EXHIBIT 1

PRISON
POLICY INITIATIVE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

PETITION OF RECIPIENTS OF COLLECT CALLS FROM PRISONERS AT CORRECTIONAL INSTITUTIONS IN MASSACHUSETTS SEEKING RELIEF FROM THE UNJUST AND UNREASONABLE COST OF SUCH CALLS

James Pingeon, Esq.
Leslie Walker, Esq.
Massachusetts Correctional Legal Services
8 Winter Street, 11th Floor
Boston, MA 02108

Patricia Garin, Esq.
Stern, Shapiro, Weisberg & Garin
90 Canal Street, 5th Floor
Boston, MA 02114

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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"Inmates shall have access to reasonably priced telephone services... Fees should be commensurate with those charged to the public."
103 CMR 482.01, Massachusetts Department of Correction Regulation on Telephone Access and Use, Effective August 7, 2009[1]

I. INTRODUCTION AND SUMMARY

A. Petitioners do not pay just and reasonable rates for prisoner telephone service.

Petitioners are family members, loved ones, 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.[2] Petitioners are representative of the thousands of telephone company customers who are harmed by the excessive, inflated telephone rates for instate and local calls that result from the exclusive service contracts that prison administrators enter into with telecommunications carriers for prisoner calling services.[3] Petitioners are also harmed by the poor quality of service they do receive.

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[1] Available on DOC's website at http://www.mass.gov/Eeops/docs/doc/policies/482.pdf.
[2] *See* Appendix I for a list of the names and addresses of all Petitioners.
[3] Currently Petitioners fall into four categories: five institutions, eight family and friends of prisoners, twelve prisoners, and six individual attorneys who represent prisoners. With more than 24,000 prisoners in the state on any given day, tens of thousands of telephone calls are made each week from the Commonwealth's prisons and county facilities to thousands of telephone company customers in the state who pay for those calls. Over 11,000 prisoners are in the state prison system, generally serving terms of 2½ years or more. In April this year debit calling was introduced at Department of Correction (DOC) facilities. The DOC estimates that 3-4,000 prisoners in fact use debit calling for at least some of their calls. Each of these prisoners is a telephone company customer. (cont'd)

Petitioners, like all telephone company customers, are entitled to pay just and reasonable rates for prisoner phone calls. Because an effective monopoly market that offers no competitive alternative to the pre-selected payphone companies exists, the Department of Telecommunications and Cable ("DTC") must determine what is just and reasonable based on actual, necessarily incurred costs of providing prisoner telephone service plus a reasonable return on investment. Currently, the exorbitant rates paid by Petitioners and others – including per call surcharges of up to $3.00 per call for each local and intrastate call – fund the millions of dollars of commissions that telephone service providers pay annually to correctional institutions to secure their exclusive service contracts. Such commissions are not a cost of providing telephone service according to the Federal Communications Commission ("FCC") and other regulatory bodies, but instead represent shared profits. This has particular resonance in the Commonwealth where the millions of dollars of commissions paid to correctional facilities each year are virtually all paid into either the state's General Fund (in the case of DOC) or canteen funds that support prisoner programs and other prisoner amenities (in the case of county correctional facilities). Commissions are not used for telephone-related purposes and in fact the state and most counties are required by law to use these funds for non-telephone objectives.

Just under 13,000 prisoners are housed in county facilities on any given day. The annual turn-over in county facilities is high, at over 400% of bed capacity, with pre-trial prisoners being held an average of 12-14 weeks, and sentenced prisoners serving sentences of up to 2½ years. The high turnover rate translates into over 50,000 women and men who are admitted and released annually from county penal institutions in the Commonwealth, all of whom have family, friends and legal counsel they must contact by collect and prepaid calls. Debit calling is not an option at county facilities.

Petitioner Committee for Public Counsel Services, which oversees the provision of legal representation to indigent persons in criminal and civil court cases, has an active roster of over 2,800 lawyers in the state, each of whom is a current telephone company customer. Five of the attorney Petitioners fall into this category.

For information about current prison and county facility population statistics, see the Quarterly Report on the Status of Prison Overcrowding, First Quarter 2009, Mass. Dept. of Correction, May 2009, available at http://www.mass.gov/Eeops/docs/doc/research_reports/1st_09_overcrowding.pdf .

Telephone charges that fund millions of dollars of telephone company profits that are ultimately used for general expenses of the Commonwealth and other non-telephone related budget items are by definition not actual, necessarily incurred costs of providing telephone service and therefore not just and reasonable. Moreover, notwithstanding that the overwhelming majority of prisoner phone calls are paid from prepaid accounts, telephone service providers continue to bill them as more expensive collect, operator-assisted calls when in fact they are neither.

Petitioners also complain of (i) bad connections and poorly maintained equipment that make it difficult to hear parties, including excessive static; (ii) calls that are frequently dropped or terminated for no valid reason, requiring that additional surcharges be incurred when calls are reinstituted; (iii) requests to customer service that are routinely ignored; (iv) excessive replaying of recorded announcements and warnings that greatly reduce the actual time parties can speak; and (v) other service issues.

Accordingly, Petitioners petition DTC pursuant to G.L.c. 159 §§ 14, 17 and 24 to open a proceeding and, after hearing, to enter an order providing relief from the unjust and unreasonable cost of instate and local telephone calls they receive from Massachusetts' prisoners, and the poor quality of service they receive. Petitioners call on the Commission to find that: (1)(i) in accordance with FCC and other regulatory rulings, commissions paid by telephone service providers to correctional institutions are shared service provider profits, not an actual, necessarily incurred cost of service; (ii) per call surcharges are unnecessary for service providers to recover the actual costs of their calls plus a reasonable profit; and (iii) per call surcharges on all intrastate and local telephone calls originated by prisoners incarcerated in the Commonwealth's correctional institutions are unjust and

unreasonable and should be eliminated; (2) per minute rates must be lowered to reflect just and reasonable rates that permit providers to recover necessarily incurred costs of providing service plus a reasonable rate of return; (3) all service, maintenance, recharge and other fees incurred by Petitioners and other telephone company customers in connection with the use of prepaid accounts must be included in the calculation of just and reasonable rates for prisoner phone calls; and (4) prisoner telephone service providers must improve the quality of service they offer their customers.

B. The Cost of Calls that Petitioners Pay to Maintain Contact with their Incarcerated Family, Friends and Clients is Exorbitant and Harmful.

The enormous cost that Petitioners and other telephone company customers must pay to stay in touch with their family, friends, and clients who are incarcerated in Massachusetts is clear: gross annual telephone proceeds per prisoner bed average over $1000 for many of the county facilities for which we have data.[4] Profits per prisoner are also staggering, with a prisoner's family, friends, and counsel each funding hundreds of dollars in telephone company profits annually that the companies then share with correctional facilities in the form of commissions.[5] These profits-*cum*-commissions are almost all used for general revenue purposes and to pay for prisoner programs and benefits.[6]

Petitioners and telephone company customers like them are harmed in several ways by the unjust and unreasonable charges they are forced to pay for prisoner initiated phone calls. The financial burden is obvious: the charges bear no rational relationship to the actual, necessarily incurred cost of the calls to the service providers, who make enormous

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[4] *See* the last column of Appendix II, "Avg. Gross Proceeds Per Prisoner."
[5] *See* column 6 of Appendix II, "Annual Commission Payment (Profit) Per Prisoner."
[6] *See* discussion in section II.B.1 below, at pp. 11-14.

profits that are shared with correctional institutions as commissions. The exorbitant monopoly charges bear no relationship to the quality of telephone service that Petitioners receive, which they universally rate as poor. Petitioners complain of frequently dropped calls that require them to pay an additional connection surcharge of up to $3.00 when the call is reconnected; static-filled or otherwise difficult to hear connections; poorly maintained and malfunctioning equipment; excessive playing of recorded announcements that are often too loud; and non-responses to service complaints. In addition, Petitioners who must establish prepaid accounts to receive collect calls also complain of the outrageous cost of service fees (13.9% in the case of calls received from Evercom-serviced facilities) that they must pay on top of already high surcharges.[7]

Prisoners tend to come from the poorest communities in the state, meaning that the financial burden of these calls falls disproportionately on those individuals and communities that are least able to afford it. Petitioners who are family and friends of prisoners describe being forced to restrict their acceptance of calls from prisoners, effectively depriving their incarcerated loved ones of the most accessible and reasonable means of communication. This further weakens the family and community ties needed for released prisoners' successful reentry and reintegration into society. Prisoners, including twelve Petitioners, and society suffer as a result: half a century of studies show a consistent relationship between strong family and community contact during incarceration and reduced recidivism rates.[8]

Lawyers complain of the high cost of calls to stay in touch with their clients. This has forced some public interest law firms, including Health Law Advocates, not to accept

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[7] *See* discussion of high service fees in section II.B.3. below, at pp. 22-23.
[8] *See* Appendix III, a summary of public policy arguments supporting lower prisoner telephone rates.

collect calls from prisoners. Massachusetts Correctional Legal Services paid almost $4,000 in charges for phone calls from county prisoners last year. Because of budget cuts, MCLS had to reduce staff and curtail the hours that prisoners can call with their legal problems. The Committee for Public Counsel Services, the organization charged with providing criminal legal services to the indigent in the state, paid over $100,000 for collect and prepaid phone calls from prisoners in 2008.

II. DISCUSSION

A. Telephone company customers who receive prisoner telephone calls are entitled to pay just and reasonable rates for those calls.

Petitioners (like all telephone company customers) are obligated to pay (and, conversely, telephone carriers in Massachusetts are entitled to receive) just and reasonable charges for any telephone service the companies provide, including service to prisoners and the recipients of their calls. G.L.c. 159 §17. DTC[9] is statutorily obligated "to ensure that rates for common carrier telecommunications services in Massachusetts are just and reasonable." Re Verizon New England, Inc. dba Verizon Massachusetts, D.T.E. 01-31-Phase II, 223 PUR4th 361,392 (April 11, 2003), citing G.L.c. 159 §§ 14, 17, 20. In 1998 the Department of Telecommunications and Energy ("DTE"), DTC's immediate predecessor, determined that due to the lack of competitive alternatives, it had to continue to regulate the prisoner payphone market to ensure that customers like Petitioners paid just and reasonable rates for prisoner phone calls. D.P.U./D.T.E. 97-88/97-18 Phase II at 9 (April 17, 1998)(the "1998 Order"). DTE recognized that this market was an effective

[9] As successor in interest to the Department of Public Utilities and the Department of Telecommunications and Energy.

monopoly market serviced by a single, presubscribed carrier.[10] *Id.* The FCC has recognized that in the absence of strict regulation the prisoner payphone market acts "perversely," with competitive pressures pushing charges to consumers up, not down, driven by the payment of exorbitant commissions to correctional institutions to secure the lucrative exclusive service contracts. Order on Remand & Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* FCC No. 02-39 at 7-8 (2002)("FCC Prisoner Payphone Order").[11] Indeed, commissions are now the single largest component of prisoner payphone costs in Massachusetts, ranging from 30% to more than 52% of gross telephone revenues.[12] The prisoner telephone market in the Commonwealth is in fact acting perversely, and requires DTC's continued regulation to establish just and reasonable rates.

1. Just and reasonable rates in the anti-competitive prisoner telephone market must be based on actual, necessarily incurred costs of providing service plus a reasonable return on investment.

In the absence of a competitive market, DTC must determine the appropriate methodology and standard(s) to use in determining whether rates are just and reasonable. *See* Re Verizon 223 PUR4th at 392 (where telecommunications "services are subject to competition sufficient to keep prices at a reasonable level" the DTC can rely on market forces to produce just and reasonable rates; otherwise the DTC must act). Prior to 1995 the DTE determined just and reasonable rates for Verizon (and other telephone carriers) by using a "cost plus" method where carrier revenue requirements were calculated based on

[10] The 1998 Order regulates Operator Service Providers, long distance companies that carry so-called operator handled calls such as collect and credit card. 1998 Order at p.4, fn. 4. Notwithstanding that live operators have long been replaced by computers, prisoner telephone service providers continue to describe collect calls from prisoners as operator-assisted, and to bill them as such. *See* discussion at section II.B.2, below at pp. 15-22.

[11] Available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513183346

[12] *See* column 3 of Appendix II, "Commission" for a list of commission formulas that Massachusetts correctional institutions receive from prisoner payphone providers.

historic costs of providing service plus a fair rate of return on investment. *Id.* at 393. This method of determining just and reasonable rates has been common in the field of telecommunications as well as for public utilities regulated by DTE/DTC.[13] Indeed, as will be seen, the FCC has used a cost plus rate of return model in the prisoner payphone market context. Actual costs of service, then, must be a central focus of DTC's inquiry here.

Appropriate, necessarily incurred costs of service played the central role in both the FCC Prisoner Payphone Order and in the DTE's 1998 Order, and are indeed central to Petitioners' claims today. The FCC Prisoner Payphone Order turned on the FCC's finding that commissions paid to correctional institutions by telephone service providers were not recoverable costs of service but constituted an element of service provider profit. FCC Prisoner Payphone Order at 8, 12, 15.[14] In the 1998 Order the DTE justified the need for per call surcharges for prisoner telephone calls by finding that carriers incurred unique costs in providing service to correctional institutions that the companies were entitled to recover and which existing rates were deemed unable to cover. 1998 Order at 9. Costs necessarily incurred by payphone companies in providing prisoner telephone service were therefore at the heart of DTE's reasoning in approving per call surcharges. Nevertheless, in the eleven years since the 1998 Order was issued, the special costs cited by DTE have been almost entirely eliminated, thereby removing the justification for per call surcharges underlying the 1998 Order.[15] Moreover, the overwhelming majority of prisoner phone

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[13] *See, e.g., Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 594 (6th Cir. 2001)(a just and reasonable rate for basic local exchange service must be sufficient to cover costs and ensure a fair and reasonable return on investment); *Public Advocate v. Public Util. Comm'n*, 718 A.2d 201, 203-04 (Me. 1998)(telephone rates must be just and reasonable to customers and public utilities -- including telephone companies -- such that providers recover their operating expenses and an adequate return on investment); *Hingham v. DTE*, 433 Mass. 198, 203 (2001)("It is a long-standing principle that a public utility is entitled to charge rates that allow it to meet its costs of service, including a fair and reasonable return on [investment]").

[14] *See* discussion in sections II.A.2. and II.B.1, below at pp. 9-14.

[15] *See* discussion of the 1998 Order in section II.B.2, below at pp. 15-22.

calls are now paid from prepaid accounts, and are therefore not collect, operator-assisted calls, even though providers continue to bill them as such.

2. Commissions are not recoverable costs but shared profits according to the FCC and other regulatory bodies.

The FCC has determined that commissions paid to correctional institutions are *not* a recoverable cost of providing payphone service, but should be treated as an element of the service provider's profit. FCC Prisoner Payphone Order at 8, fn.49, 12, 15. In the FCC Prisoner Payphone Order, the FCC denied the prisoner payphone service providers' request either to preempt state mandated calling caps or to impose a $0.90 per call surcharge on all instate prisoner calls. *Id.* at 2, 11-12. The FCC rejected the companies' petition after finding, *inter alia*, that their cost data was deficient because commissions were treated as costs rather than profits. *Id.* at 15. While the FCC emphasized that "costs must ultimately be recovered" by prison telephone providers, it was equally adamant that "location rents that providers have agreed to pay [correctional institutions] in the form of commissions... *should not be treated as costs*" and are therefore not recoverable in the providers rate base. *Id.* at 11-12 (emphasis added). A few pages later it reiterated: commissions "represent an apportionment of profits between facility owners and the providers of inmate payphone service." *Id.* at 15.

Both the Alaska and Georgia utility regulatory agencies ruled at about the same time that commissions paid to correctional agencies were not costs incurred in providing telephone service, and therefore not recoverable through rates. *Re Evercom Sys., Inc., Order Granting in Part, and Denying in Part, Pet. for Recons.*, 2001 WL 1246903 (Regulatory Comm'n of Alaska, 2001)("Alaska Prisoner Telephone Order"); *Re Investigate Long Distance Charges, Corrected Order*, 2002 WL 31096770 (Ga. Pub. Serv.

Comm'n 2002)("Georgia Prisoner Telephone Order"). In the Georgia Prisoner Telephone Order, the Georgia Public Service Commission capped rates charged by AT&T for Institutional Telecommunications Services (prisoner telephone service). In rejecting AT&T's interLATA rates as unjust and unreasonable, the Commission noted that the "most substantial increased cost to carriers" is the commissions paid to correctional institutions "to prevail in the RFP process." *Id.* at 5. It concluded that the RFP process "does not ensure a reasonable rate for the billed party. In fact, the record reflects just the opposite. If bidders increase their chance of winning by including a high commission, which they fully intend to pass on to the real consumer, then the RFP process may result in higher costs to the billed parties." *Id.* (internal citation omitted). The Georgia Commission forced AT&T to reduce its interLATA rate from $3.95 per call and $0.69 per minute to $2.20 per call and $0.35 per minute. (IntraLATA surcharge and per minute call rates were capped at $2.20 and $0.24 respectively.) The Commission found "that *the rates to be charged for [prisoner telephone service] should relate to the costs incurred in providing the service, and that the commission paid to the [Georgia DOC] is not one of those costs*." *Id* at 6 (emphasis added).[16]

In the Alaska Prisoner Telephone Order of 2001, the Regulatory Commission of Alaska reaffirmed an earlier decision that excluded commissions payable to the state's DOC from expenses that could be recovered through rates. Evercom, the "monopoly provider of inmate telephone services in Alaska," had requested the reconsideration. In denying Evercom's motion, the Commission quoted from its earlier ruling:

[16] It is noted that the Georgia intraLATA surcharge and per minute rates remain among the highest in the country. The Georgia Commission noted that any attempt to raise the caps would have to be cost-justified but it relied on the *rates* in eight neighboring states to reach its conclusion on appropriate rate caps, using reasoning that echoes the DTE's in the 1998 Order. *See* Gerorgia Prisoner Telephone Order at 5. The Commission failed to consider actual cost data in its analysis justifying rate caps.

> "'A commission paid to a government agency pursuant to contractual agreement is not the type of cost typically recovered through rates in a regulatory setting. The inclusion of a commission requirement in a bid solicitation for regulated utility service conflicts with the regulatory objective of ensuring utility costs are necessarily incurred and rates are just and reasonable... Since the likelihood of being awarded a sole source prison phone system contract is enhanced by proposing higher DOC commissions, the incentive for service providers is to increase the DOC commission in bid proposals. *By allowing commissions to be recovered through rates, the governing regulatory body... promotes a system where the service provider has an incentive to increase the price of service regardless of the actual costs incurred...*
>
> *We believe that such commission [sic] should not be treated as a utility operating cost recoverable through rates. Disallowing negotiated commissions from the rate base facilitates the regulatory goal of encouraging utilities to only seek rate recovery for the necessarily incurred costs of providing service and promotes just and reasonable rates.* Where prison phone service solicitations require commissions, the exclusion of commissions from rates compels bidders to consider the impact of a proposed commission on its profit margin.'" (internal citations omitted)(emphasis added). *Id.* at 4-5.

Prison telephone service providers can in fact pay commissions, but they must come out of, and be calculated as part of, their profits. As held by the FCC and the Georgia and Alaska regulatory agencies, commissions paid to correctional institutions are not necessarily incurred costs of providing prisoner telephone service and therefore not recoverable in a provider's rate base, but represent shared profit.[17]

B. The profits of prisoner telephone service providers and the rates that fund them have risen to levels that are presumptively unjust and unreasonable notwithstanding that the actual, necessarily incurred costs of providing service have fallen dramatically since 1998.

1. Telephone rates that generate profit margins of 30% to more than 52% are presumptively unjust and unreasonable.

Commissions paid by prisoner telephone service providers to Massachusetts correctional institutions are the single largest category of prisoner payphone expense

[17] We note that commissions are not listed among the legitimate costs that the DTE agreed telephone service providers could recover through per call surcharges on prisoner calls in its 1998 Order. 1998 Order at 9-10; *see* discussion of the 1998 Order in section II.B.2, below at pp. 15-22.

incurred by providers. Amounts paid to the state's prisons and jails range from 30% to more than 52% of gross telephone proceeds, sums that are collected by providers from telephone company customers like Petitioners. *See* Appendix II, Annual Commissions (Including Per Prisoner Commission Profit). As column 4 titled "Commission Paid" of Appendix II shows, Petitioners and other telephone customers fund millions of dollars of such commissions each year, funds that the FCC and other regulatory agencies have determined are in fact profits shared by telephone companies with correctional institutions. Commissions are decidedly *not* necessarily incurred, recoverable costs of providing service. Regulatory characterization of commissions as shared profits takes on particular resonance in the Commonwealth since commissions paid here are ultimately used like profits, that is, for purposes completely unrelated to the provision of telephone service in the state's correctional facilities. Indeed, at the state level and in most counties commissions have been unavailable for prisoner telephone-related use.

For the five year period from July 1, 2003 through June 30, 2008, prisoner telephone service providers Verizon and its successor Global Tel*Link (GTL) shared more than $11.5 million in profits – paid in the form of commissions – with the state Department of Correction. 100% of that sum – funded by Petitioners and other telephone company customers – was paid by law directly into the state's General Fund, the repository for taxes and other general revenues collected by the state. G.L.c. 29 § 2. The more than $3 million of shared profits paid each year by providers to county correctional facilities in the form of commissions (also funded 100% by telephone customers including Petitioners) is virtually all deposited in prisoner canteen funds.[18] Moneys in these funds are earmarked for

[18] *See* column 4 of Appendix II, "Commission Paid," for a list of the amount of commissions paid to county facilities for which we have data. The $3 million is a very conservative figure: we have no figures for several

prisoner programs and other prisoner amenities. 103 CMR 911.08(2)[19] Half the counties in the state are required by statute to pay telephone commissions into these funds.[20] Commissions paid to at least four (and possibly all) of the other seven counties in the state are also paid into canteen funds pursuant to local rules written under authority of 103 CMR 911.08.[21]

The profits that prisoner telephone providers share with state prisons and jails in the form of commissions are clearly unrelated to the cost of providing phone service or security. Instead this single largest chunk of prisoner telephone revenue is used like taxes or other public levies for general state operations or programs and services that benefit prisoners. Funding state and county general revenue streams is clearly not a cost of providing telephone service to prisoners.

Commissions paid to correctional institutions are profits shared by prisoner telephone service providers according to the FCC and other regulatory bodies. Provider profit margins therefore are *at least* equal to the amount of the commissions paid since commissions are calculated on a gross revenue basis. Profits-*cum*-commissions paid in the state range from 30% to more than 52% of gross billable charges.

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counties including Suffolk, the state's largest county facility, which receives 50% of gross telephone proceeds as an annual commission, with a $2.85 instate per call surcharge. In addition, the commission amount for Worcester is from a period immediately before a new contract with a 350% surcharge increase took effect. *See* discussion of the history of commissions in the state at section II.C.1, below at pp.24-27.

[19] "[R]evenues generated by the sale or purchase of goods or services to persons in correctional facilities may be expended for the general welfare of all the inmates at the discretion of the sheriff..."

[20] Seven of the fourteen counties in the state have been abolished. The sheriffs' departments in the former counties are now technically state departments though still independent. The other seven sheriffs' departments continue to exist as independent county units though they are funded in large part by the state. As part of the annual appropriation to fund sheriffs' offices in these non-abolished counties, the legislature passed a law requiring that all telephone commissions paid to such county sheriffs be retained by them "for use in a canteen fund." *See, e.g.,* the text accompanying state budget line item appropriation for County Correctional Programs, State Budget Account 8910-0000, from the Budget Summary for FY2009 (7/1/08-6/30/09), attached as Exhibit 1. The legislature apparently felt this income stream for sheriffs needed statutory protection. It is unclear why there is no parallel law or restriction for abolished counties.

[21] Commissions paid to Hampden, Middlesex, Berkshire and Franklin counties are paid to canteen funds. We do not know what entity receives commission payments in Suffolk, Worcester, or Hampshire counties.

The Supreme Judicial Court held that a return on investment "'should be commensurate with returns on investments in other enterprises having corresponding risks.'" *Att'y Gen. v. Dep't of Pub. Utils.*, 392 Mass. 262, 266 (1984)(quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944))(upholding a return on equity of 16.3% by a gas and electric utility). The FCC found that an 11.25% return on investment is "accepted elsewhere in telecommunications." FCC Prisoner Payphone Order at 16. Since risks are relatively low in a monopolistic market with a captive client base, steady and predictable usage, and no competitive alternative, it can be argued that the 11.25% return on investment in this telecommunications submarket is actually high.[22] The FCC held elsewhere that a return of investment of 24% in the telecommunications field was, in fact, unreasonable. In a 2001 case, the FCC found that defendant Business Telecom Inc. failed to explain how revenues from a "truly reasonable" charge "could profitably permit" commissions of up to 24% of gross revenues. *ATT Corp. v Business Telecom Inc.*, 16 FCC Rcd 12312, 12332 (2001), *recon. denied*, 16 FCC Rcd 21750 (2001). Since telephone rates paid by Petitioners fund profits that are at least 30% to more than 50% of the total cost of a prisoner telephone call, truly just and reasonable rates that reflect a fair return on investment for service providers must be vastly lower than the monopoly rates providers currently charge in the state. Although it can be argued that these excessive profit-*cum*-commissions are used for laudable purposes, including helping to balance the state's budget and funding needed prisoner programs, there is no exception to the requirement of Massachusetts law that telephone service charges be "just and reasonable."

[22] Because prisoner telephone service providers are for-profit companies with responsibilities to shareholders, it may be assumed that in addition to profits-*cum*-commissions, other profits are built into the rates charged which are also funded by the substantial revenues retained by providers on each prisoner initiated call.

2. The cost of providing prisoner telephone service has fallen dramatically since 1998, and none of the special cost elements cited by DTE in the 1998 Order to justify per call surcharges on prisoner-initiated telephone calls is any longer significant.

The DTE in 1998 recognized the monopoly nature of the prisoner payphone market and the absolute need for its continued regulation including, most importantly, the capping of phone rates. 1998 Order at 9. In the 1998 Order the DTE found it necessary to authorize surcharges for prisoner phone calls but capped them at $3.00 per call. *Id.* The DTE grounded its 1998 ruling on the right of payphone service providers to recover "legitimate additional costs incurred in providing inmate calling services." *Id.* DTE authorized the surcharges to fund three specific categories of costs that providers claimed were not recoverable in the per minute rate: special systems and security costs; uncollectibles; and higher personnel costs. *Id.* at 9-10. Commissions are notably absent from DTE's list of costs that service providers are entitled to recover through increased rates. In fact commissions figure not at all in the 1998 Order even though service providers had been paying commissions to correctional institutions for years prior to the 1998 ruling.

What is apparent more than a decade later is that the need for an extraordinary per call charge to fund the special cost categories enumerated by DTE no longer exists. Indeed, service providers primarily need and use surcharges to fund the millions of dollars of profits they share with the state's correctional institutions in the form of commissions that secure their exclusive service contracts.[23] Profit sharing with correctional institutions represents the single largest component of prisoner phone call proceeds. But as has been shown, these commissions are neither used for nor are they legally available at the state

[23] *See* Appendix V for an analysis that correlates surcharges levied and commissions paid for a ten-month period in FY05 to the DOC. We only have sufficient data to attempt the correlation for that partial year, and only for DOC. The correlation shows almost a one-to-one ratio between surcharges collected and commissions paid. Commissions by law are, of course, deposited into the state's General Fund.

level and in most counties for the cost categories DTE approved in the 1998 Order. Indeed virtually none of the commissions are used to pay for telephone service costs. Instead they are paid to the Commonwealth's general fund to underwrite the state's operations or to prisoner canteen funds that pay for prisoner programming and other amenities.

The communications landscape has changed dramatically since 1998, and even more so since 1994 and 1995, the date of the underlying documents from AT&T, MCI and Sprint cited by DTE to justify the 1998 Order.[24] Only two states impose per call surcharges of $3 today versus the 33 that DTE said did so in 1994/95; ten have eliminated surcharges altogether. 1998 Order at 9; *see* column 8 of Appendix IV, "2008 IntraLATA rates" for rate data for intraLATA calls in MA counties and nationally, discussed in section II.C.2 at pp. 27-29, below. GTL, Evercom and other telephone companies can profitably charge lower rates in diverse correctional settings across the nation (from large, state-wide systems to smaller, local jails) because costs in all expense categories are lower and continue to decline as improved technologies make telephone operations more efficient.

Each of the three categories of extraordinary costs allegedly incurred by prison telephone service providers that DTE cited in the 1998 Order to justify per call surcharges has benefitted from considerable cost savings over the past decade as communications technologies have continued to advance, tighter payment safeguards have been imposed, and the industry itself has undergone widespread consolidation resulting in significant economies of scale. System and security costs have come down dramatically since the 1998 Order was issued.[25] Fully automated collect call functions that use voice recognition

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[24] *See* Exhibit 1 to InVision Initial Comments cited in the 1998 Order at p. 9.

[25] *See, e.g.,* Declaration of Douglas A. Dawson in Support of Petitioners' Alternative Proposal ("Dawson Declaration 2007-I") at 5-6, Appendix B to Petitioners' Alternative Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC

software came on-line in the late 1990s.[26] These continue to be improved and made more cost effective, and assure that live operators and the high wages and infrastructure needed to support them are a thing of the past.[27] As GTL noted in a 2007 filing with the FCC, the provider "continues to explore ways to reduce costs by increasing automation, thus limiting the need for on-site personnel, which will further reduce costs and create savings for customers."[28] Other industry-wide factors that contributed to the decrease in the cost of telephone service include: the "reduction in transport costs as transport technologies have improved; drastic reductions in switching costs as the cost of switching hardware and software has plummeted in recent years; reduction of access charges over the years; and a reduction in the regulation and thus the regulatory costs of providing long distance."[29]

More recent technological advances have specifically benefited the prison telephone industry. Between 2003 and 2007, the use of soft switches reduced switching costs by "allowing signaling and penological control functions to be provided to many facilities from a central location" resulting in huge economies of scale.[30] As a result, prisoner calling service providers "can serve hundreds or thousands of prison facilities

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Docket No. 96-128 (March 1, 2007). Dawson Declaration 2007-I is available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518909012
Mr. Dawson is the Petitioners' expert witness in connection with the on-going FCC inquiry into long distance call rates for prisoner telephone calls (the "FCC Interstate Rate Case"). The FCC Prisoner Payphone Order was issued earlier in this case.

[26] *See, .e.g.,* Affidavit of Douglas A. Dawson ("Dawson Affidavit 2003") at 6, Appendix A to *Martha Wright, et al.; Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking,* CC Docket 96-128 (Nov. 3, 2003). Dawson Affidavit 2003 is available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6515782168

[27] Dawson Declaration 2007-I at 4-6. Live operators have not been used for well over a decade for collect and prepaid calls, yet Evercom still categorizes these calls as "operator-assisted" on its billing website, noting that there "is a surcharge applied to this type of service." Surcharges may have been justified when operators were live to cover the associated special costs, but this false characterization serves now only as a smokescreen to rationalize an unnecessary and otherwise unjustifiable fee.

[28] Comments of Global Tel*Link (filed in the FCC Interstate Rate Case), May 2, 2007 at 10, available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519408408

[29] Dawson Declaration 2007-I at 6.

[30] *Id.* at 21.

from a single switching platform with a central feature server and signaling gateway," greatly reducing overall operating costs.[31] (Evercom, service provider for eight of the ten counties in the state for which we have at least some data, is now part of Securus Technologies, the largest prison telephone service provider in the country. Securus services 2,600 prisons and jails from one central facility.)[32]

Advanced recording technologies developed since the 1998 Order make it possible to record and monitor calls, a key penological requirement, more efficiently and cheaply. For most of the history of phone service, calls could only be monitored by having a person tap into and listen to the calls.[33] Modern recording systems record and store calls digitally, making it easy to later retrieve recorded calls.[34] The size and cost of storage devices that can be used for such a purpose have decreased dramatically over time.[35] The cost continues to decline as digital storage technologies improve year to year, "with a seeming doubling in storage capacity per dollar every 18 months or so."[36]

One of the biggest areas of savings for service providers has been the substantial elimination of uncollectibles, DTE's second category of unique costs supporting per call surcharges. Indeed the overwhelming majority of prisoner telephone calls are now made from mandatory prepaid accounts. Uncollectibles essentially vanish with these accounts. Unless they are exempted, telephone customers must deposit money with the provider before they can accept collect calls from correctional facilities. The hefty service fees that are imposed to set up and replenish prepaid accounts, including GTL's unconscionable

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[31] *Id.*
[32] *See* website of Securus Technologies, Inc., Evercom's parent, at http://www.t-netix.com/public/about.asp .
[33] Dawson Affidavit 2003 at 6.
[34] *Id.* at 6-7.
[35] *Id.* at 7.
[36] *Id.*

19% service charge, are a source of unregulated income (and profit) for GTL, Evercom, and other service providers.[37]

A more accurate way of describing the current prisoner payphone system is that service providers have shifted from essentially a collect call system to a prepaid system, with truly collect calls generally available only to the most financially responsible and credit-worthy third parties. The only individuals and entities that are generally exempted from the prepaid requirement are lawyers and legal and government agencies. There are also some exceptions for individuals with certain local providers, like Verizon, that have a tight contractual relationship with the prisoner payphone provider, greatly reducing the risk of uncollectibles from the small universe of true collect call recipients under the new, mostly prepaid system.

Even though the vast majority of prisoner calls are now prepaid, service providers insist on labeling and billing them as if they were much more expensive collect, operator-assisted calls when in fact they are neither. That prepaid calls represent a substantial billing and cost savings to providers is clear. In a filing in the FCC Interstate Rate Case, Illinois-based prisoner payphone service provider Consolidated Communications Public Services, Inc. conceded that use of prepaid accounts "would enable it to recover its costs without the need for a per-call [sur]charge."[38] The current contract between Missouri on behalf of state correctional institutions and Public Communications Services, Inc., a Los Angeles prisoner payphone provider, explicitly recognizes these significant savings: charges are $0.10 per minute for all prepaid and debit account prisoner calls made

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[37] *See* section II.B.3 below for a more detailed discussion of unregulated service fees, at pp. 22-23.
[38] Comments of Consolidated Communications Public Services Regarding the Alternative Rulemaking Proposal of Martha Wright, et al., filed in the FCC Interstate Rate Case, May 2, 2007 at 17, available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519408595

anywhere in the country, but a per call surcharge of $1.00 is imposed *only* for collect calls.[39] Similarly in New Mexico, the April 22, 2009 prisoner telephone service contract with Securus, Evercom's parent, provides that prepaid and debit account calls instate are $0.89 flat (i.e., without a surcharge or per minute charge) while collect calls are more, at $1.00 flat.[40] Charging any surcharge for prisoner phone calls paid from prepaid accounts is unjustifiable. Charging $3 per call for local and instate calls is unconscionable.

The final category of unique cost cited by DTE in the 1998 Order to justify per call surcharges – high labor charges – has also seen dramatic reductions as personnel costs fall by eliminating live operators and shifting virtually all of their functions to computers, as discussed above, and (more recently) through mergers and acquisitions that have resulted in an unprecedented consolidation of former competitors in the prison payphone service industry and accompanying centralization of operations.[41] The two dominant players in the field nationally – Evercom (now part of Securus Technologies) and GTL – are also the predominant service providers in Massachusetts. Major economies of scale have resulted from consolidation in the industry and the centralization of function allowed by new switching technologies.[42]

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[39] Relevant pages of the Missouri contract are included as Exhibit 2.

[40] According to John Reynolds, Economist, Telecommunications Bureau, New Mexico Public Regulations Commission, in an email dated June 9, 2009.

[41] *See, e.g.*, website of Securus Technologies, Evercom's parent (*supra* at fn. 32), the largest prisoner telephone service provider in the world. The History section describes Securus' creation through the merger of "two correctional business leaders," Evercom and T-Netix, who were themselves the results of numerous prior mergers. *See also* website of GTL describing its acquisition of (i) AT&T's prison service division in June 2005, and (ii) MCI's prison division in July 2007. http://www.gtl.net/index.aspx?Pid=51

[42] Pay Tel, a Securus competitor, noted that "Evercom and T-Netix merged in 2004 to form Securus Technologies, Inc. to provide better economies of scale and to attempt to improve profitability by positioning that company as the largest ICS provider in the country." Comments of Pay Tel Communications, Inc. (filed in the FCC Interstate Rate Case), May 2,2007 at 8, available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519408488
Pay Tel goes on to discuss its own centralized systems for providing support to correctional institutions, systems that save money because of economies of scale.

Large carriers that serve hundreds or thousands of facilities, including both Evercom/Securus and GTL, by definition enjoy enormous economies of scale. Most of the functions performed by prisoner payphone service providers, including management, billing and collection, marketing, and customer support, are centralized.[43] Thousands of correctional customers can now be serviced from one central location, translating into huge savings from reduced labor costs on a per call basis (i.e., fewer personnel are needed to service thousands of facilities from one location). It is clear that personnel costs do not need to be subsidized through an additional surcharge.

None of the reasons cited by DTE in support of per call surcharges of up to $3 in the 1998 Order is any longer relevant. The argument by proxy DTE cited – that because prison payphone providers imposed a $3 surcharge in 33 states (in 1994/95) to cover the extra expenses associated with prison payphone service, a $3 per call surcharge cap was appropriate here – has completely collapsed with the dramatic reduction in collect call rates for prisoner initiated calls in all parts of the country, with only two states continuing to permit $3 per call surcharges in 2008.[44] Indeed the majority of states – 28 – impose no surcharge or surcharges of $1.50 or less. Appendix IV, column 8 "2008 IntraLATA rates." In 1998, no Massachusetts correctional institution levied an intrastate surcharge approaching $3; now, in 2008, most of the counties do, raising rates dramatically even as correctional institutions across the country are lowering theirs, making the counties outliers nationally. The special costs that DTE cited to rationalize surcharges have declined dramatically over the past decade as technology has advanced, cost-saving measures have

[43] GTL states on its website (*sipra* at fn. 41) that it provides technical service and customer support for all its customers at its headquarters in Mobile, AL, with a validation and secondary system and data backup site in Houston, TX.

[44] *See* more detailed discussion of national trends in section II.C.2 below at pp. 27-29.

been adopted and uncollectibles have been virtually eliminated, and the industry has become increasingly consolidated. Surcharges -- and unjust and unreasonable rates generally -- are levied by service providers not for necessarily incurred costs of providing telephone service, but to increase profits which they share with correctional institutions in the form of commissions to secure the monopoly markets they serve.

3. Service providers impose highly lucrative service and other fees to set up and replenish prepaid accounts. These unregulated charges further inflate already unjust and unreasonable prisoner phone rates.

Prepaid accounts have become another source of income for Evercom and GTL because of the outrageous service fees they (or billing affiliates) impose to set up and replenish prepaid accounts. GTL charges a 19% service fee, or $9.50 for a $50 deposit, on set-up and anytime money is deposited in a prepaid account. When GTL took over the DOC account from Verizon in 2006, DOC administrators objected to the confiscatory fee, adamant that recipients of telephone calls from DOC prisoners not see a rate increase because of the vendor switch.[45] DOC was well aware that an almost 20% fee on prepaid accounts translated directly into a significant rate increase. GTL agreed.[46] Had the DOC not insisted on reducing the service fee to zero for GTL's customers in Massachusetts, the cost to consumers would have been enormous: in FY 2008 total gross telephone revenues at DOC prisons was over $5.66 million. If only 75% of those calls had been paid with prepaid accounts, GTL's customers would have been required to pay over $823,000 in service fees *in one year* on those accounts, virtually all of which would have added to

[45] Exhibit 3 is a notice from DOC to prisoners and their families about the switch of service to GTL. It describes the complex mechanism needed to effectively eliminate the 19% service fee for MA customers.
[46] Because GTL had centralized all of its operations, including billing, at one facility, it decided the cost of setting up a separate billing system for DOC was too expensive. So a GTL bill for a customer in Massachusetts is quite complicated: GTL's billing continues to assess the 19% service fee for pre-paid Massachusetts accounts, but those calls are discounted 23% so that the actual cost of the call including the service fees equals the posted rates. *See* Exhibit 3.

GTL's bottom line since the accounts are set up by computer. These are profits GTL does not share with DOC, nor need to file with DTC.

County correctional institutions are not as concerned as DOC with phone company customers who receive collect calls from their facilities: Evercom is allowed to collect service fees on prepaid accounts. The company's customers who receive county phone calls and set up prepaid accounts with a credit card must pay a 13.9% service charge, or $6.95 for a $50 deposit. This charge essentially increases telephone call costs by almost 14%, so that a $6 call actually ends up costing $6.83; a $10 call ends up costing $11.39. In one smart business move, uncollectible charges for calls were reduced to a fraction of their former magnitude due to the switch to a prepaid system, while simultaneously establishing incredibly successful profit generators. While economies of scale provide enormous savings for the industry, set-up and service fees for prepaid accounts provide a separate, quite lucrative, and completely unregulated source of profit for the companies, even while these same customers are charged up to $3.00 for each local and instate call. The rate of return represented by this piling of fees on surcharges as actual costs of service have plummeted is egregious, beyond unjust and unreasonable.

This unregulated area of service fees imposed on a captive customer base must be examined by DTC since the service charges effectively operate as additional surcharges on prisoner calls. Evercom charges a 14% service fee. If GTL were to become the provider of choice to one or more counties, set-up fees would translate into an almost 20% surcharge on the amount of many prisoner calls. In the absence of competition, strict regulation of this charge is required. Nothing else will contain or cap these charges.

C. The recent history of commissions and surcharges in Massachusetts as well as developments in the prisoner payphone market nationally provide

further incontrovertible evidence that prisoner telephone rates in the state are unjust and unreasonable.

The recent history of prisoner telephone rates in Massachusetts, including surcharges and the exorbitant service provider profits and commissions they finance, starkly illustrates how the prisoner telephone market functions as a reliable and convenient revenue enhancement extraction device for correctional administrators, where charges are increased to boost profits and commissions, untied to actual, necessarily incurred costs of providing prisoner telephone service. An examination of the downward trend in prisoner telephone charges nationally similarly underscores both the outlier position of many Massachusetts correctional facilities and the need for the DTC to step in and establish just and reasonable rates for prisoner phone calls in the Commonwealth.

1. Increased charges for prisoner telephone calls in the state are directly tied to increased commission payments to correctional facilities that are used for budget balancing and general revenue purposes, not telephone related expenses.

County sheriffs in Massachusetts have been using their monopoly pricing power to inflate prisoner telephone call rates and increase correctional facility revenues for non-telephone related purposes at least since 2001. That year Norfolk County Sheriff Michael Bellotti more than tripled the per call surcharge on all instate prisoner phone calls from $0.86 to $2.85 at the correctional facilities under his control. The Sheriff acknowledged that the increased revenues would not be used for telephone related purposes when he declared at the time that the increase benefitted prisoners because, "by law," commission proceeds had to be paid to a prisoner canteen fund, "helping to pay for things such as drug

rehabilitation."[47] The Sheriff noted that the added cost for telephone company customers "helps defer the cost to taxpayers here in Norfolk County."[48] Considering that at least two-thirds of individuals incarcerated at Norfolk County facilities are actually from the county, his comment underscores the unjust and unreasonable nature of the surcharge: functioning as a special tax or penalty, the surcharge shifts the cost of programs like drug rehabilitation from the entire county population onto the backs of only those county residents (and others, including Petitioners) who happen to have family, friends, or clients incarcerated in a Norfolk County facility and pay for phone calls from them. Drug rehabilitation and other prisoner programs are obviously worthwhile penological and sociological tools.[49] But Petitioners and other telephone company customers should not be unfairly singled out to fund these programs through unjust and unreasonable telephone rates.

The use of increased surcharges to fund prisoner programs gained momentum through the decade. For example, a 15-minute intra-LATA collect call in Hampden County increased from $2.10 in January 2005 to $2.60 in February of that year, an increase of 24%. The price rise resulted from a $0.50 jump in the per call surcharge for all local and intra-LATA calls from $1.50 to $2.00, a 33% increase. The surcharge helped fund $1,017,808 in commission payments to the Inmates Commissary Fund for the period from December 2005 to November 2006.

In Worcester County the increase was even more dramatic: the price of 15-minute local and intraLATA calls rose an astronomical 90.7% (from $2.36 to $4.50) in July 2006 when an amended Evercom contract took effect. Prior to July the per call surcharge for

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[47] Kevin Rothstein, "Phone fee hike may quiet inmates," The Patriot Ledger, Dec. 1, 2001, attached as Exhibit 4. The law the Sheriff referred to was undoubtedly an earlier version of the budget law included as Exhibit 1. Norfolk County is still an independent county, and therefore covered by such a law.

[48] *Id.*

[49] *See* Appendix III describing the public policy benefits of just and reasonable telephone charges.

local and intraLATA calls was $0.86, the surcharge that DOC imposes and that Norfolk County similarly charged prior to the 2001 increase to $2.85. In July 2006 the Worcester surcharge rose to $3.00, an increase of almost 350%. At the same time Evercom agreed to increase its commission to the county (40% of gross telephone proceeds) by $60,000 annually.[50] From July 2006 forward, the Worcester County sheriff would earn a minimum of $1.80 per 15 minute intraLATA call (40% of the cost of such a call) versus $0.944 for the same call prior to the increase in the surcharge.

While we do not have comparable rate data for other counties and cannot show when rates increased and by how much, we do know that four of the seven counties for which we have per call rate data impose a per call surcharge of $3.00 for each local and instate call, two others charge a $2.85 instate per call surcharge, and the seventh (Hampden County) levies a surcharge of $2.00 per call.[51] A comparison of commissions paid to Barnstable County House of Correction by Evercom in the same general time frame that other counties were entering into new telephone contracts supports the conclusion that the rate increases described were negotiated as pure revenue generators, not to pay for any telephone related cost or expense. The following table shows that commissions paid to the Barnstable HOC Canteen Fund (the recipient of telephone service provider commissions) more than doubled after January 1, 2005, the date that a renegotiated contract with Evercom became effective.

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[50] Prior to the increase in the surcharge in July 2006, commissions paid to the Worcester County sheriff's department totaled $424,930 for the period of April 2005 to April 2006, an average of $32,686.92 per month. Commissions paid to Worcester went up beginning in July but we do not have data indicating by how much. With a 350% increase in the amount of the surcharge, the commission on a 15 minute call would increase from $0.944 to $1.80 for a 15-minute call, an increase of more than 90%. It is likely that gross revenues would almost double following the increase, leading to a similar increase in commission payments.

[51] *See* Appendix IV, column 8, "2008 IntraLATA rates" for a list of surcharges for counties in the state for which we have data.

Year	Commission Paid	% increase/decrease from prior year
2003	$100,585.40	--
2004	$113,380.41 (projected)[52]	+12.7%
2005	$254,304.09	**+124%**
2006	$247,674.55 (projected)[53]	-2.6%

The astronomical increase in profits represented by the more than doubling of commissions from 2004 to 2005 parallels the increase in rates experienced by recipients of prisoner telephone calls in Hampden and Worcester (and undoubtedly other) counties.

2. The rise in prisoner telephone rates for county facilities runs counter to the recent national trend of decreasing fees and eliminating surcharges, with the result that many Massachusetts counties in 2009 are counted among the jurisdictions that charge the highest per call surcharges in the country for instate calls.

The dramatic increase in the Commonwealth in rates for local and instate prisoner initiated telephone calls runs counter to the national trend and virtually every major prison system in the country. From 2004 to 2008, at least 23 state systems reduced their phone charges for intraLATA prison calls, including substantial reductions at five of the nine largest prison systems in the country with almost one-third (31%) of the country's prison population.[54] Indeed, well over half (54.85%) of prisoners nationwide experienced reductions in their phone bills from 2004 to 2008. Prison phone calls in Florida were reduced by 66%, by 57% in New York State, by more than 70% in New Mexico and Washington State, 37% in New Hampshire and 84% in Rhode Island. Only one state system, in Colorado, experienced an increase in intraLATA rates, and that was part of a larger renegotiation of the telephone contract that saw an overall reduction in intrastate

[52] We were provided data for 10 months of 2004, which showed commissions paid of $94,483.68.
[53] Similarly, ten months of data for 2006 yielded a sum of $206,395.46 for the period.
[54] *See* Appendix IV for a detailed comparison of charges for a 15-minute Intra-LATA prisoner-initiated collect call in 2008 vs. 2004, for correctional facilities in Massachusetts counties and 47 states. The chart indicates percentage increases and decreases in rates between 2004 and 2008 for the listed jurisdictions.

rates.[55] Today, at least ten states no longer impose any surcharge or connection fee for intraLATA calls,[56] another eighteen had surcharges of $1.50 or less, including Massachusetts DOC, and (at the high end) only two states had surcharges of $3.00 (Arkansas and Minnesota). In contrast, at least five Massachusetts counties *increased* their surcharges in the same general time frame, and a sixth imposed a surcharge that qualifies as the second highest in the country. Along with Arkansas and Minnesota, Massachusetts counties now charge the highest per call surcharges in the country for instate calls.

To the inevitable cry from providers that rates were substantially reduced in correctional systems with large prison populations or other unique characteristics, we note that all local and intrastate phone calls in Rhode Island are $0.70 flat for a call of any authorized length (without a surcharge) while in New Mexico all such calls are $0.89 flat (prepaid) or $1.00 flat (collect), also with no surcharges. (The New Mexico provider is Securus, Evercom's parent, pursuant to a contract dated April 22, 2009.) These two systems could not be more different: New Mexico is a huge, sprawling, sparsely populated Western state, while Rhode Island is the smallest, most densely populated state in the country. Finally, GTL entered into a contract with the Montgomery County (Maryland) Department of Correction on May 15, 2008 that calls for a flat rate of *$0.65 for calls made anywhere in the country*, both intra- and interstate, with no per call surcharge.[57] The Montgomery County DOC has a capacity of 1,228 prisoners, smaller than at least four county correctional institutions in the state.[58]

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[55] Pursuant to correspondence in September, 2008 with Board members of Colorado CURE.
[56] Seven of these states charge flat rates for intra-LATA calls. Texas only started permitting prisoner phone calls this year, with no per call surcharge.
[57] Exhibit 5 is a copy of relevant pages from the Montgomery County, MD DOC contract with GTL.
[58] *See* the website of the Montgomery County Department of Correction and Rehabilitation, http://www.montgomerycountymd.gov/doctmpl.asp?url=/content/docr/index.asp and links to different county

The per minute cost of prisoner initiated collect calls is obviously also falling as various rate components decline.[59] In Massachusetts, a truer per minute cost of prisoner payphone rates emerges when commissions – the shared profit element of the rates according to the FCC – are backed out of the per minute rate.[60] A collect call from a DOC facility costs 10.2¢ per minute after backing out the 35% commission payments. Similarly, the cost of a collect call from a Hampden County jail facility costs less than 8.3¢ per minute after backing out the 52% commission.[61] These all indicate that in Massachusetts, charges to collect call customers of 10.2¢ per minute or less cover the actual costs of providing collect telephone service for prisoners, including adequate profit margins for the providers *with no per call surcharges or other additional costs.*

III. CONCLUSION

A. DTC must continue to regulate the anti-competitive prisoner payphone market and determine just and reasonable rates.

The cost of telephone calls made by Massachusetts' prisoners to their in-state families, friends, and counselors is exorbitant. The high rates for collect calls are due almost entirely to per call surcharges that prison telephone service providers use to fund millions of dollars of commissions paid to the correctional facilities annually. Virtually none of the commissions are used for telephone or telephone security related purposes, and

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facilities for numbers of beds at each. *See* column 5 of Appendix II, "Institution Population," for similar data for MA county facilities. Suffolk, Hampden, Worcester and Plymouth county facilities are all larger.

[59] *See* column 7 of Appendix IV, "Per minute customer cost 2008." The figures in this column were derived by dividing the cost of a fifteen-minute intraLATA call, including surcharges, by 15.

[60] *See* the last column of Appendix VI, "Cost of 15 Minute Call Less Commission = Net Received by Provider/Per Minute Cost." The first number in this column is the cost of a 15 minute call, reflecting the net amount received by telephone providers *after* paying commissions. The second figure after the slash (/) is the per minute cost of a call after backing out the relevant commission amount.

[61] *Id.* Hampden County receives an annual commission of 52% plus $42,000/year. The $42,000 cannot be factored out when calculating per minute costs. It is clear from the relatively low telephone rates negotiated by the Hampden County Sheriff, on the one hand, and the high commissions paid (over $1 million/year, certainly among the highest commissions paid to any county facility), on the other, that Sheriff Ashe and his team negotiated the best county service contract in the state.

at the state level and in half the counties they have in any event been legally unavailable for such uses. Instead commissions underwrite the state's operations and increase the funds available to sheriffs for prisoner programming and other amenities, laudable functions for sure, but ones that should be borne by the general public, not select telephone company customers.

These unjust and unreasonable telephone rates are clearly unjustifiable and must be dramatically reduced. The DTE's rationale underlying the 1998 Order in support of per call surcharges has been shown to be no longer valid. Commissions – the single largest component driving the cost of prisoner telephone calls – are not mentioned in the 1998 Order either as a category of cost contributing to the need for a surcharge or otherwise. And nowhere in the 1998 Order does the DTE contemplate that funding the state's general revenue fund or balancing county sheriffs' budgets is a legitimate, recoverable cost of providing telephone service to prisoners.

The American Correctional Association, the national organization that accredits prisons, in 2006 adopted a policy that stated that rates and surcharges for prisoner telephone calls should be "commensurate with those charged to the general public for like services" and that "[a]ny deviation from ordinary consumer rates should reflect actual costs associated with the provision of [telecommunications] services in a correctional setting."[62] Where, as in Massachusetts, the proposed enormous deviations in rates from those charged to the public are determined by officials who also must seek to maximize their institutions' revenue streams in tough economic times, the conflict of interest is obvious. What is also obvious, and what has not changed in the eleven years since the 1998 Order, is the absolute

[62] Public Correctional Policy on Adult/Juvenile Offender Access to Telephones unanimously ratified by ACA Delegate Assembly on Jan. 24, 2001; last amended Feb. 1, 2006.

need for the DTC to continue to regulate the prisoner telephone service market. Indeed, the FCC in the FCC Prisoner Payphone Order urged state regulatory commissions

> to examine the issue of significant commissions paid to ICS providers to confinement facilities and... the upward pressure they impose on inmate calling rates. FCC Prisoner Payphone Order at 13.

DTC must ask itself a fundamental question: is it just and reasonable to impose on the families and friends of prisoners an annual multi-million dollar obligation to fund public revenue coffers and local jail facilities? Or is that an obligation that should properly be borne by the general public? It's clear how the surcharges imposed on prison call recipients by the correctional institutions "take on the nature of a regressive tax that is imposed exclusively upon the families of those who are incarcerated." J. Carver, *An Efficiency Analysis of Contracts for the Provision of Telephone Services to Prisons*, Fed'l Communications Law Jnl 54:3, at 400 (May 2002). No matter how the funds are ultimately used, the surcharges that fund them are experienced by telephone customers "as an additional punishment imposed on the consumer for no reason other than that a family member of the consumer has been incarcerated." Id. at 400-01.

DTC must find that the state's punishing surcharges are indeed unjust and unreasonable and must be eliminated. In addition, the DTC must examine and adopt additional remedies based on its findings including a reduction in the cap on per minute rates, and the addition of safeguards for prepaid accounts such as including service fees in calculating the cost of calls when determining compliance with rate caps. DTC must act.

Respectfully submitted,

Massachusetts Correctional Legal Services
Stern, Shapiro, Weisberg & Garin
Committee for Public Counsel Services
Disability Law Center

Prisoners' Rights Clinic at Northeastern University
School of Law
Sonia Booker
Lula Bozman
Roger Carver
Jean Conti
Kim Eckmann
Patricia Gonet
Virginia Polk
Christine Rapoza
David Baxter
Derek Biggs
Samuel Conti
Raymond Gauthier
Shirley Jay McGee
Stephen Metcalf
Kenneth Moccio
William Nadworny
Marcos Ramos
Isaias Rodriguez
Gerardo Rosario
Edward Sarmanian
Beverly Chorbajian, Esq.
Howard Friedman, Esq.
David Hallinan, Esq.
James Logar, Esq.
Peter T. Sargent, Esq.
Joshua Werner, Esq., *Petitioners*

By their Attorneys,

Leslie Walker

James Pingeon, Esq.
Leslie Walker, Esq.
Massachusetts Correctional Legal Services
8 Winter Street, 11th Floor
Boston, MA 02108
(617) 482-2773

Patricia Garin

Patricia Garin, Esq.
Stern, Shapiro, Weisberg & Garin
90 Canal St., 5th Floor
Boston, MA 02114
(617) 742-5800

Dated: August 31, 2009

Appendix I

Names and Addresses of Petitioners

Massachusetts Correctional Legal Services (Co-Counsel)
8 Winter Street, 11th Floor
Boston, MA 02108
Attn.: James Pingeon, Esq.

Stern, Shapiro, Weisberg & Garin (Co-Counsel)
90 Canal Street, 5th Floor
Boston, MA 02114
Attn.: Patricia Garin, Esq.

Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108
Attn.: Anthony J. Benedetti, Esq., General Counsel

Disability Law Center
11 Beacon Street, Suite 975
Boston, MA 02108
Attn.: Kathryn Joyce, Esq., Executive Director

Prisoners' Rights Clinic
Northeastern University School of Law
Dockser Hall
400 Huntington Avenue
Boston, MA 02115
Attn.: James Rowan, Esq.

Family and Friends of Prisoners

Sonia Booker
214 Harvard St. Apt. 3A
Dorchester, MA 02124

Roger Carver
12 Briarwood Court
North Andover, MA 01845

Kim Eckmann
11 Bunker Hill Rd.
Ipswich, MA 01938

Lula Bozman
49 Withington Street
Dorchester, MA 02124

Jean Conti
One Glenwood Ave.
Hyde Park, MA 02136

Patricia Gonet
11 Emerald Drive
Dartmouth, MA 02747

Virginia Polk
7 Sesame Street
Dracut, MA 01826

Christine Rapoza
P.O. Box 9776
Fall River, MA 02720

Prisoners

David Baxter (W83642)
Derek Biggs (W66551)
Samuel Conti (W84707)
Raymond Gauthier (W45176)
Shirley Jay McGee (W88293)
Stephen Metcalf (C57664)
Kenneth Moccio (W86539)
William Nadworny (W40533)
Marcos Ramos (W69760)
Isaias Rodriguez (W80211)
Gerardo Rosario (W90224)
Edward Sarmanian (W45480)

All prisoner petitioners reside at:
North Central Correctional Institute at Gardner
500 Colony Road
P.O. Box 466
Gardner, MA 01440

Attorneys

Beverly Chorbajian, Esq.
390 Main St., Suite 659
Worcester, MA 01608

Howard Friedman, Esq.
Law Offices of Howard Friedman
90 Canal Street, 5th floor
Boston, MA 02114

David Hallinan, Esq.
221 Essex Street, Suite 31
Salem, MA 01970

James Logar, Esq.
1245 Hancock St.
Quincy, MA 02169

Peter T. Sargent, Esq.
P.O. Box 425
Gardner, MA 01440

Joshua Werner, Esq.
944 Washington St., Suite 2
South Easton, MA 02375

Appendix II: Annual Commissions (Including Per Prisoner Commission Profit)[1]

County/ *DOC*	**Provider**	**Commission**	**Commission Paid**	**Institution Population (as of date)[2]**	**Annual Commission Payment (Profit) Per Prisoner**	**Avg. Gross Phone Proceeds Per Prisoner/ Bed**
DOC	***Global Tel*Link Corp.***	***35%*** [3]	***$2,434,000 FY04; $2,664,217 FY05; $2,514,778 FY06; $1,914,608 FY07; $1,980,601 FY08 (pd to State's General Fund)***[4]	***9,780 (12/27/04); 10,385 (12/27/05); 10,769 (12/26/06); 11,072 (12/31/07); 11,348 (6/30/08)***	***$248.87; $256.54; $233.52; $172.92; $174.53***	***$592.56; $610.82; $556.00; $494.06; $498.66***
Worcester	Evercom	40% + $60,000/yr[5]	$424,930 (4/05-4/06) (pd to State General Fund)[6]	1,361 (12/27/05)	$312.22	$780.55
Hampden	Evercom	52% + $42,000/yr	$1,017,808 (12/05-11/06) (pd to Inmates Commissary Fund)	2,147 (avg daily for 2006)	$474.06	$874.03
Plymouth	Evercom	52%	$1,020,000 (FY04/05); $871,776 (FY05/06); $928,939 (3/07-2/08) (pd to Canteen)	1,460 (12/27/04); 1,524 (12/27/05); 1,535 (12/31/07)	$698.63; $572.03; $605.17	$1343.52; $1100.06; $1163.79

[1] Unless otherwise noted, information in this document was obtained from documents provided by the relevant correctional institution pursuant to state public record requests.

[2] From relevant Quarterly Report on the Status of Prison Overcrowding, index available at http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Law+Enforcement+%26+Criminal+Justice&L2=Prisons&L3=Research+Data&sid=Eeops&b=terminalcontent&f=doc_research_and_planning_quarterly_overcrowding_reports&csid=Eeops

[3] DOC entered into a new telephone service contract in 2006 that lowered the commission paid to DOC from 42% to 35%, reflected in the decreased commission paid for FY 2007. DOC does not retain the commissions it is paid, but pays them to the Commonwealth's General Fund.

[4] Total commissions paid FY 04-FY08: $11,508,204.

[5] For "On-site administrator."

[6] This commission amount reflects the per call surcharge of $0.86. It rose almost 350% to $3.00 per call in July of 2006.

County/ *DOC*	**Provider**	**Commission**	**Commission Paid**	**Institution Population** (as of date)[2]	**Annual Commission Payment (Profit) Per Prisoner**	**Avg. Gross Phone Proceeds Per Prisoner/ Bed**
Hampshire	Inmate Calling Solutions	44%(w/option to increase to 58%)(min. $137,000/yr.)	$137,000 (minimum guaranteed)	302 (12/31/07)	$453.64	$1031.00
Middlesex	Evercom	40% + $40,000/yr (plus $200,000 'signing bonus' in 2001)	$291,205 (FY2005/6)[7] (pd to Canteen Funds at Jail and HOC)	1,163 (12/27/05)	$250.39	$625.98
Barnstable	Evercom	52%	$254,304 (2005) (pd to Canteen Fund)	410 (12/27/05)	$620.25	$1192.79
Berkshire	Evercom	45%	$146,948 (2006) (pd to Inmate Canteen Fund)	341 (12/26/06)	$430.93	$957.63
Franklin	Evercom	40%	$72,578 (2006) (pd to Commissary Fund)	184 (12/26/06)	$394.45	$986.11
Suffolk	Evercom	50%		2,485 (3/30/09)		

Total county commissions paid FY 06 (with 05 for Barnstable): $3,083,067. $142,000 possibly paid for telephone staff person. Over 95% (95.4%) was for non-telephone, non-security related purposes.

[7] From both Cambridge and Billerica facilities.

Appendix III

Public and Penological Policy

Sound correctional policy is designed to promote public safety by seeking to curtail the continuous cycle of prisoner reoffending. *See, e.g.*, the Report of the Governor's Commission on Corrections Reform, June 30, 2004 at (i).[1] Indeed, it is one of the central statutory charges to the Commissioner of Correction who oversees all state correctional facilities. G.L.c. 124 § 1(e). Supporting that legislative charge, the DOC's Mission Statement specifically describes as core goals the promotion of public safety and reduction of recidivism.[2] The Department's Vision Statement focuses on successful community re-entry as a principal objective for the thousands of prisoners it releases yearly.[3]

Research is unequivocal: recidivism rates are lower when prisoners remain in closer contact with family members during their incarceration. For example, a DOC study from 1990 documented significantly lower short- and long-term recidivism rates among men who participated in programs that were "geared to maintain, or establish, or to reestablish general societal links such as family, economic, political, and social roles."[4] A 2003 review of ten studies from the 1980s and 1990s found that each study reviewed

> found that stronger ties between inmates and families and close friends during incarceration led to better postrelease outcomes. Prisoners who experienced more family contact... experienced lower recidivism rates and greater postrelease success.[5]

These ten studies corroborated the findings of five earlier studies from the 1950s to the 1970s that prisoners' family relationships and ties to family members during prison improve postrelease outcomes. The uniformity of the findings support the conclusion

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[1] Available at http://www.mass.gov/Eeops/docs/eops/GovCommission_Corrections_Reform.pdf
[2] Available on the home page of the DOC (http://www.mass.gov/doc).
[3] *Id.*
[4] Daniel LeClair, "The Effect of Community Reintegration on Rates of Recidivism: A Statistical Overview of Data for the Years 1971 Through 1987" at 2, 10, 11 (MA DOC, July 1990). This study focused primarily on prerelease programs and furlough as remarkably successful means of maintaining family and community ties, nearly doubling the chance for post-release success. The curtailment of prerelease programs with new sentencing structures and the effective elimination of furloughs following the Willie Horton debacle in 1988 underscores the importance of other means of maintaining close family and community ties, including regular telephone contact.
[5] Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, Annual Review of Sociology 89, 100 (2003).

that the "family ties-lower recidivism relationship is consistent across study populations, different periods of time, and different methodological procedures."[6] A 2006 report similarly noted "the remarkably consistent association" found in 50 years of studies "between family contact during incarceration and lower recidivism rates."[7] Maintaining prisoners' contact with their families is a critical route to postrelease success.

Regular telephone contact by prisoners with their families and communities also facilitates better prison management: prisoner morale is improved, and as a result prisoners are more likely to have better interactions with others, including staff. Studies show that "telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison,"[8] and that quality family visitation improves the mental health of people in prison, as well as their ability to participate successfully in prison programs and avoid disciplinary problems while incarcerated.[9]

This unequivocal research prompted prominent national corrections agencies and other organizations to adopt policies explicitly recognizing the importance of telephone communication for prisoners. The Federal Bureau of Prisons recognizes the importance of telephone access for prisoners in the preamble to its regulations,[10] a policy that is reflected in key statements of major players in the corrections field, including the American Correctional Association (ACA), the national organization that accredits prisons, and the National Sheriffs' Association.[11] In 2006 the ACA adopted a policy that opined that rates and surcharges for prisoner telephone calls should be "commensurate with those charged to the general public for like services;" and that "[a]ny deviation from

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[6] C.F. Hairston, *Family Ties During Imprisonment: Important to Whom and for What?*, J.Soc.& Soc. Welfare, Mar. 1991, at 85, 97.

[7] Rebecca L. Naser & Christy A. Visher, "Family Members' Experiences with Incarceration and Reentry," 7 W.Criminology Rev. 20, 21 (2006).

[8] U.S. Department of Justice, Office of the Inspector General, *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/ (last accessed May 26, 2009).

[9] Terry A. Kupers, M.D., Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, 157-173; 239-40 (1999).

[10] "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." 28 C.F.R. § 540.100. Calls from federal Bureau of Prison facilities are 17 cents per minute with no surcharge and reflect the Bureau's desire to facilitate telephone contact between prisoners and their families, also reflected in BOP's policy allowing prisoners to use debit cards to place direct calls.

[11] Resolution of 14 June 1995.

ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting."[12] The American Bar Association in 2005 adopted a resolution urging corrections administrators "to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates."[13] In an accompanying report, the ABA's Criminal Justice Section noted that "[t]elephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison."[14]

Recognizing the importance of prisoner telephone contact in furthering its mission and vision, DOC on August 7, 2009 officially adopted a new departmental policy for prisoner telephone access and use. The new policy states in its opening section that "Inmates shall have access to reasonably priced telephone services… Fees [for prisoner telephone calls] should be commensurate with those charged to the public."[15] In keeping with its policy to reduce the cost of prisoner telephone calls, the DOC in April of this year initiated debit calling in all its facilities with charges that are 25% less than its instate collect call rate, already among the lowest in the country. A DOC official noted that he and other officials at DOC would prefer that surcharges on prisoner telephone calls be eliminated altogether for penological and other reasons, a position we urge DTC to adopt.[16]

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[12] Public Correctional Policy on Adult/Juvenile Offender Access to Telephones unanimously ratified by ACA Delegate Assembly on Jan. 24, 2001; last amended Feb. 1, 2006. The official comment to the policy advised correctional officials who were seeking or renewing telephone service contracts to "inquire into the reasons for proposed deviations from standard charges and seek the best possible rates for the broadest possible range of calling options determined to be consistent with sound correctional management." ACA Standard Governing Correctional Telephone Services adopted in Aug. 2002.

[13] American Bar Ass'n, House of Delegates, Resolution adopted August 2005..

[14] Report of the ABA Criminal Justice Section to the House of Delegates dated 5.14.05, p.1.

[15] Available on DOC's website at http://www.mass.gov/Eeops/docs/doc/policies/482.pdf

[16] Conversation with DOC Chief Operating Officer Peter Macchi, December 12, 2007.

Appendix IV: A Comparison of Charges for a 15-minute Intra-LATA Prisoner-initiated Collect Call in 2008 vs. 2004, for Correctional Facilities in Massachusetts Counties and 47 States[1]

State/*County* (Nat'l prison population rank-top 10)	***IntraLATA* 15 minute collect call cost 2008**[2]	***2008* Rank**	***% increase /decrease 2008 v 2004***	***IntraLATA* 15 minute collect call cost 2004**	***2004* Rank**	***Per minute customer cost 2008***[3]	***2008 IntraLATA rates***		***Highest Surcharges (#1-#2)***
							Per call surcharge	***per min. charge***	
Montgomery County, MD	**$0.65**[4]					4.3¢	0-flat rate		
Rhode Island	**$0.70**	1	**-84%**	$4.30	22	4.6¢	0-flat rate		
New Mexico	**$0.89/$1.00**[5]	2	**-77%**	$4.38	24	6.7¢	0-flat rate		
DC	**$1.75**	3	**-42%**	$3.00	7	11.7¢	0-flat rate		
Michigan (#7)	**$1.80**	4	**-56%**	$4.10	17	12¢	$0	12¢	
Nebraska	$1.80	4		$1.80	1	12¢	$0.75	7¢	
Florida (#3)	**$1.80**	4	**-66%**	$5.32	37	12.1¢	$1.20	4¢	
Alaska	$2.16	7		$2.16	3	14.4¢	$0[6]		
New York (#4)	**$2.30**	8	**-57%**	$5.40	38	15.3¢	$1.28	6.8¢	
***Massachusetts DOC**[7]	$2.36	9		$2.36	4	15.73¢	**$0.86**	10¢	
California (#1)	**$2.45**	10	**-25%**[8]			16.3¢	$1.50	10.7¢	
Missouri	**$2.50**	11	**-19%**	$3.10	8	16.6¢	$1.00	10¢	

[1] Information in this document was culled from a variety of sources. Information pertaining to state and county facilities in Massachusetts was obtained from documents provided by the relevant correctional institution pursuant to state public record requests. Information about facilities in other states was obtained from CURE, the national grassroots prisoner rights organization based in Washington, D.C. that is spearheading a national campaign to lower prisoner telephone rates. The FCC cited their work in the FCC Prisoner Payphone Order at p. 13. In addition, information was culled from documents filed with the FCC in connection with the FCC Interstate Rate Case, and from communications with state regulatory agencies and correctional institutions.

[2] Numbers in this column indicate the percentage increase or decrease in the cost of a 15 minute call from 2004 to 2008.

[3] Derived by dividing the cost of a 15 minute call from column 2 by 15.

[4] Effective May 15, 2008. Contract with Global Tel*Link. Montgomery County Dept. of Correction has a capacity of 1,228 prisoners.

[5] Effective April 22, 2009. Contract is with Securus Technologies (Evercom). Flat rate for intrastate calls is $0.89 for prepaid calls, $1.00 for collect calls.

[6] Local calls are free including IntraLATA. InterLATA surcharge is $1.55.

[7] Entries for Massachusetts and its counties are marked with an asterisk (*) and in bold typeface.

[8] According to news reports and CADOC press releases. We don't have earlier data and therefore can't compute the Intralata cost for 2004.

State/*County* (Nat'l prison population rank-top 10)	***IntraLATA 15 minute collect call cost 2008***[2]	***2008 Rank***	***% increase /decrease 2008 v 2004***	***IntraLATA 15 minute collect call cost 2004***	***2004 Rank***	***Per minute customer cost 2008***[3]	***2008 IntraLATA rates***		***Highest Surcharges (#1-#2)***
							Per call surcharge	***per min. charge***	
****Hampden Cnty (abolished)***[9]	$2.60	12	**+24%**	$2.10	2	17.3¢	**$2.00**	4¢	
New Hampshire	**$2.70**	13	**-37%**	$4.30	21	18¢	$1.20	10¢	
Nevada	**$2.73**[10]	14	**-39%**	$4.27	20	18.2¢			
Alabama	$2.85	15		$2.85	6	19¢	0-Flat rate		
West Virginia	$3.25	16		$3.25	9	21.6¢	$0.25	20¢	
Tennessee	$3.35	17		$3.35	10	22.3¢	$0.50	19¢	
Ohio (#9)	$3.42	18	**-48.2%**	$6.60	45	22.8%	$1.05	27¢/ 15¢	
Washington	**$3.50**	19	**-74%**	$13.27	50	23.3¢	0-Flat rate		
Idaho	$3.60	20		$3.60	11	24¢	0-Flat rate		
Oklahoma	**$3.60**	20	**-47%**	$6.73	47	24¢	0	24¢	
North Carolina	$3.65	21		$3.65	12		$1.25	16¢	
Wyoming	**$3.72**	22	**-9%**	$4.08	16		$1.17	17¢	
Virginia (#10)	$3.75	23					$1.50		
Kansas	**$3.80**	24	**-39%**	$6.24	42		$2.30	10¢	
Texas (#2)	$3.90	25		n/a	n/a	26¢	$0	26¢	
****Barnstable County***	$3.94	26	**+?%**[11]	$3.94	14	26.3¢	**$3.00**	10¢,6¢	**#1**
****Hampshire Cnty (abolished)***	$4.05[12]	27		$4.05	15	27¢	**$3.00**	7¢	**#1**

[9] Hampden County has been abolished and is now a state entity, along with six other abolished counties including Hampshire and Worcester. The sheriffs' departments in these former counties are independent, but all their facilities are state property. Legislation is pending that would abolish all remaining counties.

[10] Based on a 16 minute call. The 2004 figure of $4.27 is for a 15 minute call. The percentage reduction is based on Embarq's calculation of the cost of a 16 minute call in 2004 ($4.48).

[11] Barnstable's current contract became effective January 1, 2005. Although we do not have per call surcharge and per minute rates for the prior contract, it is inconceivable that there was not a substantial increase in the telephone call rates from the pre-2005 contract to the current one. Commissions paid by Evercom to Barnstable HOC jumped over 100% from 2004 to 2005. While some of this increase could be attributable to an increase in the percentage of gross revenues paid, it is highly likely that the commissions were funded by greatly increased telephone call rates, as is the case for all other counties for which we have data. See attached chart of Barnstable commissions for the period 2003 to 2006.

State/*County* (Nat'l prison population rank-top 10)	***IntraLATA 15 minute collect call cost 2008***[2]	***2008 Rank***	***% increase /decrease 2008 v 2004***	***IntraLATA 15 minute collect call cost 2004***	***2004 Rank***	***Per minute customer cost 2008***[3]	***2008 IntraLATA rates***		***Highest Surcharges (#1-#2)***
							Per call surcharge	***per min. charge***	
Oregon	$4.14	28		$4.14	18		$1.56[13]		
Utah	$4.17	29		$4.17	19		$2.37	12¢	
****Suffolk County***	$4.35	30		$4.35	23	29¢	**$2.85**	$1.71[14]	**#2**
Arizona	**$4.50**	31	**-18%**	$5.46	39				
Kentucky	**$4.50**	31	**-9%**	$4.95	30		$1.50	20¢	
****Plymouth County***	$4.50	31	**+18%**	$3.81	13	30¢	**$3.00**	10¢	**#1**
****Worcester Cnty** (abolished)*	$4.50	31	**+90.7%**	$2.36	4	30¢	**$3.00**	10¢	**#1**
Wisconsin	$4.55	35		$4.55	25		$1.25		
Vermont	$4.70	36		$4.70	26		$1.40		
New Jersey	**$4.75**	37	**-9%**	$5.20	35		$1.75		
Louisiana	**$4.78**	38	**-14%**	$5.58	40				
Arkansas	**$4.80**	39	**-27%**	$6.60	43		**$3.00**	12¢	**#1**
Georgia (#5)	$4.85	40	**-16.4%**	$5.80	41	32.3¢	$2.00	19¢	
Illinois (#8)	$4.89	41		$4.89	27		$2.71		
Mississippi	$4.90	42		$4.90	28		$1.90	20¢	
South Carolina	$4.91	43		$4.91	29		$1.50		
Minnesota	$4.95	44		$4.95	30		**$3.00**	13¢	**#1**
Indiana	**$5.00**	45	**-26%**	$6.75	44		$1.50		
Pennsylvania (#6)	$5.00	45		$5.00	32		$2.00[15]		
North Dakota	$5.13	47		$5.13	34		$1.70	35¢/ 22¢	
Connecticut	$5.20	48		$5.20	35		$1.75	23¢	

[12] Evercom is not the service provider for Hampshire County.
[13] Intralata surcharges in OR are $1.56 in most institutions and $2.00 in one state institution.
[14] 2005 surcharge and connection fee. Surcharge is less now.
[15] Intralata surcharges are $1.45 at three institutions, $1.75 at six institutions, and $2.00 at 16 institutions.

State/*County* (Nat'l prison population rank-top 10)	***IntraLATA 15 minute collect call cost 2008***[2]	***2008 Rank***	***% increase /decrease 2008 v 2004***	***IntraLATA 15 minute collect call cost 2004***	***2004 Rank***	***Per minute customer cost 2008***[3]	***2008 IntraLATA rates***		***Highest Surcharges (#1-#2)***
							Per call surcharge	***per min. charge***	
Maine	**$5.30**	49	**-22%**	$6.80	48		$1.55		
Montana	$5.75	50					$2.75	20¢	
Colorado	$6.20	51	**+42.2%**	$4.36	33		$2.75	23¢	
South Dakota	$6.30	52		$6.60	45		$2.25		
Maryland	$7.05	53		$7.05	49		$2.55	30¢	

APPENDIX V

A Comparison of Surcharges levied and Commissions Paid to DOC for FY2005 (Partial Year)

A closer look at commissions paid to DOC and the amount of surcharges levied on recipients of phone calls from DOC prisoners for ten months of FY2005 highlights the almost one-to-one funding relationship between surcharges collected and commissions paid: surcharges, at least in this case, are almost equal to commissions paid.[1] This example also underscores the fact that a phone charge to customers of less than $0.11 per minute, *without any surcharge*, is sufficient to cover the service provider's costs as well as to earn it (in all likelihood) a substantial profit.

From July 2004 to April 2005, 2,234,294 intrastate calls were made from DOC facilities, along with 74,962 interstate calls. Altogether, the surcharges on these calls generated $2,146,378.84. Commissions paid for this period totaled $2,234,573.17, a difference of only a little over $88,000.00. Because of the shortfall, Verizon had to use a tiny percentage of the funds generated by the $0.10 per minute charge to fully fund the commissions due, equal to 42% of gross telephone revenues. Since the service contract with Verizon was on a triple net basis, meaning that Verizon was responsible for all costs and expenses incurred in connection with providing phone service to DOC facilities, including all security measures and maintenance, Verizon covered its own costs plus profit for less than the per minute cost of each call (since it had to use some of the revenues generated to pay the balance of the commissions due). In fact Verizon had to pay approximately $0.0028 per minute for each call during this period to cover the commission, reducing it's per minute revenues to about $0.0972.[2] Since all of the commission funds paid to the DOC ended up in the state's general fund, it is clear that all costs and expenses of DOC calls incurred by the telephone provider for this time period were covered by a rate of just under $0.10 per minute. Everything else paid by telephone

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[1] This was the only entity for which we had sufficient data to make the comparison. Additional information was requested from a number of institutions but not supplied with sufficient detail to make corresponding analyses.

[2] The difference between commissions paid and the amount of funds generated by the surcharges on all calls was $88,194.33. This amount had to be paid out of the revenues Verizon received from per minute charges, which is $0.10 for all DOC calls. Since there was a total of 30,922,474 minutes of prisoner calls generated for this period, the per minute cost to Verizon of the shortfall was $0.0028. Deducting that figure from the $0.10 per minute charge results in a net-to-Verizon figure of $0.0972 per minute.

customers went to the state's general fund, not to fund any prisoner telephone costs or expenses, security related or otherwise.

The new service provider contract between GTL and DOC calls for a reduced commission rate of 35%. If the lower rate had been in effect under the Verizon contract, Verizon would still have paid more than 99% of the funds generated by the surcharges to the DOC in the form of commissions. With the lower commission rate, the per minute amount retained by the carrier to cover its costs and profits after payment of commissions would have been 10.92¢, that is less than a penny more than the current per minute cost. The $0.92 figure is far less than the $3.00 that carriers said they needed to cover the additional expenses for prisoner telephone calls. The $0.1092 per minute amount is not much greater than the per minute cost (after excluding commissions) of intraLATA calls of 10.2¢ per minute in column 6 of Appendix VI, "Cost of 15 Minute Call Less Commission=Net Received by Provider" that was calculated using DOC's published rates. (Under the prior Verizon contract that paid a larger commission to DOC, Verizon still received 9.72¢ per minute to cover its costs and profit.)

Appendix VI: Comparison of County and DOC Telephone Rates including Cost of Call Data Net of Commissions[1]

County/ *DOC*	**Provider**	**Per call Surcharge: intraLATA**	**Per minute charges**	**Cost of 15 Minute Call**			**Cost of 15 Minute Call Less Commission =Net Received by Provider/Per Minute Cost[2]**	
				Local (Intralata[3])	Interlata/ Instate	Interstate	Intralata/Instate	Interlata/Instate
DOC	***Global Tel*Link Corp.***	***$0.86***	***$0.10***	***$2.36***	***$2.36***	***$13.35***	***$1.53/ 10.2¢ per min.***	***$1.53/ 10.2¢ per min.***
Worcester	Evercom	$3.00	$0.10	$4.50	$4.50	$16.35	$2.16/ 14.4¢ per min.	$2.16/ 14.4¢ per min.
Hampden	Evercom	$2.00	$0.04	$2.50 ($2.60)	$2.58	$14.30	$1.25/ 8.3¢ per min.	$1.24/ 8.26¢ per min.
Plymouth	Evercom	$3.00[4]	$0.10	$4.50	$4.00	$17.30	$2.16/ 14.4¢ per min.	$1.92/ 12.8¢ per min.
Hampshire	Inmate Calling Solutions	$3.00	$0.07	$4.00 ($4.05)	$4.50	$17.30	$1.92/ 12.8¢ per min.	$2.16/ 14.4¢ per min.
Barnstable	Evercom	$3.00	$0.10/0.06	$4.50 ($3.94)	$3.94	$17.30	$1.89/ 12.6¢ per min.	$1.89/ 12.6¢ per min.
Suffolk	Evercom	$2.85	$0.10	$4.35	$4.50	$16.35	$2.175/ 14.5¢ per min.	$2.25/ 15¢ per min.

[1] Information in this document was obtained from documents provided by the relevant correctional institution pursuant to state public record requests.
[2] The first number in this column is the cost of a 15 minute call, reflecting the net amount received by telephone providers *after* paying commissions. The second figure in the column is the per minute cost of a call after backing out the relevant commission amount.
[3] At some facilities, local calls are the same as Intralata calls. Where they are not, the Intralata rate is given in (parentheses).
[4] The intrastate/interlata connection surcharge is $2.50.

FY2009 Budget Summary Exhibit 1

http://www.mass.gov/bb/gaa/fy2009/app_09/act_09/h89100000.htm

8910-0000 - County Correctional Programs

Account	Description	FY2009 GAA	FY2009 Total Spending
8910-0000	**County Correctional Programs** For a reserve to fund county correctional programs; provided, that funds appropriated in this item shall be distributed among the sheriffs departments of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties by the county government finance review board upon prior notification to the house and senate committees on ways and means; provided further, that funds made available to Plymouth county may be expended for operating and debt service costs associated with state inmates housed in the Plymouth county facility, pursuant to clauses 3 and 4 of the Memorandum of Agreement signed May 14, 1992; provided further, that funds distributed from this item shall be paid to the treasurer of each county who shall place the funds in a separate account within the treasury of each such county; provided further, that the treasurer shall authorize temporary transfers into this account for operation and maintenance of jails and houses of correction in advance of receipt of the amount distributed by the commonwealth under this item; provided further, that upon receipt of the state distribution, the treasurer may transfer out of such account an amount equal to the funds so advanced; provided further, that all funds deposited in such accounts and any interest accruing thereto shall be used solely for the functions of the sheriffs' departments of the various counties including, but not limited to, maintenance and operation of jails and houses of correction, without further appropriation; provided further, that the sheriff's department of each county shall reimburse the county treasurer of each county for personnel-related expenses, with the exception of salaries, attributable to the operations of the sheriff's department of each county heretofore paid by the county including, but not limited to, the cost of employee benefits; provided further, that the	195,179,966	195,179,966

Account	Description	FY2009 GAA	FY2009 Total Spending
	spending plans required by this item shall be developed by the county government finance review board, in consultation with the Massachusetts Sheriffs' Association; provided further, that in accordance with section 247 of chapter 38 of the acts of 1995, all spending plans shall be detailed by object class and object code in accordance with the expenditure classification requirements promulgated by the comptroller; provided further, that such spending plans shall be accompanied by a delineation of all personnel employed by each county correctional facility including, but not limited to, position, title, classification, rank, grade, salary and full-time or part-time status; provided further, that such spending plans shall be accompanied by a delineation of all vehicles leased, owned or operated by each county sheriff; provided further, that no sheriff shall purchase any new vehicles or major equipment in fiscal year 2009 unless such purchase is made pursuant to a multicounty or regionalized collaborative procurement arrangement or unless such purchase is directly related to significant population increase or is otherwise necessary to address an immediate and unanticipated public safety crisis and is approved by the county government finance review board and the executive office of public safety and security; provided further, that notwithstanding the other provisions in this item, sheriffs may purchase "marked" prisoner transportation vans, upon notification to the county government finance review board; **provided further, that notwithstanding any special law to the contrary, no county treasurer shall retain revenues derived by the sheriffs from commissions on telephone service provided to inmates or detainees; provided further, that such revenues shall be retained by the sheriffs not subject to further appropriation for use in a canteen fund;** provided further, that the county government finance review board and the executive office of public safety and security shall identify and develop county correction expenditures which shall be reduced through shared		

NOTICE OF AWARD

State Of Missouri
Office Of Administration
Division Of Purchasing And Materials Management
PO Box 809
Jefferson City, MO 65102
http://www.oa.mo.gov/purch

SOLICITATION NUMBER	CONTRACT TITLE
B2Z05070	Offender Telephone Service
CONTRACT NUMBER	**CONTRACT PERIOD**
C205070001	May 19, 2006 through May 18, 2011
REQUISITION NUMBER	**VENDOR NUMBER**
NR 300 2150000041	9546154400 0
CONTRACTOR NAME AND ADDRESS	**STATE AGENCY'S NAME AND ADDRESS**
Public Communications Services, Inc. 11859 Wilshire Blvd., Suite 600 Los Angeles, CA 90025	Various Correctional Institutions Throughout The State of Missouri

ACCEPTED BY THE STATE OF MISSOURI AS FOLLOWS:

The proposal submitted by Public Communications Services, Inc. in response to RFP B2Z05070 is accepted in its entirety, including Best and Final Offer #001 and #002, and the letters of clarification dated October 21, 2005 and December 13, 2005. The contract period shall be May 19, 2006 through May 18, 2011.

BUYER	BUYER CONTACT INFORMATION
John Stobbart	E-Mail: John.Stobbart@oa.mo.gov Phone: (573) 751-3796 Fax: (573) 526-9818
SIGNATURE OF BUYER	**DATE**
John J. Stobbart	5-19-06

DIRECTOR OF PURCHASING AND MATERIALS MANAGEMENT

James Miluski James Miluski

EXHIBIT A
COST (PRICING SECTION)

EXHIBIT REVISED BY BAFO #002, REVISION #001

A.1 REQUIRED PRICING: The offeror must state below the firm, fixed price for performing OTS services in accordance with the provisions and requirements stated herein, including furnishing, installing, providing any necessary hardware, monitoring, maintaining and incurring the expense for the of installation of and the ongoing monthly expense, through the life of the contract, for data circuits, separate from the bandwidth provided for the offender phone recording and monitoring system, at each of the institutions referenced in paragraph 3.1.8. All costs associated with providing the required services, including all travel and expenses to be incurred by contractor staff, must be included. The offeror must propose all items (001 through 010). Prices shall not include commissions to be paid to the State of Missouri (see RFP paragraph 4.4.1).

☐ PCS has read and understands.

The TeamPCS Full Disclosure Rate Plan

PARAGRAPH REVISED BY BAFO #002, REVISION #001

a. **Basic OTS:** Collect Calls: shall be defined as where the outside party is requested to pay for the calls where the cost would be billed through a monthly invoice to the called party. Such prices shall be exclusive of taxes. The offeror must propose all items (001 through 008). The offeror must state the firm, fixed rates per minute and shall include all set up fees for all offender calls for the following service, exclusive of any and all local, state, and federal fees/taxes ***(I.E, LOCAL, STATE AND FEDERAL TAXES/FEES MAY BE PASSED ON TO THE CUSTOMER IN ADDITION TO THE OFFEROR'S PER MINUTE PRICES AND SET-UP CHARGE).***

ITEM NO.	Description	Unit of Measure	Firm Fixed Price
001	Local Call	Minute	$0.10
002	Set-up Charge for Local Call	Call	$1.00
003	Intralata Call	Minute	$0.10
004	Set-up Charge for Intralata Call	Call	$1.00
005	Interlata Call	Minute	$0.10
006	Set-up Charge for Interlata Call	Call	$1.00
007	Interstate Call	Minute	$0.10
008	Set-up Charge for Interstate Call	Call	$1.00

PARAGRAPH REVISED BY BAFO #002, REVISION #001

b. Basic OTS with option 1 features and functions for debit calls where the offender will deposit money within the state run commissary. Price must be inclusive of taxes. The offeror must propose item 009. The offeror must state a firm, fixed all inclusive postalized price per minute, which must include any and all regulatory fees/surcharges, set up fees,

and any and all taxes, etc *(I.E, LOCAL, STATE, AND FEDERAL TAXES/FEES SHALL NOT BE ADDED TO THE FIRM, FIXED POSTALIZED PRICE PER MINUTE PAID FOR BY THE OFFENDER).*

ITEM NO.	*Description*	*Unit of Measure*	*Firm Fixed Postalized Price*
009	*Postalized Debit Call*	*Per Minute*	*$0.10*

PARAGRAPH REVISED BY BAFO #002, REVISION #001

c. Basic OTS with option 1 features and functions for pre-paid calls, where the called party deposits money within the offeror's operated account. Price must be exclusive of taxes. The offeror must propose item 010. The offeror must state a firm, fixed all inclusive postalized price per minute, which shall be exclusive of any and all regulatory fees/surcharges, set up fees, and any and all taxes, etc: *(I.E, LOCAL, STATE AND FEDERAL TAXES/FEES MAY BE PASSED ON TO THE CUSTOMER IN ADDITION TO THE OFFEROR'S FIRM, FIXED POSTALIZED PRICE PER MINUTE).*

ITEM NO.	*Description*	*Unit of Measure*	*Firm Fixed Postalized Price*
010	*Postalized Pre-paid Call*	*Per Minute*	*$0.10*

d. **International Calls:** The offeror must propose rates for International calls. The offeror shall attach their proposed international callings rates. Prices for International calls will be subjectively evaluated within the area of Proposed Method of Performance.

PCS INTERNATIONAL CALLING RATES

ITEM NO.	Description	Unit of Measure	Firm Fixed Price
201	International Call	Minute	$ 0.75
202	Set-up Charge for International Call	Call	$ 0.50

MASSACHUSETTS DEPARTMENT OF CORRECTION

PLEASE POST: Global Tel Link (GTL) Advance Pay Program Rates

To: Inmate Population, Families & Friends of Inmates
Date: June 4, 2007
Re: Advance Pay Program Calling Rates

The Advance Pay Program is offered as a means for families and friends of inmates to receive calls from Massachusetts Correctional Institutions that otherwise would be blocked for "collect" calling. These calls are generally blocked due to the lack of 'third party billing agreements" between Competitive Local Exchange Carriers. There appears to be some confusion as to the rates being charged for these calls and "service fees" charged to deposits to the Advance Pay Program. Our contract with GTL is specific as to rates charged for inmate telephone calls and the rates presently being charged for Advance Pay calls are not higher than rates charged for collect calls.

Present "collect" calling rates for inmate phone calls:

Calls within Massachusetts: $0.10 per minute, plus a per call surcharge of $0.86
Out of State Calls: $0.69 per minute, plus a per call surcharge of $3.00
(Plus applicable state and federal taxes/fees)

GTL is presently charging all deposits made into an Advance Pay account a 19% "service fee". This fee is $9.50 for a $50 deposit. GTL offers the Advance Pay Program to over 25 state correctional agencies plus many more county and local correctional jurisdictions. Massachusetts is the only customer of GTL who prohibits this charge in their contracted rates. GTL's present billing system does not allow for the removal of this 19% service charge for just Massachusetts. The current billing mechanism only allows for this charge to be assessed to all users of the Advance Pay Program. To compensate for this charge, **GTL discounts all Advance Pay calls originating from Massachusetts by 23%.** This discount more than offsets the 19% service fee and the end result is the Advance Pay calls are less costly than the cost of collect calls.

The **only added** charge for the Advance Pay Program is the $2.00 service charge for deposits under $50 **made with a credit card**. This charge can be avoided by either making deposits of $50 or greater when using a credit card or paying by personal check, certified check, money order or via Western Union.

The two charts detailed on the next page show the cost of a 20 minute collect phone call (chart on left) compared to the cost of a 20 minute phone call made via the Advance Pay Program (chart on right), with the 23% discount. For $50, more calls (17) can be made via the Advance Pay Program than calls (16) at the collect call rate. **The Advance Pay Program is not more expensive than collect calling.**

$50.00 Deposit without Discount

(for 20 minute collect call)

Call #	Cost	Balance	Note
	$ 50.00	$ 50.00	Deposit
	$ -	$ 50.00	Service Charge
1	$ 2.86	$ 47.14	Call
1	$ 0.13	$ 47.01	Tax
2	$ 2.86	$ 44.15	Call
2	$ 0.13	$ 44.02	Tax
3	$ 2.86	$ 41.16	Call
3	$ 0.13	$ 41.03	Tax
4	$ 2.86	$ 38.17	Call
4	$ 0.13	$ 38.04	Tax
5	$ 2.86	$ 35.18	Call
5	$ 0.13	$ 35.05	Tax
6	$ 2.86	$ 32.19	Call
6	$ 0.13	$ 32.06	Tax
7	$ 2.86	$ 29.20	Call
7	$ 0.13	$ 29.07	Tax
8	$ 2.86	$ 26.21	Call
8	$ 0.13	$ 26.08	Tax
9	$ 2.86	$ 23.22	Call
9	$ 0.13	$ 23.09	Tax
10	$ 2.86	$ 20.23	Call
10	$ 0.13	$ 20.10	Tax
11	$ 2.86	$ 17.24	Call
11	$ 0.13	$ 17.11	Tax
12	$ 2.86	$ 14.25	Call
12	$ 0.13	$ 14.12	Tax
13	$ 2.86	$ 11.26	Call
13	$ 0.13	$ 11.13	Tax
14	$ 2.86	$ 8.27	Call
14	$ 0.13	$ 8.14	Tax
15	$ 2.86	$ 5.28	Call
15	$ 0.13	$ 5.15	Tax
16	$ 2.86	$ 2.29	Call
16	$ 0.13	$ 2.16	Tax
	$ 2.86	$ (0.70)	Call
	$ 0.13	[redacted]	Tax

$50.00 Deposit with Discount

(for 20 minute call, Advance Pay)

Call #	Cost	Balance	Note
	$ 50.00	$ 50.00	Deposit
	$ 9.50	$ 40.50	Service Charge
1	$ 2.20	$ 38.30	Call
1	$ 0.11	$ 38.19	Tax
2	$ 2.20	$ 35.99	Call
2	$ 0.11	$ 35.88	Tax
3	$ 2.20	$ 33.68	Call
3	$ 0.11	$ 33.57	Tax
4	$ 2.20	$ 31.37	Call
4	$ 0.11	$ 31.26	Tax
5	$ 2.20	$ 29.06	Call
5	$ 0.11	$ 28.95	Tax
6	$ 2.20	$ 26.75	Call
6	$ 0.11	$ 26.64	Tax
7	$ 2.20	$ 24.44	Call
7	$ 0.11	$ 24.33	Tax
8	$ 2.20	$ 22.13	Call
8	$ 0.11	$ 22.02	Tax
9	$ 2.20	$ 19.82	Call
9	$ 0.11	$ 19.71	Tax
10	$ 2.20	$ 17.51	Call
10	$ 0.11	$ 17.40	Tax
11	$ 2.20	$ 15.20	Call
11	$ 0.11	$ 15.09	Tax
12	$ 2.20	$ 12.89	Call
12	$ 0.11	$ 12.78	Tax
13	$ 2.20	$ 10.58	Call
13	$ 0.11	$ 10.47	Tax
14	$ 2.20	$ 8.27	Call
14	$ 0.11	$ 8.16	Tax
15	$ 2.20	$ 5.96	Call
15	$ 0.11	$ 5.85	Tax
16	$ 2.20	$ 3.65	Call
16	$ 0.11	$ 3.54	Tax
17	$ 2.20	$ 1.34	Call
17	$ 0.11	[redacted]	Tax
	Savings	[redacted]	

Exhibit 4

Saturday,
December 1, 2001

Full Forecast

Find it fast:

The Patriot Ledger

SOUTHO

LOCAL NEWS

Phone fee hike may quiet inmates

By KEVIN ROTHSTEIN
The Patriot Ledger

Norfolk County Sheriff Michael Bellotti is installing a new phone system that will triple the cost for inmates calling collect from the jail.

The new system, which will be in use within a week, is expected to net at least $200,000 for the sheriff's department as well as profits for Evercom Systems, the Texas company that supplies the phones.

Advocates for inmates across the country have blasted the lucrative phone deals as kickbacks for correction administrations that depend on captive customers.

"Any increase on the rates is an additional tax on the families of prisoners who have already paid exorbitant phone rates in the past," said Peter Kane, a paralegal with Massachusetts Correctional Legal Services.

The new system will impose a $2.85 connection fee to make a collect call, up from the current charge of 86 cents, said David Falcone, a spokesman for Bellotti. The per-minute fees will remain the same.

The only way for inmates to call the outside is through a collect call. The jail allows free calls in emergencies, Falcone said.

He said the higher fees will result in benefits for inmates because by state law the money go to an inmate canteen fund, helping to pay for things such as drug rehabilitation.

"This money is helpful for two reasons. One, it goes into our

canteen funds so we can have these programs and services for our inmates, and two, it helps defer the cost to taxpayers here in Norfolk County," he said.

The sheriff's department will keep 30 percent of the revenues, a smaller percentage than the old arrangement but a more lucrative one because of the higher fee.

The sheriff's department has already taken a $200,000 advance payment from Evercom based on projected revenue, Falcone said.

Inmates in several states have filed lawsuits over phone systems they say charge exorbitant rates. Calling plans vary by state and by company, but critics say that the phone companies and the prisons, some of them privately run, profit from inmates' families.

Kevin Rothstein may be reached at krothstein@ledger.com.

Transmitted December 1, 2001

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The Patriot Ledger, 400 Crown Colony Drive
P.O. Box 699159, Quincy, MA 02269-9159
Telephone: (617) 786-7000

CONTRACT NO. 8426000003-AA ☐ ORIGINAL

This Contract is entered into by and between Montgomery County, Maryland (the "County"), a political subdivision of the State of Maryland, and Global Tel*Link Corporation, whose address is 2609 Cameron Street, Mobile, Alabama 36607 (the "Contractor").

WITNESSETH:

WHEREAS, the County has a need for inmate telephone services for inmates of the Department of Correction and Rehabilitation ("DOCR"), and

WHEREAS, the intent of this Contract is to offer telephone services at the lowest possible cost to inmates and their families, and that the Contractor must not, outside of the contracted calling Rates, include/attach any hidden/back-end fees (e.g. Bill Statement Fee, Bill Rendering Fee, Administrative Fee, etc.,) to the final bill to inmates and their families, and

WHEREAS, the County reserves the right, at any time during the term of this Contract, to conduct audits of the Contractor's billing statements to inmates and their families, and/or conduct investigative findings of the Contractor's contract with the County; and, in the event of an audit (at no cost to the County), the Contractor must make all records associated with this Contract available to the County within a reasonable time period (agreed to between both parties to the contract), and

WHEREAS, the County requires a qualified establishment to provide inmate telephone services, and the Contractor has represented to the County that Contractor and its Subcontractor are qualified to do business in the State of Maryland, are fully capable of performing the services described in this Contract, and are duly authorized and in compliance with applicable federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and hold all valid licenses and permits necessary to perform the services, and will promptly notify the County in the event any such license or permit expires, terminates, or is revoked, and

WHEREAS, the County has relied on such representation to select the Contractor and award this Contract to provide telephone services, and

WHEREAS, this Contract is entered into as a result of a Formal Solicitation in accordance with Section 4.1.2 of the Montgomery County Procurement Regulations,

NOW THEREFORE, for and in consideration of the mutual agreements contained herein, the parties agree as follows:

ARTICLE 1
SCOPE OF SERVICES

A. General Requirements

The Contractor must comply with the following general requirements:

3. The Contractor's Invoice or Bill to called-parties must include the Contractor's information and a Toll-Free telephone number for called-parties to use when seeking resolution to problems or answers to questions.

4. The Contractor must begin charges for a call only when the calling party is connected to the called party. The call terminates when either party hangs up the telephone. The Contractor must not bill the calling party for incomplete calls such as network intercept recordings, busy signals, no answers, refusal of calls, and answering machine pickups.

ARTICLE II
Compensation and Pricing

A. The Contractor shall pay no commission to the County for the term of this Contract and the Contractor must not charge the County for any of the following costs and charges associated with this Contract, which include, but are not limited to:

- Costs of purchasing and installing telephone system, including site repair, if necessary;
- Charges from the local telephone company for installation of subscriber lines, plus related taxes;
- Monthly charges for subscriber lines;
- Costs of maintenance and repair procedures;
- Costs for on-site system administrator;
- Costs associated with administrative functions for monthly billing, collection of revenues from inmates' families and friends, and monthly reporting;
- Sales tax on purchases of all goods and services;
- Per call charge from local telephone company, if applicable;
- Charges billed to telephones as a result of inmate fraud;
- Charges for directory assistance calls;
- Charges from local telephone company for moving lines;
- Cost associated with vandalism;
- Cost for obtaining permits, if necessary;
- Training of County employees, as required.

B. The following pay rates must apply to all inmates' telephone calls regardless of type, (Local, IntraLata / IntraState, IntraLata / InterState, InterLata / IntraState, and InterLata / InterState calling services), other than debit transactions identified in Article I, Section C.6 of this Contract:

1. The Contractor must charge a flat rate of $0.65 per call, with no additional surcharge and/or usage charges, and regardless of time of day, and call duration.

2. The County's current inmate telephone system does not allow for debit transactions. However, the County reserves the right to include this option and to add it to the inmate telephone system if it determines that it is in the best interest of the inmate population. If and when the County decides to implement the use of debit cards, the County shall utilize the Inmate