

**Before The
THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Petition Of Recipients Of Collect Calls)	
From Prisoners at Correctional Institutions)	
In Massachusetts Seeking Relief from the Unjust)	D.T.C. 11-16
And Unreasonable Cost of such Calls)	
)	
)	

REPLY TO PETITIONERS' MEMORANDUM

In accordance with the provisions of 220 CMR §1.00, Securus Technologies, Inc. ("Securus" or "Company"), acting through undersigned counsel, hereby respectfully submits this reply to the Memorandum Of Petitioners Opposing Dismissal filed in this proceeding on March 23, 2012 ("Memorandum").

I. BACKGROUND

1. On January 27, 2012, the Hearing Officer, by electronic message, directed "petitioners to respond to Respondents' assertion that the Petition contains insufficient allegations of fact to support an investigation and this case should thus be dismissed." The parties were directed to confer and advise the Department "regarding a proposed deadline for petitioners' response, and whether a hearing regarding this issue is necessary."

2. After conferring with Petitioners, the Respondents informed the Hearing Officer, by electronic message on January 31, 2012, that they agreed with the Petitioners proposed date of March 23, 2012 "to provide a response consistent with the Department's directive," while reserving the right, in the event that the Petitioners' response goes beyond the scope of the

Department's directive for such filing...to seek leave to file a further response and ...to seek oral argument on this phase of the proceeding.”

3. On March 23, 2012, Petitioners filed the lengthy Memorandum, supplementing the factual and legal arguments made in its original Petition. In view of the scope and nature of the Memorandum, Securus, consistent with the reservation made with the Department on January 23, 2012, files this brief Reply.

II. PETITIONERS' MEMORANDUM DOES NOT PROVIDE ANY NEW GROUNDS FOR MODIFYING THE LAWFUL EXISTING RATE REGIME IMPOSED ON PROVIDERS OF INMATE CALLING SERVICES IN MASSACHUSETTS OR INITIATING A QUALITY OF SERVICE INVESTIGATION

4. Despite going well beyond the Hearing Officer's instructions, Securus respectfully submits that Petitioners' Memorandum provides no new grounds for modifying the lawful existing rate regime currently imposed and enforced by the Department on providers of Inmate Calling Service (“ICS”) in Massachusetts. Securus respectfully submits that to do so is unnecessary.

5. Petitioners continue to claim, without providing any actual evidence other than the dated assertions of a declarant in a long-pending proceeding at the Federal Communications Commission, that various developments have reduced the ICS-related costs that justified the capped \$3.00 surcharge and thus have “eroded the basis for the current rate cap.” Yet Securus, which has direct and current experience providing ICS throughout the nation, discusses in detail how that assertion is not the case and unequivocally states that since just 2008 its overall per-call costs have increased approximately 16.3% and its overall per-minute costs approximately 16.5%¹- all the while there has been no increase in the rate caps in Massachusetts, which have

¹ Response of Securus Technologies, Inc., January 20, 2012, Exhibit 4.

remained in place for the last 14 years. Contrary to Petitioners repeated claims, Mr. Dawson's assertions, some of almost a decade ago, do not "demonstrate" otherwise and cannot manufacture a "factual dispute" that justifies revisiting the Department's current rate cap regime. Again, the citation to data reflecting rates 5 years ago in other states for state department of correction facilities ignores the facts that Securus points out regarding the county and municipal facilities that it serves in Massachusetts.

6. Even with Petitioners' supplementation of the factual record, they point to no decision that mandates the Department to hold that commission payments that are required by confinement facility administrators must be considered "profits" that are shared by ICS providers. Petitioners argue that the Department, because it did not include commissions as a business cost in a *non-exclusive* list of costs in 1998, "deliberately excluded commissions as a cost factor."² This assertion is without any foundation and is not supported by the Department's 1998 decision or its regulation/oversight of ICS in the Commonwealth since. Securus respectfully submits that Petitioners' complaints regarding commission payments properly lie not with the Department, but with the policymakers who permit, at least at the county level, the funding of inmate support programs through compensation to the confinement facilities as part of the service contracting process. Petitioners effectively concede that to be the case by noting the state legislatures that have proscribed commission payments and presumably chosen to fund these programs, if at all, in an alternative fashion.³ At this point, the authority of confinement facilities to enter contracts including those requirements has been affirmed and these payments are normal business expenses incurred by ICS providers in conjunction with contracting for and

² Memorandum, at p.14.

³ Memorandum, at p. 15 and n. 57.

providing the service. Commission payments are not “fees” imposed on prisoners by Securus; they are payment requirements imposed on Securus by its confinement facility customers as a cost of doing business with them.

7. Securus would be surprised if it were the Department’s preference that service quality complaints in the first instance be brought to the Department, even without a requirement for exhaustion of remedies with the service provider. Securus thoroughly researched the complaints that were lodged by the thirty-two (32) affiants who (a) specifically mentioned Securus in their affidavits or (b) represented that they had received calls in the past from facilities served by Securus. According to Securus’ records, less than half (15) bothered to contact Securus. Of those only three (3) raised issues comparable to those cited in their respective affidavits. With respect to Ms. Turner, the indication was that she received more than her fair share of attention from Securus’ Customer Service, which spoke with her directly in forty-five (45) instances between February 2008 and December 2009, including instructing her how to address dropped calls. According to Securus’ investigation she was mailed a form to complete for cut-off calls. Although she never returned the form, she was “issued courtesy credits on multiple occasions....”⁴ Securus respectfully submits that the information submitted by Petitioners, which is now a number of years old, does not warrant the service quality investigation that the Petitioners seek. Securus has invested substantially in customer service and has more than 200 people involved, in addition to online instructions. These are not the hallmarks of a company not using its very best efforts to address customer complaints.

⁴ Response of Securus Technologies, Inc., January 20, 2012, Exhibit 8.

III. CONCLUSION

9. Securus again respectfully submits that Petitioners, as supplemented by their Memorandum, have failed to demonstrate that the existing ICS rate structure in Massachusetts is “unjust and unreasonable.” There is no basis for eliminating the \$3.00 per-call surcharge cap and reducing the \$0.10 per-minute usage cap. Finally, based on the reports provided by Securus, nothing in Petitioners’ Memorandum regarding service quality and customer service justify a further investigation of these issues at this time. In light of the foregoing, this proceeding should be terminated.

Respectfully submitted

SECURUS TECHNOLOGIES, INC.

By: /s/ Paul C. Besozzi

Curtis L. Hopfinger
Director – Regulatory and Government Affairs
Securus Technologies, Inc.
14651 Dallas Parkway, 6th Floor
Dallas TX 75254
972-277-0319 (Tel)
972-277-0416 (Fax)
chopfinger@securustech.net

Paul C. Besozzi
Ryan W. King
Patton Boggs LLP
2550 M Street NW
Washington DC 20037
202-457-5292 (Tel)
202-457-6315 (Fax)
pbsozzi@pattonboggs.com

April 12, 2012

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 12th day of April, 2012, I did serve, by Federal Express or first class mail, postage prepaid and by electronic mail a copy of the foregoing “Reply To Petitioners’ Memorandum” on the parties listed on the Service List below issued by the Department:

<p>Kalun Lee Hearing Officer Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 kalun.lee@state.ma.us</p>	<p>Betsy Whittey Hearing Officer Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 betsy.whittey@state.ma.us</p>
<p>Paul Abbott General Counsel Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 paul.abbott@state.ma.us</p>	<p>Karlen Reed Director, Competition Division Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 karlen.reed@state.ma.us</p>
<p>Ben Dobbs Deputy Director ,Competition Division Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 benedict.dobbs@state.ma.us</p>	<p>Joseph Tiernan Competition Division Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 joseph.tiernan@state.ma.us</p>
<p>James Pingeon, Esq. Bonita Tenneriello, Esq. Elizabeth Matos, Esq. Prisoners’ Legal Services, Inc. 10 Winthrop Square, 3rd floor Boston, MA 02110 jpingeon@plsma.org btenneriello@plsma.org lmatos@plsma.org</p>	<p>Patricia Garin, Esq. Stern, Shapiro, Weisberg & Garin 90 Canal St., 5th Floor Boston, MA 02114 pgarin@sswg.com</p>

<p>Dorothy E. Cukier Executive Director, External and Regulatory Affairs Global Tel*Link Corporation 12021 Sunset Hills Road, Suite 100 Reston, VA 20190 duckier@gtl.net</p>	<p>Ken Dawson VP Contracts & Regulatory Inmate Calling Solutions, LLC d/b/a ICSolutions 2200 Danbury St. San Antonio, TX 78217 kdawson@icsolutions.com</p>
<p>Linda Nelson Manager- Regulatory Affairs Securus Technologies, Inc. 14651 Dallas Parkway, Ste. 600 Dallas, TX 75254 lnelson@securustech.net</p>	<p>Chèrie Kiser Angela F. Collins Cahill Gordon & Reindel LLP 1990 K Street NW Suite 950 Washington DC 20006 ckiser@cgrdc.com acollins@cgrdc.com</p>
<p>Catrice C. Williams Secretary Department of Telecommunications and Cable 1000 Washington Street, 8th Floor, Suite 820 Boston MA 02118-6500 catrice.williams@state.ma.us dte.efiling@state.ma.us</p>	

/s/ Paul C. Besozzi

Paul C. Besozzi