

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

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

MOTION TO HOLD PROCEEDING IN ABEYANCE

Global Tel*Link Corporation (“GTL”), by its attorneys and pursuant to 220 C.M.R. § 1.04(5), respectfully moves the Massachusetts Department of Telecommunications and Cable (“Department”) to hold this proceeding in abeyance pending resolution of similar matters before the Federal Communications Commission (“FCC”). Specifically, GTL requests that the Department stay the current filing deadlines and any further action on the appeal filed by Petitioners as well as any further action on the Department’s planned investigation.¹ In support of this Motion, GTL states:

1. On August 31, 2009, Prisoners’ Legal Services of Massachusetts (“PLS”) and several “family members, loved ones, legal counsel, and others residing in Massachusetts who receive and pay for telephone calls from prisoners” (collectively, “Petitioners”) filed a petition seeking relief from what they claim are unjust and unreasonable rates for inmate calling service (“ICS”) in Massachusetts (“Petition”). Petitioners amended their Petition on May 18, 2010 and again on April 27, 2011. GTL and Securus Technologies, Inc. (“Securus”) (collectively, “Respondents”) requested that the Department dismiss the Petition.

2. On September 23, 2013, the Hearing Officer issued an Interlocutory Ruling²

¹ Pursuant to the Hearing Officer’s October 16, 2013 ruling, responses to the appeal are now due by October 28, 2013. To date, no filing deadlines or other timelines have been established for the Department’s investigation.

² D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Interlocutory Ruling (Sept. 23, 2013) (“*Interlocutory Ruling*”).

opening an investigation into: the per-call surcharge assessed by ICS providers; the tariffed service and other fees assessed by ICS providers; the telephone service quality provided by Respondents, including the frequency of dropped calls and line noise; and Respondents' billing practices. The Interlocutory Ruling dismissed Petitioners' request to investigate: the usage rate component of the ICS rate-setting mechanism; the frequency and content of recorded warning messages; and the availability and upkeep of telecommunications equipment at correctional facilities.

3. On September 26, 2013, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking ("FNPRM") in its ongoing proceeding to review the reasonableness of current ICS rates and the steps needed to ensure reasonable ICS rates going forward.³ The decision was the result of the FCC's 2002 request for comments on ICS rates, commissions, cost and revenue data, and proposed methods to lower ICS rates, as well as a 2003 petition filed by families of inmates asking the FCC to establish nationwide rate caps for ICS.⁴

4. The Report and Order establishes interim rate caps and safe harbors for interstate ICS rates and requires a mandatory data collection from ICS providers. The new rules adopted by the Report and Order will be effective 90 days after the Report and Order is published in the Federal Register.

5. The FNPRM seeks additional data to allow the FCC to establish further and permanent reforms for interstate ICS rates, as well as reforms for intrastate ICS rates. The FCC finds in the FNPRM that "intrastate reform is necessary" and the FCC "has the authority to

³ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 (rel. Sept. 26, 2013) ("*Order and FNPRM*").

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248 (2002); CC Docket No. 96-128, Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in a Pending Rulemaking, at 3 (filed Nov. 3, 2003); CC Docket No. 96-128, Petitioners' Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services (filed Mar. 1, 2007).

reform intrastate ICS rates.”⁵ In addition to addressing intrastate ICS rates, the FNPRM seeks information on the adoption of unified interstate and intrastate ICS rates, ancillary charges, quality of service issues, and billing issues. Comments on the FNPRM are due 30 days and 45 days after the FNPRM is published in the Federal Register.

6. PLS was a participant in the FCC’s proceeding. It argued that FCC action was needed to “provide national leadership for state regulatory agencies in Massachusetts,” “to encourage states that have not yet acted, such as Massachusetts,” and to “establish guidance as our state regulatory agency evaluates intrastate rates.”⁶ PLS requested that the FCC take action on many of the same issues PLS has raised before the Department. In prior filings to the Department and the FCC, PLS has emphasized that the FCC’s ultimate actions regarding ICS rates and services are important and influential to the Department’s review of these same issues.⁷

7. Petitioners’ recent appeal further supports holding this proceeding in abeyance pending action by the FCC.⁸ Petitioners’ appeal is based on data submitted as part of the FCC’s ongoing ICS rates proceeding, and they urge the Department to follow the lead of the FCC. They note that the FCC is considering adopting a “flat, distance-insensitive ICS rate”⁹ and rely on the FCC’s *proposed* action to support their position in this proceeding that the per-minute ICS

⁵ *Order and FNPRM* ¶ 129.

⁶ WC Docket No. 12-375, Comments of Prisoners Legal Services of Massachusetts, 1, 12, 19 (filed Mar. 25, 2013) (“PLS FCC Comments”).

⁷ *See generally* PLS FCC Comments; *see also* D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Letter from Counsel for Petitioners (filed Apr. 26, 2013) (noting the “relevant findings” in the FCC’s ICS proceeding).

⁸ D.T.C. 11-16, , *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners’ Appeal (filed Oct. 16, 2013) (“Petitioners’ Appeal”).

⁹ Petitioners’ Appeal at 1.

rates for Massachusetts should be revised.¹⁰ At the same time, the Petitioners concede that the FCC is continuing to collect data in order to develop a permanent rate structure,¹¹ but ask Department to rely on the FCC's analysis, which is still being formulated in the FNPRM.¹² Thus, Petitioners' recent appeal filing further demonstrates the interplay between the FCC's ongoing ICS proceeding and the issues set for investigation here.

8. The Department, therefore, should hold the instant proceeding in abeyance, including any filing deadlines or action associated with Petitioners' appeal, pending the outcome of the FCC's ongoing review of ICS rates. The issues set for review in the FCC's FNPRM are the same issues raised by Petitioners and set for investigation by the Department in the *Interlocutory Ruling*.

9. As the Hearing Officer recognized in the *Interlocutory Ruling*, the Department previously has "stayed proceedings pending the outcome of FCC proceedings when it would be unreasonably onerous for the Department to issue a decision without preceding action by the" FCC.¹³ In this case, the Department runs the risk of adopting rules governing ICS that subsequently may be deemed inconsistent with the FCC's determinations, which would require the Department to conduct additional proceedings. This type of "administrative inefficiency would not benefit the Department, the parties, or the public interest."¹⁴

¹⁰ Petitioners' Appeal at 4-5.

¹¹ Petitioners' Appeal at 7.

¹² Petitioners' Appeal at 8.

¹³ *Interlocutory Ruling* at 13 (citing D.T.E. 01-20, *Investigation by the Dep't of Telecomms. & Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements & Combinations of Unbundled Network Elements, & the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass. Resale Servs. in the Commw. of Mass.*, Interlocutory Order on Part B Motions (Apr. 4, 2001) ("01-20 Interlocutory Order")).

¹⁴ *01-20 Interlocutory Order* at 8.

10. In addition, while the FCC’s Report and Order provides some indication of the “general approach contemplated by the FCC,” the Department cannot be sure that the FCC will not “alter that approach in its to-be-issued rules” or as the result of court proceedings in response to the Report and Order.¹⁵ The Department previously has stayed proceedings in light of possible action by the FCC or the courts that would affect the proceeding, and has let those “[e]vents . . . inform [its] course of action.”¹⁶ It should do so here.

Accordingly, GTL respectfully moves the Department to hold the instant proceeding, including the current filing deadlines and any further action on Petitioners’ appeal, in abeyance pending the outcome of the FCC’s ongoing review of ICS rates.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

/s/ Chérie R. Kiser

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¹⁵ 01-20 Interlocutory Order at 8.

¹⁶ D.T.E. 03-60, *Proceeding by the Dep’t of Telecomms. and Energy on its own Motion to Implement the Requirements of the Federal Comms. Comm’n Triennial Review Order Regarding Switching for Mass Market Customers*, Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Massachusetts, 15, 17 (Apr. 4, 2004).

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 17th day of October 2013, I served a copy of the foregoing Motion to Hold Proceeding in Abeyance on the following via the method indicated:

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