## Comments of Prisoners Legal Services of Massachusetts

### Introduction

Prisoners Legal Services (PLS) is a non-profit law office serving Massachusetts prisoners. We welcome this opportunity to submit comments in response to the Notice of Proposed Rulemaking issued in FCC 12-167.

PLS represents a group of prisoners, family members and attorneys who petitioned the Massachusetts Department of Telecommunications (DTC) to reduce intrastate inmate calling services (ICS) rates and investigate the poor quality of prison telephone service, DTC no. 11-16. PLS undertook this representation after years of witnessing its clients and their family members struggle to maintain ties in the face of unaffordable telephone bills and inaudible conversations.

On July 19, 2012 the DTC held public hearings in connection with this petition and received an outpouring of grievances from prison families and other consumers over ICS rates and quality of service. The comments we submit below draw upon the oral and written testimony provided by members of the public for that hearing, as well as the affidavits of the petitioners and data gathered by PLS in connection with the petition.[1]

The Petitioners are waiting for the DTC to decide whether to go forward with an adjudicatory proceeding on the Petitioners' claim or to grant the Respondents motion to dismiss. Action by the Federal Communications Commission to establish a just and reasonable rate for interstate calls will provide national leadership for state regulatory agencies in Massachusetts and elsewhere looking to ensure the same principle within their jurisdictions.

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[1] Filings and public comments related to the petition are available at http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/dtc-11-16.html. The quotes in the textboxes throughout this document are excerpted from public comment letters submitted to DTC for its July 19, 2012 public hearing and available at this website under each individual's name, with the exception of Anna Ledlum's letter, which, by error, is not available online, but is attached as Ex. 1.

## I. The importance of affordable ICS

The heavy burden of high prison telephone rates prevents Massachusetts families from keeping in touch with loved ones in prison. As the FCC, Government Accountability Office and Bureau of Prisons have already recognized, keeping in as close contact as possible is paramount to ensuring stability and success both inside and outside of the prison walls.[2] In fact, a half century of studies show a consistent relationship between strong family and community contact during incarceration and reduced recidivism rates.[3] Furthermore, where 97% of the prison population will be released to our communities and the Massachusetts DOC's latest available data shows a recidivism rate of 44%, we simply cannot afford to compromise support systems that are proven to contribute to successful reentry and lower recidivism.[4]

**"We look forward to fundamentally functional prison phone services at MCI [Norfolk] for inmates and pertinent families and friends. With God's blessing, Cedric may be paroled in about two years. Phone service now, while he is an inmate, has extended ramifications. It is another crucial factor in building and maintaining his future. He cannot be totally cut off from the "outside world" for two more years, then face society in reality and expect normalcy." Anna Lednum**

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[2] *See* 28 C.F.R. § 540.100 ("The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development."). *See also* United States Gov't Accountability Office, GAO-12-743, Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure (2012), *available at* http://www.gao.gov/assets/650/648123.pdf; *see also* United States Gov't Accountability Office, GAO-08-11-893, Bureau of Prisons: Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection 18 (2011), *available at* http://www.gao.gov/assets/330/322805.pdf.

[3] *See* Commonwealth of Massachusetts Governor's Commission on Corrections Reform, Strengthening Public Safety, Increasing Accountability, and Instituting Fiscal Responsibility in the Department of Correction (i) (2004), *available at* http://www.mass.gov/eopss/docs/eops/govcommission-corrections-reform.pdf; Daniel LeClair, Massachusetts Dep't of Correction, *The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1987* at 2, 10, 11 (1990), *available at* https://www.ncjrs.gov/pdffiles1/Digitization/137240NCJRS.pdf; Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways,* 29 Ann. Rev. of Soc. 89, 100 (2003); U.S. Dep't of Justice & Office of the Inspector Gen., *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges,* Ch. II, n. 6 (Aug. 1999), *available at* http://www.usdoj.gov/oig/special/9908/; *see also supra* note 2 and footnotes 19 and 20 of FCC Notice of Proposed Rulemaking WC Docket No. 12-375.

[4] *See generally* Massachusetts Dep't of Correction, Prison Population Trends (2011), http://www.mass.gov/eopss/docs/doc/research-reports/pop-trends/poptrends2011final.pdf.

The DTC received 228 letters from prisoners and their families for the public hearing held in July of 2012. Almost all, 95%, discuss the reliance of prisoners and their families on the telephone to maintain family bonds and provide mutually needed support, but that the cost-prohibitive nature of the phone calls is a serious barrier to maintaining this connection. Many prisoners come from the poorest communities in the state so that the high cost of these calls causes families additional financial stress in struggling to keep lines of communication open with their loved ones and further financially straps those who can least afford it. Moreover, many correctional facilities are located in remote areas far from where prisoners' families live and not accessible by public transportation, making phone communication all the more important.

**"We are elderly and retired. We have health issues and the distance to visit our son is too much, therefore our only means of communication are via telephone....We live on a limited income and do the best we can to provide funds to our son so that he can make telephone calls home, however due to the high cost of a 20 minute telephone call ...our communication is extremely limited. It is very important for all of us to keep the lines of communication open to keep a family bond. Also, our son is challenged with a terminal illness and it is important for all of us to be able to stay well informed of each of our health conditions and issues." Henrique and Joyceanne Nunes**

**"[T]he pain I feel when I have to hurriedly tell my daughter that our phone time is up and I can only talk to her again next week, is hard to bear. She doesn't understand why it's such a big deal for daddy to call her especially when she can talk all day on her cell phone without worries...I want to keep in close contact with my children so they won't go down the road I traveled. Hearing their voices and giving them my wisdom is an important way to insure they remain on the positive path. I hope you will help us-the prisoners- to stay connected with our families by lowering the cost of phone calls." Michael Gomes**

**"My dad works very few hours on his job. Most of the time he has to choose between tak[ing] my call or hanging up because there [are] bills to pay. It br[eaks] his heart but he has to do it. I can go months sometimes without any outside contact. He lives in California so he can't visit....If prices could be reduced, I believe it would bring more friend and family support, not only into my life but into others as well." Cyria Lewis**

**"This company [Securus] has very lousy service... I call home twice per day, usually so I can talk to my fiancée during the day and at night to speak with our children, as this is important. I also rely on the phone because visit hours are Friday 8am-9:30am which often is the hours my fiancée works and when our daughters are at daycare. Unfortunately, as a result of the phone rates, the calls have been becoming less frequent. As a result of the calls being less frequent, our children's behavior and emotional attitude has changed." Robert Assad**

## II. The need to eliminate site commissions

In the Notice, Sec. III, A (37), the Commission requests comment on site commissions paid to facilities, including the ways that commissions are used, how contracts vary facility by facility, and whether commissions cause telephone rates to be unreasonable in violation of 47 U.S.C.. § 201(b). Massachusetts practices demonstrate that site commissions do not reflect the cost of providing ICS, but are kickbacks to correctional agencies made by ICS providers to secure contracts and passed on to consumers. Under both § 201(b) and Massachusetts law,[5] commissions should be treated as shared profit.

### A. Commission rates and the use of funds generated by commissions in Massachusetts

PLS has presented to the DTC an affidavit of expert witness Douglas Dawson analyzing the rates of the Massachusetts Department of Corrections (DOC) and four of the Massachusetts counties whose ICS contracts PLS had obtained.[6] Commissions account for nearly sixty percent of the rates paid by customers in Plymouth County, 50-52 percent in the three other counties, and approximately 24 percent in the DOC.[7] Commissions paid to county facilities in Massachusetts are placed in a fund available for use by the facilities[8] while commissions paid to the Department

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[5] *See infra* Section II(C).

[6] Amended Aff. of Douglas Dawson, attached as Exh. 2, pp. 6-8. The rates relied upon on this affidavit were based on the most recent contracts available as of the date it was filed, April 20, 2012. Some or all contracts relied upon may have since expired.

[7] *Id.*

[8] *See* "An Act transferring county sheriffs to the Commonwealth," Senate. No. 2045, Section 12.a (enactment of the Senate and House of Representatives providing that inmate telephone funds shall remain with the office of the sheriff in abolished counties) (2009); *see also* Appendix C to "Inmate Fees as a Source of Revenue: Review of Challenges," *Report of the Special Commission to Study the Feasibility of Establishing Inmate Fees* (Power Point), Massachusetts Executive Office of Public Safety and Security (July 1, 2001) (listing use of fees collected by counties and DOC).

of Correction are transferred to the General Fund of the Commonwealth.[9] In the case of county facilities, the commission funds are used for the general welfare of the prisoners,[10] and often support programming and treatment for prisoners.[11] Although PLS clients in county facilities lack adequate programs and treatment, it is unjust and unreasonable to fund these rehabilitative activities as a hidden cost in telephone bills paid by the families of prisoners. It is even more unfair to require DOC telephone consumers to pay extra into the state budget. This is a hidden tax on a largely low-income and vulnerable population.

**B. The effect of commissions on ICS rates in Massachusetts**

As the Dawson affidavit demonstrates, the cost of providing ICS service varies little between states and between facilities, largely because of advances in technology and the centralization of ICS operations. Yet rates vary widely between states. Commissions appear to be responsible for most, if not all, of this disparity.

ICS consumers in Massachusetts counties typically pay a per-call surcharge of $3.00 for intra-state calls, which is the maximum permitted by Massachusetts law,[12] plus $ 0.10 per minute; inter-state call surcharges run as high as $3.95. The consumers in state prisons pay a

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[9] *See* G.L. c. 29 § 2 (April 1, 2003).

[10] G.L. c. 127 § 3 ("Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent.").

[11] Transcript of Massachusetts Department of Telecommunications and Cable public hearing for docket number 11-16 Testimony of Russell Homsy, Assistant General Counsel of Suffolk County Sheriff's Office, at p.88, lines 18-24 and p.89, lines 1-3, relevant pages attached as Exh. 3.

[12] *Investigation by the Dept. 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 BARIERS TO ENTRY AND EXIT, AND OSP RATE CAP*, D.P.U./D.T.E. 97-88/97-18 (Phase II) (April 17, 1988).

surcharge of $0.65 for debit calls plus $0.075 per-minute and $0.86 for collect and advance pay calls, plus $0.10 per-minute. As discussed below in Section III, PLS has received myriad complaints of dropped calls in both county and state facilities resulting in multiple surcharges for a single conversation.

ICS consumers in states that have eliminated site commissions by statute pay far lower rates. The rate in New York is less than five cents per minute for all calls, and in Michigan it is $0.12 per minute for intra-state and $0.15 for interstate, with no surcharge in either state. In Nebraska, consumers pay a surcharge (except for local calls) of $0.70 and $0.05 per minute.[13] All three states have eliminated commissions.[14]

By the terms of Massachusetts ICS contracts, half or more of the telephone bill that county consumers pay covers site commissions rather than the cost of service, and DOC consumers pay approximately a quarter of their bill toward the commissions. Indeed, in fiscal year 2012, the DOC collected $1,717,504 from ICS consumers (and transferred it to the state general fund),[15] while in fiscal year 2010, the latest year for which we have complete data, Suffolk County Jail and House of Correction alone collected $1,320,000.[16] Thus commissions are responsible for much of the difficulty reported by families of prisoners in bearing the cost of communicating with their loved ones.

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[13] *See* Dawson Affidavit at 8-9.

[14] New York, *see* McKinney's Correctional Law § 623 (2008); Michigan, *see* Act No. 245, Public Acts of 2008 (effective July 18, 2008), available at http://www.legislature.mi.gov/documents/2007-2008/publicact/pdf/2008-PA-0245.pdf; Nebraska *see* Department of Correctional Services, Administrative Regulation 205.023, Section XII, available at http://www.corrections.state.ne.us/pdf/ar/mail/AR%20205.03.pdf.

[15] *See* "Commission History, Fiscal Year 2012," from Attachment C to Massachusetts Department of Correction Request for Responses for a Secure Inmate Calling System, DOC File No. 13-DOC-Inmate Phone, December 11, 2012, attached as Exh. 4.

[16] http://www.mass.gov/eopss/docs/eops/inmate-fee-final-7-1-11.pdf at 32.

### C. Commissions are not a legitimate business cost and should be treated as shared profit

Like 47 U.S.C. § 201, Massachusetts law requires that telephone rates must be just and reasonable,[17] permitting a utility to meet its cost of service and make a "fair and reasonable return" on its investment.[18] Thus under Massachusetts law, as under Federal law, ICS providers may not pass on to consumers a charge which is unrelated to the cost of service.

Commissions do not reimburse correctional facilities for any actual cost of providing telephone service. As noted above, commissions paid to county facilities in Massachusetts are placed in a fund available for use by the Sheriff,[19] while commissions paid to the Department of Correction are transferred to the General Fund of the Commonwealth.[20] Correctional facilities, by requesting that ICS bidders offer commissions, base their selection of contractor at least in part on the amount of cash inducement offered rather than solely seeking high quality service at the most affordable rates for prison consumers. The telephone companies, in turn, offer cash inducements to win contracts, paid for by the consumers.

While the FCC has not previously barred ICS providers from including the cost of commissions in interstate rates, it has refused to allow companies to pass on the cost of commissions to customers through preemption of state rate caps or through a surcharge above

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[17] *See* G.L. C. 159, § 14

[18] *See Hingham v. Dept' of Telecommunications and Energy*, 433 Mass. 198, 203 (2000) (citing *Lowell Gas. Co. v. Dept. of Public Utils.*, 324 Mass. 80, 94-95 (1949)).

[19] *See* "An Act transferring county sheriffs to the Commonwealth," Senate. No. 2119, Section 12.a (enactment of the Senate and House of Representatives providing that inmate telephone funds shall remain with the office of the sheriff in abolished counties) (2009) (attached as Exh. 5); *see also* Appendix C to "Inmate Fees as a Source of Revenue: Review of Challenges," *Report of the Special Commission to Study the Feasibility of Establishing Inmate Fees* (Power Point) , Massachusetts Executive Office of Public Safety and Security (July 1, 2001) (listing use of fees collected by counties and DOC).

[20] *See* G.L. c. 29 § 2 (April 1, 2003).

state rate caps for local collect calls, recognizing that commissions are not a business cost.[21] The Regulatory Commission of Alaska (RCA) and Georgia Public Service Commission (GPSC) have also determined that commissions are not a cost of service and have refused to let telephone companies pass on the cost of commissions to consumers.[22]

> The inclusion of a commission requirement in a bid solicitation for regulated utility service conflicts with the regulatory objective of ensuring that utility costs are necessarily incurred and rates are just and reasonable. . . . By allowing commissions to be recovered through rates, the governing regulatory body acquiesces in this commission-based bid process and promotes a system where the service provider has an incentive to increase the price of service regardless of the actual costs incurred.[23]

In Massachusetts, ICS providers have attempted to argue that commissions are equivalent to fees or payments made to government agencies. However, under Massachusetts law, commissions are not governmental fees.[24] A governmental fee is collected "not to raise revenues but to compensate the governmental entity providing the services for its expenses."[25] Regulatory fees are ordinarily "imposed by an agency upon those subject to its regulation" to "serve regulatory purposes," raising money "to help defray the agency's regulation-related expenses."[26] The Massachusetts Executive Office of Administration and Finance, following

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[21] *In re Implementation of Pay Telephone Reclassification and Compensation Provisions of Telecommunications Act of 1996, ORDER ON REMAND & NOTICE OF PROPOSED RULEMAKING* ("FCC Prison Payphone Order"), FCC No. 02-39, 2002 WL 252600 **7, 17 F.C.C.R. 6347 (Feb. 21, 2002).

[22] *Re Evercom Systems Inc., ORDER GRANTING IN PART, AND DENYING IN PART, PETITION FOR RECONSIDERATION*, Regulatory Commission of Alaska No. U-00-143, 2001 WL 1246903 (April 24,2001); *Re Investigate Long Distance Charges, CORRECTED ORDER*, Georgia Public Service Commission No. 14530-U, 2002 WL 31096880 (March 19, 2002).

[23] *Re Evercom Systems, Inc.*, Regulatory Commission of Alaska, 2001 WL 1246903 at *4.

[24] *Emerson College v. City of Boston*, 391 Mass. 415 (1984), at 424. *See also Nextel Communications of Mid-Atlantic, Inc. v. Town of Randolph*, 193 F.Supp.2d 311, 321 (D. Mass, 2002), *Greater Franklin Developers Ass'n v. Town of Franklin*, 49 Mass.App.Ct. 500 (2000).

[25] *Id.*, at 425.

[26] *Nuclear Metals, Inc. v. Low-Level Radioactive Waste Management Bd.*, 421 Mass. 196 (1995), citing Justice Breyer's opinion in *San Juan Cellular Tel. Co. v. Public Serv. Comm'n of P.R.*, 967 F.2d 683, 685 (1st Cir. 1992).

these principles, provides in its fee-setting procedures that "[f]ees may not be used purely as a tool to raise revenue, but should reflect the government's expense in providing the service associated with the fee."[27]

Commission payments to the correctional facilities in Massachusetts are used to raise general revenue in precisely the way that a governmental fee may not. They are not used to cover costs related to ICS but, rather, payments to the DOC are channeled into the general fund of the state treasury,[28] while county facilities use the commissions for the general welfare of the prisoners.[29] In addition, commissions are not regulatory fees because they do not "bear at least a 'rough correlation to the expense to which the State is put in administering its licensing procedures or to the benefits those who make the payments receive.'"[30] The large amounts collected in commissions -- $1,717,504 to the DOC in FY 2012, and $1,320,000 to the Suffolk County Jail and House of Correction[31] -- surely dwarf the actual cost of any ICS-related expenses that are not already assigned to the providers under the terms of the contract.

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[27] Executive Office of Administration and Finance, "Procedures for Setting Fees" (ANF 6), June 25, 2008, Appendix C, at p. 30, available at http://www.mass.gov/anf/budget-taxes-and-procurement/admin-bulletins/procedures-for-setting-fees-anf-6.html.

[28] *See* G.L. c. 29 § 2 (April 1, 2003).

[29] G.L. c. 127 § 3, "Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent."

[30] *Walton v. N.Y. State Dep't of Corr. Svces.*, 921 N.E.2d 145, 151 (N.Y. Court of Appeals 2009) (citation omitted) (holding, where state legislature had passed a law banning commissions from telephone charges, that customers were not entitled to a refund of charges paid previously because the practice did not violate the state constitution, commissions were not a tax or fee, and therefore there was no entitlement to a refund as an unlawful tax or fee).

[31] *See* "Commission History, Fiscal Year 2012," from Attachment C to Massachusetts Department of Correction Request for Responses for a Secure Inmate Calling System, DOC File No. 12-DOC-Inmate Phone, December 11, 2012, attached as Exh. 4; .http://www.mass.gov/eopss/docs/eops/inmate-fee-final-7-1-11.pdf at 32.

Neither do commissions reimburse correctional facilities for the rental value of the telephones' location. Indeed, the FCC has held that prison payphones actually add value to the premises: "A payphone that 'earns just enough revenue to warrant its placement, but not enough to pay anything to the premises owner' is 'a viable payphone…because the payphone provides increased value to the premises.' Therefore, *location rents are not a cost of payphones but should be treated as profit.*"[32] The New Mexico Public Regulation Commission similarly determined that the space occupied by prison payphones has no rental value, noting that prisons have a legal obligation to provide access to telephone service, telephones do not occupy an additional room, and prisons have no other potential paying tenant other than one commissary at each facility.[33]

In Massachusetts, as elsewhere, the ICS providers have argued that site commissions are a required cost of doing business because they are demanded by facilities in requests for proposals. A utility regulator cannot, of course, dictate the terms of ICS contracts. However, the providers' argument asks that utility regulators *subordinate* their own legal standard to the dictates of correctional facilities. Taken to the extreme, such an argument suggests that a facility could in its RFR require 90 percent commissions, or could require services and hardware that fail to meet safety, environmental or other regulatory standards. It is true that protecting consumers from bearing the cost of commissions, as the "just and reasonable" standard requires,

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[32] *FCC Prison Payphone Order* at **4, quoting *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1966, THIRD REPORT AND ORDER, AND ORDER ON RECONSIDERATION OF THE SECOND REPORT AND ORDER*, 14 FCC Rcd.2545, 2562 (1999), *pet. Den. Sub nom American Public Comm. Council f. FCC*, 215 F.3d 51 (D.C. Cir. 2000) ("*Third Report and Order*") (emphasis supplied).

[33] *In the Matter of a Commission Inquiry into the Rates and Charges of Institutional Operator Service Providers, RECOMMNENDED DECISION OF THE HEARING EXAMINER*, New Mexico Public Regulation Commission No. 07-00316-UT, November 4, 2010, at 67 ("New Mexico Rate Inquiry"), *adopted by the Commission in ORDER REMANDING CASE ON THE ISSUE OF RATE-OF-RETURN*, December 22, 2010, at 2.

will limit drastically or eliminate the amount of commissions that facilities can require and that providers can offer. But contracts are bounded by many aspects of consumer protection law. This agency is not powerless to enforce its own standards.

### D. The FCC should support state efforts to protect ICS consumers from site commissions

Ensuring that consumers pay a just and reasonable rate is the guiding principle of state regulatory law across the country.[34] The FCC's leadership on this issue is essential to give meaning to this common standard. Many states have already protected consumers from site commissions in intra-state rates, through statute, the discretion of correctional agencies, or – in

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[34] *See* Ala. Code § 37-1-80 (2013); Alaska Stat. § 42.05.381 (2013); Ariz. Rev. Stat. Ann. § 40-361 (2007); Ark. Code Ann. § 23-4-103 (West 2012); Cal. Pub. Util. Code § 451 (2012); Colo. Rev. Stat. § 40-3-101 (2013); Del. Code. Ann. tit. 26, § 303 (2013); D.C. Code § 34-911 (2013); Ga. Code Ann. § 46-2-23 (West 2012); Haw. Rev. Stat. § 269-16 (2013); Idaho Code Ann. § 61-301 (2013); 220 Ill. Comp. Stat. 5 / 9-101 (2013); Ind. Code § 8-1-2-4 (2012); Iowa Code § 476.1D (2013); Kan. Stat. Ann. § 66-1,189 (2013); Ky. Rev. Stat. Ann. § 278.030 (2012); La. Rev. Stat. Ann. § 45:163 (2012); Me. Rev. Stat. tit. 35-A, § 301 (2012); Md. Code Ann., Pub. Util. Cos. § 4-201 (West 2013); Mass. Gen. Laws ch. 159, § 17 (2012); Minn. Stat. § 237.05 (2012); Miss. Code Ann. § 77-3-33 (2012); Mo. Rev. Stat. § 392.200 (2012); Mont. Code Ann. § 69-3-807 (2011); Neb. Rev. Stat. § 75-119 (2012); Nev. Rev. Stat. § 704.040 (2013); N.H. Rev. Stat. Ann. § 374:1 (2012); N.J. Rev. Stat. § 48:3-1 (2013); N.M. Stat. Ann. § 63-9A-8.1 (2012); N.Y. Pub. Serv. Law § 91 (Consol. 2013); N.C. Gen. Stat. § 62-132 (2012); N.D. Cent. Code § 49-04-02 (2011); Ohio Rev. Code Ann. § 4905.22 (2012); Okla. Stat. tit. 17, § 137 (2012); Or. Rev. Stat. § 759.035 (2011); 66 Pa. Cons. Stat. § 1301 (2012); R.I. Gen. Laws § 39-2-1 (2011); S.C. Code Ann. § 58-3-140 (2011); S.D. Codified Laws § 49-31-4 (2012); Tenn. Code Ann. § 65-4-122 (West 2012); Tex. Util. Code Ann. § 53.003 (2011); Utah Code Ann. § 54-3-1 (2012); Vt. Stat. Ann. tit. 30, § 218 (2010); Va. Code Ann. § 56-234 (2012); Wash. Rev. Code § 80.36.080 (2012); W. Va. Code § 24-3-1 (2012); Wis. Stat. § 196.03 (2013); Wyo. Stat. Ann. § 37-15-404 (2012). *See also* Conn. Gen. Stat. § 16-20 ("If any public service company or private water company unreasonably fails or refuses to furnish adequate service at reasonable rates to any person within the territorial limits within which the company has, by its charter, authority to furnish the service or, in the case of a nonfranchised, nonchartered private water company, the general territorial limits within which it operates, and if no other specific remedy is provided in this title or in regulations adopted thereunder, the person may bring a written petition to the Department of Public Utility Control alleging the failure or refusal."); Conn. Gen. Stat. § 16-247b (2013) ("(b) Each telephone company shall provide reasonable nondiscriminatory access and pricing to all telecommunications services, functions and unbundled network elements and any combination thereof necessary to provide telecommunications services to customers.").

the case of Alaska and Georgia – through the rulings of state regulatory agencies.[35] In other states, such as Massachusetts, ICS consumers are struggling to rid themselves of this burden.

If the FCC fails to protect consumers from paying site commissions through interstate rates, this will undermine the efforts of those states that have already acted to protect consumers. ICS providers may seek to recover the cost of commissions through interstate rates where they are banned from passing on such charges through intrastate rates. This burden will fall hardest on families of prisoners held in far-off states, those least able to visit in person. Perhaps more importantly, FCC action is needed in order to encourage states that have not yet acted, such as Massachusetts, to give meaning to the "just and reasonable" standard.

**E. The need to eliminate per-call surcharges**

If ICS service were reliable, then it might be reasonable to suggest that some cost be recovered up front in a surcharge, rather than spread out in per-minute charges, and that consumers making a short call should effectively pay more per-minute than those making longer calls. However, because ICS service is unreliable, consumers often pay the same surcharge two or three times for a single call, whether because the call is dropped or because the connection is

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[35] For statutes and regulations, *see* California, Cal. Gov't Code § 15819.40 Amended by Stats. 2007, c. 175 (S.B.81), § 1, eff. Aug. 24, 2007; Michigan, Act No. 245, Public Acts of 2008 (effective July 18, 2008); Nebraska Department of Correctional Services, Administrative Regulation 205.023, Section XII, available at http://www.corrections.state.ne.us/pdf/ar/mail/AR%20205.03.pdf; New York, McKinney's Correctional Law § 623 (2008); Rhode Island, R.I. Gen. Laws New Mexico, N.M.S.A. 1978, Section 33-14-1 (2001); § 42-56-38.1(c) (2007); South Carolina, S.C. St. § 10-1-210 (2008); Washington D.C., D.C. Code § 24-263.01 (2001). Michigan, Act No. 245, Public Acts of 2008 (effective July 18, 2008); Nebraska, Department of Correctional Services, Administrative Regulation 205.023, Section XII, available at www.corrections.state.ne.us/pdf/ar/mail/AR%20205.03.pdf; for rulings of state regulatory agencies, *see Re Evercom Systems Inc., ORDER GRANTING IN PART, AND DENYING IN PART, PETITION FOR RECONSIDERATION*, Regulatory Commission of Alaska No. U-00-143, 2001 WL 1246903 (April 24,2001); *Re Investigate Long Distance Charges, CORRECTED ORDER*, Georgia Public Service Commission No. 14530-U, 2002 WL 31096880 (March 19, 2002).

so bad they must reinitiate. This would be an unfair burden even if the surcharge were small, but with exorbitant surcharges such as charged in Massachusetts and elsewhere, dropped and inaudible calls create an intolerable burden on prisoners' families.

The Notice, Sec. III, A (19), asks for data and comments regarding multiple per call charges for a single call. Petitioners in the pending complaint with the DTC reported bad connections and dropped or cut off calls as the most pervasive problems they faced as ICS consumers. In the 32 affidavits filed with the petition, consumers reported experiencing static frequently. Although some reported experiencing static in about a third of the calls, many reported that most or almost all of the calls were plagued by static, making the call virtually inaudible and forcing them to reinitiate the call incurring another surcharge. They also reported dropped or cut off calls in as many as 60 to 70% of the calls.[36]

The 228 letters the DTC received from prisoners and their loved ones in 2012 very clearly echo the same problems and frustrations experienced by the 32 petitioners who submitted affidavits in 2010. Experience with dropped calls was mentioned in 79% of the letters, while bad connections and/or poorly maintained equipment was mentioned in 68% of the complaints. Below are some excerpts from those letters.

In addition to bad connections and dropped calls, the comments of prisoners and their families to the DTC in 2012 frequently reported billing problems, including overcharging, (43%); false detection of third party calls (17%); and excessive playing of recorded announcements during the call (25%).

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[36] *See Amendment 1 and Supplement to Petition* at 6-14 at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/amend1supp51810.pdf.

**"I am a customer of global tel link and am having trouble with my phone service. I am experiencing calls dropping. I can hear him when he['s] talking but he cannot hear me. He [has] to call me back several times in order for the phone to get back right. This is still taking money off my account...I don't have...trouble getting calls from anyone else that calls my phone." Sonia Sellers**

**"Despite the high cost of telephone calls, we have experienced poor quality connections, at other times we could hear our son but he could not hear us and vise-versa. We have experienced dropped calls, and that is an increased expense because the largest portion of the call is to connect for the first minute. Further, at least three times per call an over-riding and intrusive telephone recording states "this call is from a Massachusetts Correctional Facility." We are well aware that our son is incarcerated and do not need this over-riding and intrusive recording to interrupt our conversation that we are paying for." Henrique and Joyceanne Nunes**

**"The quality of the phone system is very poor, despite the exorbitant fees they charge. I constantly have to tell my son to speak up; there is always static in the phone; my son often states he cannot hear me, so he will have to cut my call short, only to change to another phone, which is sometimes even worse than the first one." Lula Koonce**

Sec. III, A (19) also requests comment on how to ameliorate the problem of multiple surcharges for a single call. In addition to eliminating the surcharge altogether, ICS providers should: 1) repair or replace all non- or malfunctioning telephone equipment as part of providing its service, including telephone units and lines; 2) 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; 3) 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 4) 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.

The Petitioners' suggestion that a call reinitiated within two minutes should not incur another per-call charge is constructive, to the extent that per-call charges are permitted as part of the pricing structure. However, PLS fears that such a policy might be inconsistently implemented, leaving consumers to seek refunds – if they can – through a burdensome and often

ineffective phone company process. In fact, 41% of the public comments received by the DTC state that customer service is unresponsive to complaints by consumers.

> **"Some of the problems that I am encountering with the GTL service is: [d]ropped Call[s], no response from the customer service department[,]...[c]ommunication on the phone sometimes breaks up, [i]f money is placed on the phone by inmates, when we call and can not get through and attempt to recall sometimes the system states that we have a lower amount or none at all. We then have to wait for an hour or so until the system resets itself." Ricardo Feliciano**
>
> **"...GTL takes no responsibility on the quality of their phone service, even after I filed complaints to them they have never admitted any error in their system and never have refunded me on calls where I was disconnected or overbilled." Brian Davis**

PLS therefore urges that per-call surcharges be eliminated. There is no reason that ICS providers cannot recover costs plus a reasonable return on investment through per-call charges, as demonstrated by existing ICS contracts with no surcharges, such as those in New York, Rhode Island and Michigan. Per-minute charges would appear to be even more likely to yield a profit for interstate calls than intrastate, since these are most likely to substitute for in-person visits and therefore to be of substantial duration.

## III. The need for per-minute rate caps

A cap on the per-minute rate is necessary to ensure just and reasonable ICS charges. The Dawson Affidavit highlights large differences in ICS rates between various states and between state and county facilities in Massachusetts. The fact that providers are able to profitably offer low rates in some jurisdictions (under five cents per minute in New York) suggests that where rates are much higher the providers and facilities (through commissions) are reaping profits far in excess of their costs.[37]

[37] *See* Dawson Affidavit pp. 8-9.

In support of this argument Dawson points to technological changes that have centralized ICS operations and reduced capital investment costs. Not only has this created economies of scale and brought down the cost of providing ICS service, it has also radically reduced or eliminated the difference in the cost of providing ICS to different facilities, be they small or large.[38] In essence, if ICS service can profitably be offered at under $0.10 in some facilities, it can profitably be offered at that rate in all facilities.

Dawson supported the benchmark rates proposed in the Wright Petitioner's Alternative Petition of 2007, of $0.20 per minute for debit calls and $0.25 per minute for collect calls. However, in the attached affidavit he argues that technological changes since then have further reduced the cost of providing service, and he estimates that per-minute costs have probably been cut in half since 2007, supporting a far lower rate.

## IV. Marginal location methodology

In the Notice, Sec. III, A (24), the Commission asks if it is appropriate to rely on "marginal location methodology" adopted to calculate public payphone rates in order to calculate ICS rates, as advocated in the CIS Provider Proposal. PLS has not analyzed this question in detail, but does not agree that marginal location methodology is appropriate for analyzing the costs of ICS. It is clear, however, that ICS rates should take into account the far higher volume of calls at prison pay phones than other pay phones, which results in greater profits than at public pay-phones even at a lower per-call or per-minute rate. While public pay phones have fallen to disuse as residential service and then cell phone service expanded, prisoners remain a captive market for the pay phones in their facilities.

[38] *See* Dawson Affidavit pp. 9-27.

In its 2005 Request for Responses, the Massachusetts DOC required 1,028 telephones for prisoners,[39] and it is fair to assume that the existing contractor, GTL, maintains approximately that number of telephones today. There are approximately 11,000 prisoners in DOC custody,[40] all of whom must use these telephones for all legal and personal phone calls. This means that on average about eleven prisoners depend exclusively on each telephone for all calls. DOC statistics for FY 2012 show that accepted phone calls totaled 48,699,751 minutes, which means that each telephone was used on average about 47,374 minutes over the year and, on average, about 130 minutes each day.[41]

While PLS does not have data on public pay phone usage, it seems apparent that these telephones do not come close to such usage, but rather are largely abandoned and frequently broken. PLS clients report having to wait to use telephones.[42] ICS use in Massachusetts would seem not only to dwarf pubic payphone use, but even to exceed residential landline use. It is extremely doubtful that many landlines exclusively serve ten individuals (particularly given the availability of cell phones and the spreading of calls between home and office), or are in use an average of 130 minutes per day.

## V. Impact of Rate reductions on call volume

In the Notice, Sec. III, A (24), the Commission asks whether call volumes have increased where call rates have been lowered. PLS does not have data on the price-sensitivity of call

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[39] *See* Exh. 6, DOC Request for Responses, July 11, 2005, Attachment B, "Required Number of Inmate Telephone Instruments."
[40] *See* Exh 7, Weekly Count Sheet, Massachusetts DOC, March 18, 2013, p.2.
[41] *See* DOC Request for Responses for a Secure Inmate Calling System, DOC File NO. 13-DOC-Inmate Phone, December 11, 2012, Attachment C, attached as Exh. 4
[42] *See* public comments submitted to DTC of Michael Borodine at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/mborodinecmts.pdf; Thomas Koonce at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/tkooncecmts.pdf; and Lula Koonce at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/lkooncecmts.pdf.

volume. However, many prisoners have stated that they cannot afford to speak with their loved ones as frequently or as long as they would like[43], suggesting that demand for ICS service would increase if rates were limited.

## VI. Billing-Related Call Blocking

ICS providers in Massachusetts are reluctant to enter into agreements with Local Exchange Carriers to provide for billing collect calls, as described in the Notice, Sec. II, A (40), meaning that collect calls will not be placed to most homes, unless their carrier has an agreement with the ICS provider. Massachusetts ICS consumers are therefore forced to go through the process of establishing a prepaid account with the provider for the facility housing their loved one, and must pay an exorbitant fee to do so. While the Massachusetts DOC has insisted that GTL eliminate service charges to set up prepaid accounts, consumers who receive calls from county facilities pay Securus a 13.9% service charge and to set up a prepaid account with a credit card, or $6.95 for a $50 deposit. This charge essentially increases telephone call costs by almost 14%.

In an era of computerized billing and instant credit card transfers such fees cannot bear any relation to the actual costs of administering prepaid accounts. The FCC should regulate this as an important component of ICS rates.

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[43] *See* letters submitted to DTC for public comment of: Tyran Daniels attached at Exh. 8; Dennis Kelley at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/dkelleycmts.pdf; Ky James at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/kjamescmts.pdf; Michael Rompa at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/mrompacmts.pdf; Robert Assad at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/rassadcmts-20120802102415.pdf; Pernell Saunders at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/psaunderscmts.pdf; Michael Marney at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/mmarneycmts.pdf; Michael Gomes at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/mgomescmts.pdf; Brian Davis at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/bdaviscmts.pdf; Cyria Lewis at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/clewiscmts.pdf

## Conclusion

Massachusetts ICS consumers look to the FCC to vindicate their right to just and reasonable rates, which is the same under governing state law as under federal law. FCC regulation will not only ensure affordable interstate calls to many who now simply cannot afford them, it will also establish guidance as our state regulatory agency evaluates intrastate rates. This matter is urgent for children and other relatives who long to speak with loved ones in prison, and for prisoners who need family ties and outside connections for successful reentry. We hope the FCC will act speedily to end profiteering at the expense of these consumers.

# EXHIBIT 1

JUL 17 2012

July 13, 2012

Anna Lednum
121 Palmetto Drive
Edgewood, MD 21040

**Prisoner's Legal Services**
Attn: Ms. Leslie Walker
10 Winthrop Square
3rd Floor
Boston, MA 02110

**Subject: Phone Service For Inmates at MCI -Norfolk, MA Concerning Cedric Lednum, W88861**

Dear Ms. Walker:

I am the mother of Cedric Lednum, W88861, an inmate at MCI – Norfolk, MA. Since his Dad and I support Cedric's phone debit account, we truly appreciate and thank you for your efforts to rectify the very poor phone service we receive.

Cedric says it may help you to hear from others involved, as well as the inmates; otherwise I would simply not bother you with our complaints.

Cedric calls us averaging four times per week, depending on what needs to be discussed (health, real estate, family, etc.) MCI's phone service is deplorable. I will try to be concise in my details.

1) **Cedric's Voice Quality:** Always very poor. Volume weak with a "cave" effect often during calls. The words are often garbled and his sentences are obliterated or interrupted by static, clicking and announcements. This results in indiscernible speech and missed content.

2) **Dropped Calls:** Occasionally our call is simply dropped/cut off, or ended one or two minutes early.

3) **Switching Phones:** Due to the poor phone service, often we must drop a call and try again. Cedric will go to a different phone; usually it is having the same problems also.

4) **Repeated Calling:** Again, due to the poor quality of phone reception repeated calling is common occurrence. Having to repeat the call is expensive, and especially troublesome when due to Poor Service.

5) **"20 Minute" Call Rule:** Not only is repeating the call expensive and troublesome, but there are times when we have to discuss personal family business. The rule of "20 Minute Calls" becomes ridiculous because the majority of the time is spent trying to establish a decent connection and we can't discuss our personal matters within this timeframe. I feel this rule "fills someone's coffers" unnecessarily.

6) **Inaccurate Debit Amounts:** Very frequently erroneous remaining debit amounts are quoted; this results in difficulty budgeting and replenishing Cedric's phone fund in a timely manner.

We look forward to fundamentally functional prison phone services at MCI for inmates and pertinent families and friends. With God's blessing, Cedric may be paroled in about two years. Phone service, now, while he is an inmate, has extended ramifications. It is another crucial factor in building and maintaining his future. He cannot be totally cut off from the "outside world" for two more years, then face society in reality and expect normalcy.

Letters for communication are wonderful. No letter, however, can compare to hearing Cedric's voice and conversing with him. We love him dearly. He is a wonderful person and son. Phone conversation not only provides voice contact, but also immediacy and voice inflections, i.e., modulations of voice: tone, pitch and distribution of stress placed on particular phrases/words. We anxiously await his calls. They are very important to us as well as to Cedric.

Again, we thank you greatly for your representation to improve the phone service for the inmates at MCI.

Yours truly,

Anna Lednum

Anna R. Lednum

EXHIBIT 2

**Before the**
**COMMONWEALTH OF MASACHUSETTS**
**DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

**No. D.T.C 11-16**

**PETITION OF REIPIENTS OF COLLECT CALLS FROM PRISONERS AT CORRECTIOANL INSTITUTIONS IN MASSACHUSETTS SEEKING RELIEF FROM THE UNUST AND UNREASONABLE COST OF SUCH CALLS**

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**AMENDED AFFIDAVIT OF DOUGLAS A. DAWSON**

## I. INTRODUCTION

1. My name is Douglas A. Dawson, and I am President of CCG Consulting, Inc. ("CCG"), located at 7712 Stanmore Drive, Beltsville, Maryland, 20705. CCG is a general telephone consulting firm. CCG works for over 450 communications companies, which includes competitive local exchange companies (CLECs), local telephone companies, cable TV providers, electric companies, wireless providers, wireless companies, municipalities and governments and internet service providers.

2. This affidavit has been amended at one place. In paragraph 17 I have changed the commission rate collected by DOC and added a footnote explaining the change.

3. I have specific experience that is relevant to the issues in this case. This case involves the cost of providing local and long distance calling for jails and prisons. I have assisted in the launch of over 50 long distance companies in my career. In that role, I have done just about everything possible associated with creating or running long distance companies. I am familiar with all regulatory aspects of long distance service including the development of prices and costs and the writing and filing of tariffs. I have helped numerous companies select the hardware for providing

long distance service. I have negotiated numerous times with wholesale long distance providers such as Sprint, AT&T, Level3 and CenturyLink. I understand the details about the underlying long distance networks and issues associated with using them. I have had extensive experience with and, consequently, have an in-depth understanding of the capabilities and configurations of network switching systems, which lie at the heart of what all telephone systems can do. I also have helped numerous companies with the provisioning of ancillary long distance products such as calling cards, operator services, pre-paid cards, international toll, and Voice Over IP (VoIP) long distance.

4. In this affidavit, I have been asked to support the original petitioners in the case who claim that the rates charged for prison calling in Massachusetts are unreasonable. Recently Securus and GTL made arguments in their responsive pleadings asking for the case to be dismissed and said that the petitioners provided insufficient evidence that the rates charged in the state are too high. I believe that the DTC should hear this case. My primary argument is that there are other states with lower long distance rates for prisons, and the fact that prison providers accept contracts in those other states is sufficient evidence that the rates in Massachusetts are higher than necessary. Further, Respondents make claims that the costs of providing prison calling have increased since the original petition for this case was filed in 2009. I will argue below that the prison provider's costs to provide long distance services have dropped precipitously in the last few years. The petitioners have retained me as an expert witness and the original plan was for me to file extensive testimony once this docket moved forward. For now, since time is short, my goal is to explain briefly why the claims made by Securus and GTL are without merit and why the DTC should hear this case.

5. For the reasons set forth in this affidavit and based on my extensive background in the telecommunications field, I conclude that the rates charged for calling in Massachusetts are excessive. I further contend that the costs of providing prison calling has dropped precipitously over the last few years, rather than increased as claimed by the petitioners. In brief, in this affidavit, I will a) discuss my background and qualifications in the field of telecommunications, b) briefly discuss

how the rates in Massachusetts are higher than rates in many other places, and c) discuss how costs have dropped dramatically for prison telephone providers in the last few years.

## II. Background

6. I received a Bachelor of Science in Accounting from the University of Maryland in 1977. In addition, I received a Masters degree in Mathematics from the University of California at Berkeley in 1985.

7. I began my telephone career in 1975 as a test technician building telephone switches for Litton Industries in College Park, Maryland. In this position I did system integration testing and learned in detail how early digital switches operate.

8. My next telephone job began in 1978 with John Staurulakis, Inc. ("JSI"). JSI is a telephone consulting firm that specializes in consulting for independent telephone companies (those smaller telephone companies that were not part of the Bell System). In this job, I worked on separations cost of service studies for Independent Telephone Companies. In this role, I had my first detailed exposure to developing the costs of providing telephone service. Additionally, I performed numerous traffic studies for switches. These studies were used to determine the patterns of customer usage for switches, and were used to determine costs, but also were used to determine the most efficient way to configure the switch and the network.

9. Next, in 1981 I became a Staff Manager of Industry Relations at Southwestern Bell Telephone Company in St. Louis, Missouri. Southwestern Bell was a huge regional telephone company that is now part of AT&T. My functions there included tracking issues that impacted Bell's relationships with the independent telephone industry, calculating and negotiating various interconnection and settlement rates between companies for local calling and other network arrangements, and overseeing the review of an independent telephone company's traffic and toll cost studies. In performing the traffic studies I had hands on experience working with measuring usage on

a number of different brands of switches. I also served for a period of time as a member of the rate case team for the Missouri operations. In working on rate cases, I further developed my knowledge of calculating and developing telephone costs.

10. In my next position, beginning in 1984, I gained operating telephone company experience at CP National in Concord, California. CP National was a holding company that owned, among other things, 13 telephone companies. I had several jobs with increasing responsibility and ended as Director of Revenues. In that capacity, I oversaw a large group that performed telephone accounting, separations and traffic engineering studies for a seven-state area. My group also monitored earnings, developed access and local rates, maintained tariffs, filed rate cases, and monitored and commented in state and federal regulatory proceedings. In this role, I was directly responsible for setting rates and for defending those rates in front of various regulatory authorities. Thus, I testified in a number of rate-making cases and regulatory proceedings in California, Texas, Nevada, Oregon and Arizona and New Mexico. Part of my responsibility at CP National included calculating costs and setting rates for four separate operator centers where the company maintained telephone operators for completing collect and other types of operator-assisted calls. While at CP National, I also became responsible for earnings monitoring and rate case development for electric, gas and water properties.

11. In my next position, in 1991 I again joined John Staurulakis, Inc. in various capacities. My final position there was as Director of Special Projects. In that capacity, I oversaw all projects and clients who were not historically part of JSI's core cost separations business. Some of the projects I worked on included assisting clients in launching long distance companies and to become internet service providers; studying and implementing traditional and measured local calling plans; developing optional toll and local calling plans; performing embedded Total Element Long-Run Incremental Cost ("TELRIC") and incremental cost studies for products and services; assisting in local rate case preparation and defense; and conducting cross-subsidy studies

determining the embedded overlap between telephone services. In this role, I gained in-depth experience in long distance rates rate setting and the regulatory process. I also became thoroughly familiar with the underlying costs of running a long distance company, and providing telephone service.

12. In 1997, I became a founder and owner of Competitive Communications group, LLC. The company has subsequently been reformed as CCG Consulting, LLC. My title at CCG is President and I am directly responsible for all of the consulting work performed by our company. As a firm we offer the following telephone consulting products and services that are needed by companies that are launching new ventures or entering new markets, all under my direct control and supervision:

- Engineering services, including:
  - Analysis of telephone hardware for switching and networks
  - Detailed network design and development
  - Developing switching specifications and provisioning new switches into service
  - Developing RFPs and analyzing vendors;
- Development of financial business plans;
- Market segmentation studies to understand markets and customers;
- Competitive research including rates and services of other providers;
- Strategic analysis and planning;
- Marketing plans;
- Regulatory work including certification of companies to provider service, development and filing of tariffs and regulatory compliance to make certain companies are meeting regulatory requirements;
- Implementation assistance for start-up companies including:
  - Negotiating interconnection agreements with other carriers
  - Negotiating network implementation and collocation of equipment with other carriers;
  - Choosing vendors for billing, back office, operator services and other external requirements
  - Ordering trunks (telephone lines that go between different networks)
  - Detailed hands-on project management;
  - Assistance in developing and implementing accounting systems;
  - Development of rates;

- Calculation of costs.

## III. RATE ISSUES

15. The purpose of this section is to highlight a few other states where rates are significantly lower than the rates charged today in Massachusetts, which is sufficient proof that the rates in Massachusetts are too high. If and when this case proceeds to an evidentiary hearing, I will provide a more detailed and comprehensive analysis of rates in other states as they compare to Massachusetts.

16. One thing that anybody who looks at prison calling rates will instantly see is how widely the rates vary. This is often the case even within the same prison or jail where the rates for state and interstate rates might be quite different, although the costs are nearly identical. Generally it seems like prison telephone providers will charge as much for calls as they can get away with in each jurisdiction. As can be seen by a few of the rates I list below, there is a big discrepancy even within Massachusetts between the rates charged by state prisons and those charged by County facilities.

17. Following are some examples of the rates charged in Massachusetts today. The first rates below are the rates used by GTL for the Massachusetts Department of Corrections. In this document I will refer to those as the **DOC rates**.

The DOC Commission rate is rates is 15% for debit calls and 30% for collect calls. The composite effective Commission rate is 24%.[1]

[1] In the 'Third Amendment to Contract for a Secure Inmate Calling System and Related Serves, DOC File No. 1000-PHONE2006' dated September 9, 2010 the commission rate was lowered to 30% on collect calls and 15% on debit calls. In the most recent 'RFR for a Secure Inmate Calling System and Related Services, DOC File No. 13-DOC-Inmate Phone' the effective commission rate for the two types of calling combined can be calculated at just over 24% for 2012 based on the revenues and commissions listed on the final page of Attachment C. That page shows $7,132,095.44 of calling revenue for 2012 and $1,717,504.80 of commissions paid.

Debit Calls

| | |
|---|---|
| Local | $0.65 Surcharge plus $0.075 per minute |
| State IntraLata | $0.65 Surcharge plus $0.075 per minute |
| State InterLata | $0.65 Surcharge plus $0.075 per minute |
| Interstate | $0.65 Surcharge plus $0.075 per minute |

Collect Calls

| | |
|---|---|
| Local | $0.86 Surcharge plus $0.10 per minute |
| State IntraLata | $0.86 Surcharge plus $0.10 per minute |
| State InterLata | $0.86 Surcharge plus $0.10 per minute |
| Interstate | $0.86 Surcharge plus $0.10 per minute |

18. In addition to the DOC rates, there are contracts for different rates among many County and city-owned correctional facilities. Following are some examples of these other rates:

**Rates for the Plymouth County Sheriff's Department (GTL)**

The Plymouth rates include a 60% commission plus a monthly fee of $2.89 for anybody who receives a bill.

All Calls

| | |
|---|---|
| Local | $3.10 for the 1st minute and then $0.10 per minute |
| State IntraLata | $3.10 for the 1st minute and then $0.10 per minute |
| State InterLata | $2.60 for the 1st minute and then $0.10 per minute |
| Interstate | $3.95 for the 1st minute and then $0.89 per minute |

**Suffolk County Sheriff's Department (Securus)**

The Suffolk rates include a 50% commission.

Debit Calls

| | |
|---|---|
| Local | $0.50 per minute |
| State IntraLata | $0.50 per minute |
| State InterLata | $0.50 per minute |
| Interstate | $0.50 per minute |

Collect Calls

| | |
|---|---|
| Local | $2.85 Surcharge plus $0.10 per minute |
| State IntraLata | $2.85 Surcharge plus $0.10 per minute |
| State InterLata | $3.00 Surcharge plus $0.10 per minute |
| Interstate | $3.00 Surcharge plus $0.89 per minute |

**Hampden County Sheriff's Department (Securus)**

The Hampden rates include a 52% commission plus payment of $3,500.

| All Calls | |
|---|---|
| Local | $2.50 Surcharge plus $0.50 per call |
| State IntraLata | $2.50 Surcharge plus $0.10 per minute |
| State InterLata | $2.50 Surcharge plus $0.10 per minute |
| Interstate | $3.95 Surcharge + $0.89 the 1st minute then $0.10 per minute |

**Barnstable County Sheriff's Department (Securus)**

The Barnstable rates include a 52% commission

| All Calls | | |
|---|---|---|
| Local | | $3.00 Surcharge plus $0.10 per minute |
| Interstate | | $3.95 Surcharge plus $0.89 per minute |
| State IntraLata & InterLata | | $3.00 Surcharge plus the following per minute rates: |
| Day | 0 – 10 Miles | $0.10 for 1st minute then $0.06 per minute |
| | 11 – 14 Miles | $0.10 for 1st minute then $0.09 per minute |
| | 15+ Miles | $0.10 for 1st minute then $0.10 per minute |
| Evening | 0 – 10 Miles | $0.074 for 1st minute then $0.055 per minute |
| | 11 – 14 Miles | $0.10 for 1st minute then $0.055 per minute |
| | 15+ Miles | $0.10 for 1st minute then $0.061 per minute |
| Night/Wknd | 0 – 10 Miles | $0.046 for 1st minute then $0.036 per minute |
| | 11 – 14 Miles | $0.054 for 1st minute then $0.036 per minute |
| | 15+ Miles | $0.078 for 1st minute then $0.036 per minute |

19. Following are now some examples of state rates that are priced far lower than some of the rates being used in Massachusetts particularly by the Counties. These are examples of the collect calling rates from some other state DOC contracts.

**New York (Unisys/VAC)**

| | |
|---|---|
| All calls | $0.048 per minute with no surcharge |

**Michigan (Embarq)**

| | |
|---|---|
| Local | $0.12 per minute with no surcharge |
| State IntraLata | $0.12 per minute with no surcharge |
| State InterLata | $0.12 per minute with no surcharge |
| Interstate | $0.15 per minute with no surcharge |

**Rhode Island (GTL)**

| | |
|---|---|
| Local | $0.70 per call with no surcharge |
| State IntraLata | $0.70 per call with no surcharge |
| State InterLata | $0.70 per call with no surcharge |
| Interstate | $1.30 Surcharge plus $0.30 per minute |

**Nebraska (PCS)**

| | |
|---|---|
| Local | $0.70 per call with no surcharge |
| State IntraLata | $0.70 Surcharge plus $0.05 per minute |
| State InterLata | $0.70 Surcharge plus $0.05 per minute |
| Interstate | $0.70 Surcharge plus $0.05 per minute |

20. The fact that there are states that have lower rates than Massachusetts is reason enough for DTC to investigate the rates charged in Massachusetts prisons and jails, especially given the lack of significant discrepancy in the cost of providing these services across states. Further, the fact that there is a big disparity between the rates charged by the State and Counties is yet another reason why this docket should move forward.

## IV. THE FALLING COSTS OF PRISON CALLING

21. Like the rest of the telephone industry, the methods and costs of providing prison long distance have dropped precipitously over the last few years. There are several technological changes in the industry that have enabled the prison providers to drastically streamline their operations and greatly increase profit margins. These changes relate to the ability to process calls from centralized locations, which is often referred to as 'using the cloud'. There is also a

dramatic change ongoing in the cost of transport and bandwidth that have made it cheaper to connect to a jail facility. Finally, the large providers like Securus and GTL have benefitted greatly by centralization and economies of scale.

22. Of these changes, the most important one is the ability to process and switch prison calls at locations outside the prisons. In the past each prison would have needed a telephone switching device of some sort that would have required a significant capital investment. Further, the requirement of having sophisticated equipment at prisons also meant that the prison calling provider had to maintain an extensive fleet of technicians to keep the dispersed equipment in the network functioning. But the day of needing to make big capital investments at prisons is gone. Today, the prison providers can deploy one, or a few large softswitches in their network nationwide to handle the calls from all of the jails and the prisons on their network.

23. This change to a centralized switching and processing has been further enabled by a change in the way that calls get to and from prisons to the outside world. It was not too many years ago that prison providers had to buy very expensive T1s to carry voice calls. And since one T1 can handle 24 calls at most, larger prisons required multiple T1s. Today the prisons (along with many normal businesses) are converting to IP based voice switching. The prison provider now can order DSL, a cable modem or some other sort of ethernet connection at a prison and use that connection to route calls back to the centralized switching location. These connections are significantly less expensive than T1s and are more efficient. This new method of sending and receiving calls over ethernet is generically referred to as Voice over IP (VoIP).

24. Today there is very little capital investment made by prison telephone provider at each prison. All of the brains of the prison calling network are housed now at large centralized

locations. Today a prison calling system consists primarily of the telephones, an ethernet pipe to the outside world and some sort of small data router. Everything else is done at the centralized hubs in the network. One of the benefits of centralization for the prison providers is that there is significantly less labor required to keep prison systems operating. It was not unusual in the past for a prison telephone provider to maintain large fleets of service personnel who were needed to trouble shoot and keep the prison telephone systems operating. Today that task is mostly done from a centralized location and technicians rarely have to visit the prisons other than to deal with the telephone handsets. When trouble shooting is needed it can usually be done be a technician from the centralized hub. The savings in labor costs are dramatic compared to just a few years ago.

25. I have participated in many dockets in the past that looked at prison calling systems where the prison providers testified about their investments in developing centralized software for handling the penological requirements of a prison. In the not too distant past they would have to create different versions of software for different prisons and different states. However, software has also gotten much more sophisticated in the last few years. Prison calling providers now have one large software system that will handle just about any penological need and allows providers to quickly choose the functions they want from a menu to apply to a given prison. In the past they might have maintained different versions of software for different prison systems, but today they maintain one giant program that can accommodate every system.

26. Prison telephone systems are the perfect example of an economy of scale business. The more jails and prisons any one provider can add to their system, the more profitable they can be for every prison on the network. Most of a prison provider's costs are now

fixed at big hub locations and a much smaller percentage of their costs are driven incrementally at each prison.

27. Several years ago I did costs estimates of the cost of prison calling where I estimated that the cost per minute was in the six to seven cent per minute range. I have not yet updated that estimate for the issues discussed above, but I would have to guess today that the net effect of all of the above changes have probably cut the cost at least in half on a per minute basis. Almost every important cost component of prison calling has gotten significantly less expensive over the past few years.

## V. SUMMARY

28. This affidavit summarizes an abundance of evidence that prison rates are now out of line with costs, which I am prepared to present in more detail as this case proceeds. First there are states where prison providers are operating today using rates that are significantly lower than the rates charged in Massachusetts today, while costs across states remain virtually the same. That fact alone is enough evidence that there is room for rate cuts in the rates here and that Massachusetts rates are unreasonable. Secondly, the prison providers are benefitting from tremendous reductions in their cost of providing service without having seen any corresponding cut in the rates they charge. Prison providers should, of course, make a profit, but the existing rates yield excessive profits that are unnecessarily burdensome to consumers in this instance. There are sufficient issues worth exploring in this docket that would support this Commission taking a harder look at prison telephone rates in Massachusetts.

DOUGLAS A. DAWSON

EXHIBIT 3

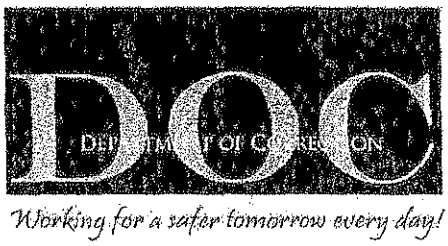
1 COMMONWEALTH OF MASSACHUSETTS
2 DEPARTMENT OF TELECOMMUNICATIONS AND CABLE
3
4 DOCKET NO.: DTC11-16
5
6 * * * * * * * * * * * * * * * * * * * * * * * * *
7 PETITION OF RECIPIENTS OF COLLECT CALLS FROM *
8 PRISONERS AT CORRECTIONAL INSTITUTIONS IN *
9 MASSACHUSETTS SEEKING RELIEF FROM THE UNJUST *
10 AND UNREASONABLE COST OF SUCH CALLS *
11 * * * * * * * * * * * * * * * * * * * * * * * * *
12
13
14 BEFORE: HEARING OFFICER KALUN LEE
15
16 OFFICE OF THE DIVISION OF INSURANCE
17 First Floor, Hearing Room E
18 1000 Washington Street
19 Boston, Massachusetts
20 Thursday, July 19, 2012 10:00 a.m. - 5:00 p.m.
21
22
23 Laurie J. Jordan
24 Professional Court Reporter

1 MR. HOMSY: Good afternoon. I am Russ
2 Homsy. I am the Assistant General Counsel with the
3 Suffolk County Sherriff's Department.
4 THE HEARING OFFICER: Since you are
5 not entered into this matter, if I could just ask you
6 to spell your name for the court reporter.
7 MR. HOMSY: Sure, R-U-S-S-E-L-L,
8 H-O-M-S-Y.
9 THE HEARING OFFICER: And the phone
10 number I have for you is 617-704-6535.
11 MR. HOMSY: That's correct.
12 THE HEARING OFFICER: Then you may
13 begin.
14 MR. HOMSY: Thank you. I just wanted
15 to point out that the use for the funds we receive
16 from the commissions, what those are actually used
17 for.
18 Those funds are generally used for lots
19 of inmate programming. Life-skills programs, GED
20 programs for inmates, vocational programs and
21 reentry programs. They're also used for inmate
22 supplies. These are generally not of the types that
23 are necessary but things that help inmates during the
24 time of their incarceration like library supplies,

1 certain recreational supplies, computers and
2 software. This is what the funds from those
3 commissions derived are used to spend on.
4 I also want to point out that the
5 telephone systems that are used in these facilities
6 are not garden-variety telephone systems, which is
7 what I'm hearing it's often compared to. Where you
8 buy a calling card and it's very similar in terms of
9 the cost of those systems.
10 Here we have a system that's tied to
11 inmate accounts, which costs considerably more.
12 There's a very advanced system in place for
13 monitoring the telephone calls. And it protects the
14 public and victims from harassing calls. It also
15 provides unfettered attorney-client communication.
16 Those are all things that are used as part of this
17 system.
18 The benefits of those funds I think we
19 all can agree are beneficial to the inmates
20 themselves. They are beneficial to the staff and
21 security of the institutions. And they are also very
22 beneficial to the public as a whole.
23 Those funds are used to help prevent
24 recidivism. They provide security to the staff at

EXHIBIT 4

Commonwealth of Massachusetts
Executive Office for Public Safety and Security




# Department of Correction

Request for Responses
for an

# Secure Inmate Calling System & Related Services

DOC File No. 13-DOC-Inmate Phone

December 11, 2012

# Attachment C
# Current Inmate Call Volume and Commission History

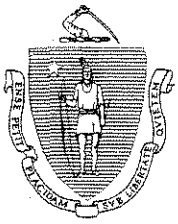
SUMMARY BY MONTH – ALL CALL TYPES

| Date | Attempted Record Count | Accepted Record Count | Accepted Total Minutes |
|---|---|---|---|
| July, 2011 | 1,211,482 | 309,368 | 4,045,885 |
| August, 2011 | 1,141,032 | 288,941 | 3,779,846 |
| September, 2011 | 1,055,988 | 274,499 | 3,601,850 |
| October, 2011 | 1,154,263 | 299,541 | 3,964,056 |
| November, 2011 | 1,189,971 | 300,649 | 4,032,564 |
| December, 2011 | 1,288,070 | 317,734 | 4,247,364 |
| January, 2012 | 1,201,485 | 307,839 | 4,158,387 |
| February, 2012 | 1,143,967 | 310,474 | 4,165,804 |
| March, 2012 | 1,270,034 | 335,562 | 4,499,781 |
| April, 2012 | 1,250,042 | 315,103 | 4,200,463 |
| May, 2012 | 1,223,165 | 311,637 | 4,119,418 |
| June, 2012 | 1,165,420 | 293,616 | 3,884,333 |
| **Totals:** | **14,294,919** | **3,664,963** | **48,699,751** |

EXHIBIT 5

# Senate, No. 2045, printed as amended

[Senate, April 28, 2009 – Text of the Senate Bill transferring county sheriffs to the Commonwealth, (Senate No. 2031, printed as amended)]



## The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

SECTION 1. Section 17 of chapter 37 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following paragraph:-

The sheriffs of the counties of Barnstable, Bristol, Norfolk, Plymouth and Suffolk and of the former counties of Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex and Worcester shall each receive a salary of $123,209. The sheriff of the county of Dukes shall receive a salary of $97,271. The sheriff of the county of Nantucket shall receive a salary of $71,332.

SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 11to 13, inclusive, and inserting in place thereof the following 2 sections:-

Section 11. Except for Barnstable and Suffolk counties, there shall be established upon the books of each county of a transferred sheriff, the government of which county has not been

13 abolished by chapter 34B or other law, a fund, maintained separate and apart from all other
14 funds and accounts of each county, to be known as the Deeds Excise Fund.

15 Notwithstanding any general or special law to the contrary, except for Barnstable and
16 Suffolk counties, on the first day of each month, 10.625 per cent of the taxes collected in the
17 county of a transferred sheriff under this chapter shall be transmitted to the Deeds Excise Fund
18 for each county. The remaining percentage of taxes collected under this chapter, including all
19 taxes collected under this chapter in Barnstable and Suffolk counties and all counties the
20 government of which has been abolished by chapter 34B or other law, but not including the
21 additional excise authorized in section 2 of chapter 163 of the acts of 1988, shall be transmitted
22 to and retained by the General Fund in accordance with section 10.

23 Section 12. (a) There shall be within the executive office for administration and finance
24 a county government finance review board to consist of the secretary of administration and
25 finance or his designee, the commissioner of revenue or his designee a county commissioner
26 annually selected by the Massachusetts Association of County Commissioners and the state
27 auditor or his designee. The secretary of administration and finance or his designee shall serve
28 as chairperson of the board.

29 (b) Notwithstanding any general or special law or county charter to the contrary, the
30 annual or supplementary budget of a county shall not take effect until reviewed and approved by
31 the board. Except for Barnstable and Suffolk counties, the board shall not approve a budget of a
32 county unless it is satisfied that:

33 (1) the estimates of revenue are reasonable and adequate funding has been provided for
34 all necessary county expenditures;

(2) of the amounts deposited in the Deeds Excise Fund for each county from revenues derived under this chapter: (i) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (ii) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds; and

(3) with respect to funds appropriated for the purpose designated in subclause (ii) of clause (2) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the submitted proposed budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.

In the case of Barnstable county, the board shall not approve a budget unless it is satisfied that the estimates of revenue are reasonable and that adequate funding has been provided for all necessary county expenditures.

(c) If a proposed budget is disapproved by the board, the county commissioners or a successor body shall, with the approval of the county advisory board, if applicable, and within 30 days of notification of disapproval of the proposed budget, resubmit a revised proposed budget to the board which addresses the board's concerns.

(d) The board shall develop guidelines for implementing this section.

SECTION 3. Notwithstanding any general or special law to the contrary, the offices of the Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk county sheriffs are hereby transferred to the commonwealth as provided in this act.

SECTION 4. Notwithstanding any general or special law to the contrary, all functions, duties and responsibilities of the office of a transferred sheriff pursuant to this act including, but not limited to, the operation and management of the county jail and house of correction, and any

58 other statutorily authorized functions of that office, are hereby transferred from the county to the
59 commonwealth.

60 SECTION 5. Notwithstanding any general or special law to the contrary, the
61 government of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties,
62 except the office of county sheriff, shall retain all existing authority, functions and activities for
63 all purposes including, but not limited to, the purposes established in chapters 34, 34A, 35 and
64 36 of the General Laws or as otherwise authorized by this act. This act shall not affect the
65 existing county boundaries.

66 SECTION 6. All valid liabilities and debts of the office of a transferred sheriff which are
67 in force on the effective date of this act shall be obligations of the commonwealth as of that
68 date, except as may be otherwise provided in this act. All assets of the offices of a transferred
69 sheriff on the effective date of this act shall become assets of the commonwealth, except as
70 otherwise provided in this act.

71 SECTION 7. (a) Notwithstanding any general or special law to the contrary, all rights,
72 title and interest in real and personal property, including those real property improved upon
73 through construction overseen by the division of capital asset management and maintenance and
74 paid with commonwealth funds and which are controlled by the office of a transferred sheriff on
75 the effective date of this act including, without limitation, all correctional facilities and other
76 buildings and improvements, the land on which they are situated and any fixtures, wind
77 turbines, antennae, communication towers and associated structures and other communication
78 devices located thereon or appurtenant thereto, shall be transferred to the commonwealth,
79 except as otherwise provided in this act. This transfer of all buildings, lands, facilities, fixtures
80 and improvements shall be subject to chapter 7 of the General Laws and the jurisdiction of the

commissioner of capital asset management and maintenance as provided therein, except as
82 otherwise provided in this act. The commonwealth shall take all necessary steps to ensure
83 continued access, availability and service to any assets transferred to the commonwealth under
84 this subsection, to a local or regional organization that currently uses such assets.

85 (b) If a transferred sheriff occupies part of a building or structure owned by a county, the
86 county shall lease that part of the building or structure to the commonwealth under reasonable
87 terms determined by the commissioner of the capital asset management and maintenance.

88 (c) The transfer under this section shall be effective and shall bind all persons, with or
89 without notice, without any further action or documentation. Without derogating from the
90 foregoing, the commissioner of capital asset management and maintenance may, from time to
91 time, execute and record and file for registration with any registry of deeds or the land court, a
certificate confirming the commonwealth's ownership of any interest in real property formerly
93 controlled by the office of a transferred sheriff pursuant to this section.

94 (d) This section shall not apply to the land and buildings shown as Parcel C on a Plan of
95 Land in Braintree, Mass, dated October 2, 1997, prepared by County of Norfolk Engineering
96 Dept., 649 High Street, Dedham, filed at the Norfolk county registry of deeds in plan book 454,
97 page 128. (e) This section shall not apply to the former Barnstable county house of correction
98 located at the Barnstable County Complex on state highway route 6A in the town of Barnstable.

99 SECTION 8. Once the commonwealth has refinanced any outstanding bonds of the
100 Plymouth County Correctional Facility Corporation, said corporation shall be dissolved and its
101 assets shall be transferred to the commonwealth. The criminal detention facility constructed
102 under chapter 425 of the acts of 1991 shall be transferred to the commonwealth. The revenue
held by the corporation in the Repair and Replacement and Capital Improvement Accounts shall

104 be transferred to the Plymouth Sheriff's Facility Maintenance Trust Account. The Plymouth
105 sheriff shall make expenditures from this account only for the maintenance, repair and
106 replacement of the sheriff's facilities.

107 SECTION 9. All leases and contracts of the office of a transferred sheriff which are in
108 force on the effective date of this act shall be obligations of the commonwealth and the
109 commonwealth shall have authority to exercise all rights and enjoy all interests conferred upon
110 the county by those leases and contracts except as may be otherwise provided in this act.

111 SECTION 10. Notwithstanding any general or special law to the contrary, beginning in
112 fiscal year 2010 and thereafter until terminated, Barnstable, Bristol, Dukes, Nantucket, Norfolk,
113 and Plymouth counties shall appropriate and pay to their respective county retirement boards,
114 and any other entities due payments, amounts equal to the minimum obligations to fund from
115 their own revenues in fiscal year 2009 the operations of the office of the sheriff for the purpose
116 of covering the unfunded county pension liabilities and other benefit liabilities of the retired
117 sheriff's office employees that remain in the county retirement systems, as determined by the
118 actuary of the public employee retirement administration commission. Pursuant to section 20 of
119 chapter 59 of the General Laws, the state treasurer shall assess the city of Boston and remit to
120 the State-Boston retirement system an amount equal to the minimum obligation of Suffolk
121 county to fund from its own revenues in fiscal year 2009 the operations of the office of the
122 sheriff. The secretary of administration and finance shall establish a plan for county
123 governments to pay off these unfunded county pension liabilities and shall establish an
124 amortization schedule to accomplish this task. These payments shall remain in effect for the
125 duration of that amortization schedule, which shall not exceed the funding schedule established
126 by the respective county retirement board. If the unfunded pension liability of retirees exceeds

any county's minimum obligation to fund operations from its own revenues as set forth in this
128 section, the retirement system for such county may extend its pension funding schedule to the
129 extent necessary to eliminate that excess unfunded pension liability. In the case of any such
130 county, when the county has paid such unfunded pension liabilities in full, or the county has
131 completed the amortization schedule as established under this section, whichever occurs first,
132 the county's obligation to make payments of its minimum obligations to fund its sheriff's office
133 operations, as determined under this section, shall terminate.

134 In fiscal year 2010 and succeeding years, if the amount that represents 31.875 per cent of
135 deeds excise collections in a county exceeds the cost of the operation of the office of the sheriff,
136 including health insurance and retirement costs, such county shall provide sufficient deeds
137 excise revenue to the commonwealth to fund those costs as identified by the general
appropriations act for that fiscal year. Any deeds excise revenue of the 31.875 per cent
139 collected by a county that is in excess of the costs of operations of the office of the sheriff
140 as identified in the annual state budget shall remain with the county's Deeds Excise Fund to
141 fund obligations of the county under section 1 of chapter 64D of the General Laws. Amounts in
142 this paragraph shall be as determined by the secretary of administration and finance, in
143 consultation with the appropriate sheriff and county officials.

144 SECTION 11. Notwithstanding any general or special law to the contrary, any funds
145 including, but not limited to county correctional funds and other sources of income and revenue,
146 to the credit of the office of a transferred sheriff on June 30, 2009, shall be paid to the state
147 treasurer, but the county treasurer may pay appropriate fiscal year 2009 sheriff's department
148 obligations after June 30, 2009. Payment of obligations to be charged to the sheriff's fiscal year

149 2009 budget as approved by the county government finance review board shall be within that
150 budget or shall be approved by the secretary of administration and finance.
151 SECTION 12. (a) Notwithstanding any general or special law to the contrary and except
152 for all counties the governments of which have been abolished by chapter 34B or other law,
153 revenues of the office of sheriff in Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth
154 and Suffolk counties for civil process, inmate telephone and commissary funds, shall remain
155 with the office of sheriff.
156 (b) In order to encourage innovation and enterprise, each sheriff's office shall annually
157 confer with the house and senate committees on ways and means regarding that sheriff's efforts
158 to maximize and maintain grants, dedicated revenue accounts, revolving accounts, fee for
159 service accounts and fees and payments from the federal, state and local governments and other
160 such accounts and regarding which revenues shall remain with the sheriff's office.
161 (c) Any sheriff who has developed a revenue source derived apart from the state treasury
162 may retain that funding to address the needs of the citizens within that county.
163 (d) Any unencumbered carry-forward deeds excise or other funds to the credit of the
164 sheriff on June 30, 2009 shall be paid to the state treasurer.
165 (e) Notwithstanding any general or special law or county charter to the contrary,
166 regional services and contracts for such services, including, but not limited to, regional
167 communication centers and law enforcement support, shall continue until expired, terminated or
168 revoked under the terms of the agreement or contract for such services.
169 SECTION 13 (a) All employees of the office of transferred sheriff, including those who
170 on the effective date of this act hold permanent appointment in positions classified under
171 chapter 31 of the General Laws or those who have tenure in their positions by reason of section

172 9A of chapter 30 of the General Laws or do not hold such tenure, are hereby transferred to that
173 transferred sheriff as employees of the commonwealth, without interruption of service within
174 the meaning of said section 9A of said chapter 30 or said chapter 31 and without reduction in
175 compensation or salary grade.

176 (b) Notwithstanding any general or special law to the contrary, employees of the office
177 of a transferred sheriff shall continue to retain their right to collectively bargain pursuant to
178 chapter 150E of the General Laws and shall be considered sheriff's office employees for the
179 purposes of said chapter 150E.

180 (c) All petitions, requests, investigations and other proceedings duly brought before the
181 office of a transferred sheriff or duly begun by that sheriff and pending on the effective date of
182 this act, shall continue unabated and remain in force, but shall be assumed and completed by the
183 office of a transferred sheriff.

184 (d) All orders, rules and regulations duly made and all approvals duly granted by a
185 transferred sheriff which are in force on the effective date of this act, shall continue in force and
186 shall thereafter be enforced until superseded, revised, rescinded or canceled in accordance with
187 law by that sheriff.

188 (e) All books, papers, records, documents and equipment which, on the effective date of
189 this act, are in the custody of a transferred sheriff shall be transferred to that sheriff.

190 (f) All duly existing contracts, leases and obligations of a transferred sheriff shall
191 continue in effect. An existing right or remedy of any character shall not be lost or affected by
192 this act.

193 SECTION 14. The rights of all employees of each office of a transferred sheriff shall
194 continue to be governed by the terms of collective bargaining agreements, as applicable. If

195 collective bargaining agreement has expired on the transfer date, the terms and conditions of
196 such agreement shall remain in effect until a successor agreement is ratified and funded.
197 SECTION 15. Notwithstanding any general or special law to the contrary, a transferred
198 sheriff in office on the effective date of this act shall become an employee of the commonwealth
199 with salary to be paid by the commonwealth. The sheriff shall remain an elected official for the
200 purposes of section 159 of chapter 54 of the General Laws. The sheriff shall operate pursuant to
201 chapter 37 of the General Laws. The sheriff shall retain administrative and operational control
202 over the office of the sheriff, the jail, the house of correction and any other occupied buildings
203 controlled by a transferred sheriff upon the effective date of this act. The sheriff and sheriff's
204 office shall retain and operate under all established common law power and authority and
205 consistent with chapters 126 and 127 of the General Laws and any other relevant General Laws.
206 SECTION 16. Notwithstanding any general or special law to the contrary, a transferred
207 sheriff shall be considered an "employer" as that term is defined in section 1 of chapter 150E of
208 the General Laws for the purposes of said chapter 150E. The sheriff shall also have power and
209 authority as employer in all matters including, but not limited to, hiring, firing, promotion,
210 discipline, work-related injuries and internal organization of the department.
211 SECTION 17. (a) Notwithstanding any general or special law or rule or regulation to the
212 contrary, the sheriff, special sheriff, deputies, jailers, superintendents, deputy superintendents,
213 assistant deputy superintendants, keepers, officers, assistants and other employees of the office
214 of a transferred sheriff, employed on the effective date of this act in the discharge of their
215 responsibilities set forth in section 24 of chapter 37 of the General Laws and section 16 of
216 chapter 126 of the General Laws shall be transferred to the commonwealth with no impairment
217 of employment rights held on the effective date of this act, without interruption of service,

without impairment of seniority, retirement or other rights of employees, without reduction in compensation or salary grade and without change in union representation. Any collective bargaining agreement in effect on the effective date of this act shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. Nothing in this section shall confer upon any employee any right not held on the effective date of this act or prohibit any reduction of salary, grade, transfer, reassignment, suspension, discharge layoff or abolition of position not prohibited before the effective date of this act. Such employees shall not be considered new employees for salary, wage, tax, health insurance, Medicare or any other federal or state purposes, but shall retain their existing start and hiring date, seniority and any other relevant employment status through the transfer.

(b) All demands, notices, citations, writs and precepts given by a sheriff, special sheriff, deputy, jailer, superintendent, deputy superintendent, assistant deputy superintendent, keeper, officer, assistant or other employee of the office of a transferred sheriff, as the case may be, on or before the effective date of this act shall be valid and effective for all purposes unless otherwise revoked, suspended, rescinded, canceled or terminated.

(c) Any enforcement activity imposed by a sheriff or special sheriff or by any deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendents, keepers, officers, assistants or other employees of the office of a transferred sheriff before the effective date of this act shall be valid, effective and continuing in force according to the terms thereof for all purposes unless superseded, revised, rescinded or canceled.

(d) All petitions, hearings appeals, suits and other proceedings duly brought against and all petitions, hearings, appeals, suits, prosecutions and other legal proceedings begun by a sheriff, special sheriff, deputy, jailer, superintendent, deputy superintendent, assistant deputy

241 superintendent, keeper, officer, assistant or the employee of the office of a transferred sheriff, as
242 the case may be, which are pending on the effective date of this act shall continue unabated and
243 remain in force notwithstanding the passage of this act.

244 (e) All records maintained by a sheriff or special sheriff or by any deputies, jailers,
245 superintendents, deputy superintendents, assistant deputy superintendents, keepers, officers,
246 assistants and other employees of the office of a transferred sheriff on the effective date of this
247 act shall continue to enjoy the same status in a court or administrative proceeding, whether
248 pending on that date or commenced thereafter, as they would have enjoyed in the absence of the
249 passage of this act.

250 SECTION 18. All officers and employees of the office of a transferred sheriff
251 transferred to the service of the commonwealth shall be transferred with no impairment of
252 seniority, retirement or other rights of employees, without reduction in compensation or salary
253 grade and without change in union representation, except as otherwise provided in this act. Any
254 collective bargaining agreement in effect for transferred employees on the effective date of this
255 act shall continue as if the employees had not been so transferred until the expiration date of the
256 collective bargaining agreement. Nothing in this section shall confer upon any employee any
257 right not held on the effective date of this act prohibit any reduction of salary, grade, transfer,
258 reassignment, suspension, discharge, layoff or abolition of position not prohibited before that
259 date.

260 SECTION 19. (a) Notwithstanding any general or special law to the contrary, employees
261 or retired employees of the office of a transferred sheriff and the surviving spouses of retired
262 employees of the office of a transferred sheriff who are eligible for group insurance coverage as
263 provided in chapter 32B of the General Laws or who are insured under said chapter 32B, shall

264 have that eligibility and coverage transferred to the group insurance commission effective 4
265 months after the effective date of this act and those employees shall cease to be eligible or
266 insured under said chapter 32B. These employees shall not be considered to be new employees.
267 The group insurance commission shall provide uninterrupted coverage for group life and
268 accidental death and dismemberment insurance and group general or blanket insurance
269 providing hospital, surgical, medical, dental and other health insurance benefits to the extent
270 authorized under chapter 32A of the General Laws. Employees who were covered by a
271 collective bargaining agreement on the effective date of this act shall continue to receive the
272 group insurance benefits required by their respective collective bargaining agreements until a
273 successor agreement is ratified and funded.

(b) The human resources division of the executive office for administration and finance
275 shall assume the obligations of the office of a transferred sheriff to employees who become state
276 employees and who are covered under a health and welfare trust fund agreement established
277 under section 15 of chapter 32B of the General Laws pursuant to a collective bargaining
278 agreement until the expiration date of the collective bargaining agreement

279 (c) The group insurance commission shall evaluate, in consultation with appropriate
280 county officials and county treasurers, the value of any monies in a claims trust fund established
281 pursuant to section 3A of said chapter 32B of the General Laws that would otherwise have been
282 reserved for claims made by employees of a transferred sheriff. Any monies therein shall be
283 transferred to the group insurance commission on the effective date of this act.

284 SECTION 20. Notwithstanding chapter 32 of the General Laws or any other general or
285 special laws to the contrary, the retirement system in the county of a transferred sheriff shall
286 continue pursuant to this section and shall be managed by the retirement board as provided in

his section. Employees of a transferred sheriff who retired on or before the effective date of this act shall be members of the county retirement system, which shall pay the cost of benefits annually to such retired county employees and their survivors. The annuity savings funds of the employees of transferred sheriffs who become state employees pursuant to this act shall be transferred from that county retirement system to the state retirement system, which shall thereafter be responsible for those employees, subject to the laws applicable to employees whose transfer from one governmental unit to another results in the transfer from one retirement system to another, except for paragraph (c) of subdivision (8) of section 3 of said chapter 32. All other provisions governing the retirement systems of the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk shall remain in effect.

SECTION 21. County commissioners, county sheriffs, county treasurers, county retirement systems, the State-Boston retirement system, and all executive branch agencies and officers shall cooperate with the secretary of administration and finance in effecting the orderly transfer of the county sheriffs to the commonwealth. The secretary may establish working groups as considered appropriate to assist in the implementation of the transfer.

SECTION 22. There shall be a special commission to consist of 10 members, 1 of whom shall be a member of the Massachusetts Sheriffs Association, 1 of whom shall be a county commissioner of a county of a transferred sheriff as appointed by the chairs of the county commissioners of the counties of transferred sheriffs 2 of whom shall be appointed by the speaker of the house of representatives, 1 of whom shall be appointed by the minority leader of the house of representatives, 2 of whom shall be appointed by the president of the senate, 1 of whom shall be appointed by the minority leader of the senate and 2 of whom shall be appointed by the governor for the purpose of making an investigation and study relative to the

reorganization or consolidation of sheriffs' offices, to make formal recommendations regarding
311 such reorganization or consolidation and to recommend legislation, if any, to effectuate such
312 recommendations relating to the reorganization, consolidation, operation, administration,
313 regulation, governance and finances of sheriffs' offices.

314 The chairman of the commission shall be selected by its members. Section 2A of
315 chapter 4 of the General Laws shall not apply to said commission. So long as a member of the
316 commission discloses, in writing, to the state ethics commission any financial interest as
317 described in section 6, 7 or 23 of chapter 268A of the General Laws which may affect the
318 members work on the commission, the member shall not be deemed to have violated said
319 section 6, 7 or 23 of said chapter 268A. Four members of the commission shall constitute a
320 quorum and a majority of all members present and voting shall be required for any action voted
by the commission including, but not limited to, voting on formal recommendations or
322 recommended legislation.

323 The commission, as part of its review, analysis and study and in making such
324 recommendations regarding the reorganization, consolidation, operation, administration,
325 regulation, governance and finances of sheriffs' offices, shall focus on and consider the
326 following issues, proposals and impacts:

327 (1) the possible consolidation, elimination or realignment of certain sheriffs' offices and
328 the potential cost savings and other efficiencies that may be achieved by eliminating,
329 consolidating and realigning certain sheriffs' offices to achieve pay parity;

330 (2) any constitutional, statutory or regulatory changes or amendments that may be
331 required in order to effectuate any such consolidation or reorganization;

332 (3) the reallocation of duties and responsibilities of sheriffs' office as a consequence of
333 any such consolidation or reorganization;
334 (3 1/2) the best management practices associated with the current use of civil process
335 funds, including the amount of civil process funds collected by each county sheriff and the
336 actual disposition of said funds currently, and, in the event of consolidation, realignment,
337 elimination or reorganization, the collection and use of civil process fees in the future; and
338 (4) the consideration of any other issues, studies, proposals or impacts that, in the
339 judgment of the commission, may be relevant, pertinent or material to the study, analysis and
340 review of the commission.
341 All departments, divisions, commissions, public bodies, authorities, boards, bureaus or
342 agencies of the commonwealth shall cooperate with the commission for the purpose of
343 providing information or professional expertise and skill relevant to the responsibilities of the
344 commission subject to considerations of privilege or the public records law.
345 The commission shall submit a copy of a final report of its findings resulting from its
346 study, review, analysis and consideration, including legislative recommendations, if any, to the
347 governor, president of the senate, speaker of the house of representatives, the chairs of the house
348 and senate committees on ways and means and the chairs of the joint committee on state
349 administration and regulatory oversight and the clerk of the house of representatives not later
350 than June 1, 2010.
351 SECTION 23. A sheriff transferred under this act shall provide a detailed account to the
352 secretary of administration and finance of all contracts entered into before July 1, 2009;
353 provided, however, that for any contracts entered into after April 1, 2009, the contract shall not
354 be approved without the approval of the secretary of administration and finance. The account

shall include, but not be limited to, descriptions of the nature of the contract, the length of the contract and amounts currently owed.

SECTION 24. Not less than 90 days after the effective date of this act, a sheriff transferred under this act shall provide to the secretary of administration and finance a detailed inventory of all property in the sheriff's possession which shall include, but not be limited to vehicles, weapons, office supplies and other equipment.

SECTION 25. This act shall take effect on July 1, 2009.

EXHIBIT 6

# The Commonwealth of Massachusetts

# Department of Correction

## Request for Responses for an

# Secure Inmate Calling System & Related Services

**DOC File No. 1000-Phone2006**

**July 11, 2005**

# Attachment B
## Required Number of Inmate Telephone Instruments

| Location | Inside Inmate Telephones | Outside Inmate Telephones | Special Mgmt Unit Telephones | Coin Telephones |
|---|---|---|---|---|
| Bay State Correctional Center | 24 | 6 | 0 | 2 |
| Boston Pre-Release Center | 12 | 0 | 0 | 3 |
| Bridgewater State Hospital | 18 | 4 | 0 | 1 |
| Lemuel Shattuck Hospital Correctional Center | 2 | 0 | 0 | 3 |
| Mass Alcohol & Substance Abuse Center (MASAC) | 18 | 0 | 0 | 2 |
| Massachusetts Treatment Center | 59 | 7 | 2 | 2 |
| MCI - Cedar Junction | 79 | 4 | 20 | 2 |
| MCI - Concord | 85 | 4 | 5 | 1 |
| MCI - Framingham | 64 | 0 | 2 | 4 |
| MCI - Norfolk | 57 | 11 | 3 | 2 |
| MCI – Plymouth | 13 | 2 | 0 | 1 |
| MCI – Shirley | 123 | 0 | 4 | 7 |
| North Central Correctional Institution at Gardner | 106 | 5 | 2 | 2 |
| Northeastern Correctional Center | 18 | 0 | 0 | 2 |
| Old Colony Correctional Center | 59 | 11 | 2 | 2 |
| Pondville Correctional Center | 11 | 0 | 0 | 0 |
| South Middlesex Correctional Center | 11 | 0 | 0 | 2 |
| Souza Baronowski Correctional Center ( Shirley) | 159 | 7 | 9 | 4 |
| | | | | |
| **TOTAL** | **918** | **61** | **49** | **42** |
| | | | | |

EXHIBIT 7

Massachusetts Department of Correction
Weekly Count Sheet

**DATE :** 3/18/2013 revised 4/11

| | DESIGN CAPACITY | FACILITY POPULATION | PERCENT OCCUPANCY |
|---|---|---|---|
| ***MAXIMUM*** | | | |
| MCI CEDAR JUNCTION @ WALPOLE | 561 | 739 | 132% |
| SOUZA - BARANOWSKI C. C. | 1,024 | 1,197 | 117% |
| **SUB-TOTAL MAXIMUM** | **1,585** | **1,936** | **122%** |
| ***MEDIUM*** | | | |
| BAY STATE CORRECTIONAL CENTER | 266 | 331 | 124% |
| MASSACHUSETTS TREATMENT CENTER | 561 | 595 | 106% |
| MCI CEDAR JUNCTION @ WALPOLE | 72 | 71 | 99% |
| MCI CONCORD | 614 | 1,258 | 205% |
| MCI FRAMINGHAM (FEMALE) | 388 | 358 | 92% |
| MCI FRAMINGHAM: ATU (FEMALE) | 64 | 256 | 400% |
| MCI NORFOLK | 1,084 | 1,445 | 133% |
| MCI SHIRLEY (Medium) | 720 | 1,182 | 164% |
| NCCI GARDNER | 568 | 980 | 173% |
| OCCC @ BRIDGEWATER | 480 | 786 | 164% |
| SHATTUCK CORRECTIONAL UNIT(S4) | 24 | 30 | 125% |
| STATE HOSPITAL @ BRIDGEWATER | 227 | 341 | 150% |
| **SUB-TOTAL MEDIUM** | **5,068** | **7,633** | **151%** |
| ***MINIMUM*** | | | |
| MA ALCOHOL AND SUBSTANCE ABUSE CENTER | 236 | 153 | 65% |
| MCI SHIRLEY (Minimum) | 299 | 270 | 90% |
| NCCI GARDNER (Minimum) | 30 | 25 | 83% |
| OCCC (Minimum) | 100 | 127 | 127% |
| **SUB-TOTAL MINIMUM** | **665** | **575** | **86%** |
| ***MIN/PRE-RELEASE*** | | | |
| BOSTON PRE-RELEASE | 150 | 169 | 113% *MIN* 28 *PRE* 141 |
| MCI PLYMOUTH | 151 | 168 | 111% *MIN* 161 *PRE* 7 |
| NECC @ CONCORD | 150 | 238 | 159% *MIN* 174 *PRE* 64 |
| PONDVILLE CORRECTIONAL CENTER | 100 | 183 | 183% *MIN* 134 *PRE* 49 |
| SOUTH MIDDLESEX C.C.(FEMALE) | 125 | 128 | 102% *MIN* 104 *PRE* 24 |
| **SUB-TOTAL MIN/PRE-RELEASE** | **676** | **886** | **131%** |
| ***CONTRACT PRE-RELEASE(COMMUNITY BEDS B)*** | | | |
| BROOKE HOUSE | 20 | 15 | 75% |
| WOMEN & CHILDREN'S PROGRAM | 15 | 6 | 40% |
| **SUB-TOTAL CONTRACT MIN/PRE-RELEASE** | **35** | **21** | **60%** |
| **DOC FACILITIES CUSTODY TOTAL POPULATION** | **8,029** | **11,051** | **138%** |
| DOC inmates in County Houses of Correction | n.a. | 222 | n.a. |
| DOC inmates in DYS Custody | n.a. | 1 | n.a. |
| DOC inmates in Federal Custody | n.a. | 8 | n.a. |
| DOC inmates in Interstates | n.a. | 73 | n.a. |
| **SUB-TOTALDOC INMATES IN NON-DOC FACILITIES** | **n.a.** | **304** | **n.a.** |
| **GRAND TOTAL JURISDICTION POPULATION** | **n.a.** | **11,355** | **n.a.** |

EXHIBIT 8

6. 20. 2012

DEAR G.T.L. Corp:

I AM WRITING YOU IN THE HOPE THAT YOU WILL REDUCE THE PHONE RATES HERE AT MCI-Norfolk. SINCE 2005, I HAVE SPENT AN AVERAGE OF $300.00/$400.00 A MONTH for PHONE CONTACT WITH MY family.

The CURRENT PHONE RATE IS AN UNDUE hardship ON ME & MY family. The TELEPHONE IS AN IMPORTANT METHOD OF MAINTAINING family TIES, ESPECIALLY WITH MY CHILDREN. The TELEPHONE ALSO HELPS LESSON STRESS WITHIN MY family. IT IS ALSO IMPORTANT TO NOTE THAT BECAUSE of REGULAR CONTACT WITH MY CHILDREN, The PARENT-CHILD BOND HAS BEEN STRENGTHENED. I CANNOT afford TO MAINTAIN THAT "REGULAR" CONTACT. I pray THAT YOU WILL LOWER The price of CALLS SO THAT I AND MY family CAN MAINTAIN THE REGULAR PATTERN of CONTACT WE ARE USE TO.

Tyron Daniels 6-20-2012

RESPECTfully SUBMITTED,