

April 25, 2016

BY ELECTRONIC FILING AND FEDERAL EXPRESS

Ms. Sara Clark
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 – Initial Brief Of Securus Technologies, Inc.

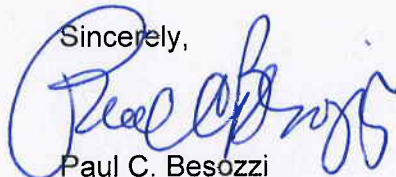
Dear Ms. Clark:

In accordance with 220 CMR 1.102:(5) enclosed for filing is an original of the Initial Brief Securus Technologies, Inc. required by the Notice Of Briefing Schedule, dated March 18, 2016. ("Initial Brief"). This filing is timely based on the Hearing Officer Ruling On Securus Technologies Inc. Motion For Extension Of Time, dated March 28, 2016.

Per Section II.A. of the original Procedural Order in this matter, the Initial Brief 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 Initial Brief is enclosed to be stamped-in or otherwise marked as received and returned in the enclosed envelope.

Sincerely,



Paul C. Besozzi
Counsel For Securus Technologies, Inc.

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) D.T.C. 11-16
in Massachusetts Seeking Relief from the Unjust)
and Unreasonable Cost of such Calls))
_____)

INITIAL BRIEF OF SECURUS TECHNOLOGIES, INC.

Securus Technologies, Inc. (“Securus” or “Company”), acting through counsel and in response to the Notice Of Briefing Schedule,¹ as modified by the Hearing Officer Ruling Securus Technologies, Inc. Motion For Extension Of Time,² hereby submits its Initial Brief regarding the effect of the Federal Communications Commission’s (“FCC”) decision, FCC 15-136, dated November 5, 2016, in WC Docket 12-375, as stayed by the United States Court of Appeals for the District of Columbia Circuit,³ on the issues remaining in this complaint proceeding.

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*, Notice of Briefing Schedule, March 18, 2016 (“Briefing Notice”).

² 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 Ruling Securus Technologies Inc. Motion For Extension Of Time, March 28, 2016 (“Extension Ruling”).

³ *In the Matter of Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015), *partially stayed*, *Global Tel*Link v. F.C.C.*, No. 15-1461, Order, (D.C. Cir., March 7, 2016) and *further partially stayed*, *Global Tel*Link v. F.C.C.*, No. 15-1461, Order (D.C. Cir. March 23, 2016) (collectively, “FCC Order”). In September 2013, the FCC addressed interstate ICS rates and sought comment reforming intrastate rates. *In the Matter of Rates for Interstate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013), *partially stayed*, *Securus Technologies, Inc. v. F.C.C.*, No. 13-1280, Order, January 13, 2014. The FCC’s proposal for intrastate ICS rate reform followed in October 2014. *In the Matter of Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170 (2014) (“Second FNPRM”).

I. SUMMARY

The FCC Order moots the remaining issues in this complaint proceeding relating to the Department-approved, tariffed per-call charge and tariffed service and other fees assessed by ICS providers. The capped \$0.10 per-minute usage rate⁴ is not an issue in this proceeding; two Department decisions removed it from the scope of this case. The Department should not proceed with the designated quality-of-service and billing detail issues because almost all of the Petitioners who complained about Securus no longer have active accounts with the Company. And these Petitioners (or those few who still do have accounts) have not lodged complaints with Securus since the Company responded to the now years-old allegations. Given that all the remaining substantive issues are moot, the related, pending discovery requests are also moot. Therefore, the Department's complaint investigation should be closed as a judicious exercise of its investigatory authority.

II. BACKGROUND

Two brief historical overviews provide essential background for responding to the six issues that the Briefing Notice poses.⁵ The first relates to the procedural history of the Department's complaint investigation. The second relates more specifically to two issues – one of which remained in this case (i.e., the \$3.00 per-call charge) and the other of which did not (i.e., the \$0.10 per-minute usage charge).

A. Brief Overview Of Procedural History Of Petitioners' Complaint

A collective of five institutions, eight family and friends of prisoners, twelve prisoners and six individual attorneys representing prisoners ("Petitioners") filed their initial complaint with the Department in late August 2009, focused on the Department-approved, tariffed rates for inmate calling services ("ICS"). After the Department requested additional information as to the status of

⁴ We refer to this capped rate herein as the "\$0.10 per minute usage charge."

⁵ Briefing Notice, pp. 2-3.

each Petitioner, they revised their membership in May 2010 and added certain quality-of-service complaints. More Petitioners were added in April 2011.⁶ The Department opened the docket on the Petitioners' Complaint in November 2011.⁷

Securus and Global Tel*Link Corporation ("GTel") responded that the Complaint should be dismissed, in part because the Petitioners had not overcome the statutory presumption that the Department-approved, tariffed rates were just and reasonable.⁸ The Petitioners opposed the dismissal.⁹

After holding a Public Hearing in July 2012 and considering another round of pleadings in late 2012, the Hearing Officer, in September 2013, ruled that the Petitioners' Complaint could go forward limited only to the following specific four issues: "the per-call surcharge assessed by ICS providers; the tariffed service and other fees assessed by ICS providers; the telephone service quality provided by Respondents, including the frequency of dropped calls and line noise; and Respondents' billing practices."¹⁰ The Petitioners' Complaint also contended that the Department-approved,

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*, Petition, August 31, 2009; Amendment #1 And Supplement On Quality Of Service To Petition, May 18, 2010; Amendment #2: Additional Petitioners, April 27, 2011 (collectively referred to as "Petitioners Complaint").

⁷ 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*, Letter to Parties, November 10, 2011.

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*, Response Of Securus Technologies, Inc., January 20, 2012 and Supplement To Response, January 25, 2012 (collectively "Securus Response"), Global Tel*Link Corporation Response To Petition, January 20, 2012. A third ICS provider, Inmate Calling Solutions, LLC ("ICS"), noted that the Complaint did not "state any claim or allegation regarding ICS" and its records revealed no complaints against it. Response of Inmate Calling Solutions, January 17, 2012, p. 1.

⁹ 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 Call*, Memorandum Of Petitioners Opposing Dismissal, March 23, 2012.

¹⁰ 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, September 23, 2013, pp.1-2 ("Interlocutory Ruling").

tariffed \$0.10 per-minute usage rate should be readdressed, but the Hearing Officer dismissed that issue (along with two other complaints) and thus it is not a part of this proceeding.¹¹ In December 2013, the Hearing Officer rejected Respondents' petitions to hold the Department proceeding in abeyance pending the resolution of the recently-initiated further FCC ICS proceeding to address intrastate ICS rates.¹²

Thereafter, in February 2014, the Hearing Officer issued a Procedural Order governing the investigation of the Petitioners' Complaint on the four previously-approved issues.¹³ Initial rounds of discovery and various related motions to compel were completed by September 2014, shortly before FCC released its Second FNPRM proposal affecting intrastate ICS rates. The Department's Commissioner appointed the present Hearing Officer in July 2015. In the aftermath of the FCC Order, a status conference was held in February of this year, which led to the Briefing Notice.

B. The Challenged Rate Structure: Traditional Costs And Legitimate Unique ICS Costs

As noted in the Interlocutory Ruling, the Department-approved ICS rate structure included the \$3.00 per-call surcharge to cover "legitimate additional costs associated with the provision of ICS" because the "record demonstrates that the unique characteristics of ICS produced higher costs per-call than those for conventional" operator service provider calls.¹⁴

¹¹ *Id.*, pp. 3, 33. In February of 2014, the Department's Commissioner rejected Petitioners' appeal of the dismissal of the \$0.10 per-minute usage charge component. 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 ("Appeal Order"). The Petitioners did not further appeal that ruling.

¹² 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 Ruling On Motion For Abeyance, December 11, 2014.

¹³ 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, December 11, 2014.

¹⁴ Interlocutory Ruling, pp. 3-4. These costs included, by way of example, call processing system costs, automated operators, call recording and monitoring equipment and fraud control programs. *See* Securus Response, pp 7-8 (citing the 1998 order of the Department's predecessor approving the rate structure).

On the other hand, the \$0.10 per-minute usage charge was to cover the “traditional cost of providing conventional collect calling services.”¹⁵ The Department was very clear that the “usage rates concern[ed] only traditional cost recovery, not the unique additional costs associated with ICS.”¹⁶

The two rate components were “separate and distinct,” but taken together were part of an incentive regulatory scheme – not a rate-of-return, cost-based regime – approved by the Department.¹⁷

III. THE BRIEFING NOTICE ISSUES

The Briefing Notice poses six issues relating to the potential effect of the FCC Order on this proceeding. Securus sets out below each such issue followed by the Company’s response.

A. **Whether the elimination of the per-call surcharge resolves all concerns regarding the just and reasonableness of the per-call surcharge rate and warrants the Department closing that portion of its Investigation. See ICS Petition, D.T.C. 11-16, Hearing Officer Interlocutory Ruling at 20 (September 23, 2013)**

Section 64.6070 of the FCC’s Rules, as adopted by the FCC Order, states that “[no ICS] Provider shall impose a Per-Call or Per-Connection Charge on a Consumer.”¹⁸ Per-Call or Per-Connection Charge means “a one-time fee charged to a Consumer at call initiation.”¹⁹ This prohibition is not subject to the DC Circuit stay and became effective on March 17, 2016 for intrastate and interstate calls made from prisons; it will become effective for such calls made from jails on June 20, 2016. Because there can be no per-call surcharge once the FCC Order takes full

¹⁵ *Id.*, p. 19.

¹⁶ *Id.* These included, for example, “transport costs, switching costs, access charges, and regulatory costs.” *Id.*, p. 20.

¹⁷ *See id.*, pp. 4, 23-24.

¹⁸ 47 C.F.R. §64.6070.

¹⁹ 47 C.F.R. §64.6000p.

effect, the FCC Order moots the per-call charge issue and the Department must close this portion of the Petitioners' Complaint.

B. Whether the elimination of the per-call surcharges and the establishment of interim and final rate caps for ICS service necessitates that the Department investigate whether the \$0.10 per-minute rate cap for all instate ICS in Massachusetts remains just and reasonable. See *id.* at 18-20.

As noted above, the \$0.10 per-minute usage charge is not an issue in this proceeding because the Hearing Officer dismissed the Petitioners' Complaint regarding that ICS rate component and the Department's Commissioner upheld that decision on appeal.²⁰ Therefore, the reasonableness of the \$0.10 per-minute usage charge has never been and is not now part of this ongoing complaint investigation.²¹

Moreover, because the DC Circuit stayed the FCC's attempt to impose any final or interim intrastate rate caps, the \$0.10 per-minute usage charge remains in effect.²² Even without a stay the FCC Order does not automatically preempt intrastate usage rates which are lower than the FCC-approved caps.²³ Subject to any further adjustment Securus might seek and which the Department might approve, the \$0.10 per-minute usage charge will apply at jails in Massachusetts effective June 20, 2016.²⁴

However, because the FCC Rules have proscribed the previously-approved \$3.00 per-call charge, which addressed "legitimate additional costs" attributed to the "unique characteristics" of

²⁰ Interlocutory Order, p. 20; *see* Appeal Order.

²¹ *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*; *see* Response Of Global Tel*Link Corporation To Petitioners' Emergency Motion To Require Compliance With Massachusetts Inmate Calling Rate Cap, April 7, 2016, at p. 2. ("GTel Response").

²² *See* GTel Response, pp. 3-4.

²³ FCC Order, ¶204. And \$0.10 per minute usage charge is roughly 30% lower than the stayed FCC per-minute rate for large jails prescribed in the FCC Order. 47 C.F.R. §64.6010(c).

²⁴ Securus notes that Global Tel*Link is currently adhering to this cap. *See* GTel Response.

ICS service, not addressed by the \$0.10 per-minute usage charge. The \$0.10 per-minute usage rate is not a just and reasonable rate as it does not take into account these “legitimate additional costs.” Indeed, it is illegally confiscatory because it deprives Securus of the ability to realize a fair and reasonable return on its investment.²⁵

Again, that issue is not part of this proceeding and Securus does not seek to add it to a complaint proceeding brought by the Petitioners. The Department twice rejected Petitioners’ attempt to include the issue. Moreover, the FCC Order provides no basis for permitting Petitioners to now seeking to amend their Complaint. Thus, there is no such issue for the Department to investigate in this proceeding.

C. Whether the FCC’s establishment of specific taxes and ancillary service charges with price caps sufficiently resolved all concerns regarding the service and other fees contained in ICS providers’ tariffs and warrants the Department closing that portion of its Investigation. See *id.* at 26-27.

Section 64.6020 of the FCC’s Rules, as adopted by the FCC Order, establishes a specific and limited list of Ancillary Service Charges and proscribes all others.²⁶ Under Section 64.6070, no ICS provider may “charge any taxes or fees to [ICS users], other than those permitted under section 64.6020, Mandatory Taxes, Mandatory Fees or Authorized Fees (as defined in Section 64.6000b. and n.)” These restrictions are not subject to the DC Circuit stay and became effective on March 17, 2016 for facilities other than jails; they will become effective for jails on June 20, 2016. In general, the FCC Rules restrict and reduce the amount of the taxes and ancillary service charges which were

²⁵ *Boston Edison Co. v Dep’t of Pub. Utils.*, 375 N.E. 2d 305, 314 (Mass. 1978); *Lowell Gas Co. v. Dep’t of Pub. Utils.*, 84 N.E.2d 811, 816 (1948). The FCC Order provides that ICS providers must receive such a return. FCC Order, ¶ 13. So does the Communications Act. 47 U.S.C. §276(b)(1)(A).

²⁶ Ancillary Service Charges are defined as “any charge Consumers may be assess[ed] for the use of Inmate Calling services that are not included in the per-minute charges assessed for individual calls.” 47 C.F.R. §64.6000a.

the subject of the Petitioners' Complaint. Therefore, the FCC Order moots the service and fees issue and the Department must close this portion of the Petitioners' Complaint.

D. Whether the FCC's Order resolves concerns about dropped calls and other service quality issues and warrants the Department closing all or part of that portion of its Investigation. See id. at 28-30.

The FCC Order does not address dropped calls and the related quality-of-service issues (i.e., voice quality and static)²⁷ approved to be part of the Petitioner's Complaint.

However, from Securus's perspective, there are additional telling reasons why the Department must close the service quality issues relating to dropped calls and quality of connected calls.

First, the bases for the Department's 2013 decision to investigate this issue are allegations that are now as much as 6 years old. The initial affidavits supporting certain Petitioners' quality-of-service complaints against Securus go back as far as April 29, 2010²⁸; additional supplemental form affidavits by attorneys – making general, unspecified claims – are 5 years old.²⁹

Second, several of the individual Petitioners raising issues against Securus have dropped out of the case, specifically James S. Murphy, Frank D. Camera and Michael DiGioia.³⁰ In September 2014, in connection with providing discovery responses, Petitioners were “still attempting to locate”

²⁷ Interlocutory Ruling, p. 30.

²⁸ 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*, Amendment And Supplement On Quality Of Service To Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and unreasonable Cost of such Calls, May 18, 2010, Exhibits A-1- A-32.

²⁹ 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*, Amendment No. #2: Additional Petitioners, April 27, 2011, Attachment A.

³⁰ 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' Third Supplemental Response To Global Tel*Link Corporation's First Set of Information Requests To Petitioners, June 25, 2014 (James Murphy) Petitioners Fourth Supplemental Response To Global*Tel Link Corporation's First Set Of Information Requests To Petitioners, September 8, 2014 (Frank D. Camera and Michael DiGioia).

other Petitioners who they claimed “given their past involvement in this case...it is likely...will wish to continue their involvement in this case.”³¹ During the hiatus which took place in the proceeding, in the last almost two years, there has been no information forthcoming on whether these nine Petitioners (three of which made claims against Securus) are “in” or “out.”³² Indeed, with the passage of time there are justifiable questions as to whether those Petitioners who were inmates even remain inmates and those who were friends and family of inmates remain as such – or whether they are, in fact, even current users of ICS services.

Third, in this regard, Securus revisited the individual analysis of its records that the Company had provided in its Response to the Petitioners’ Complaint and Securus-related comments made at the public hearing.³³ Of the thirty-two Petitioners that Securus addressed in its Response, Securus has no record that any have raised any complaints with Securus’s customer service or any other relevant regulatory/consumer authority about Securus³⁴ since 2012; indeed, Securus has no record of any quality of service concerns being raised by any of these individuals or organizations in that time period That is in part because 19 of these 27 Petitioners who filed affidavits relating to Securus

³¹ 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’ Opposition To Respondents’ (GTL And Securus) Motion To Compel Response To Respondent’s Interrogatories And Requests For Production Of Documents, June 25, 2014, p.3.

³² The Petitioners involved are John Darrell*, Frank Spillane*, Leonardo Alzarex-Savageau, Shirley MacGee, Stephen Metcalf, Christina Rapoza*, Gerardo Rosario and Shirley Turney.* The individuals with asterisks raised questions about Securus service.

³³ Securus Response, *supra*, pp. 31-38 and Exhibit 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*, Response of Securus Technologies, Inc. To Public Comments, dated October 24, 2012, pp. 14 -19 (“Securus Public Comment Response”). Securus incorporates by reference herein the relevant portions of its Response (pp. ii-iii, 31-37 and Supplement) and Public Comment Response (pp. ii-iii, 14-19).

³⁴ Relevant regulatory/consumer authorities would include the Department, the Massachusetts Attorney General, the FCC, the Massachusetts Department of Consumer Affairs and the Better Business Bureau.

and remain in the case no longer even have accounts reflected in Securus customer service records³⁵ and again, for those 8 that still do have accounts in the records, there are no records of any complaints since 2012. Similarly, with respect to the individuals who raised questions regarding Securus services in conjunction with the July 2012 Public Hearing, a search of Securus's customer service records revealed no quality of service complaints since that Hearing. Indeed, none of the identifiable individuals who complained about Securus's service have accounts in the Securus customer service records.

With the dated status of the remaining Petitioners' quality-of-service assertions and the lack of any complaints to Securus since 2012, Securus maintains that Petitioners no longer make any "factual allegations that plausibly suggest an entitlement to relief" as required by the Department's standards.³⁶ Therefore, this issue must be closed.

Fourth and finally, in the intervening years since the Petitioners' complaints, Securus has continued to invest in upgrades to its secure calling platform, all of which benefit accrued to facilities in Massachusetts. For example, in April of 2014 Securus reported that in the preceding two years it had invested \$175 million in technologies, products and patents." This was on top of some \$100 million invested over the last 5 years in its Secure Calling Platform.³⁷ At the same time Securus was expanding its customer service capabilities.³⁸ More recently Securus announced that by the end of

³⁵ The lack of any active account with Securus raises a genuine question of whether these Petitioners continue to have the requisite standing to contest the quality of Securus's current services. *See generally Bonan v. Boston*, 398 Mass. 315 (1986).

³⁶ Interlocutory Ruling, p.11 (citing the "*Twombly/Iannacchino* standard" as benchmark for determining if an investigation may proceed).

³⁷ Press Release, Securus Technologies Announces Investment Of \$175 Million In New Technologies And Products For Corrections, April 9, 2014, *available at*, <http://www.securustechnologies.com/about-us/press-releases?>

³⁸ Press Release, Securus Expands Call Center Staff By 25% As Business Client Growth Continues, April 2, 2014, *available at*, <http://www.securustechnologies.com/about-us/press-releases?>

2016 it will have deployed over 150,000 intelligent communications devices, including inmate tablets, for use by the inmate population.³⁹

For all these reasons, there is no longer the required “sufficient and reasonable basis” for proceeding with the portion of this complaint investigation relating to dropped calls and call quality and that portion should be closed.⁴⁰

E. Whether the FCC’s Order resolves concerns about the adequacy of billing details and warrants the Department closing that portion of its Investigation. See *id.* at 30-31.

The FCC Order imposes a number of disclosure requirements on ICS providers concerning their rates and ancillary charges, allowing many of these details to be provided online.⁴¹ The Order allows a charge of up to \$2.00 for “optional” paper billing statements, reflecting that the FCC does not mandate the provision of a paper bill.⁴² Finally, the FCC has in place detailed “truth in billing” requirements that already apply to ICS providers and specify required billing details.⁴³ These factors alone warrant the closing of this portion of the proceeding.

However, from Securus’s perspective, the additional reasons outlined immediately above are equally applicable to the billing detail component of this case. Indeed, according to Securus’s review

³⁹ Press Release, Securus Inmate Device Count Exceeds 84,000 In Service, March 4, 2016, *available at*, <http://www.securustechnologies.com/about-us/press-releases?>

⁴⁰ Interlocutory Ruling, p. 12 (citing *Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to General Law Chapter 159, Section 16, of the telephone service quality of Verizon New England Inc., d/b/a Verizon Massachusetts, in Berkshire, Hampden, Hampshire, and Franklin Counties*, Order to Open Investigation, D.T.C. 09-1 (Jun. 1, 2009).

⁴¹ FCC Order, ¶¶ 278-288. This is in addition to the announcement requirements already contained in 47 C.F.R. §64.710.

⁴² 47 C.F.R. §64.6020(b)(4). Moreover, to the extent that the Department added this issue 2 ½ years ago because of concerns about access to broadband (Interlocutory Order, n.10) there are low-income internet options in Massachusetts that include free internet access. See <http://www.cheapinternet.com/states/massachusetts-internet-service>.

⁴³ 47 C.F.R. §§64.2400-2401. These rules set standards for bills for telecommunications service and are “intended to aid customers in understanding their telecommunications bills.”

of the record, a single Petitioner, Sonia Booker specifically mentioned billing details. She has no account in Securus's customer records.⁴⁴

For all these reasons, the portion of this complaint investigation relating to billing details should be closed.

F. Whether any changes to the scope of the proceeding would moot any of the pending discovery requests.

In view of the fact that the four narrowly-defined issues in this proceeding warrant being closed, and the \$0.10 per-minute usage charge was never part of this proceeding, all pending discovery requests are moot.⁴⁵ Securus reviewed the Petitioners' pending interrogatory and document production requests and grounds for Petitioners' pending motion to compel to tie the particular requests to the remaining issues in order to respond to this issue.

Per-Call Charge – Because the per-call charge issue is moot in light of the FCC Order, Interrogatory 1 and 14, and DPR 14—each of which explicitly request information relating to surcharges—are now moot. Other pending discovery requests do not specifically mention “surcharges” per se, but the explanation Petitioners provide for posing the question show that the purpose or intended scope of the question is to ascertain information regarding the adequacy of surcharges.⁴⁶ Those questions—Interrogatories 2, 3, 7, 8, 10, 11, 12, 20, 21, 22, and 24—are also now moot.

⁴⁴ Securus customers have multiple ways of obtaining billing information in their account – interactive voice response, live customer service representative (who will send a written statement if asked) and online.

⁴⁵ Securus responded to Interrogatories 9, 17 and 18 and Document Production Requests (“DPR”) 2, 12 and 16. To the extent that Petitioners might claim that the responses thereto were incomplete, these contentions are now moot as well.

⁴⁶ *See, e.g.*, Opposition of Securus Technologies, Inc. to Petitioners' Motion to Compel Responses of Securus to Interrogatories and Requests for Production at p.24, DTC 11-16 (filed June 25, 2014)(In support of Interrogatory 8, which read: “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,” Petitioner explained, *inter alia*, that “whether or not the same type of equipment is used and what function the equipment performs is directly relevant to the Department's Investigation into the surcharge and surcharge cap.”)

Service And Other Fees – Because the service and other fees issue is moot in light of the FCC Order, discovery requests relating to that issue are also moot—specifically, Interrogatories 7, 11, 12, 13, 14, 21, and 22, as well as DPR 1, 5, 7, and 14.

Per- Minute Usage Charge – Because the adequacy of a \$0.10 per-minute usage charge is not part of this proceeding, all discovery requests intended to garner supporting information in that regard are also moot—specifically, Interrogatories 6, 7, 20, and 22, as well as DPR 1, 5, 6, 8, 9, 13, and 15.

Quality Of Service - Because the quality of service and billing detail issues must be closed, for the reasons outlined above, Interrogatories 12, 16, 19, 20, 21, and 25, as well as DPR 3, 4, 8, 11, 19, and 20—are also moot.

Other Discovery Requests - Finally, there are certain Discovery Requests that were not reserved for investigation and are thus totally outside the scope of this proceeding. For example, to the extent the Discovery Requests ask for information on (a) general customer service issues—i.e., Interrogatories 15, 20, 21, and 25, as well as DPR 3 and 20; (b) matters that are not within the jurisdiction of the DTC, such as site commissions—i.e., Interrogatories 4, 5, 13, and 22, as well as DPR 1 and 10; (c) relate to enforcement matters—i.e., Interrogatory 23; or any other vague, unrelated Discovery Request, for example DPR 17, which asks about communications with prison supervisors and DPR 18, which asks about lobbying communications—those Discovery Requests are also considered moot.

IV. CONCLUSION

The FCC Order has rendered moot the issues relating to the tariffed per-call charge and service and other fees. The per-minute charge is not an issue in this complaint proceeding per two decisions of the Department. There are not adequate grounds for proceeding with the quality-of-service and billing detail issues based on years-old allegations from Petitioners who have filed no

complaints on these issues since their original assertions. Since all four issues in the complaint investigation are now mooted and the investigation should be closed, the pending discovery requests are also moot. Therefore, the investigation of the Petitioners' Complaint should be closed.

Respectfully submitted,

SECURUS TECHNOLOGIES, INC.



By: _____

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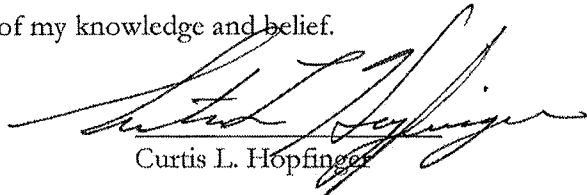
Dated: April 25, 2016

DECLARATION

1. I, Curtis L. Hopfinger, am the Director – Regulatory and Government Affairs of Securus Technologies, Inc. (“Securus” or “Company”). I have occupied that position since August of 2005. As such I am familiar with the Company’s operations and the regulatory requirements applicable to those operations in the states in which Securus operates, including the Commonwealth of Massachusetts.

2. I have participated in the Department of Telecommunications and Cable proceeding docketed as D.T.C. 11-16 (“Proceeding”) since its inception in November of 2011. Therefore I am thoroughly familiar with the issues involved in the Proceeding.

3. I have reviewed the foregoing “Initial Brief of Securus Technologies, Inc.” in the Proceeding (“Initial Brief”). The Initial Brief was prepared pursuant to my direction, supervision and control. I hereby declare under penalty of perjury that the factual representations made in the Initial Brief concerning Securus and its operations, including its operations in the Commonwealth of Massachusetts and associated costs and customer records thereof, and the inmate calling service industry in general are true and correct to the best of my knowledge and belief.


Curtis L. Hopfinger

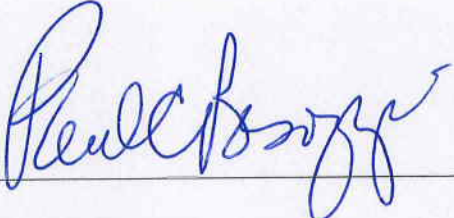
Dated: April 25, 2016

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 25th day of April, 2016 I did serve, by Federal Express or first class mail, postage prepaid or by electronic mail a copy of the foregoing "Initial Brief of Securus Technologies, Inc." on the parties listed on the Service List below issued by the Department:

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