

PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

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August 19, 2016

BY FIRST CLASS MAIL

Ms. Sara Clark
Department Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

**RE: Petitioners' Opposition to Securus Technologies' Request to be Removed
from the Service List in DTC 11-16**

Dear Ms. Clark:

Enclosed please find an original and seven copies of the Petitioners' Opposition to Securus Technologies' Request to be Removed from the Service List in DTC 11-16 as presented in its Notice filed with the Department dated August 2, 2016. Please feel free to contact me should you have any questions regarding this filing. I can be reached at 617-482-2773 x105.

Many thanks for your attention to this matter.

Sincerely,

Elizabeth Matos
Staff Attorney

cc: Parties of Record

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

No. 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' OPPOSITION TO SECURUS' REQUEST
TO BE REMOVED FROM SERVICE LIST**

On August 2, 2016 counsel for Securus Technologies, Inc. (“Securus”) filed in the docket of this case previous correspondence with the Department withdrawing and cancelling its M.D.T.C. Tariff No. 1, with a cover letter addressed to Secretary of the Department Sara Clark instructing her to remove Securus from the service list in this case. Securus has never filed a motion seeking dismissal from this case. The Petitioners urge the Department to reject Securus’ unilateral effort to remove itself from this case, and to affirm that Securus remains bound by the orders of the Hearing Officer. Securus maintains that its inmate calling service (ICS) is exempt from regulation because it is “Internet Protocol enabled service” is exempted from regulation by G.L. c. 25C § 6A. This is a legal contention which it is entitled to make in a motion seeking dismissal from this case, and which the Petitioners are entitled to dispute. The company’s unilateral decision to interpret the statute as it sees fit and dismiss itself from the case flaunts the very foundation of the adversarial process and should not be permitted.

This is more than a matter of mere formality. The Petitioners vehemently oppose Securus’ attempt to twist the purpose of § 6A to escape from regulation. Section 6A was enacted because it was believed that an open and competitive market would protect consumers from

unfair and excessive rates. However, the ICS industry is the paradigm of monopoly. The consumers (prisoners, their loved ones and others using ICS) do not have any choice of provider. Rather, providers such as Securus enter into contracts with correctional authorities whose primary interest is in obtaining the largest possible site commission from the provider. In Massachusetts, as elsewhere, these site commissions – or kickbacks -- generally double the price paid by prison telephone consumers, and prison facilities rely upon these commissions to pay for prison operations.¹ The Federal Communications Commission has stated that while it “prefers to rely on market forces to discipline prices, there is little dispute that the ICS market is a prime example of market failure.”² The Petitioners are entitled to present their case that § 6A does not protect monopolistic ICS providers from regulation.

Allowing Securus (and quite likely other ICS providers) to declare themselves exempt under § 6A would be disastrous for prison telephone consumers and would undermine the Legislature’s goal of ensuring that telephone rates be regulated in the absence of a competitive marketplace. The FCC’s limits on intra-state per-minute calling rates have been stayed pending appeal, so without the Department’s regulation ICS consumers will be entirely unprotected from

¹ While commissions paid to the Department of Correction revert to the General Fund of the Commonwealth, G.L. c. 29 § 2, county facilities in Massachusetts retain the commissions for their own use. *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) (attached as Ex. 1 to Petition of August 31, 2009). In the July 2012 public hearing testimony before the Department, a representative of the Suffolk County Sheriff’s Department urged the agency to sustain commissions precisely because they are used solely to benefit prisoners through educational and treatment programs and inmate supplies. *See* Testimony of Russ Homsy, Assistant General Counsel for the Suffolk County Sheriff’s Department, before the Department of Telecommunications and Cable of MA, July 12, 2012, p. 88 (relevant pages of transcript attached as Ex. 1).

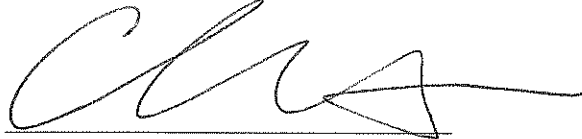
² *See In re Rates for Interstate Inmate Calling Services*, WD Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, (rel. Nov. 5, 2015) (“Second Report and Order”) at ¶2.

unjust and unreasonable rates. And permitting this in Massachusetts could embolden ICS providers to attempt a similar maneuver in other states with similar statutes.

Therefore, the Petitioners urge the Department to notify Securus that it is legally bound by the orders in this case and remains a party to this case.

Date: 8-19-2016

Respectfully submitted:




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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand)

on 8-19-2016

sig. 

1 MR. HOMSY: Good afternoon. I am Russ
2 Homsey. 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

1 the institution. They provide security to the
2 inmates themselves. We overhear during the
3 monitoring of telephone calls whether there is going
4 to be a hit on a particular inmate.

5 It's also used to help provide
6 assistance in classification of inmates. One of the
7 most important functions in an institutions is to
8 make sure that inmates that are a danger to each other
9 are put into separate areas. This provides a
10 valuable tool for classification.

11 It also prevents contraband
12 potentially from entering the facility. And it
13 provides security to the public with a very valuable
14 law enforcement tool.

15 The effect of a fee reduction for those
16 commissions would be complete loss or a virtual
17 complete loss of the programming that I just
18 mentioned, a reduction of the inmate supplies that
19 I just mentioned that would result in higher levels
20 of recidivism, increased security concerns and
21 increased downtime for the inmates.

22 That provides also a mental-health
23 problem for the inmates. There would simply be less
24 for them to do during their incarceration, more

1 downtime. What I think we have going on here really
2 is, I think we all can agree that use of those funds
3 is very beneficial to all those inmates.

4 What we are trying to do, I think, is
5 to shift the burden of those fees from the inmates
6 themselves and their families to the taxpayer.
7 There is just simply no additional tax revenue to make
8 up that budget shortfall.

9 And I'm hearing a lot of people
10 classifying the population that is affected by these
11 particular fees as either poor or minority. But I
12 think the more appropriate categorization of these
13 people are people that are incarcerated for the
14 commission of a crime.

15 These are the people where the burden
16 has been placed. Notwithstanding the fact that
17 there is simply no additional budget funding and that
18 if these commissions are reduced, these programs are
19 going to disappear. And placing the burden for those
20 fees on those that are benefiting the most is really
21 what is actually fair.

22 By law, the funds that we derive that
23 go into that inmate benefit fund have to be spent for
24 the benefit of the inmates. These are not funds that

1 go to the general fund for the sheriffs or the state
2 facilities to just use for general appropriations.

3 These aren't used for staff. This is
4 not used for building maintenance. This is used to
5 benefit simply the inmates themselves.

6 Dan Martini, the CFO from my office
7 would like to just speak to some of the detail
8 specificity as to the program loss that would result
9 in a reduction of these commissions. Thank you.

10 THE HEARING OFFICER: Daniel Martini.

11 MR. MARTINI: Good morning.

12 THE HEARING OFFICER: Good morning or
13 good afternoon. If I could ask you to spell your name
14 and provide your contact information for the court
15 reporter.

16 MR. MARTINI: Sure. It's Daniel
17 Martini. I am the CFO at the Suffolk County
18 Sheriff's Department. My telephone number is
19 617-704-6531. I think I provided my email address.

20 THE HEARING OFFICER: Yes, you did.

21 MR. MARTINI: I just wanted to briefly
22 point out a couple of facts that face some of the
23 sheriff's departments and certainly the Suffolk
24 County Sheriff's Department. Having been with the

1 Suffolk County Sheriff's Department for the last 25
2 years, I've seen how the budget cycles have gone.
3 And in the last six, seven, eight years the budget
4 cycle has been going in a downward trend similar to
5 the national economy.

6 A lot of the things that we fund through
7 the telephone commission funds that come in, really
8 are supplementing the things we would not be able to
9 do as a result of the loss of basically appropriations
10 that we have received.

11 When Russ Homsy mentions programs, we
12 have a series of vocational programs where we
13 actually take those funds and have our inmates learn
14 things like food sanitation programs so they can seek
15 gainful employment in places like restaurants and
16 food prep areas in hotels.

17 We also provide OSHA certification for
18 the inmates so that they can go into any construction
19 world and be able to say I have my OSHA certification.
20 A lot of the benefits that are derived as a result
21 of the funds that are received go directly to the
22 inmates exactly as Russ Homsy has just mentioned.

23 Recently, the Commonwealth of Mass.
24 had cut all of the HIV state grant funding to the

1 sheriffs' departments. Because we receive these
2 commissions, we were able to continue our HIV
3 programming, which is critical and really important
4 to the inmate populations, because it's a highly
5 affected population.

6 Had we not had those kind of fundings
7 when the State cut the HIV programming that
8 essentially would have meant for Suffolk County that
9 there would be no HIV programming.

10 So, it isn't just a simple matter of
11 saying that these funds are going to the
12 Commonwealth. They're not. They're going directly
13 to the benefit of the inmates and that is exactly what
14 we are using the funds for.

15 We have another program called Project
16 Place, which is a step-down mentoring program so we
17 try to reintegrate inmates into our communities.
18 And it's done through a series of programs that they
19 have to go through within the facility. Then there
20 is a mentorship program where they actually meet with
21 mentors. When they are released, they continue that
22 relationship on the outside to help them to
23 reintegrate into the community.

24 So, these and many other types of

1 programs would all but fade away if not for the fact
2 that we are receiving commission-based revenues.
3 That is the only point I really wanted to make is that
4 in reality if we lose the commissions, the State is
5 not going to then turn around and say, here's more
6 money for you to do these things. They are not and
7 they haven't. Just like HIV happened this year, we
8 know that's not going to happen because of the
9 downward trend in the economy right now.

10 That is really the only point I wanted
11 to make is that a lot of these things would go away
12 if the commissions go away.

13 THE HEARING OFFICER: I am going to go
14 off the record just for a moment.

15
16 (A recess was taken)

17
18 THE HEARING OFFICER: Let's go back on
19 the record. The first thing I want to do is give a
20 chance for the representatives of Securus to make a
21 statement if they so wish at this time.

22 MR. HOPFINGER: Yes.

23 THE HEARING OFFICER: Mr. Hopfinger,
24 please have a seat. Do you want your statement to