

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

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**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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**D.T.C. 11-16**

**RESPONSE OF SECURUS TECHNOLOGIES, INC.**

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## SUMMARY

Petitioners seek to have the Department of Telecommunications and Cable (“Department” or “DTC”) declare “unjust and unreasonable” the inmate calling service (“ICS”) rate-cap regime adopted by the Department’s predecessor in 1998, reconfirmed in 2004 and enforced through filed tariffs since then. Petitioners also complain of quality-of-service and customer service problems for which the Department should regulate standards.

The Petition, filed in August of 2009 and amended twice thereafter, was docketed by the Department in November of 2011. In doing so, the Department required Securus Technologies, Inc. (“Securus” or “Company”), a leading provider of ICS in Massachusetts and elsewhere, to respond to the Petitioners’ claims.

Petitioners contend that the rate-cap regime, and in particular the right of ICS providers to impose up to a \$3.00 per-call surcharge on collect calls, is “unjust and unreasonable” primarily because (a) legitimate, contract-based compensation paid by Securus to the county confinement facilities it serves is not a cost of providing ICS and (b) the additional costs of ICS that the Department found justified the per-call surcharge have since been “eliminated.”

Securus respectfully submits that compensation payments imposed by facility administrators as a requirement to serve their facilities are “legitimate additional costs associated with inmate calling services.” Contrary decisions by two state agencies and the FCC do not bind the Department. Commission payments to county facilities used to support “prisoner programs and amenities” (as described by Petitioners) are a legal business reality and to now ignore or exclude them as a cost of providing ICS is punitive and, in and of itself, would be unjust and unreasonable.

Further, despite Petitioners conclusory surmise based on primarily general statements as much as 10 years old by a consultant declarant in an FCC proceeding, the additional costs, which the Department recognized were driven by the “unique characteristics” of ICS, remain. Petitioners have offered no specific data to the contrary. While in some areas there have been some efficiencies from centralization or adjusted carrier costs, Securus on the other hand, based on its own internal assessment, has projected that since 2008 its overall per-call costs have increased by 16.5 %.

What may have happened to per-call rates at other State Department of Correction (“DOC”) systems between 2004 and 2008, even if correct, cannot be a basis for concluding now that a cap of \$4.50 for a 15 minute intraLATA collect call is unjust and unreasonable. This is particularly the case when the “commensurate ... [rate] charged to the general public for like services” would, for a payphone served by Verizon, be \$4.99 per call plus \$0.89 per minute.

Securus respectfully submits that the Petitioners have failed to carry their substantial burden of demonstrating that the Department’s thoughtfully adopted policy has now become unjust and unreasonable. There is no basis for changing it based on what Petitioners have brought forward or expending further Department resources on hearings or further proceedings. The Petitioners request to eliminate the per-call surcharge in its entirety and reduce the per-minute rate cap should be denied.

With respect to quality-of-service issues, Securus devotes substantial resources, both in terms of dollars and people, to service quality and customer service. The Company has dedicated field technicians residing in Massachusetts. It has brought in house all customer-service responsibilities and now has 200 customer service personnel to assist customers on a round-the-clock basis. Securus’ investigation of the thirty-two (32) affiants found that many

made general, unspecified claims and less than half (i.e., eleven (11)) actually contacted Securus customer service. None of the affiants raised complaints with the Department, the FCC, the State Attorney General, the State Office of Consumer Affairs and Business Regulation or the Better Business Bureau. None of the affiants “escalated” whatever complaints that they may have made to Securus Customer Service to the Company’s executive level. Securus is extremely cognizant of its customer service obligations. The Company’s facility customers have rated its service highly. There is no need for an additional regulatory regime beyond what the Department currently imposes.

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**Exhibit 7 - Customer Satisfaction Survey Summary**

**Exhibit 8 – Securus Customer Service Record Analysis**

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**D.T.C. 11-16**

**RESPONSE OF SECURUS TECHNOLOGIES, INC.**

Securus Technologies, Inc. (“Securus” or “Company”),<sup>1</sup> acting through counsel, hereby responds to the captioned Petition (“Petition”) filed by certain individuals and legal organizations (“Petitioners”) concerning (a) the current, approved rate regime for collect calls by inmates at Massachusetts correctional facilities and (b) certain related quality of service issues. This response (“Response”) is timely filed in accordance with the Department of Telecommunications and Cable (“DTC” or “Department”) “Order On Motions To Extend Time For Responses,” dated November 18, 2011 (“Extension Order”).<sup>2</sup> In support of its Response, Securus hereby sets forth the following.

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<sup>1</sup> Unless otherwise specified, as used herein, these terms refer to Securus and its predecessor Evercom Systems, Inc. (“Evercom”)

<sup>2</sup> Unless otherwise specified herein, the term “Department” shall include the Department of Telecommunications and Cable and its jurisdictional predecessors, the Department of Telecommunications & Energy (“DTE”) and the Department of Public Utilities (“DPU”).

## **I. INTRODUCTION**

Petitioners first challenge as unjust and unreasonable a Department-imposed rate regime for inmate calling service (“ICS”) providers approved by the Department in 1998, reconfirmed in 2004 and enforced through the tariffing process to this day. To carry their complainant’s burden of proof, Petitioners argue that the cost to ICS providers of complying with legitimate contractual obligations to compensate the confinement facilities in Massachusetts such providers serve now cannot be considered a cost of providing ICS. Next, citing primarily general assertions (some as much as 10 years old) by a consultant engaged by a similar group in an FCC proceeding concerning interstate ICS rates, and without offering any specific cost information relating to Securus, Petitioners assert that certain Securus’ costs, which the Department acknowledged reflected the unique characteristics of ICS, have “been almost entirely eliminated.”<sup>3</sup> Lastly Petitioners cite questionably accurate and dated information from what has happened to ICS rates at State Department of Corrections systems in other states to justify a radical restructuring of the current Department-approved rate regime, seeking elimination in its entirety of any per-call surcharge and reducing the approved per-minute usage now at \$0.10 per minute.

Securus respectfully submits that commission payments to the confinement facilities that it serves are a direct and attributable cost of its providing service to those facilities. To hold otherwise, which the Department has never done and is not obligated to do based on decisions in other jurisdictions, ignores business realities. There has been no change in the unique characteristics of ICS, with respect to security and other special needs. If anything, these

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<sup>3</sup> Petition, at p. 8.

requirements have become more sophisticated to counter the efforts by inmates to avoid security restrictions and engage in activities such as call forwarding and three-way calling. Indeed, on October 11, 2011, Securus filed a letter with the Federal Communications Commission (“FCC”) indicating that the Company’s overall per-call costs had increased approximately 16.3% since 2008 and that its overall per-minute costs had increased approximately 16.5% since that year. This information was provided at the request of the FCC as a follow on to an Inmate Telephone Industry cost study (the “Wood Study”) previously filed with that Commission on August 15, 2008.

Petitioners also cite quality of service and customer service issues that they claim justify the imposition of certain regulatory requirements in the cited areas. Securus investigated each of the thirty-two (32) affiants submitted by Petitioners citing Securus<sup>4</sup> and found that none of the averred concerns were ever presented (a) to Securus for resolution directly as “escalated complaints”<sup>5</sup> or (b) through more formal complaint channels such as the DTC, the FCC, the Massachusetts Attorney General’s Office (“AGO”), the state Office of Consumer Affairs and Business Regulations (“OCABR”), or the Better Business Bureau (“BBB”). Further, a thorough review of Securus’ internal Customer Care records was also conducted for the 32 Petitioners’ complaints where identifiable information was provided to determine whether any of the complaints had contacted the company directly for assistance concerning the areas cited in their complaints. Based on this investigation, well over half of the affiants (some twenty-one (21)) never contacted Securus Customer Care for assistance with the enumerated concerns expressed

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<sup>4</sup> Exhibit A-11 to Amendment #1, an Affidavit of Cheryl Williams actually cites Global Tel Link as the provider of service. So Securus counts 32 specific complainants.

<sup>5</sup> In Securus customer service system, complaints that are not resolved or addressed at the customer service level may be escalated to the attention of the Company’s Executive level management for decision. These are referred to as “escalated complaints.”

in the thirty-two (32) affidavits. A copy of Securus' findings is discussed below, with the detail provided in a separate exhibit to this Response.

Securus cannot reasonably be expected to address complaints that it does not receive through its readily available customer-service network. Nevertheless, Securus recognizes that quality of service and customer service are of critical importance and continues to invest significant resources to ensure that complaints are minimized and, when they do arise and are reported, are handled in a prompt and courteous matter.

## **II. BACKGROUND**

### **A. Procedural History And Status Of Docket**

The Petition was apparently filed with the Department on or about August 31, 2009. That filing was thereafter amended on or about May 18, 2010<sup>6</sup> and further amended on or about April 27, 2011.<sup>7</sup>

On November 10, 2011, the Department served on Securus by electronic mail a "Letter to Parties 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" ("Initiating Letter") announcing that it had, on November 10, 2011, opened the docket "for the Petitioners' Complaint."<sup>8</sup> The Initiating Letter provided that Securus had until November 21,

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<sup>6</sup> Amendment #1 And Supplement On Quality Of Service, May 18, 2010 ("Amendment #1").

<sup>7</sup> Amendment #2: Additional Petitioners, April 27, 2011 ("Amendment #2"). The original Petition and the two Amendments thereto are hereinafter, unless otherwise specified, collectively referred to as the Petition. Although the Petition was apparently sent to Securus office at the time of its filing, neither of the Amendments was so provided to Securus.

<sup>8</sup> The Department noted that Petitioners "filed a second amendment to cure flaws in their Petition and First Amendment that prevented the Department from opening a docket for their request." Initiating Letter, at p.2.

2011 to answer the “Complaint.”<sup>9</sup> The Letter also reflected that the Docket would be handled by Hearing Officer Kalun Lee.

After receiving motions to extend the time to respond from both Securus and other inmate calling service (“ICS”) providers, the Department, by Order dated November 18, 2011, extended the time for this Response until January 20, 2012.

Since the Petition is fundamentally a request for a new rulemaking, asking the Department to revise the long-established existing rate caps for ICS providers in Massachusetts established by the DTC’s predecessors and to impose certain service quality requirements, Securus respectfully submits that a brief review of the genesis of the existing rate cap regime is particularly appropriate.

**B. The Genesis Of The Existing Approved Rate Structure For Inmate Calling Service In Massachusetts**

The Department’s current rate structure for ICS providers was founded on decisions dating to the late 1980s relating to the charges that could be imposed by alternative operator service (“AOS”) providers. At that time AOS providers were given the option of having their intrastate rates set based on an adjudicated rate proceeding applying standard rate-of-return regulation principles. However, “[c]ognizant of the time, expense and administrative burden involved in presenting a rate case,” the Department also allowed such providers to “base [their] rates on the rates offered for similar intrastate services provided by [New England Telephone] NET and AT&T” by filing tariffs with rates that were equal to or less than the corresponding rates for AT&T (interLATA) or the incumbent local exchange carrier (e.g., New England

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<sup>9</sup> The Petition relies on Sections 14, 17 and 24 of Chapter 159 of the Massachusetts General Laws as a basis to request a proceeding be opened and a hearing be conducted. Petition, at p. 3.

Telephone) then on file.<sup>10</sup> This rate cap included rates for any operator surcharges on such calls. This regime was applied to ICS providers as a type of AOS provider.

The Department reasoned that “[e]xisting rates for NET’s intraLATA services and AT&T’s rates for interLATA services have been found to be just and reasonable for those companies based on traditional ratemaking principles.... Effective prices to end-users equal to or less than those of the existing dominant carriers will provide protection to consumers from unjust and unreasonable rates without need for further investigation.”<sup>11</sup> This option was a Department-approved “alternative to cost-based rates” provided the “total rate charged to the end-user, including [any] surcharge, may not exceed those rates charged by NET and AT&T.”<sup>12</sup>

Starting in 1992, the Department began to grant regulatory flexibility to both AT&T and New England Telephone in the pricing of their operator services calls.<sup>13</sup> And in 1994 the Department commenced a proceeding on its own motion to investigate “the regulatory treatment of alternative operator service providers within the Commonwealth of Massachusetts.”<sup>14</sup>

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<sup>10</sup> *International Telecharge, Inc.*, D.P.U. 97-72/88-72, 97 PUR4th 349, 356 (1988) (“*ITI*”). The Department noted that “traditional cost of service ratemaking standards...would require the Department to review the reasonableness of expenses, rate base and rate of return.” *Id.*

<sup>11</sup> *ITI*, 97 PUR4th at 356 (citations omitted); *see also NY COM, Inc.*, D.P.U. 88-69/88-87, 101 PUR4th 65, 67 (1988) (“*NY COM*”). In 1993, the Department clarified that AOS providers had the option of providing statewide rates (for both inter- and intra-LATA calls) that were identical to the corresponding rates of AT&T. Letter, dated March 19, 1993, from the Department of Public Utilities TO: All Companies Providing Alternative Operator Services RE: Intrastate Pricing of Alternative Operator Services.

<sup>12</sup> *Id.* The use of such an “alternative to cost-based rates” belies the Petitioners’ assertion that the Department must use an “actual costs” focus. Petition, at pp. 7-8; *see also Access Charge Order, infra*, n. 19.

<sup>13</sup> *See AT&T Communications of New England, Inc.*, D.P.U. 91-79, 1992 WL 506126 (1992) and D.P.U. 95-131, 174 PUR4th 38 (1996); *New England Telephone and Telegraph Company*, D.P.U. 94-50, 1995 WL 38680 (1995). At the time of the 1995 decision subjecting AT&T operator services to full “market pricing” and lifting all rate caps on AT&T, the D.P.U. retained the caps on AOS providers while noting that it would determine at a later date whether this policy should be modified and if so how. 174 PUR4th at 42, n. 6.

<sup>14</sup> D.P.U. Order, dated March 23, 1994, initiating D.P.U. 93-118. The Order cited a petition filed by an ICS provider, Value-Added Communications, Inc. d/b/a Value Access Communications, seeking exemption for ICS providers from the AOS regulations.

Although the D.P.U. took comments in the proceeding, it never proceeded with the docket. Rather, in September of 1997, the D.P.U. found that “it is necessary to investigate the rate policy for operator services providers (‘OSPs’).” It consolidated this investigation with a previously initiated proceeding involving several matters relating to pay telephone service, D.P.U. 97-18 (Phase II).<sup>15</sup>

### **C. The Department’s 1998 Order And Aftermath**

As noted by the Petition, in April of 1998, the Department issued an order in that combined docket addressing the rate policy for operator service providers. The Department generally found that “the reasons for the OSP rate cap and continued rate regulation of OSPs no longer exist.”<sup>16</sup> However, the Department maintained its regulation of ICS rates, noting:

“Since inmates have no option to access another long distance provider, they must use the presubscribed OSP at a prison payphone. As there are no competitive alternatives for inmates, the Department will continue to regulate inmate calling services providers as dominant carriers and, accordingly, will continue to ‘cap’ their rates. However, we find that it is necessary to modify the existing rate cap mechanism on inmate calling services to provide for rate recovery of *legitimate costs incurred in providing inmate calling services*. Under the existing cap, rates of independent inmate calling services providers are capped at those rates charged by Bell Atlantic or AT&T (depending on whether the call is intraLATA or intrastate), and, therefore, independent inmate calling services may be precluded from recovering *legitimate additional costs associated with inmate calling services*. The record demonstrates that the unique characteristics of inmate calling services produce per-call costs which are higher than costs for conventional OSP calls.... These additional costs *include* (1) costs associated with call processing systems, automated

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<sup>15</sup> Vote To Open Investigation And Order On Consolidation, dated September 2, 1997, D.P.U. 97-88/97-18 Phase II.

<sup>16</sup> *Investigation by the Department of Telecommunications and Energy on its own motion regarding (1) implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX’s Public Access Smart-pay Line Service, and (4) the rate policy for operator services providers, ORDER ON PAYPHONE BARRIERS TO ENTRY AND EXIT, AND OSP RATE CAP, D.P.U./D.T.E. 97-88/97-18 (Phase II), at p.8 (April 17, 1988) (“April 1998 Order”).*

operators, call recording and monitoring equipment, and fraud control programs, that are required to ensure security and deter abuses; (2) higher levels of uncollectibles; and (3) higher personnel costs.... The record shows that AT&T, MCI and Sprint Communications impose \$3.00 per call surcharges in 33 states to cover their additional costs, and that the costs of these providers do not differ significantly from state to state.... We can reasonably rely upon these carriers as a proxy for the costs of inmate calling services providers in Massachusetts....Therefore, the Department will allow inmate calling services providers, to charge a maximum surcharge of \$3.00 for such calls. This surcharge cap will apply to all inmate calling services providers, including Bell Atlantic and AT&T. Regarding usage rates for inter- and intraLATA inmate calling services calls, we find that it is reasonable and appropriate to cap carriers' rates at those of Bell Atlantic."<sup>17</sup>

Six years later, on September 4, 2004, the Department reconfirmed this rate regime in connection with a change to Verizon rates for collect inmate calls. Verizon amended its ICS tariff to increase the per-call surcharge to \$1.75 per call and set a flat usage rate of \$.10 per minute. The Department stated that the “usage or flat-rate per call charge for either a local, intra- or interLATA call cannot exceed the usage rate that would be charged by Verizon-MA for a corresponding ‘average’ local or intraLATA call,” with 15 minutes being used by the Department as the average length of a collect inmate call.”<sup>18</sup> The Department reaffirmed that “[p]roviders of collect inmate calling services may continue to charge an incremental surcharge not to exceed \$3.00 per call....” To be in compliance with the rate-cap policy, revised tariffs were to be filed by December 1, 2004. This rate cap regime for ICS providers remains in effect

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<sup>17</sup> *Id.*, at p. 9 (emphasis supplied) (footnotes omitted).

<sup>18</sup> Department of Telecommunications & Energy, **\*\*REISSUED\*\* INDUSTRY NOTICE, COLLECT INMATE CALLS – RATE CAP**, September 3, 2004. Attached as Exhibit 1.

today. By statute, all ICS rates tariffed in accordance with this policy are “deemed prima facie lawful” and remain so until the Department changes or modifies them.<sup>19</sup>

**D. Securus ICS Operations, Including In Massachusetts**

Securus is licensed and certified to provide ICS in all fifty (50) states and the District of Columbia. However, as of December 1, 2011, Securus had contracts to provide such services to correctional facilities in forty-four (44) states and in the District of Columbia. Securus serves approximately 2,300 correctional facility sites (locations) throughout the states in which it operates. The overwhelming majority of these sites are “County” jail facilities.

The Company has been an innovator in the development of ICS technology, investing millions of dollars in research and development (“R&D”) for state-of-the art ICS calling systems or software, which Securus has patented and deployed at substantial additional expense in a number of the facilities that it serves, including those in Massachusetts. Securus continues to make those investments in new technology and commits an average of \$10 million each year to advance its industry leading capabilities through reinvestment in its employees, platforms and products, at least a portion of which benefits Massachusetts.<sup>20</sup>

Securus or its predecessors have provided ICS in Massachusetts since 1997, pursuant to tariffs filed with and approved by the Department. Securus does not provide ICS at any of the

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<sup>19</sup> Mass G.L. c.159 §17. In 2009, the Department, citing the *April 1998 Order*, applied the same proxy rate setting methodology to setting intrastate access rates for Competitive Local Exchange Carriers, even though there had been no cost analysis of Verizon’s intrastate access rates. *Petition of Verizon New England, Inc. et al. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order, at pp. 21-23 (June 22, 2009) (“*Access Charge Order*”).

<sup>20</sup> The Company currently holds 85 issued patents, 4 allowed patents and another 35 patent applications are pending.

Massachusetts Department of Correction State Prisons. Rather, Securus currently services the following eighteen (18) County correctional facilities sites:<sup>21</sup>

1. Ash Street Jail and Regional Lock Up
2. Barnstable County Corrections Facility
3. Berkshire County House of Correction
4. Billerica House of Correction (Middlesex)
5. Bristol County Faunce Corner
6. Dukes County Jail
7. Essex County Lawrence Correctional Alternative
8. Essex County Middleton Jail and House of Correction
9. Essex County Women In Transit Facility
10. Franklin County Jail
11. Hampden County Correctional Facility
12. Hampden County Womens Correctional Facility
13. Middlesex County Cambridge Jail
14. Plymouth County Correctional
15. Suffolk County Jail
16. Suffolk County House of Corrections
17. West Massachusetts Correctional Alcohol
18. Worcester County Jail

In Securus' experience, most of the inmates in the facilities it serves are often there for relatively short terms and can be reflective of all levels of society in the surrounding locales.

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<sup>21</sup> Petitioners refer to certain counties as being "abolished" (e.g., Hampden, Worcester). Petition, Appendix IV. Whatever their current political status, Securus continues to perform its obligations under its contracts with the county entities that are parties thereto.

To help service these facilities, Securus has three local field technicians dedicated to its Massachusetts operations who collectively have over thirty-five (35) years of experience in the ICS industry. In addition, Securus' Massachusetts accounts are supported by a local Account Manager as well as the Regional Sales & Support Specialist and the Regional Vice President all of whom live in the Commonwealth.

In each case Securus' contracts with these facilities it serves were obtained through a competitive bidding process with the specifications and requirements for the inmate telephone system established by the facilities and their administrators. Securus had and has no role in setting those specifications and requirements. Further, the rates and billing options for calls from each of these facilities are established in consultation with the facility administrators and are tariffed to the extent required by the Department.<sup>22</sup> All such charges have been and are consistent and in accordance with the Department's long-standing and current rate cap policy.

### **III. RESPONSE TO THE PETITION**

Petitioners leave no stone unturned in their effort to argue that the current rate caps embody "unjust and unreasonable" rates, at one point implying that Securus and the confinement facilities it services are contributing to recidivism by denying inmates the right to use ICS whenever they want to and are the cause of certain budget cuts experienced by some Petitioners.<sup>23</sup> Securus will not comment on inmates' legal rights to access telephone service or budget adjustments, but rather further responds to the Petition as follows:

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<sup>22</sup> Securus current Massachusetts tariff reflecting its various rate offerings is attached as Exhibit 2. Note, Petitioners' allege that "debit calling is not an option at county facilities." Petition, at p. 1, n. 2. However, prepaid calling cards and debit accounts are a tariffed option under Securus tariff should facility administrators decide to offer same.

<sup>23</sup> See Petition, at pp. 5, 6. The probative value (for the relief requested by Petitioners in this proceeding) of Petitioners' recitation about the gross dollar amount of calls is difficult to understand when there is no information provided about the number of inmates calling, the number of calls involved calls or their duration. Moreover, county facility administrators in Massachusetts are authorized to set policies regarding the privileges of inmates to use telephones, including the specific hours of calling and the length of calls. See 103 CMR §948.10.

**A. Petitioners Bear The Burden Of Proof**

The Petition “complains” that the current, Department-approved rate structure for ICS in Massachusetts is in fundamental respects “unjust and unreasonable” and should be changed. The burden of establishing this to be the case lies squarely and wholly with the Petitioners. As the Court held in *Metropolitan District Commission v. Department of Public Utilities*, 352 Mass. 18, 25 (1967):

“Thus, where a reduction or other adjustment is sought in an existing rate (e.g. under G.L.c 164, Section 93) which has been approved for general application, the party seeking the benefit of such adjustment has the burden of proving that the existing rate should be changed. *Louisville & Nashville R.R. v. United States*, 238 U.S. 1, 11. *Swift & Co. v. United States*, 343 U.S. 373, 382. *Antioch Milling Co. v. Pub. Serv. Co. of No. Ill.* 4 Ill. 2d 200, 209. *Carpenter v. Home Tel. Co.* 122 Vt. 50, 55. Cooper, *State Administrative Law* 355. See Davis, *Administrative Law Treatise*, Section 14.14; 5 U.S.C Section 1006 (c) (1958) (Section 7 [c] of the Administrative Procedure Act).

The reason for this rule was aptly stated in *Antioch Milling Co...*, supra, 209. ‘Certainly as a practical matter a utility should not, in the absence of explicit legislative direction, be required to embark on a full dress justification of its rate structure every time an individual customer files a complaint...[I]n complaint proceedings the burden is upon the complainant to show that existing rates are unreasonable or discriminatory.’ ”

And as noted above, the existing, approved ICS rate structure is by statute deemed prima facie lawful until the Department concludes that the Petitioners have met their burden and holds otherwise.<sup>24</sup> Securus respectfully submits for the various reasons outlined below, the Petitioners have fallen far short of meeting that obligation.

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<sup>24</sup> Mass G.L. c. 159 §17.

**B. The Standard By Which The Current Rate Structure Must Be Measured**

As the Department concluded when it adopted the existing rate cap regime, the Department’s task under the applicable statute and its decisions relevant to ICS providers is to “ensure by way of a regulatory scheme that ... [the] rates are just and reasonable.”<sup>25</sup> As the Department held in the *April 1998 Order* rates that satisfy this standard include the right for ICS providers to recover “legitimate additional costs incurred in providing inmate calling services” and cannot be set at levels which preclude ICS providers from “recovering legitimate additional costs associated with inmate calling services.”<sup>26</sup>

Petitioners offer an array of additional characterizations of the standard to be applied in assessing the existing, lawful, previously-approved rate structure. For example, at various points Petitioners refer to “actual necessarily incurred costs,” “actual costs,” “appropriate necessarily incurred costs,” “necessarily incurred costs” or “necessarily incurred recoverable costs” of providing ICS.<sup>27</sup> Petitioners point to no decision of the Department or the Massachusetts courts which articulates/adopts/approves any of its variously-worded standards in this regard as applied to ICS or for that matter other services.

Petitioners also cite at several junctures a standard contained in the Department of Corrections (“DOC”) regulations and advanced by other policy statements – “commensurate with [rates] charged to the general public for like services.”<sup>28</sup> The fact of the matter is that if that standard were applied the current rate to the “general public” for an automated collect call in Massachusetts from a public pay telephone presubscribed to Verizon as the carrier consists of a

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<sup>25</sup> *ITI, supra; NY COM, supra; Mass G.L. c.159 §§ 14, 17.*

<sup>26</sup> *April 1998 Order, supra.*

<sup>27</sup> *See, e.g.,* Petition, at pp. 2, 3, 4, 8, 11, 12.

<sup>28</sup> *See id.*, at p. 30 (citing American Correctional Association); *see also, id.*, at p.1 (citing 103 CMR §482.01) and 3.

\$4.99 per-call surcharge plus \$0.89 per minute.<sup>29</sup> So Securus' ICS rates, as currently capped by the *April 1998 Order*, are far below what a member of the general public would pay using Verizon services from a payphone, including one that might be in the publicly accessible lobby of a confinement facility.

**C. Commission Payments Are A Legitimate Additional Cost Associated With Inmate Calling Services**

Petitioners first argue that the compensation payments to facilities required under the competitive Request For Proposals (“RFPs”) and subsequent service contracts for ICS cannot be considered as Securus' costs for purposes of determining whether the existing rate structure meets the “just and reasonable” standard. Rather, these payments, since they are not made for “telephone-related purposes,” represent Securus' “profits” which the Company chooses on its own volition to share with county confinement facility administrators.<sup>30</sup> Petitioners cite decisions by the FCC and state commissions in Georgia and Alaska in support of their position that these payments cannot be considered as costs of providing ICS services and assessing the justness and reasonableness of rates. As a result, Petitioners contend that the Department-sanctioned \$3.00 per call surcharge, which Petitioners claim is now imposed solely in order to generate “profits” to pay the contractually required commissions, is an unjust and unreasonable charge and must be eliminated in its entirety.

First, as in virtually all other states, contracts to provide ICS at the county facilities in Massachusetts are generally awarded pursuant to a competitive bidding process. The facility

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<sup>29</sup> A copy of Verizon's current relevant tariff pages are attached as Exhibit 3.

<sup>30</sup> While touting the “profit concept” at one point the Petitioners describe commissions as the “largest single category of prisoner payphone *expense* incurred by providers.” Petition, at pp. 11-12 (emphasis supplied). Presumably as an example of the extent of the “profits” petitioners also claim gross annual proceeds “per prisoner bed” of “over \$1000” in some county facilities as evidence of the magnitude of these “profits,” but provide no information as to numbers of prisoners, number of calls, duration of calls relating to those figures, so Securus respectfully submits that they are meaningless as a measure of alleged “profits.” *Id.*, p.4.

administrators prepare and issue the RFPs for these contracts and impose the requirements to participate in the bidding process. Securus has no role in deciding the contents of RFPs or the requirements for compensation to the facility.

Compensation to the facilities for the opportunity to install equipment and provide the ICS is a confinement-facility-dictated requirement and has been since the ICS industry was first authorized in the Commonwealth. Petitioners do not challenge the authority or right of the facilities to include such a requirement in their RFPs. Indeed, the Department of Corrections' authority to require and enter into agreements providing for such compensation has been affirmed by the Massachusetts courts.<sup>31</sup> Securus submits that the administrators of county facilities served by Securus are no less authorized to do so.<sup>32</sup>

Second, the practical reality is that in light of these facility-imposed requirements any bid response that indicated that no compensation would be paid would be non-responsive and the bidder would be disqualified. So compensation in the form of commission payments is a cost directly associated with and necessary to Securus (or any other bidder participating) providing ICS at these facilities in Massachusetts.

Contractually required commission payments to government-operated correctional facilities are no different than any other fees or payments Securus is required to make to other government agencies. Things such as state business license fees, state regulatory fees, number portability fees, operating permits, and numerous other fees and government-required payments are costs that Securus must pay if it wishes to do business in a state or county. The application

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<sup>31</sup> See *Carol Breest et al. v. Larry DuBois*, 1997 WL 449898 (Mass. Super.), at p. 8 (Because institutional telephones can be used by inmates to disrupt security, safety and order, the DOC has the power to regulate inmate access to, and use of prison telephones and incidental or necessary to exercise of that power may enter into contracts requiring payment of commissions).

<sup>32</sup> County correctional facility administrators have broad authorizations regarding the operation of those facilities under 103 CMR Part 900.

of these fees and charges, just as the contractually required facility commissions, are imposed on Securus as a matter of public policy and are not a matter of choice or discretion to Securus. Any ICS that refuses to pay these government-mandated fees would not be permitted to operate in the state or county where such payments are required. Payment of commissions is a direct cost of doing business.<sup>33</sup> The Company accounts for these costs on its books in this fashion. By any reasonable standard, compensation payments directly required as part of the contracts to provide the services are “legitimate additional costs associated” with providing ICS in Massachusetts.

Third, while state regulators in Georgia and Alaska may have chosen to mandate the exclusion of commissions in their states when assessing ICS rates, those decisions are not binding on the Department.<sup>34</sup> Moreover, the Department has never so decided or mandated such an exclusion. Petitioners apparently argue that because commissions were not “listed” as one of the additional costs associated with the “unique characteristics” of ICS in the *April 1998 Order*, the Department in effect decided that they should be excluded or they cannot be included. However, as clearly reflected in the text of that *Order*, the costs cited were not an exclusive list.<sup>35</sup> Indeed, the Department was well aware of these additional compensation-related costs in considering the rate structure for ICS.<sup>36</sup> Furthermore, other jurisdictions have implicitly

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<sup>33</sup> In this respect, it is no different than the demand by a location owner to an independent payphone provider for compensation in return for the placement of a pay telephone on the location owner’s premises. In that regards, the Regulatory Commission of Alaska conceded that a portion of commission payments “may include amounts intended to compensate DOC for use of space for inmate calling areas (and possibly telecommunications equipment funded by DOC rather than” the ICS provider. Those amounts are related to provision of ICS. *RE Evercom Systems, Inc., U-00-143, Order No. 5, 2001 WL 1246903 (RCA)*, at 4.

<sup>34</sup> See *Access Charge Order*, at p. 25 (citing *In re W. Elec. Co.*, D.P.U. 92-8C). Nor is the Department obligated to adopt the rationale of the FCC on this subject. Indeed, it is worthy to note that the FCC, unlike the Department, has imposed *no rate caps or restrictions on interstate ICS calls*.

<sup>35</sup> Petitioners conveniently ignore the word “include” which by conventional definition means “to take in or comprise as part of a whole or group.” [www.merriam-webster.com/dictionary/include](http://www.merriam-webster.com/dictionary/include).

<sup>36</sup> See e.g., Initial Comments of AT&T Communications Of New England, Inc., July 22, 1994, D.P.U. 93-118, at p. 4 (“added costs of commission expenses to the prison”).

recognized that compensation to the facilities is clearly a cost associated with providing the services.<sup>37</sup> Indeed, in at least one case, the regulatory agency determined that it had no jurisdiction over that component of the carrier's costs.<sup>38</sup>

Fourth, it cannot be ignored, at least from a public policy perspective and as conceded by the Petitioners, that in the case of the facilities served by Securus these commission payments inure to the benefit of the inmates ("prisoner programs and other prisoner amenities").<sup>39</sup> Petitioners complain that the cost of these benefits should be underwritten by the government. That is a plea that properly should be directed to those who appropriate or otherwise allocate funds to operate the facilities and not in the context of an assertion that the Department-approved rates now do not meet a "just and reasonable" standard.<sup>40</sup> To the extent that the surcharge were eliminated and compensation to the county facilities from the ICS providers were reduced, and replacement funds were not provided, then presumably these inmate benefits and amenities would have to be truncated or perhaps even eliminated.<sup>41</sup> Thus, these commission payments fund vital programs for which there could be no other state or county source of funding.

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<sup>37</sup> See, e.g., *Mario L. Sims, Sr. et al. v. AT&T, and its Contract With the Indiana DOC*, 2001 Ind. PUC Lexis 503 (Indiana Utility Regulatory Commission, 2001) (Commission rejects allegations that AT&T inmate rates are unreasonable and unjustly discriminatory where commissions acknowledged as cost to be covered by rates) ("*IURC Order*").

<sup>38</sup> See *Ordinary Tariff Filing of MCI WorldCom Communications to Change maximum Security Rate Plan for New York State Department of Corrections from a Mileage-Sensitive Structure for IntraLATA and interLATA to a Flat Rate Structure*, 2003 N.Y. PUC Lexis 616 (New York Public Service Commission, 2003) (In challenge alleging among other things that commission payments were unlegislated tax levied by the DOC, Commission finds that it could review only the jurisdictional portion of the rate that reflected what MCI retained from the provision of ICS).

<sup>39</sup> See Petition, at p. 2.

<sup>40</sup> Petitioners assert that in this respect the commissions are akin to a tax imposed upon them to support the prisoner programs and amenities. See e.g., Petition, at pp. 13, 31. This argument has been addressed and rejected by at least one court. See *In the Matter of Ivey Walton et al. v New York State Department of Correctional Services*, 2009 NY Int. 168 (Court of Appeals 2009).

<sup>41</sup> In some jurisdictions where such compensation payments to facilities have been legislatively or otherwise proscribed (e.g., Rhode Island and New York), the legislature has simultaneously appropriated funds from other sources to support such inmate-focused services.

Securus respectfully submits that commission payments currently required by facilities under competed ICS contracts in Massachusetts are “legitimate additional costs associated” with the provision of ICS service. They are a component of the costs that Securus must pay in conjunction with providing that service to facilities served by Securus. To consider commission payments as a form of shared “profit” implies that there is a for-profit “business partnership” between Securus and its customers and ignores conventional business reality.<sup>42</sup> The Petitioners’ line of reasoning on this issue should be rejected by the Department.

**D. The Unique Characteristics Of ICS Continue To Produce Additional Costs That Justify Retention Of The Current Rate Structure**

Petitioners would have the Department believe that the additional costs associated with the “unique characteristics” of ICS cited by the Department in the *April 1998 Order* (and in effect reconfirmed by the Department in 2004) as justification for the up-to-\$3.00 surcharge “have been almost entirely eliminated.”<sup>43</sup> Therefore, the surcharge can be done away with in its entirety as well.

In support of their elimination assertion, however, Petitioners they offer no current cost analysis or data. Rather, they principally support their claim with reference to two Declarations, the most recent dated some 4 years ago. The Declarations were made by a paid consultant for a group similar to Petitioners that has been asking the FCC to reregulate interstate rates for ICS calls for some of the same reasons raised in the Petition. To date the FCC has declined to do so.

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<sup>42</sup> A profit is the surplus remaining after total costs are deducted from total revenue, and the basis on which tax is computed and dividend is paid. [www.businessdictionary.com/definition/profit.html](http://www.businessdictionary.com/definition/profit.html). Since Securus is obligated to pay commissions as a cost of serving the facilities with ICS those costs are not “remaining” with Securus.

<sup>43</sup> Petition, at p. 8.

Primarily based on reference to statements in these Declarations, the Petition makes a series of general assertions, but again provides no specific data on the degree or extent to which Securus costs have declined or disappeared. The fact is, as Securus stipulated to the FCC, overall per-call costs had *increased* approximately 16.3% since 2008 and that the Company's overall per-minute costs had *increased* approximately 16.5% since 2008.<sup>44</sup> This dispositive fact aside, Petitioners' "cost analysis" must be found wanting in other fundamental respects.

First, the Petitioners' analysis focuses on the three categories of costs specifically mentioned in the *April 1998 Order* – "(1) costs associated with call processing systems, automated operators, call recording and monitoring equipment, and fraud control programs, that are required to ensure security and deter abuses; (2) higher levels of uncollectibles; and (3) higher personnel costs." But as noted above, that list was not exclusive. The Department noted that the "additional costs" included these, but not only these.<sup>45</sup> The InVision Initial Comments cited by Petition and the *April 1998 Order* also refer to call control systems, database checks, voice overlays, customized call detail reports and research and development costs. Petitioners conveniently ignore these costs and do not claim that they have too literally disappeared. None of these categories, including the Petitioners' abbreviated list of costs, have been eliminated.

Second, the Petitioners' analysis exhibits fundamental misimpressions about how the ICS business has been operating. For example, with respect to personnel costs, it argues that with the departure of "live operators" and the shift to automated systems for completing collect

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<sup>44</sup> See Letter, dated October 11, 2011, from Stephanie A. Joyce, Esq. to Marlene H. Dortch, Secretary, Federal Communications Commission, regarding CC Docket No. 96-128 Alternative Rulemaking Proposal of Martha Wright et al., attached as Exhibit 4.

<sup>45</sup> The InVision Initial Comments, with Exhibit Petition For Rulemaking, are attached as Exhibit 5.

calls, there has been a dramatic reduction in personnel costs.<sup>46</sup> But “live operators” have never been used to complete ICS collect calls. Completion has always been through sophisticated, intricate automated–operator-services equipment. Indeed, the *April 1998 Order* was not referring to live operator costs, but the personnel costs relating to customer service and fraud investigation, and maintenance, which clearly remain.<sup>47</sup>

Third, Petitioners arguments with respect to each of the categories of costs/economies are addressed as follows:

**1. System And Security Costs Down Dramatically**

ICS system and security costs have not been reduced or eliminated. Securus is an industry leader in patenting advanced ICS system security features and is continually working to combat new forms of fraud. Securus spends millions of dollars every year in an effort to “stay ahead” of the criminals that are constantly attempting to find ways to circumvent the safety and security features of the ICS system. Over the last four years, Securus has averaged over \$10 million per year in development costs and in 2011 Securus spent almost \$17 million toward the development of new and improved features for its ICS systems. These are certainly costs that are not incurred by those providing standard payphone services.

**2. Live Operators And High Wages And Infrastructure Needed To Support Them Are Gone**

As noted above, the ICS industry does not and has not used live operators in connection with its calling systems. Yet, ICS companies do have unique and higher personnel costs due to

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<sup>46</sup> See e.g., Petition, at p. 7, n.10. This equipment is used to complete automated collect calls whether or not there is a prepaid collect account established. The mere fact of repayment does not relieve Securus of the various security-related and regulatory (e.g., announcement) requirements satisfied through the operation of this equipment.

<sup>47</sup> See Exhibit 1 to InVision Initial Comments, at pp. 8, 11. Moreover, the increased prevalence of call-forwarding schemes and other efforts to avoid legitimate and required security-related restrictions on inmate calls has not diminished these costs.

the physical environment in which they operate and the unique inmate telephone system equipment. One need only consider the way a technician would enter and work in a residence or standard office building as compared to performing a similar task in the confines of a correctional institution. ICS technicians can't simply show their identification and walk into a correctional facility with tools, parts, or other equipment. The ICS technician must go through an extensive entry screening and will most often be continually escorted by a correctional officer. Should the technician need to return to his/her truck for a part or additional tool, they must go through the complete exit and reentry process. Therefore, the ICS personnel time needed to complete an installation or repair task in a confinement facility will be two, three, or more times that of a local exchange carrier ("LEC") or interexchange carrier ("IXC") technician working in a non-confinement facility environment. Additionally, ICS technicians, both in the field and located at the company's Network Operating Centers, must be trained on the features, functions, hardware, and software applicable to the specialized ICS systems and equipment. Again, these ICS personnel costs are not incurred by public payphone providers.<sup>48</sup>

### **3. Reduction In Transport Costs As Transport Technologies Improved And Lower Access Charges And Switching Costs**

It is true that Securus realizes some savings in the reduction of transport and other costs it pays carriers (e.g., pass through of switching and access charge costs) when Securus uses its centralized ICS system, known as the Secure Call Platform ("SCP").<sup>49</sup> However, these savings are dwarfed by the additional costs of designing and implementing the specific features functions and security requirements for each correctional facility served. Securus' implementation of new

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<sup>48</sup> Moreover, Securus has brought in-house all of its customer services personnel, which now consist of some 200 people who interface with end-user customers.

<sup>49</sup> Securus is a pure reseller. It owns or controls no switching or network facilities. Any cost reductions it might receive as a result in the reductions in such transport, switching or access charge costs of the facilities-based carriers whose services Securus resells would be a function of the generosity of such carriers in passing on such savings.

features and functions also comes with increased costs in hardware requirements, increased band-width costs, additional data storage capacity, and development and programming costs. Each correctional facility Securus serves must be designed and created to meet the specific requirements contained in that facility's RFP and contract. This includes partitioning each facility in the centralized equipment and assuring that a particular facility has all required equipment, software, and capacities needed. There is no "one-size-fits all" system that is just plugged into the wall at any facility we serve.

#### **4. Reduction In Regulation And Regulatory Costs Of Providing Long Distance**

Regulatory requirements and reporting are increasing costs for ICS providers as well as other telecommunications providers. Over the last three to five years, increased regulatory scrutiny of anti-cramming, anti-spamming and customer privacy regulations have caused considerable increases in Securus' operating costs. During this period Securus has had to implement new internal programs to comply with the Customer Proprietary Network Information (CPNI) rules and to comply with the Telephone Records and Privacy Protection Act implemented in 2007. These regulations have also increased required reporting requirements. Anti-cramming and anti-spamming regulations have had a dramatic effect on Securus' cost of billing through third-party billing agents. These agents have increased their rates and have significantly increased Securus' billing costs. Because these agents are so fearful of substantial regulatory fines for non-compliance, they have implemented onerous processes and procedures that cost Securus tens-of-thousands of dollars. For example, one billing agent, without investigation, will remove collect call charges from a customer's bill, recourse the charges back to Securus, and bill Securus \$150 per call if the end-user customer merely says they do not recognize the charge. Additionally, without any investigation of the legitimacy of the charge, the

billing agent will report this as a “cram” on its regulatory report. Securus has investigated these recoured calls and has found every call treated in such a manner to be a valid, accepted collect call. Securus, through comments filed at the FCC, has expressed its concerns on how regulatory requirements to protect consumers from fraud can have a very costly unintended effect on legitimate providers of services such as Securus.

**5. Economies Of Serving Many Facilities From A Central Location**

As noted above while Securus has invested substantial sums in deploying, operating and maintaining certain centralized servicing facilities and functions, each facility has its own special security and configuration needs. Centralization of certain processes does not offset these customization requirements. Moreover, service to the facilities still requires technicians and service representatives in the field to ensure that contractual obligations are met. Centralization of some functions has not eliminated the unique configurations and costs that characterize provision of ICS at a variety of facilities in terms of size and layout.

**6. Advanced Recording Technologies Including Reduction In Size And Cost Of Storage Devices**

Although, some call recording technologies have assisted in data storage, the ever increasing needs and demands of correctional facilities for retaining and accessing inmate call recordings has caused a dramatic increase in Securus’ data storage capacity requirements. All of this specialized work, software, and hardware comes at a much higher cost than the provision of non-inmate payphone services.

**7. Substantial Elimination Of Uncollectibles**

Petitioners argue that with the increase in the number of “pre-paid” accounts the cost of bad debt is virtually eliminated. This is simply not true and also ignores the costs of maintaining the pre-paid accounts. It is correct that the fewer the number of customers that pay for inmate

calls on their LEC bill there is a corresponding reduction of bad-debt for that category of billing. However, Securus still faces bad debt from checks that are returned and credit card/debit card fraud that are used to fund pre-paid accounts.

**8. Savings On Billing And Collection From Prepaid Systems**

With pre-paid accounts and pre-paid calling cards, Securus must develop, implement, and maintain internal systems to track funding, deduct call charges, produce and ship carding cards, and provide visibility to the inmates/end-users of their pre-paid accounts. These are all costs that Securus does not incur when the customer is billed by their LEC. LEC billing remains a significant portion of Securus' billing/payments options offered to its customers. Approximately, 30% to 40% percent of Securus' customer billing continues to be through the end-user's LEC. The LECs do not provide this service for free. Billing and collection charges have not decreased. Indeed, regulatory requirements relating to cramming, slamming and privacy have only contributed to a significant increase in billing and collection costs.

Separate and apart from the billing and collection charges paid to, for example, the LECs, are costs association with number and billing validation. Before any inmate call is put through, Securus must validate the number by electronically consulting a number of databases to ensure that the number is valid and the inmate is permitted to call the number and for billing purposes. Costs associated with these efforts are incurred even if the call is not positively accepted by the called party. In fact, in Securus' experience less than half of the inmate calls originated are completed, revenue generating calls, yet these validation requirements and costs remain on all inmate call attempts.

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Fourth, despite the foregoing refutation of Petitioners general claims about actual costs, it must be recognized that the Department has wide latitude in determining the method by which

just and reasonable rates will be achieved.<sup>50</sup> For the reasons described above it has chosen an alternative to cost-based rates resulting from a rate case. So unless the Department is going to reverse 25 years of precedent, the discussions and analyses that relate to measuring actual costs as part of a rate-of-return analysis are inconsistent with the “alternative to cost-based rates” methodology long ago approved by the Department with respect to ICS services.<sup>51</sup>

**E. ICS Rate Changes In Other States Do Not Warrant Abandonment Of Massachusetts Existing Rate-Cap Structure**

Petitioners argue that price adjustments in other states reflect cost changes that further justify elimination of the current up-to-\$3.00 surcharge in Massachusetts. The data is based largely on 2008 information that it gathered for intraLATA collect calls.<sup>52</sup> Specifically, Petitioners argue that because 10 states no longer impose any surcharge and another 18 had surcharges of \$1.50 or less, the Department should eliminate the currently authorized Massachusetts surcharge.<sup>53</sup>

First, at least from Securus’ perspective, the Petitioners’ comparison is apples to oranges, for it appears Petitioners have provided only rate comparison information from other State DOC systems. State DOC prisons have considerably different ICS calling and billing patterns than those of county jails like those served by Securus in Massachusetts. Those facilities almost always have much higher ICS call volumes as compared to county jails. This allows the cost of

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<sup>50</sup> See *Access Charge Order*, at p.18.

<sup>51</sup> As noted above, putting on a traditional rate case remains an option, but a burdensome one for both the ICS providers and Department. To date, to Securus’ knowledge, no ICS provider has done so. And there are other reasons why traditional rate of return regulation of ICS rates would be exceedingly difficult (e.g., ICS providers are not required to keep their books according to the uniform systems of accounts normally applied to carriers and used for rate-proceeding purposes).

<sup>52</sup> Petition, at Appendix IV.

<sup>53</sup> *Id.*, at p. 21

the ICS systems located at State prisons to be spread over a much greater number of calls, thus lower “per call” costs. As outlined earlier, each Securus correctional facility contract is unique and the ICS must recover its costs associated with a particular facility contact through the rates applicable at that specific facility. Additionally, State DOC prisons are longer term facilities and can institute programs that would simply not be feasible in the high turn-over, much shorter term county facilities. It is not unusual for the overwhelming majority of inmates in a county jail to be incarcerated only until arraignment or bond is posted. This could be as little as 48 to 72 hours, or less. In such cases it is not reasonable for the facility to set-up inmate debit programs or to institute other calling programs, such as Prisoner Allowed Number lists. With the lower call volumes, short incarceration time and high turnover, it increases the ICS per call costs and also increases bad-debt. Because an ICS’s only recourse is to block future calls for unpaid charges, there is little incentive to pay the ICS bill once an inmate is released. Therefore, any comparison of Securus’ rates applicable to the eighteen (18) county facilities it serves in Massachusetts to the State DOC prison rates in other states is an apples to oranges comparison. As detailed below, even comparing the inmate telephone rates at Massachusetts State prisons to ICS rates at other State prisons is not appropriate.

Second, the Department should not be making decisions to throw out its existing rate-cap structure on data that is now going on 4 years old and potentially inaccurate. For example, Petitioners list the cost of a 15 minute intraLATA toll collect call in 2008 in Alabama as \$2.85 without any per-call surcharge. According to data researched by Securus, Alabama’s ICS rate cap regime currently permits a per call surcharge of \$2.25 and a per minute usage rate of \$.30, so the potential cost of a 15 minute intraLATA collect call would be \$6.75, far above the Department’s existing rate cap and the charges that Securus is currently imposing in

Massachusetts.<sup>54</sup> And in Idaho, Petitioners claim that there is no per-call surcharge, but according to Securus information there are no ICS rate caps and the Qwest (South) rates include a \$2.25 per-call surcharge and a per minute usage charge of \$.37, resulting in the cost of a 15 minute intraLATA collect call being \$7.80.

Third, there are also states missing from the Appendix IV analysis which may have a bearing on Petitioner's claims. For example, in Iowa ICS rates are reportedly capped at any approved tariffed rates. Qwest's intraLATA station-to-station (partially assisted) calling surcharge is \$3.10 and the intraLATA toll usage charge is \$.25 per minute during the day, so a 15 minute intraLATA collect call based on Qwest's tariffed rates would cost \$6.85, again more than the Department's existing rate cap and the charges that Securus is currently imposing. Another missing state is Delaware (15 minute intraLATA collect call at Verizon rates would be \$4.75).

Fourth, the Petitioners include a number of states where state regulators have no jurisdiction over ICS (Colorado, Washington, Oregon and Florida) or, unlike Massachusetts there are simply no rate caps imposed on ICS (Arkansas, California, Connecticut, Delaware). Thus, although the charges listed by Petitioners may be those that were in effect in 2008 for certain State penitentiaries and may still be in effect as a result of the contracts that facility administrators have chosen to enter, unlike the Department, those states either now have no jurisdiction over ICS or have not imposed rate caps on ICS.

Fifth, while the Massachusetts per-call surcharge cap is, based on Petitioner's chart, at the high end of the scale for State DOC facilities only, if there is to be a comparison, the more appropriate measure of "just and reasonable" rates is the total cost of the candidate call. Indeed,

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<sup>54</sup> Securus' data is based on its own operating experience and information made available, on a subscription basis, by Technologies Management, Inc., a consulting firm that has long tracked rates in the ICS and payphone industry.

on the Petitioners' Appendix IV chart there are some 19 states, many of whom have per-call surcharges as low as \$1.50, but for which the total cost of the ICS call exceeds the maximum of what inmates pay under Securus current, Department-approved tariffs.

Sixth, to the extent that the "reduction" in rates reflected on Appendix IV may be deemed to be accurate, Petitioners provide no information on what may have been behind decisions to lower surcharges or other components of the ICS rates in the states that they tout. For example, were these changes as a result of legislation imposed by the legislature? Petitioners presumably would have the Department assume that these adjustments in other states all reflect cost savings or avoidance that is perforce translatable to Massachusetts, without taking into consideration the nature of the facilities being served, the equipment installed, and the contract requirements. There is no assurance that there is an apples to apples comparison being made.<sup>55</sup>

Seventh, again, the Petitioners argue that a "just and reasonable" rate is one that is "commensurate with [rates] charged to the public for like services."<sup>56</sup> If that is an acceptable standard, then the ICS charges are far below what a member of the public would pay for a comparable intraLATA collect call. Other state commissions have found this fact to be dispositive in determining whether ICS rates satisfied the "just and reasonable" standard. For example, in rejecting a very similar challenge to AT&T's rates for ICS the Indiana Utility Regulatory Utility Commission held:

"Here, the uncontroverted testimony of AT&T witness Timmis showed that price for an intrastate interLATA 0+ prison collect (\$3.00 Set-up Charge and \$0.59 per minute) is lower than for an

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<sup>55</sup> For example, in New Mexico the legislature proscribed certain payments, but not all compensation paid to facilities by ICS and thus eliminated the ICS cost associated with those proscribed payments. In seven other states (New York, Nebraska, Missouri, Rhode Island, California, Michigan and South Carolina), the DOC or other jurisdictional bodies have proscribed or limited such payments. Note, Securus does not provide ICS at any facility in the State of Rhode Island.

<sup>56</sup> See note 28, *supra*.

intrastate interLATA 0+ traditional automated call (\$4.99 Set-up Charge and \$0.59 per minute). Thus, the inmates are not paying higher rates than others receiving similar services, even though, as Mr. Timmis pointed out, AT&T incurs higher costs to serve the inmates than it does to serve other customers receiving 0+ automated calling.”<sup>57</sup>

The same analysis applies here where, as noted above, the tariffed Verizon charge for an automated toll collect call from a pay telephone would be \$4.99 per-call surcharge, plus \$0.89 per minute.

Lastly, the Department itself recently has in other contexts rejected the use of “a survey of ... rates charged by carriers across the country” as a basis for determining the appropriate rates in Massachusetts.<sup>58</sup>

**F. Service Fees Are Necessary Administrative Costs Associated With Enhanced Billing Options**

Petitioners assert that Securus’ service fees on prepaid accounts operate as an additional per-call surcharge and should be regulated. Petitioners are incorrect when they say that Securus imposes a “hefty service fee ... to set up” a prepaid account.<sup>59</sup> Securus does not charge *any fee* to establish or set up a prepaid account. An end-user customer may establish a prepaid account and fund that account by check, money order, or on-line banking and Securus will not apply any fee. If the customer chooses to fund the prepaid account via credit or debit card, there is a fee for processing the card transaction. This fee is to recover Securus’ costs paid to the card processing company and to assist in recovering Securus’ internal cost to handle credit/debit card processing. This \$6.95 fee and an explanation of its application are contained in Securus’ authorized

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<sup>57</sup> See *IURC Order*, at p. 11.

<sup>58</sup> See *Access Charge Order*, at pp. 19-20 (declining to rely on survey of switched access rates charged by carriers across the country as evidence of carrier costs in Massachusetts).

<sup>59</sup> Petition, at p. 11.

Massachusetts tariff. Securus does not apply fees or charges in Massachusetts that are not contained in its MA authorized tariff or in its published federal price list for Interstate calls.

**G. There Is No Justification For Reducing The Per-Minute Rate Cap**

Petitioners contend that even eliminating the pure “profits” generated by the current \$3.00 surcharge, with the current \$0.10 per-minute usage rate cap ICS provides still are profitable, indeed too profitable and the existing usage rate cap should be lowered. They again offer only back-of-the envelope calculations and no specific information/data to support their claim. By their own Appendix IV chart, this per minute rate is clearly at the lower end of the scale and is the same as in a number of other states that they list. Securus has clearly shown that its overall cost of providing ICS in Massachusetts have not been reduced or eliminated.

In fact, as demonstrated in the letter to the FCC, Securus’ per minute costs, as well as per-call costs, are increasing. Securus has determined that for the eighteen (18) County facilities it serves in MA that the average length of an inmate call is approximately 12.6 minutes. This is consistent with the national average for all correctional facilities Securus serves. Securus has not, and does not have the means to, perform incremental cost studies similar to LECs. However, by using internally available Massachusetts statewide financial data and the average call length of 12.6 minutes, Securus estimates it is currently only receiving a low single digit (about 3.5%) profit margin on Massachusetts ICS calls. For these reasons, there is no justification for the DTC to even consider a per-call or per-minute rate reduction.

**H. Securus Invests Substantial Time and Resources In Order To Provide High Quality ICS And Customer Service**

In the original Petition and Amendment #1, Petitioners complain of “poor quality of service”<sup>60</sup> As a result, Petitioners ask that the Department take a number of steps relating to quality of service.<sup>61</sup>

**1. Securus Quality And Customer Service Policies**

Securus has been providing quality ICS to correctional facilities for more than 25 years. As previously noted, Securus currently serves approximately 2,300 facilities nationwide in 44 states with the dedication of more than 900 Securus associates. More than seventy-five percent (75%) of these associates are customer facing – meaning they are out in front of the Company’s customers assisting them with their needs. As stated previously, Securus’ Massachusetts-based team includes three local field technicians dedicated to its Massachusetts operations who collectively have 35+ years experience in the ICS industry. Securus does not use third-party contractors. Rather the Company uses its own field service technicians to ensure they meet with strict guidelines our correctional facility customers demand. In addition, Securus’ Massachusetts accounts are supported by a local Account Manager as well as the Regional Sales & Support Specialist and the Regional Vice President who all live in the Commonwealth. The local Securus service and account management team provides round-the-clock coverage.

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<sup>60</sup> The complaints as they relate to Securus include (a) connection problems (b) disconnected calls (c) call reporting and details of charges and (d) customer service problems. See Table of Contents, Amendment No. 1.

<sup>61</sup> Petitioners specifically ask the Department to require that “all prisoner telephone service providers (i) replace and/or repair all non- and malfunctioning telephone equipment used in providing prisoner telephone call service, including without limitation telephone units and lines, whether such equipment is located inside or outside state and county correctional facilities; (ii) calibrate three-way calling detection systems such that prisoner telephone calls in the state are not prematurely terminated unless genuine attempts to evade telephone security measures are initiated; (iii) provide each of their customers who initiate or receive calls from prisoners and have prepaid accounts with the company a detailed accounting of how the funds deposited into such accounts are actually allocated and spent; and (iv) limit the number of recorded warnings concerning the recording and monitoring of calls that are played during a prisoner telephone call to one at the beginning of such call.’ Amendment #1, p. 30.

As has always been the practice in Massachusetts correctional facilities served by Securus, when the facility receives a complaint matter requiring resolution, either the local Account Manager or the primary field technician is contacted. Company procedure is for the Securus individual to open a trouble ticket for timely investigation and resolution of the issue. Depending on the nature of the complaint issue, personnel in the company's technical, operations, or customer service areas may be engaged in its satisfactory resolution.

In competing for contracts to provide ICS in Massachusetts or elsewhere, Securus is fully cognizant of the critical importance of service quality and customer service. Securus invests millions of dollars each year to maintain and enhance service quality, as well as to ensure responsive, courteous customer service. Over the past 20 years, Securus has spent more than \$100 million dollars and devoted 300,000 person-hours developing the Company's advanced network platform. Securus commits an average of \$10 million each year to advance its industry-leading capabilities through re-investment in its people, platforms, and products. Securus leads the industry in innovation with patents to ensure continuous improvements in both products and services to its customers. These investments include research and development on new technologies that contribute to both areas.<sup>62</sup>

Securus is committed to providing the best customer service to friends and family members of inmates as demonstrated by the Company's expenditure of more than \$2 million dollars the past two years (2009 and 2010) to build an in-sourced call center in Dallas, Texas operating around the clock. Securus employs more than 200 people in the provision of customer services, as well as online instructions as to how to deal with issues such as disconnected

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<sup>62</sup> As noted above, Securus holds 85 issued patents, 4 allowed patents and another 35 patent applications are pending.

calls.<sup>63</sup> Securus expends substantial time and resources training its customer services representatives, who are available by toll-free number and email 24 hours a day for 7 days a week. Customer service handles account set up, billing and collection, dropped or disconnected calls and other service problems. Customers are given the opportunity to initiate specific investigations of dropped calls. Securus also maintains an interactive company website, “www.securustech.net” that offers its customers important round-the-clock access to information on all products and services. Consumers may access the Securus website to set up an account, make payments, look up call rates and facility locations, and locate essential information on the Company’s products and services. A Frequently Asked Questions (“FAQ”) section is included that provides helpful customer information, such as how to avoid disconnections and information on obtaining a copy of a prepaid account statement.

Securus contracts with its confinement facilities customers include quality of service requirements. Securus makes every effort to be consistently in compliance with all those requirements. To remain competitive in the marketplace, it is essential that Securus provides a high quality of customer service to win new business and secure renewals. Securus provides annual surveys to our facility customers nationwide to obtain their important feedback about our company’s performance. The facilities are asked to rank their satisfaction with Securus’ quality of service (customer satisfaction “CSAT” scores). In Massachusetts, Securus has not been called to task by its facility customers for failing to meet its quality-of-service obligations. In fact, quite the opposite is suggested based on the Company’s CSAT scores for 2008, 2009, and 2010. Securus has been and is providing highly rated service<sup>64</sup>

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<sup>63</sup> See <http://www.securustech.net/consumersolutions.asp>. A copy Securus’ Friends and Family Telephone Service Guide is attached as Exhibit 6.

<sup>64</sup> A summary of the results of these systematic surveys is attached as Exhibit 7.

## 2. Petitioners' Securus-Specific Service Problems

As stated previously, Securus found that the NONE of the complainants presented their concerns to Securus for resolution either directly, as “escalated complaints,” or through more formal complaint channels; such as the DTC, the FCC, the state AGO, the state OCABR, or the BBB. Certainly, Securus cannot reasonably be expected to respond to or seek to address alleged service deficiencies of which the Company has no knowledge.

Securus' review of its Massachusetts related complaints at the state agency level, FCC and BBB found a total of twenty two (22) complaints over a period of the past six (6) years.<sup>65</sup> Securus regards its quality of service and customer service of critical importance to ensure that complaints are minimized and when they do arise are reported and handled in a prompt and courteous matter. Securus is not suggesting that twenty two complaints over a six year period from multiple agencies specific to the state of Massachusetts are acceptable. It does, however, demonstrate Securus has not received a high level of such complaints in Massachusetts concerning its rates and quality of service.

Securus has researched and examined the specific customer complaints supported by Affidavits attached to the Petitioners Amendment #1 and Amendment #2. A number of the complaints for which affidavits were filed contained no specific information about the problem. Rather, there were just general assertions about cut off calls or other general accusations. Unfortunately, the majority of the thirty two (32) Petitioners' affidavits provided limited and generalized complaint information making it difficult or impossible to investigate. Also, no customer telephone account or billed telephone number information was provided in any of the respective complaints.

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<sup>65</sup> Massachusetts Complaint Breakdown: BBB (8); AGO (3); FCC (3); DTC (5) DCA (2); and Executive (1) = twenty-two (22) total complaints over a six (6) year period.

Twenty-seven (27) of the thirty two (32) complaints were from law firms and five (5) were from Friends & Family (F&F). Twenty-one (21) of the complaints consist of signed affidavits from lawyers requesting lower rates and improved quality of calls. No specific detail is, however, provided on dates or incidents related to the general complaint issues. An additional six (6) complaints from lawyers and the institutional petitioners did provide more particular detail and timeframes associated with their complaint issues. Finally, the five (5) complaints from Friends and Family (“F&F”) provided the most detail in their affidavits, though dates of the incidents were not very clear.

A review of Securus’ Customer Care records (reflecting contacts with the Company’s customer service representatives) was conducted to determine whether any of the Petitioners’ complaints with identifiable information relating to the incidents had contacted the Company for assistance concerning the areas cited in their affidavits. In fact, of the thirty-two (32) affiants, Securus found that only eleven (11) had contacted Securus Customer Care and in many cases the inquiries did not relate to the matters complained of. Indeed, in many cases the contacts did not relate to service complaints at all, but questions about bills or balances or other issues. A copy of Securus’ findings is provided as Exhibit 8. With respect to the “categories” of service problems attributed to Securus in Amendment #1, Securus notes the following:

**a. Poor Connection Problems**<sup>66</sup>

Petitioners complain of problems with poor connections and request that Securus replace and/or repair all non- and malfunctioning telephone equipment used in providing ICS, including

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<sup>66</sup> While poor connections on any call are not acceptable to Securus, the percentages of calls on which poor connections were experienced by some of the lawyer petitioners were 5% or less out of hundreds of calls. Amendment #1, at p.12.

without limitation telephone units and lines, whether such equipment is located inside or outside state and county correctional facilities.

Securus is responsive to facility and customer complaints involving poor connection problems. Securus is unable to specifically respond to the generalized allegations of these complaints particularly due to the time that has elapsed. It is the Company's practice to upgrade and replace all malfunctioning telephone equipment that is determined to be causing poor connection problems. A Securus trouble ticket is issued upon receipt of a complaint from the facility or directly from the customer complaining of a poor connection problem. The resulting solution is to isolate the trouble and correct any malfunctioning equipment.

**b. Disconnected Or Dropped Calls**

Petitioners are requesting that Securus calibrate three-way calling detection systems such that inmate telephone calls in Massachusetts are not prematurely terminated unless genuine attempts to evade telephone security measure are initiated.

Securus works with each of its facilities to ensure that three-way calling systems are appropriately working. Should there be an incidence of complaints involving dropped calls reported, the system is thoroughly checked to validate its operation in accordance with prescribed security parameters.

Securus addresses the reasons for dropped calls with its customers when they first establish an account to ensure that they understand the causes for potential disconnects. Dropped call disputes may be submitted to the Company within 90 days of the call to be eligible for a call credit and a customer may complete a dropped call investigation form to dispute calls. Dropped calls of one minute or less in duration receive credit. Securus cannot be responsible for the transmission quality of wireless/cellular networks. These networks experience dropped calls. Therefore, Securus cannot issue credits for dropped calls to cell phones or wireless devices.

**c. Call Reporting And Details Of Charges**

Customers with prepaid accounts do not receive printed documentation reflecting call charges, but customers with Internet access can check their accounts on-line, including call detail and other charges.

In the Petitioners' complaints it was correctly stated that customers with prepaid accounts do not receive bill statements in the mail reflecting call charges. Customers may go on the Internet to the Securus' website at [www.securustech.net](http://www.securustech.net) to review their account detail on-line. Securus customer service is available twenty four hours a day seven days a week for customers to call and speak with a representative to obtain prepaid account charges and request a copy of their bill by mail.

**d. Customer Service Problems**

Petitioners reported dealing with customer care was a frustrating challenge. The Petitioners' complaints express difficulty in reaching a Securus CBS customer service representative to assist them when attempting to have their concerns addressed. Securus sincerely regrets customers experienced difficulty in trying to reach a customer service representative. Due to customer feedback nationwide, please note that changes have been implemented to Securus' Interactive Voice Response ("IVR") automated line that assists customers in navigating through their options when they call Securus CBS. These changes allow customers many more self-service options than our previous IVR, and there are opt out opportunities throughout the IVR which allows customers to more easily connect with a customer service representative. Securus hopes our customers are able to secure contact with a customer service representative much more easily than during their past experiences.

#### **IV. CONCLUSION AND REQUEST FOR RELIEF**

Securus respectfully submits that for all the reasons set forth above the Petitioners 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 pre call surcharge cap and reducing the \$0.10 per-minute usage cap. Further, based on the reports provided by Securus above Petitioners claims with respect to service quality and customer service do not justify a further investigation of these issues at this time.

Respectfully submitted

**SECURUS TECHNOLOGIES, INC.**

By /s/ Paul C. Besozzi

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January 20, 2012

**DECLARATION**

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.

I have reviewed the Petition filed by various parties, and the two (2) Amendments thereto, which are the basis for the Department of Telecommunications and Cable (“DTC”) initiating proceeding D.T.C. 11-16 (“Proceeding”).

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

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/s/ Curtis L. Hopfinger

**Curtis L. Hopfinger  
Director – Regulatory and  
Government Affairs  
Securus Technologies, Inc.**

**Dated: January 20, 2012**

**CERTIFICATE OF SERVICE**

I, Paul C. Besozzi, hereby certify that on this 20<sup>th</sup> day of January 2012, I did serve, by first class mail, postage prepaid and by electronic mail a copy of the foregoing “Response of Securus Technologies, Inc.” on the parties listed on the Service List below issued by the Department:

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/s/ Paul C. Besozzi

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