such a tiny portion of its overall business, it does not track financial performance in Massachusetts beyond the data referenced with regard to the agreement on Interrogatory number 6.

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

**Response:** ICSolutions responds “N/A with respect to MA.”

**Argument:** This interrogatory is not limited to Massachusetts, but rather seeks information on ICSolutions’ budgetary process and financial goals more broadly. ICSolutions continues to object to producing information regarding its national budgetary process and financial goals as overly burdensome and irrelevant. The Petitioners maintain that cost and profit data are vital to setting just and reasonable ICS rates.

**Partial agreement:** ICSolutions has agreed to provide a representative sample or model demonstrating how it sets financial goals for Hampshire county or another comparable site under a protective order limiting disclosure to outside counsel for GTL and Securus, PLS and the DTC, and only for use in this case.

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

**Response:** IC Solutions responses “None with respect to MA.”

**Argument:** This interrogatory is not limited to Massachusetts, however, but rather seeks to identify documents reporting on ICSolutions’ profitability overall. This is directly relevant to the Department’s investigation of the surcharge and surcharge cap. As argued in the Plaintiffs’ Motion to Compel Responses of GTL and Securus, cost and profit data are vital to setting just and reasonable ICS rates.

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.

**Answer:** ICSolutions provided national gross revenue and net earnings for 2008 through 2013 and stated that it does not do facility-specific accounting.

**Agreement:** In conference, ICSolutions informed Petitioners that .4 percent of its business is attributable to Hampshire county, indicating that Petitioners could use this to calculate local gross and net earnings based on the national data provided.

### **DOCUMENT REQUESTS**

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

**Response:** ICS reiterates its general objections and states that this request is too vague to be comprehensible.

**Argument:** This request is not too vague as to be comprehensible. Petitioners simply request any and all documents that Respondent ICS identified in its responses to Petitioners' First Set of Interrogatories. The request is clear and straight forward. Pursuant to the discovery conference, ICSolutions has agreed to produce documents in connection with Interrogatories 1, 20 and 22.

**Partial agreement:** ICSolutions agreed to provide the contract for Hampshire County for the relevant time period and any amendments and requests for proposals associated with that contract in its possession.

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

**Response:** ICSolutions reiterates its general objections and further objects to the phrasing of the request and that "corporate goals" includes information that is strategically sensitive, not relevant to the current proceeding and none of Petitioners' business. ICS also claims to not understand the scope of the request as to "security quality goals".

**Argument:** This document request is not vague or confusing. 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. Assertedly protected materials must be filed with the DTC as specified in the procedural order.

4. 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.

**Response:** ICS reiterates its general objections and further objects that the request is "time-wasting". As "representative samples only", ICS produced two months of commission statements.

**Agreement;** ICSolutions agreed to provide revenue and expense data as indicated in the discussion of Interrogatory No. 6, above.

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

**Response:** ICS reiterates its general objections and further objects that the request is “completely ridiculous” as it seeks “literally seeks virtually every document for every cost incurred by Respondent.” ICS also states that the interrogatory is “hopelessly vague” and that MA only represents a trivial component of Respondent’s overall business. ICS proceeds to produce Site Maintenance Invoices, Telecom invoices for only March and October of each year, and Call Center Invoices for October of each year.

**Agreement;** ICSolutions agreed to provide revenue and expense data as indicated in the discussion of Interrogatory No. 6, above.

6. 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.

**Response:** Respondent reiterates its general objections and further objects that the request is burdensome and overbroad. ICS refers to Attachment B to its Hampshire, MA contract showing some applicable service fees, but no such document was provided.

**Agreement:** ICSolutions agreed to produce Attachment B to its Hampshire contract (along with the contract itself) in a supplemental response and confirmed that there are no other relevant fees charged to consumers of inmate calling services in the MA facility it provides services to.

13. If you pay sales commissions or other incentives to employees based upon getting new jails and prisons as customers or for renewing and extending existing contracts, please provide any and all documents concerning performance goals and standards that are used to define how sales commissions are earned.

14.

**Response:** ICS describes how sales commissions are generally earned within the company but states that relevant correspondence between Respondent and its employees regarding compensation are confidential.

**Agreement:** ICSolutions stated that the information provided as indicated in the discussion of Interrogatory No. 6 will include sales incentives such as bonuses and commissions.

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.



**Response:** ICS reiterates its general objections and further objects that Petitioners are attempting to obtain trade secret and/or competitively strategic communications and to the burdensome nature of the request. ICS also suggests that Petitioners need to establish a protective order to obtain confidential communications.

**Argument:** This interrogatory is not unduly burdensome. It requests information pertaining to the provision of ICS in Massachusetts with the one facility serviced by ICS and regards a limited time period (from January 2011). The request is relevant to the extent there are documented communications between the ICS and Hampshire County Jail regarding any of the issues under the Department's investigation in these proceedings. Responsive materials which may be legitimately protected, including correspondence between ICS and Hampshire County, must be filed with the DTC as specified in the procedural order.

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

**Response:** ICS reiterates its general objections.

**Agreement:** ICSolutions agreed to provide its third party billing contract upon consent from the billing company and pursuant to an appropriate protective order.

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

**Response:** ICS reiterates its general objections and further objects that the request is overbroad and moot as ICS has not secured any additional contracts in MA during the subject time period. ICS refers Petitioners to its website for available marketing materials.

**Argument:** Pursuant to the discovery conference, ICSolutions has agreed to produce, under protective order, a sample, current representative bid with associated marketing materials.

### **CONCLUSION**

For the above-described reasons, the Department should grant the Petitioners' Proposed Motion and compel the responses of Inmate Calling Solutions to Petitioners' interrogatories and requests for production of documents.

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Respectfully submitted:



Bonita Tenneriello, Esq.  
Elizabeth Matos, Esq.  
10 Winthrop Square, 3<sup>rd</sup> Floor  
Boston, Massachusetts 02110  
(617) 482-2773 (telephone)  
(617) 451-6383 (facsimile)  
[btenneriello@plsma.org](mailto:btenneriello@plsma.org)  
[ematos@plsma.org](mailto:ematos@plsma.org)

#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above  
document was served upon the attorney of  
record for each other party by mail (~~by hand~~)

on June 14, 2014

sig. 