

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

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SUMMARY

Even considering the oral testimony and other materials submitted in connection with the July 19, 2012 Public Hearing, the Petitioners have failed to carry their burden in this docket. The existing Department-approved inmate telephone service (“ITS”) rate structure, and Securus’ tariffed rates, remain just and reasonable. Securus has devoted substantial resources to ensuring service quality and establishing a system for addressing customer complaints. Therefore, as previously urged by Securus and other participating ITS providers herein, the docket should be closed.

The Department’s decision as to whether to continue this proceeding must be based on facts and the applicable legal principles. Securus respectfully submits that the Public Hearing submissions, while of unquestioned sincerity, were fraught with misconceptions, mistakes, exaggerations and, in Securus’ view, unrealistic and perhaps unreasonable expectations. None of the oral testimony or letters, as sympathetic as the Department might be to the content thereof, supports the conclusion that the Department must continue to investigate whether (a) the current Department-approved rates are no longer *prima facie* lawful (i.e., are unjust and unreasonable) or (b) additional standards or requirements must be imposed on the quality of service provided by Securus.

When examined closely, the exhortations about high rates and expectations do not ring true. Rates for and the right to use ITS cannot be compared to wireless rate plans, Skype and flat-rate long distance services enjoyed by residential customers. Citations to ITS rates at large state Department of Correction facilities in other jurisdictions ignore the distinct differences in calling and billing patterns in those facilities and therefore are inapposite. Finally, specific examples of intrastate rates that were asserted to apply in Massachusetts are, in Securus’ judgment, just

incorrect or not credible. Others described usage that in Securus' view strains the "privileged" nature of ITS use.

Contrary to Mr. Dawson's assertions, Securus overall costs have risen, not dropped. In 2011 Securus stipulated to the FCC that since just 2008 the Company's (a) overall per-call costs had *increased* approximately 16.3% and (b) overall per-minute costs had *increased* approximately 16.5%. Of course since 1998, ITS rates have been capped at the current Department-approved levels. Securus' ITS systems are not one-size-fits-all. While there have been cost savings in some areas, the cost reductions are relatively modest when compared with the other costs that have consistently increased, such as validation costs, database updates and maintenance, development of new and updated security features, the requirement to continually update fraud detection, voice storage, billing costs, equipment (armored telephones), labor costs and regulatory costs.

Commission payments remain legitimate costs of doing business, required by the state and local government entities that solicit competitive bids for ITS. In county facilities these payments support inmate programming that even Petitioners' counsel would support. The propriety from a policy or moral perspective of commission payments and the use thereof is not a matter for the Department. The Hearing Officer effectively said so.

Finally, Securus invests significant resources, in terms of dollars and personnel, in ensuring ITS quality and the ability to respond to customer inquiries. Six individuals who made submissions in connection with the Public Hearing commented on Securus' quality of service. According to Securus' customer service records only one (1) of these six (6) individuals ever contacted Securus customer service to register a complaint about the issues reflected in their letters submitted in this proceeding. Securus is concerned about any unsatisfied customer.

However, the fact that the Public Hearing submissions include letters from just six (6) individuals, over what appears to be a multi-year period, do not warrant continuation of this proceeding on service quality and customer service issues.

For the foregoing reasons, as discussed in detail below, and those set forth in Securus' prior filings in this docket, Securus requests that the Department find that (a) the Petitioners have failed to sustain their burden, (b) no further investigation of the matters raised by Petitioners is warranted and (c) the docket shall be closed.

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**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
And Unreasonable Cost of such Calls**

D.T.C. 11-16

RESPONSE OF SECURUS TECHNOLOGIES, INC. TO PUBLIC COMMENTS

Securus Technologies, Inc. (“Securus” or “Company”),¹ acting through counsel and in accordance with the Hearing Officer’s Notice of Deadline, dated September 24, 2012, hereby responds to certain public comments, both written and oral, made at and in connection with the Public Hearing in this proceeding held at the Department of Telecommunications and Cable (“DTC” or “Department”) on July 19, 2012 (“Public Hearing”).²

Securus respectfully submits that the Public Hearing Materials have added no information to the record that requires the Department to continue this proceeding. First, the Department must find that the Petitioners’ assertions regarding the long-standing Department-approved rate parameters for inmate telephone service (“ITS”) merit no further investigation; those rate caps remain just and reasonable and therefore Securus’ existing tariffed ITS rates, filed, approved and implemented in accordance with those parameters, remain just and reasonable. Second, the service quality and customer service allegations raised by Petitioners

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

² Unless otherwise specified herein, Securus will refer to the oral testimony and written submissions in connection with the Public Hearing collectively as the “Public Hearing Materials.” The oral testimony will be referred to as the “Testimony” and individual letters submitted will be referred to as “Letter.”

can best be addressed through use of existing regulatory and service provider systems and processes. The Department should encourage their use, rather than examining whether yet additional options should be required here.

Therefore, for the reasons set forth below, as supported by its extensive previous submissions herein,³ Securus respectfully reiterates that further investment of Department resources on the issues raised by Petitioners is not justified and the docket should be closed.

I. INTRODUCTION

The genesis of the ITS rate structure and the procedural history of this proceeding are well-known to the Department and need not be repeated here.⁴ The Department-approved rate caps, in place since 1998, are, by statute, *prima facie* lawful (i.e., just and reasonable) unless or until the Department concludes that the Petitioners have met their burden and holds otherwise.⁵

In the aftermath of various filings responding to Petitioners' initial filings, the Department held the Public Hearing pursuant to Massachusetts G.L. c.159 §24 after Securus (and other parties) demonstrated, in lengthy detail, that Petitioners had "failed to state a claim that merits an investigation" and therefore the docket should be closed.⁶

Securus, which has a long successful history of providing ITS throughout the United States, is highly sensitive to the allegations and claims made by the Petitioners' representatives

³ Securus incorporates by reference its previous filings in this Docket, specifically the (a) Response of Securus Technologies, Inc., dated January 20, 2012 ("Securus Response"), (b) Supplement To Response, dated January 25, 2012 ("Securus Supplement"), and (c) Reply To Petitioners' Memorandum, dated April 12, 2012 ("Securus Reply").

⁴ See Securus Response, at pp. 4-7.

⁵ Mass G.L. c. 159 §17; see *AT&T v. IMR Capital Corp.*, 888 F. Supp. 221, 246 (D. Mass. 1995). Under established precedent, the burden is squarely on the Petitioners to establish otherwise. See *Metropolitan District Commission v. Department of Public Utilities*, 352 Mass. 18, 25 (1967)

⁶ Notice of Public Hearing, DTC 11-16, June 12, 2012, at p.1. See also Global Tel* Link Corporation Response To Petition, January 20, 2012, p. 2, n. 5 ("GTL Response"). Section 24 provides in relevant part: "upon complaint, relative to the service or charges for service in, to or from any city or town as rendered or made by any company engaged therein in the transmission of intelligence by electricity, by the mayor or selectman, or by 20 customers of the company, the department shall grant a public hearing...."

and the inmate friends and families at the Public Hearing. This is particularly true with respect to customer service allegations, as Securus invests substantial personnel and financial resources in maintaining service quality and responding to end-user customer concerns and inquiries.⁷

However, the Department's decision as to whether to continue this proceeding must be based on facts and the applicable legal principles. The Public Hearing Materials, while of unquestioned sincerity, were fraught with misconceptions, mistakes, exaggerations and, Securus respectfully submits, unrealistic and perhaps unreasonable expectations.⁸ None of the Testimony or Letters, as sympathetic as the Department might be to the content thereof, supports the conclusion that the Department must continue to investigate whether (a) the current Department-approved rates are no longer *prima facie* lawful (i.e., are unjust and unreasonable) or (b) additional standards or requirements must be imposed on the quality of service provided by Securus.⁹ Therefore, this proceeding should be closed.

II. THE DEPARTMENT APPROVED RATE PARAMETERS AND SECURUS' TARIFFED RATES REMAIN JUST AND REASONABLE

The Public Hearing Materials seeking to buttress Petitioners' argument that Securus' Department-approved rates were "unjust and unreasonable" focused primarily on three areas: first, how the level of the Department-approved rates is now unjustified in light of residential,

⁷ See Securus Response, pp. 31-33.

⁸ Citations to the Testimony will be in the form of "HT, p.____, ll.____." References to Letters will be cited as _____Letter, p.____.

⁹ Section 24 is a procedural statute providing a method by which persons aggrieved by the service or charges for service may have an opportunity to be heard on complaint. See *City of Newton et al. v. Dept. of Pub. Util, et al.*, 367 Mass. 667, 671, n.4 (1975). However, at least five (5) of the Public Hearing witnesses explicitly stated that they *do not even receive inmate telephone calls*. See Dodd, HT, p. 122, ll. 1-3 (Don't receive any calls, not associated with any prisoners); Thayre, HT, p. 14, ll. 9-11 (Don't receive phone calls, have never called a prison, don't know anyone in jail at the moment); Weitzman, HT, p. 147, ll. 19-20 (Not receiving phone calls now); Carey, HT, p. 151, ll. 23-24 (Don't personally receive phone calls); Kelsey, HT, p. 156, ll. 15-16 (Don't currently receive phone calls, received only one in my life, 20 years ago). Nor presumably does Petitioners' expert witness Mr. Dawson receive such calls. There was also at least one commenter whose complaints related to interstate rates, which of course are not within the Department's jurisdiction and, unlike the Department-approved rates, are not capped. See Demello Letter, p. 2 (regarding rates for calls to Rhode Island from Massachusetts).

wireless and ITS rates in other states and the sums that those who spoke with inmates were choosing to spend; second, how the level of the Department-approved rates is now unjustified because Securus' costs of providing ITS had, as Petitioners' expert witness Mr. Dawson claimed, "dropped and dropped and dropped";¹⁰ and third, how the level of the Department-approved rates is now unjustified because they continue to allow commissions to be paid to county facility administrators for use in providing inmate programs, a cost that should be borne by others.

For the various reasons set out below, Securus respectfully submits that the Public Hearing Materials in these areas do not require or support continuation of this proceeding.

A. Public Hearing Exhortations And Expectations About ITS Rates Do Not Ring True

The Public Hearing Materials contain many general assertions that the Department-approved rates are "too high" because they strain budgets, require undesirable expenditure choices and cannot be reconciled with the ability to talk for hours on cellular, residential or even Skype (i.e., internet based services) at lower rates.¹¹ Some commenters in particular argued that inmates have a "right" to make phone calls at rates that are comparable to those outside-the-facility-walls services.¹²

¹⁰ Dawson, HT, p. 82, ll. 12-14.

¹¹ See, e.g., Matos, HT, p. 20, ll. 6-7 (unidentified inmate noting that his daughter "can talk all day on her cell phone without worries"); Dimanche, HT, p. 28, ll. 6-11 (can purchase a phone card that "will allow me to call someone on the other side of the planet for pennies a minute"); White, HT, p. 35, ll. 16-21 ("flat rate long distance, free minutes on cell phones, and other gimmicks" including "programs like Skype"); Zimbabwe, HT, p. 59, ll. 9-10 (Calling card for half hour calls to Africa); Assad Letter, p.1 (referring to MetroPCS flat rate wireless service package).

¹² DiCesare, HT, p. 130, ll. 22-24 ("You should have a *right* to make a phone call that doesn't cost me \$5.85 for 30 minutes." (emphasis supplied). Even Petitioners' counsel recognizes that inmate access to telephonic communications while in confinement is not a "right" but a "privilege" granted by the facility administrators. See Garin, HT, p. 48, ll. 20-24 (loss of "telephone privileges"); see also GTL Response, p. 4 (discussing limitations on inmate access to telephone service).

These comparisons clearly ignore the special context in which ITS is provided, including the well-recognized differences between the ITS environment and the family living room.¹³ The comparison of ITS rates to rates for these services is totally inapposite. Even Petitioners' counsel did not go this far, having previously argued that a "just and reasonable" rate is one that is "commensurate with [rates] charged to the public for *like* services."¹⁴ As Securus previously noted, if that is an acceptable standard, then the Department-capped ITS charges are far below what a member of the public would pay, for example, for a comparable intraLATA collect call from a traditional public pay telephone in Massachusetts.¹⁵ Other state commissions have found this fact to be dispositive in determining whether ITS rates satisfied the "just and reasonable" standard. For example, in rejecting a very similar challenge to AT&T's rates for ITS, the Indiana Utility Regulatory Utility Commission held:

"Here, the uncontroverted testimony of AT&T witness Timmis showed that the price for an intrastate interLATA 0+ prison collect (\$3.00 Set-up Charge and \$0.59 per minute) is lower than for an 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."¹⁶

¹³ See *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 Sup. Ct 1510, 1515 (2012) ("The difficulties of operating a detention center must not be underestimated..."); see also GTL Response, p. 3

¹⁴ See Securus Response, pp. 28-29.

¹⁵ As Securus previously noted, the 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 \$4.99 per-call surcharge plus \$0.89 per minute. Securus Response, pp. 13-14 and Exhibit 3.

¹⁶ See *Mario L. Sims, Sr. et al. v. AT&T, and its Contract With the Indiana DOC*, 2001 Ind. PUC Lexis 503 at p. 11 (Indiana Utility Regulatory Commission, 2001).

Further, broad general assertions like those of Petitioners' expert witness Mr. Dawson,¹⁷ that the Department-approved ITS rates are "higher than in other states" does not make those rates "unjust and unreasonable."¹⁸ As Securus previously noted, comparisons of county facility ITS rates with those charged at State Department of Correction ("DOC") facilities are inappropriate. DOC facilities have considerably different ITS calling and billing patterns than those of county jails served by Securus in Massachusetts. DOC facilities almost always have much higher ITS call volumes as compared to county jails. This allows the cost of the ITS systems located at State prisons to be spread over a much greater number of calls, thus lower "per call" costs.¹⁹

Each Securus correctional facility contract is unique and the ITS provider must recover its costs associated with a particular facility contact through the rates applicable at that specific facility.²⁰ 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

¹⁷ The paramount purpose of the Public Hearing was to hear from "members of the public who are receiving the phone calls," not take expert witness testimony. *See* HO, HT, p. 43, ll. 14-15. It was presented that Mr. Dawson would testify as to "general principles in the industry," a limitation he seemingly later largely ignored when discussing rate levels, costs, commission payments and other specific allegations largely derivative of the Declaration that he had already submitted in the proceeding. *See* Tenneriello, HT, p. 43, ll. 22-23.

¹⁸ *See* Dawson, HT, p. 78, ll. 17-23. Ms. Matos noted that the "rates are higher in Massachusetts than they are in many states across the country, despite the fact that these are the same companies that are providing service in other states with the same security concerns and the same overhead." Matos, HT, p. 11, ll. 9-14. This simplistic comparison ignores the fact that there are different regulatory regimes and cost factors in other states and individual facilities.

¹⁹ *See* Securus Response, pp. 25-26.

²⁰ This explains why, what Mr. Dawson tried to paint as somehow a nefarious occurrence, there are different rates schemes, all of which have been tariffed and approved by the Department at the different county facilities served by Securus. *See* Dawson, HT, p. 79, ll. 1-8.

calling programs, such as Prisoner Allowed Number lists. With the lower call volumes, short incarceration time and high turnover, it increases the ITS per-call costs and also increases bad debt. Because an ITS provider's only recourse is to block future calls for unpaid charges, there is little incentive to pay the ITS 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 that cannot be the basis for continuing this proceeding.²¹ Securus has already thoroughly addressed the rate differential issue in this proceeding.²² None of the Public Hearing Materials refuted or in any way undermined Securus' explanations on this issue.

A number of Public Hearing witnesses gave specific examples of intrastate rates that they asserted apply in Massachusetts which, in Securus' judgment, are just incorrect or not credible. Others described usage that in Securus' view strains the "privileged" nature of ITS use.

Although not specifying the provider, Ms. White claimed that there were per minute usage rates as high \$.75 per minute for local calls in Massachusetts.²³ Securus' highest per minute usage rate for a local collect call is \$.10 per minute.

Ms. Kelsey stated that to make a 15-minute call in Massachusetts it costs about \$10.05.²⁴ The highest rate Securus charges for any 15-minute in-state collect call in Massachusetts is \$4.50 and the charge for a similar call is less at some other facilities Securus serves.²⁵

²¹ See Securus Response., p. 26.

²² See Securus Response, pp. 25-29.

²³ White, HT, p. 36, ll. 23.

²⁴ Kelsey, HT, p. 158, ll. 12-14. Ms. Kelsey conceded that she had only received one inmate call in her life.

²⁵ For example, for Berkshire County and Barnstable County the highest rate for charge for such a call would be \$3.50 and \$3.80, respectively.

According to Ms. Matos, Amanda Verling spends almost \$175 a week to have two 20 minute conversations a day with her fiancée and the father of her children, who is in the Bristol County Jail.²⁶ But the maximum rate for a local collect call from that facility, irrespective of the length, is \$4.50. For an intrastate toll call, the maximum rate for a 30-minute collect call would be \$6.00. For \$175 per week Ms. Verling would be having 29 intrastate toll calls per week of 30 minutes each. This would be more than double the number of calls claimed and each call would be of a greater length than claimed. In other words her claimed costs do not add up with the reality of applicable, existing Securus rates.²⁷

Ms. Matos read from a letter from Jason Copson, who stated that while at Essex County Jail that he spent \$5,400 on calls (at \$6.00 per call) over a 6 month period with 5 calls per day, spending about 1½ hours per day on the phone.²⁸ But Essex County has standard intrastate rates which would mean that each collect call would be at least 30 minutes for \$6.00 (including taxes).²⁹ So the inmate would be spending not 1½ hours daily, but 2½ hours every day for 6 months using the ITS at the facility.³⁰

Securus in no way begrudges an inmate his or her full and complete use of the telephone privileges afforded by the facility. But is it reasonable to contend that for the Department to

²⁶ Matos, HT, p. 114, ll. 5-9. To avoid paying interstate charges, Ms. Verling apparently purchased a cell phone with a Massachusetts number local to the jail. *Id.*, ll. 3-4.

²⁷ If they were local calls of 20 minutes for \$175 per week she could have 39 such calls each week.

²⁸ Matos, HT, p. 117, ll. 22-24; HT, p.118, ll. 1-3. Mr. Copson is now at a non-Securus-served facility. *See* Matos, HT, p. 116, ll. 18-19.

²⁹ The standardized rate at Essex County for a 15-minute call would be \$4.00, so a 30-minute call would be \$5.50 before any taxes. Securus assumes the inmate was rounding up to \$6.00 to include taxes, which of course are collected, but not retained by Securus.

³⁰ *See also* Duarte, HT, p. 135, ll. 17-20; HT, p. 136, ll. 15-16 (\$100-\$150 per week for 30 minute calls costing \$4.79 each including taxes would mean 21-31 calls per week or 10.3-15.5 hours per week on the phone). Ms. Duarte lives 15 minutes from the facility where her husband is confined. *Id.*, p. 135, ll. 13-14. The use figures outlined above certainly belie the accusation that inmates have been “systematically shut out of ... an ability to communicate with their love[d] ones” by the existing approved rates. *See* White, HT, p. 36, ll. 3-5.

conclude that the current approved ITS rates continue to be “just and reasonable” these charges must accommodate inmates spending 2½ hours, each and every day, on the phone?

As much as the public witnesses would like, the Department cannot seek to benchmark ITS rates based on or against the charges friends and family might pay for wireless or residential services. It is a non sequitur. Nor do the general exhortations about rates in other states warrant reopening of the current approved rate structure at county facilities. Again, the comparison with large state DOC systems or rates charged in other states is unrealistic. Finally, testimony by a number of the witnesses about what they were paying was erroneous or at best misleading when the actual rates are considered. Collectively, these often exaggerated allegations do not overcome the prima facie lawful status of the Department-approved rate structure and Securus’ tariffed rates.

B. Cost Reductions In Securus’ Provision Of ITS Do Not Warrant A Reduction In The Current Inmate Rates

Contrary to assertions, principally by Petitioners’ expert witness Mr. Dawson, Securus has not experienced cost reductions that warrant a reduction in the current ITS rates. Indeed, as noted in Securus’ Response, in 2011 Securus stipulated to the FCC that since just 2008 the Company’s (a) overall per-call costs had *increased* approximately 16.3% and (b) overall per-minute costs had *increased* approximately 16.5%. Other than Mr. Dawson’s exhortations, neither the Public Hearing Materials nor the previous Petitioners’ filings counter that evidence.

Mr. Dawson himself conceded that inmate providers have higher costs noting that “[t]hey have to do things that a normal business wouldn’t have to do” and [t]here’s no question that it is going to cost more for them to provide a call...I don’t think anyone denies that they have higher

costs....”³¹ But he claims that there are still cost savings that justify an adjustment in the current rates.

He cites savings because there are no longer “live operators” required to handle the inmate collect calls and the rates were set back at a time when such calls were required to go through a live operator.³² But Securus’ ITS systems have never completed calls through the use of live operators and the 1998 rates were not set based on costs associated with such use.³³ Moreover, operator-assistance surcharges have long been sanctioned for automated operator-assisted calls such as those made by inmates.³⁴

Mr. Dawson also claimed that there were cost savings because now Securus and other providers do not have to make any “custom fixes for every single jail” but can “simply go to a new location and hook them up rather quickly.”³⁵ That is just not the case and Mr. Dawson’s bare assertions cannot change the reality that there is no one size ITS system that fits all facilities. Every inmate telephone system Securus installed at a Massachusetts facility was designed and installed pursuant to the exact requirements of the facility customer based on, for example, call volume, circuits desired, system capacity, particular software desired by the facility, and whether the facility offers video visitation capability. All of these costs are paid for out of call revenues. Mr. Dawson is simply wrong when he makes it sound like at each facility it is no more difficult than plugging a lamp into an electric socket.

³¹ See Dawson, HT, p. 84, ll. 7-16.

³² Dawson, HT, p. 81, ll. 17-23; *see also* Dawson, HT, p. 86, ll. 1-3.

³³ Securus Response, at pp. 19-20. Other witnesses raised cost savings from no longer having to rely on “live operators.” See Dodd, HT, p. 124, ll. 12-14; Toure, HT, p. 128, ll. 13-16. They too are obviously equally misinformed and demonstrate a fundamental lack of understanding of the operations of the ITS industry.

³⁴ See GTL Response, p. 16. Mr. Dawson asserts that the rates are “tied to payphone rates.” Dawson, HT, p. 82, ll. 7-8. But, as noted above, payphone rates are much higher. See note 15, *supra*.

³⁵ Dawson, HT, p. 85, ll. 18-22.

Securus does not deny that there have been cost savings in certain areas (e.g., transport costs, benefits of centralization). Contrary to Mr. Dawson's assertion that "the underlying cost of providing this service has dropped and dropped and dropped,"³⁶ the cost reductions are relatively modest when compared with the other costs that have consistently increased, such as validation costs, database updates and maintenance, development of new and updated security features, the requirement to continually update fraud detection, voice storage, billing costs, equipment (armored telephones), labor costs³⁷ and regulatory costs.³⁸

It is unrealistic to compare these systems and the cost trends/savings to those of basic residential telephone or wireless networks. As noted by Mr. Homsey, the "telephone systems that are used in these [county] facilities are not garden variety telephone systems..." but "are tied to inmate accounts, which costs considerably more."³⁹

The testimony of Mr. Dawson and others who made general assertions about cost savings are uninformed and simply do not support a Department conclusion that there is adequate evidence to warrant further investigation of the current ITS rates. The Department has kept them frozen for almost 15 years and, as noted above, over just the last 3-4 years of that period Securus' overall per-call costs and overall per minute costs have gone **up** - not *down* - substantially.

³⁶ Dawson, HT, p. 82, ll. 12-14.

³⁷ Labor costs include the efforts needed to send technicians to repair ITS phones and equipment damaged by inmates.

³⁸ See also Securus Response, at pp. 19-24. Mr. Dawson claims that, although he does not know the profitability of ITS providers like Securus, "[i]t's got to be a really large number." Dawson, HT, p. 86, ll. 6. Securus estimates it is currently only receiving a low single digit (about 3.5%) profit margin on Massachusetts ITS calls. Securus Response, p. 30.

³⁹ Homsy, HT, p. 89, ll. 5-11.

C. Commission Payments To County Facilities Remain A Legitimate Cost

As expected, several Public Hearing witnesses claimed that the commissions paid by Securus to county facilities now make the Department-approved rates unjust and unreasonable.⁴⁰

Securus is neither a proponent nor opponent of commission payments. The requirement for commission payments is not decided or dictated by Securus. These payments are directly related to Securus' provision of ITS because commissions are a cost of doing business with (i.e., providing service to) the facilities, imposed by the facility contracts as a condition of the competitive bidding process. The policy to require such payments as a qualification to compete for business is one that has been adopted and implemented by the facilities. As a matter of Massachusetts law they are authorized to enter into contracts requiring such payments.⁴¹ Securus is obligated to pay these commissions if it wants to serve county facilities in Massachusetts. Decisions relating to the payment of commissions by ITS providers are a matter of public policy choice governed by the entities, county and state governments, with which the ITS providers contract to provide ITS. As the Hearing Officer aptly noted, when asked about where and for what purpose the commission payments were used – “It is not appropriate for me to answer that question particularly since *the Department of Telecommunications and Cable does not issue*

⁴⁰ See Matos, HT, p. 13, ll. 14-23; HT, p. 112, ll. 20-23; HT, p. 113, ll. 1-3. One witness went so far as to call the commissions “brides (sic)” and “kickbacks” as if they were illegal. Dimanche, HT, p. 30, ll. 1; HT, p. 32, ll. 16. Of course they are not and they are not a new phenomenon in Massachusetts. See Securus Response, p. 15. Mr. Dawson complained about the level and growth of commission levels in Massachusetts, but conceded at the same time that he had “not looked into the long-term history of the commissions” in the state and did not “have a specific set of history” on the growth of commissions in Massachusetts. Dawson, HT, p. 80, ll. 4-6; HT, p. 81, ll. 5-6. Assuming there has been growth in Securus commission costs since 1998, there has, of course, been no upward adjustment in the Department’s rate caps during that period. The average commission rate paid by Securus is about forty-two percent (42%), with twenty-five percent (25%) the low point.

⁴¹ See Securus Response, p. 15; GTL Response, p. 12.

*rules and does not run the prison system.”*⁴² Securus respectfully submits that the Department cannot, directly or indirectly, start seeking to do so in this docket at Petitioners’ behest.

Even if the Department were inclined to do so, in the county facilities the commissions collected go to benefit the individuals whose families claim they are being victimized by the Department-approved rates – the inmates. For example, in the Suffolk County Jail served by Securus, commission payments support a variety of inmate programs such as “[l]ifeskills programs, GED programs..., vocational programs and reentry programs”; they are also used for “library supplies, certain recreational supplies, computers and software,”⁴³ and to help prevent recidivism, provide security to the facility staff and assist in classification of inmates.⁴⁴

Absent funding through commission payments, the future and scope of inmate programming in the county facilities would be at best uncertain. Mr. Martini, the Chief Financial Officer of the Suffolk County Sheriff’s Department, was unequivocal in stating that “in reality if we lose the commissions, the State is not going to then turn around and say, here’s more money for you to do these things. They are not and they haven’t.... [A] lot of these things would go away if the commissions go away.”⁴⁵

Even the Petitioners “want prisoners to access necessary programming that will help them after they are released.”⁴⁶ However, they object to costs of these programs being funded out of commissions paid by Securus through the rates charged for ITS calls. Petitioners believe

⁴² HO, HT, p.164, ll. 12 -16 (emphasis supplied). The Department’s articulated authority does not include regulation of commission payments. *See* Mass G.L. c. 159 §12.

⁴³ Homsy, HT, p. 88, ll. 19-24; HT, p. 89, ll. 1-2.

⁴⁴ Homsy, HT, p.89, ll. 23-24; HT, p. 90, ll. 1-6. As to other uses of funds to benefit inmates, *see* Martini, HT, p. 93, ll. 11-18 (vocational programs, food sanitation programs, OSHA certification programs).

⁴⁵ Martini, HT, p. 95, ll. 4-7, ll. 11-12.

⁴⁶ Matos, HT, p. 113, ll. 12-13; *see also* HT, p. 115, ll. 9-11 (“We want to access for our clients and I think society in general benefits from the access to programming inside the jails.”).

that this is a “moral issue” which, legalities aside, requires that the Department continue this proceeding.⁴⁷

Securus respectfully submits that the issue before the Department is a legal one – whether the existing Department-approved rates remain just and reasonable. The propriety from a policy or moral perspective of commission payments and the use thereof is not a matter for the Department. The Hearing Officer effectively said so. As in other states, where inmate rates have been reduced because of public policy decisions to prohibit or reduce commission payments, the decision makers are the legislature or those who administer/oversee the confinement facility system, not the regulators of telecommunications services and ITS rates.⁴⁸ The Public Hearing Materials do not cure the Petitioners’ failure to state a claim and justify further continuation of this proceeding.

III. SECURUS RELATED ALLEGATIONS CONCERNING QUALITY OF SERVICE DO NOT REQUIRE CONTINUATION OF THIS PROCEEDING

Securus previously outlined the critical importance it gives to the quality of its ITS and the Company’s ability to respond to end-user customer inquiries. In doing so, Securus responded in detail to the initial quality of service/customer service comments filed by Petitioners, explaining the resources, both in terms of dollars and personnel, it devotes to maintaining/upgrading service quality and customer service capability.⁴⁹ Securus facility customers have given, and continue to give, Securus high marks for its quality of service.⁵⁰

⁴⁷ See Matos, HT, p. 114, ll. 21-24; HT, p. 115, ll. 1-8; HT, p. 116, ll. 1-3.

⁴⁸ For example, in New Mexico the legislature proscribed certain payments, but not all compensation paid to facilities by ITS providers and thus eliminated the ITS costs associated with those proscribed payments. In seven other states (New York, Nebraska, Missouri, Rhode Island, California, Michigan and South Carolina), the state Department of Corrections or other jurisdictional bodies have proscribed or limited such payments.

⁴⁹ Securus Response, pp. 31-37.

⁵⁰ *Id.*, p. 33 and Exhibit 7.

There were, by Securus' count, ten (10) people who submitted letters that could be identified as relating to Securus-served locations and thus Securus ITS. The ten were either cited by Petitioners' counsel during the hearing or in letters submitted by Petitioners counsel to the Department.⁵¹ These ten (10) were (1) Robert Assad, (2) Corey Patterson (3) Jason Copson, (4) Valentine Underwood, (5) an unidentified inmate at "Middleton jail," (6) Sokhannary Chea, (7) Russell Demello, (9) Lori Stanton, (9) Heather (no last name provided), and (10) Tina-Marie DePaulis.⁵² Of these ten (10), four (4) complained exclusively about the Securus rates and charges, not Securus quality of service or customer service.⁵³

Securus thoroughly researched its customer records on the remaining six (6) individuals who did address such issues. The fact that the complaints were general and unspecific as to times or other details of course made the record search more challenging.⁵⁴ Nevertheless, according to Securus' search only one (1) of these six (6) individuals ever contacted Securus customer service to register a complaint about the issues reflected in their letters submitted in

⁵¹ Counsel included as Securus-related a letter from a Shaka Dyette in the MCI-Shirley facility. While Mr. Dyette mentions Evercom in his letter, the Shirley facility where he is serving is a Global Tel Link facility and the reference to funds being spent and service quality refers to his current location and states that "the call rates for 'GTL' are too expensive and should be decreased" and that the "quality of service with the phones isn't worth the excess amount of money I spend on it" – clearly referring to the service he is receiving in his current facility. Dyette Letter, p.1. Petitioners' counsel also represented that a July 12, 2012 letter from Lynne Catarius related to a Securus facility, but the letter mentions no county facility served by Securus and refers to the DOC (Securus serves no DOC facilities in Massachusetts). Similarly, a letter from Frederick McGrath, included as a Securus-related letter, mentions no facility at all, much less one served by Securus. McGrath Letter, p. 1.

⁵² Securus has assumed that the reference to "Middleton jail" is to the Essex County Jail, which is in Middleton, Massachusetts and the reference to "Dartmouth House of Corrections" is to the Bristol County Jail, both of which are county facilities served by Securus. Soraya Harley also mentioned Securus quality of service, although her son is currently in a non-Securus facility. Harley, HT, p. 62, ll. 3.

⁵³ These four (4) were Corey Patterson, Jason Copson, unidentified inmate, and Heather. General rate complaints regarding Securus were also lodged by Lois Frazier and Soraya Harley. Frazier, HT, p. 39, ll. 24; HT, p. 41, ll. 1-2; Harley, HT, p. 63, ll. 2-3. Carolyn Barry also mentioned Securus but referred to facilities which are not served by Securus. Barry, HT, p. 74, ll. 6-8. Rate issues are addressed in Section II above.

⁵⁴ For example, Mr. Assad simply asserted that Securus has "very lousy service, both call quality and customer service." Assad Letter, p. 1.

this proceeding.⁵⁵ Securus does not question the sincerity of these complaints, but it is impossible for Securus to address them when they are not reported. Moreover, while Securus is concerned about any unsatisfied customer, the fact that the Public Hearing Materials include letters from just six (6) individuals, over what appears to be a multi-year period, regarding Securus' service quality cannot be reasonably construed to cure the failure of Petitioners to carry their burden.⁵⁶

The specific categories of service quality or customer service comments raised by these six (6) individuals generally related to dropped calls and transmission quality issues (e.g., static on lines).

A. Dropped Calls

Securus has previously specifically addressed the issue of dropped calls.⁵⁷ 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 ninety (90) days of the call to be eligible for a call credit and a customer must complete a dropped call investigation form to dispute calls. With the exception of inmate calls to wireless phones, dropped calls of one minute or less in duration do receive credit.

Apparently some of the complaints regarding dropped calls relate to calls made to wireless phones.⁵⁸ Dropped calls on wireless phone networks are not unique to the ITS context. The plain fact is that continuous transmission reliability on wireless systems is not the same as

⁵⁵ Two of the individuals (Chea and Stanton) did contact Securus customer service on other matters, but according to Securus records did not raise the issues complained of in their Letters in this proceeding. Ms. DePaulis' July 19, 2012 letter indicated that she would be "disputing the charges with Securus directly as well" and Securus' records indicate that she contacted customer service on July 25, 2012 regarding certain billing questions and issues and Securus sent her certain invoices on the same day and on August 14, 2012.

⁵⁶ According to Ms. Matos, Petitioners received 244 letters from prisoners. Matos, HT, p. 21, ll. 11-12.

⁵⁷ Securus Response, p. 36.

⁵⁸ See Underwood Letter, p. 1 ("...I had to buy a local phone and send it to her...").

with calls on wireline networks.⁵⁹ Wireless transmission reliability and quality and thus potential for dropped calls can vary depending, for example, on the location and surroundings of the called party and the carrier's coverage and network capacity.⁶⁰ That is why Securus makes it clear to customers that it cannot be responsible for dropped calls on wireless networks.

Another potential reason for interrupted calls, particularly calls to wireless phones, relates to call forwarding and third-party calling detection. Securus is required by its facility contracts to detect and prevent the forwarding of calls and three-way calling by inmates, which facility administrators view as a serious security issue.⁶¹ Call forwarding and three-way calling detection protocols check to detect on pauses or delays in call transmission, which may indicate that a call is being forwarded or a third party is being brought into the call. Currently, there is a greater tendency for such pauses/delays where calls are being made to wireless phones and therefore calls to wireless phones are more susceptible to triggering those protocols.

B. Call Transmission Quality

As Securus previously noted, the Company 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 repair, upgrade or 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. Securus spends substantial sums on repairing phones and that is the

⁵⁹ See Stanton Letter, p.1 (Shifted to wireline network phone to avoid cell phone dropped calls).

⁶⁰ Indeed, Securus warns customers with landline phones to avoid use of in-home portable phones because of the same prospect for dropped calls due to variations in transmission quality and reliability.

⁶¹ See Underwood Letter, p. 2 (Not allowed to have three-way calling).

principal reason for its continued need for technical personnel in the field – to repair the telephone sets themselves. Securus respectfully submits that there is no evidence from the Public Hearing (or otherwise in the record) that the Company is being derelict in taking reasonable efforts to ensure that the ITS phones are in working order. Again, its Massachusetts facility customers give Securus high marks for the ITS that it provides.⁶²

C. Billing Issues: Service Charges And Fund Forfeiture

There were comments about Securus’ convenience fee for credit or debit card use to fund a prepaid account.⁶³ This is an optional charge for the convenience of using a credit or debit card. The charge has been tariffed and approved by the Department and in many other states where Securus operates. End-user customers are explicitly told, in a number of different ways, that they can avoid the charge by using other payment methods such as check, money order or using online banking.⁶⁴ The convenience fee permits recovery of Securus’ costs paid to the card processing company and to assist in recovering Securus’ internal cost to handle credit/debit card processing.⁶⁵

There were also comments about forfeiture of unused funds – claims that “often” funds are forfeited when not used.⁶⁶ In Securus experience this is a very rare occurrence. A Securus

⁶² There was a comment related to intrusive recordings by Ms. Chea, but it is not clear that this related to the Securus-served Essex County facility since Ms. Chea also had a relative at the Shirley facility, which is not served by Securus. Securus believes that this comment related to Shirley. *See* Matos, HT, p. 16, ll. 14-16 (referring to such recordings at the Shirley facility).

⁶³ Duarte, HT, p. 136, ll. 18-19; HT, p. 140, ll. 14-15; *see also* Stanton Letter, p. 1; Heather Letter, p. 1 and DePaulis Letter, p. 1.

⁶⁴ Stanton Letter, p.1 (Alleges she was never told by Securus that she could avoid the fee, Securus records show that she has contacted customer service, which is required to inform customers who object to the convenience fee how they can avoid having to pay it).

⁶⁵ *See* Securus Response, pp. 29-30.

⁶⁶ Matos, HT, p.112, ll. 15-16 (If they don’t use up all of the money they often forfeit the funds).

customer with an AdvanceConnect Account for pre-paid collect calls⁶⁷ can request and receive a refund, without any charge. If such an account remains dormant for a period of six months (i.e., not a single call is received on the account for a six month period) without a request for a refund, then and only then does the account expire and any funds in the account are forfeited. This forfeiture policy only applies in the case of AdvanceConnect accounts. This expiration policy is specifically authorized in Securus' Department-approved tariff.⁶⁸

D. Intrusive Recordings

There were comments about “intrusive recordings” during calls announcing that the call was being made from a confinement facility.⁶⁹ It is not clear that these complaints related to any Securus facilities.⁷⁰

The Public Hearing comments do not warrant further Department proceedings on Securus' service quality and customer service. Securus has the standards and systems in place to address those service problems that it controls. These include the customer service personnel ready, willing and able to respond to customers if they call to report a problem.

IV. CONCLUSION

The existing Department-approved rate structure, and thus Securus' authorized tariffed rates, remain just and reasonable. The testimony and submissions regarding rate levels in

⁶⁷ Securus' AdvanceConnect Account is a tariffed billing option which allows friends and family to establish an account into which they can deposit funds to prepay for inmate collect calls.

⁶⁸ That Section states in relevant part: “The End User may request a refund of the available balance in the AdvanceConnect Account either by written request to the Company or by contacting the Company at its toll free telephone number once the End User verifies certain account information. Any unused balances will expire one-hundred eighty (180) days following the last call made, unless the balance is fully depleted or a refund has been requested.

⁶⁹ Chea Letter, p.1; *see also* Matos, HT, p. 16, ll. 14-16.

⁷⁰ There was a comment related to intrusive recordings by Ms. Chea, but it is not clear that this related to the Securus-served Essex County facility since Ms. Chea also had a relative at the Shirley facility, which is not served by Securus. Securus believes that this comment related to Shirley. *See* Matos, HT, p. 16, ll. 14-16 (referring to such recordings at the Shirley facility).

connection with the Public Hearing do not require the Department to continue this proceeding. Nor does the testimony relating to service quality and customer service issues justify such continuation. For all the foregoing reasons and those previously articulated by Securus and the other inmate providers in this matter, the Department should now find that Petitioners have failed to meet their burden, insufficient facts have been set forth to warrant further investigation and this Docket should be closed.

Respectfully submitted

SECURUS TECHNOLOGIES, INC.

By /s/ Paul C. Besozzi

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October 24, 2012

DECLARATION

1. I am Curtis L. Hopfinger, the Director of Government and Regulatory Affairs for Securus Technologies, Inc. As such I am responsible for the overall regulatory and rate compliance matters for the Company. I attended the Public Hearing on July 19, 2012 and testified briefly for Securus. In addition I have otherwise participated on behalf of Securus in the previous filings in this proceeding.

2. I have reviewed the foregoing "Response of Securus Technologies, Inc. To Public Comments," which was prepared under my supervision and control. I hereby declare, under penalty of perjury, that the statements and representations therein relating to the rates, costs and other aspects of the operations of Securus inmate telephone service are true and correct to the best of my knowledge and belief.

/s/ Curtis L. Hopfinger
Curtis L. Hopfinger

Dated: October 24, 2012

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 24th day of October, 2012, I did serve, by Federal Express or first class mail, postage prepaid and by electronic mail a copy of the foregoing “Response of Securus Technologies, Inc. to Public Comments” on the parties listed on the Service List below issued by the Department:

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