

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

Dated: December 12, 2013

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits these comments in response to the Report and Order and Further Notice of Proposed Rulemaking (“Order and FNPRM”) released by the Federal Communications Commission (“FCC”) on September 26, 2013, in the above-referenced docket.² The Order and FNPRM seeks comment on additional measures the FCC could take to ensure that interstate and intrastate inmate calling services (“ICS”) are provided consistent with statute and the public interest and to ensure that consumers across the country can benefit from a fair, affordable ICS rate framework that encourages inmates to stay connected with family and friends.³ The MDTC responds to the FCC’s request and states that pursuant to M. G. L. c. 159, §§ 14, 16 and 17, it has opened an investigation (“*In re ICS Petition*”) into ICS intrastate rates and service quality in

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; GEN. LAWS ch. 166A, § 16.

² *In the Matter of Rates for Interstate Inmate Calling Service*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 (rel. Sept. 26, 2012).

³ *Id.* at ¶¶ 128-129.

Massachusetts.⁴ Due to this ongoing investigation, the MDTC is precluded from offering comments on many of the issues raised in the Order and FNPRM. Consequently, the MDTC deliberately limits its comments to those expressly offered herein.⁵

I. FCC SEEKS FAIR, AFFORDABLE RATES FOR INMATES AND FAMILIES

A. MDTC Has Opened An Investigation Into Intrastate ICS Rates and Service Quality

In 2011, the MDTC docketed a complaint filed by family members, friends, legal counsel, and others residing in Massachusetts who receive and pay for telephone calls from prisoners who live in the Commonwealth's prisons, jails, and houses of correction ("Petitioners") asking that an investigation be opened to determine just and reasonable rates for ICS ("Petition").⁶ Currently in Massachusetts, ICS intrastate rates are capped with a maximum per-call surcharge of \$3.00⁷ and a maximum per minute rate equivalent to the incumbent local exchange carrier rate of \$1.50 for a 15 minute call (approximately \$.10 per minute).⁸ Petitioners also asked the MDTC to investigate the pervasive quality of service issues Petitioners encounter

⁴ See *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls* ("In re ICS Petition"), D.T.C. 11-16, Hearing Officer Interlocutory Ruling, at 1-2 (Sept. 23, 2013)("Interlocutory Ruling")(attached as Appendix A).

⁵ The MDTC's silence on any particular issue presented by the FCC should not be construed as rejection or support of that issue.

⁶ Petitioners filed an initial complaint on August 29, 2009, their first amendment and supplement on May 18, 2010, and their second amendment on April 27, 2011. See *In re ICS Petition*, Docket at 1.

⁷ See *Investigation by the Dep't of Telecomms. & Energy on its own motion regarding (1) implementation of § 276 of the Telecomms. Act of 1996 relative to Pub. Interest Payphones, (2) Entry & Exit Barriers for the Payphone Marketplace, (3) New England Tel. & Tel. Co. d/b/a NYNEX's Pub. Access Smart-pay Line Service, & (4) the rate policy for operator servs. providers*, D.P.U./D.T.E. 97-88/97-18 (Phase II) *Order on Payphone Barriers to Entry & Exit, & OSP Rate Cap* at 10 (Apr. 17, 1998)("1998 Order")(The 1998 Order established an Operator Service Provider rate cap, addressed ICS rates, and set a maximum \$3.00 per call surcharge in addition to the ICS usage rate).

⁸ See *Dep't of Telecomms. & Energy Indus. Notice, Collect Inmate Calls – Rate Cap* at 1-2 (rel. Sept. 3, 2004)(In response to a request from incumbent Verizon New England Inc. d/b/a Verizon Massachusetts to replace its multiple-component usage rates with a flat usage rate of \$.10 per minute for ICS calls, the MDTC approved the request and notified industry that ICS providers were not required to adopt a flat usage rate, but were required to maintain usage rates that would not exceed the usage rate for a corresponding average 15-minute collect ICS call, i.e., a maximum of \$1.50 for a 15-minute collect ICS call).

in connection with prisoner telephone calls.⁹ ICS providers Global Tel*Link (“GTL”) and Securus Technologies, Inc. (“Securus”) responded to the Petition and sought dismissal of the claims.¹⁰

On July 19, 2012, the MDTC held a public hearing and received oral testimony from members of the public and more than 200 pieces of written testimony.¹¹ At the hearing, customers of GTL and Securus testified about a pattern of: (1) poor service quality and dropped calls; (2) being charged a connection fee each time a dropped call was redialed; (3) difficulties receiving refunds or credits for dropped calls; and (4) a variety of surcharges in addition to the connection and per-minute fees.¹²

The MDTC issued an Interlocutory Ruling on September 23, 2013, setting forth the scope of the investigation to include an examination of the following: (1) the per-call surcharge; (2) the per-call surcharge cap; and (3) the tariffed service and other fees assessed by ICS providers (e.g., prepaid account maintenance fees and card-processing fees); (4) the allegations of frequent call disconnections, heavy static, and poor voice quality; (5) as well as the billing (e.g., alleged inadequate billing details and on-line only availability) and customer service practices of GTL and Securus.¹³ The MDTC declined to investigate ICS usage rates or the cap imposed on those

⁹ *In re ICS Petition*, Interlocutory Ruling at 4.

¹⁰ *See In re ICS Petition*, Response of Securus Technologies, Inc. (Jan. 20, 2012) and Global Tel*Link Corporation Response to Petition (Jan. 20, 2012), Docket at 1. In January 27, 2012, Petitioners were directed to respond to Respondents’ assertions that the complaint did not contain sufficient allegations of fact to support an investigation. *See In re ICS Petition*, Hearing Officer E-mail to Parties (Jan. 27, 2012), Docket at 1. On March 23, 2012, Petitioners filed a *Memorandum Opposing Dismissal*. *See In re ICS Petition*, Docket at 1. On April 12, 2012, GTL submitted its *Motion for Leave to File Response and a Brief Response to Petitioners’ March 23 Memorandum* and Securus submitted its *Motion to File Reply to Petitioners’ Memorandum and Reply to Petitioners’ Memorandum*. *Id.* Also, on April 20, 2012, Petitioners submitted a *Motion for Leave to Surreply and Surreply*. *Id.*

¹¹ *See In re ICS Petition*, Docket at 1.

¹² *See In re ICS Petition*, Tr. of Public Hearing at 48, 59, 62, 63, 66, 70, 72, & 127 (July 19, 2013). On October 25, 2012, Securus filed its *Response of Securus Technologies, Inc., to Public Comments* and GTL filed its *GTL Response to Public Comments*. *See In re ICS Petition*, Docket at 1. On November 5, 2012, Petitioners filed their *Proposed Reply of Petitioners Regarding Public Comments*. *Id.*

¹³ *In re ICS Petition*, Interlocutory Ruling at 14, 17, 20-31.

rates.¹⁴ The MDTC also declined to investigate Petitioners' allegations concerning the frequency of recorded warning messages and the availability and upkeep of phone equipment within correction facilities.¹⁵ Petitioners have appealed the MDTC's decision declining to investigate ICS usage rates or the rate cap.¹⁶ This appeal remains pending. GTL and Securus filed motions to hold the proceeding in abeyance while the FCC conducts its ICS rulemaking proceeding.¹⁷ The MDTC has denied these motions.¹⁸

B. MDTC Asserts its Authority to Regulate Intrastate ICS Rates and Service Quality

The Department has broad supervisory and regulatory oversight over the provision of common carrier telecommunications services.¹⁹ The Department's explicit authority includes the ability to inquire into and investigate rates, charges, regulations, practices, equipment, and services of common carriers rendering service subject to the Department's jurisdiction.²⁰ In particular, the MDTC "shall determine the just and reasonable rates, fares and charges to be charged for the service to be performed, and shall fix the same by order to be served upon every common carrier by whom such rates, fares and charges or any of them are thereafter to be observed."²¹ Additionally, the MDTC has broad statutory authority to investigate service quality complaints against providers of telecommunications services in Massachusetts.²² Pursuant to this

¹⁴ *Id.* at 18-20.

¹⁵ *Id.* at 31-33 (The MDTC determined that these matters are governed by Massachusetts Department of Corrections ("MDOC") regulations and by the terms of the contract between the MDOC and the ICS provider).

¹⁶ *See In re ICS Petition, Petitioner's Appeal* (Oct. 16, 2013), Docket at 2.

¹⁷ *See In re ICS Petition, Securus' Motion to Hold Proceeding in Abeyance* (Oct. 18, 2013) and *GTL's Motion to Hold Proceeding in Abeyance* (Oct. 17, 2013), Docket at 2.

¹⁸ *In re ICS Petition, Hearing Officer Ruling on Motions for Abeyance*, at 5-6 (Dec. 11, 2013), Docket at 2.

¹⁹ M. G. L. c. 159, § 12.

²⁰ M. G. L. c. 159, §§ 13, 14, 16, 17, 20, & 24.

²¹ M. G. L. c. 159, § 14.

²² M. G. L. c. 159, § 16 (the MDTC may investigate the "regulations, practices, equipment, appliances, or service" of any common carrier and order remedial measures if it finds any of these to be unjust, unreasonable, unsafe, improper, or inadequate).

authority, the MDTC has lawful oversight of ICS intrastate rates and service quality.²³ The MDTC respectfully asserts that individual states are in the best position to oversee and investigate matters relating to ICS intrastate rates and service quality.²⁴

II. CONCLUSION

The MDTC is currently, pursuant to its lawful authority, investigating the reasonableness of certain ICS rates and charges and quality of service. Many of the issues raised in the Order and FNPRM are similar, if not identical to, those being investigated by the MDTC. The MDTC is uniquely qualified to make a determination on the matters before it. The MDTC welcomes this opportunity to comment and thanks the FCC for its consideration.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By: /s/ Paul Abbott
Paul Abbott, General Counsel
Karlen Reed, Competition Director
Betsy S. Whittey, Counsel

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
Phone: 617-368-1108
Paul.abbott@state.ma.us

²³ *In re ICS Petition*, Interlocutory Ruling at 2, 12, 16, and 28; *1998 Order* at 9.

²⁴ *See generally, In the Matter of Connect Am. Fund*, et al., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, State Members of the Federal-State Joint Board on Universal Service Comments at 88-89 (filed May 2, 2011)(asserting that “[s]tates are uniquely qualified to...assess local conditions generally, and service quality in particular,” and to “identify public benefits and harms” involved with the presence of ETCs in local markets).

APPENDIX A
MDTC COMMENTS

Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls, D.T.C. 11-16, Hearing Officer Interlocutory Ruling (rel. Sept. 23, 2013)