

STATE OF IOWA DEPARTMENT
OF COMMERCE UTILITIES
BOARD

IN RE: ENCARTELE, INC.

DOCKET NO. TF-2019-0270

**RESPONSE TO PPI COMMENTS AND
MOTION FOR BOARD RELIEF**

On July 18, 2019, in REG-3827, the Board issued an Order Canceling Encartele, Inc's Registration and Authority for failure to participate in Docket No. RMU-2017-0004. Upon notification of the cancellation, on August 28, 2019 Encartele responded to the Board's Order by filing a Motion for Reconsideration. With its motion, it refiled its existing tariff with no changes and refiled its registration. It additionally responded to the questions as required under Docket No. RMU-2017-0004. On September 20, 2019, the Board issued an Order finding Encartele's Motion moot and opened this proceeding instead, as a tariff docket. Encartele appreciated that time was of the essence to ensure compliance should it provide Alternative Operator Service calling in Iowa. Therefore, its initial filing did not contain an updated Tariff.

Throughout the term of this docket, Encartele worked with the Iowa Office of Consumer Affairs, the Iowa Utilities Board staff, and to an extent and as needed, the parties of this docket. On July 21, 2020, Encartele filed an extremely clear tariff with the Board. Outdated material was removed. Encartele's rate was lowered to \$.25 per minute for an AOS voice call.

TECHNICAL CONFERENCE IS COMPLETE

Throughout 2020, Encartele has been affected by the Covid 19 Pandemic. This was disclosed through a request for extension of time. During this time, Encartele specifically focused on responding to the Board's Inquiry and OCA's Inquiries. Many responses were short and succinct because the person with more information was personally affected by the pandemic. As such, Encartele sought to ensure compliance with its regulator, the Board. Notwithstanding, it did consider Prison Policy Initiative's ("PPI") comments and met them half-way by lowering the rate to \$.25.

A technical conference was held in this docket on September 10, 2020. In response to the technical conference, Encartele presented a clean, modified tariff for staff to review on October 2, 2020, for the Board's consideration. In good faith, Encartele filed a tariff that addressed all issues that evolved from the technical conference.

On November 13, 2020, PPI filed supplemental comments regarding the proposed tariff. "PPI asserts that Encartele charges a \$2.99 processing fee and an additional fee of 5% of the amount of the purchase for deposits to an inmate calling service account. PPI states that this type of layered fee structure likely violates federal law and Encartele appears to be imposing fees that the Board has not authorized."¹

In this November filing, PPI included the Declaration of Andrea L. Fenster. Ms. Fenster visited Encartele's website and asserts that she purchased services from Encartele. In truth, Encartele has no record of Ms. Fenster's purchase of services from Encartele. The "purchase" was initiated to discredit Encartele. It was not initiated for the

¹ IUB Order dated December 11, 2020 in Docket No TF-2019-0270, page 2, para 3

benefit of an inmate. It was not initiated for Ms. Fenster's incarcerated loved one. Therefore, she could not possibly have any insight into the services provided by Encartele or the cost of those services.

PPI conveniently ignores the fact that Encartele provides a myriad of services to facilities and the inmates in their care. Many communications services fall outside the scope of Encartele's tariff. Not all services are Alternative Operator Services. PPI assumes that a screen shot of this pretend purchase should give them insight into Encartele's business. This is a blatant attempt to force Encartele to open its books and its business plans for PPI's inspection.

On March 22, 2021, the Board Approved Encartele's tariff with one exception. In its second ordering clause that –

Within 30 days of the date of this order, Encartele, Inc., shall provide additional information on how its third-party transaction fee was calculated, on what basis this fee is charged, and why this fee is substantially higher than the third-party transaction fees charged by other inmate calling service providers in Iowa.

In response, Encartele filed the following statement:

Encartele cannot speak to expenses incurred by other inmate calling service provider in Iowa. Notwithstanding, Encartele does confirm that the "passthrough" rate (approximately 5%) is actually less than the extraneous expenses incurred by Encartele for credit card processing cost, including chargebacks.

Encartele challenges that it owes confidential financial information or proprietary business information to the organization, Prison Policy Initiative. Throughout this docket, PPI has escalated its comments. PPI started by objecting to its rate. When Encartele did not lower its rate to \$.21, PPI went further by blatantly accusing Encartele of being guilty of violating federal law.

ENCARTELE'S COMPLAINT HISTORY

Encartele became a domestic corporation in Nebraska on September 30, 2004. Encartele operations exceed twenty states. Since Encartele's inception, it has received exactly one complaint. This complaint is attached because even though this company has operated since 2004 without a single consumer complaint, neither state nor federal, PPI has filed the attached complaint with the FCC. Encartele believes this is a smear campaign designed to bully Encartele into opening its books for PPI. This is a complete waste of resources on both the state and federal level.

ALTERNATIVE OPERATOR SERVICES DESIGNATION

Encartele realizes that it does not actually earn "more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones."² Encartele has only remained certified because Encartele is extremely concerned with compliance. It has remained certified on the off chance that a traditional AOS call might slip through.

As such, Encartele respectfully requests that the tariff be approved with no additional changes. Encartele realizes it could motion the Board to retire its certification. It is not seeking relinquishment of its certification at this time. However, we do implore the Board to Order that Encartele has responded sufficiently for this docket. Encartele is a compliant and innovative company. It seeks to serve inmates and their families to assist in the reduction of recidivism. It has a spotless record when it comes to actual consumer complaints. There has never been a single complaint launched against Encartele through

² IAC, 22.1(2) definition of "Alternative operator services company" or "AOS company"

the life of its provision of services. Therefore, Encartele should not be subjected to invasive tactics used to gain insight into Encartele's confidential financials and confidential business plans.

**REQUEST FOR REIMBURSEMENT OF EXPENSES RELATED TO THE
EXTENDED TIME IN THIS DOCKET**

Should the Board allow PPI's inquiries to keep this docket open, Encartele respectfully requests that the Board Order that PPI should pay for all additional legal fees incurred by Encartele from this time forward until the conclusion of this matter.

For the reasons contained herein, supra, Encartele respectfully requests that the Board consider this tariff filing as compliant and therefore, a closed matter.

Respectfully submitted this 28th day of April 2021.

By: /s/ *Dana Hoyle, MS*

Regulatory Consultant
Encartele, Inc.
8210 S. 109 Street
LaVista, NE 68128

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

Informal Complaint re: Encartele, Inc.,
FRN 0015341019

Pursuant to 47 U.S.C. § 208(a) and 47 C.F.R. § 1.716, the Prison Policy Initiative, Inc. submits this informal complaint regarding Encartele, Inc. (“Encartele”), an inmate communications service (“ICS”) provider subject to the provisions of 47 C.F.R., part 64, subpart FF.

ICS providers are prohibited from charging ancillary fees other than those authorized by Commission rules.¹ Among the ancillary fees allowed by law is an automated payment fee that covers “credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or kiosk.”² This automated payment fee is capped at \$3.³ Alternatively, a carrier may accept payments facilitated by third party processors, and pass through those processors’ fees to the end-user.⁴

In contravention of this rule, Encartele is charging both an automated payment fee of \$3 *and* passing through its credit- or debit-card processing costs, resulting in total ancillary payment fees in excess of \$3 per transaction. Our organization initially became aware of Encartele’s practices in connection with a ratemaking proceeding conducted by the Iowa Utilities Board (“IUB”).⁵ Encartele’s website discloses that the company charges a “convenience fee” of \$2.99 for payments, in addition to a “credit card processing fee” equal to 5% of the total deposit amount. Consistent with this disclosure, when our organization initiated a test deposit of \$18.90,

¹ 47 C.F.R. § 64.6020(a); *see also* WC Docket No. 12-375, [Enforcement Bureau Reminds Providers of Inmate Calling Services that They Are Responsible for Complying with the Commission’s Rules Relating to Those Services](#), Public Notice, DA 20-1364 (hereinafter “Enforcement Advisory”) (rel. Nov. 20, 2020).

² 47 C.F.R. § 64.6000(a)(1); *see also* Enforcement Advisory at 3.

³ *Id.* § 64.6020(b)(3).

⁴ *Id.* § 64.6020(b)(5).

⁵ IUB [Docket No. TF-2019-0270](#).

Encartele sought to impose a “Convenience Fee” of \$2.99 and addition to credit card processing fees of \$1.09. A copy of the evidence that we submitted to the IUB is attached hereto as **Exhibit 1**⁶ and is submitted here pursuant to 47 C.F.R. § 1.16.

As explained below, we believe that Encartele’s practices violate two applicable Commission regulations.

I. Encartele Cannot Charge an Automated Payment Fee and Pass Through Fees for the Same Transaction

Carriers should not be allowed to charge an automated payment fee under 47 C.F.R. § 64.6020(b)(1) while also passing through transaction fees under § 64.6020(b)(5). The Commission’s record provides at least two indications that Encartele’s practice of double-dipping should not be allowed. First, the automated payment fee is already designed to compensate carriers for their own payment-card processing expenses. When the Commission initially proposed capping the automated payment fee at \$3, one of the dominant ICS carriers (Securus Technologies) objected, alleging that its payment-card processing fees exceeded \$3 per transaction. The Commission rejected this argument, finding that Securus’s alleged costs were an outlier, and that other companies were able to cover their processing costs under a \$3 fee cap.⁷ The Commission’s analysis here shows that carriers’ card processing costs may be recovered only through the automated payment fee, not the pass-through provision for third-party fees.

Second, when it allowed carriers to pass through third-party fees under § 64.6020(b)(5), the Commission framed the rule as a matter of addressing “money transfer service fees” incurred by customers who “do not have bank accounts, and therefore rely on third-party money transfer services such as Western Union or MoneyGram to fund calls with inmates.”⁸ This background is reflected in the regulatory definition of “third party financial transaction fee,” which is described as a fee “that Providers of Inmate Calling Services are charged by third parties to transfer money

⁶ Note that the caption of the attached declaration inadvertently contains the incorrect proceeding number. As indicated in the filing stamp, Encartele’s tariff proceeding before the IUB is being conducted as Docket Number TF-2019-0270.

⁷ Second Report & Order ¶ 167, 30 FCC Rcd. 12848.

⁸ *Id.* ¶ 170, 30 FCC Rcd. 12849 (footnotes omitted).

or process financial transactions to facilitate a Consumer's ability to *make account payments via a third party.*"⁹ But here, there is no third party involved in the transaction. A three-party transaction occurs when a customer (party 1) wishes to pay a carrier (party 2) and does so by initiating a transaction through a money transmitter like Western Union (party 3). When a customer makes a payment via Encartele's website, there are only two parties to the transaction. True, other entities may participate behind the scenes (such as the customer's card issuer and Encartele's acquiring bank), but these entities are not third parties to the transaction; they are merely agents of the payor and payee.

II. Encartele's Practice of Pricing Telephone Service by Megabytes Violates the Commission's System of ICS Rate Regulation

As noted in the attached declaration, Encartele requires customers to prepay for telephone calls by "purchasing" megabytes of data. On Encartele's website, a customer must enter the amount of calling time they would like to pay for, and translate that duration of time into an "approximate" amount of data that the customer must then pay for. *See* Exh. 1, ¶ 6. We believe that this convoluted manner of pricing violates the Commission's rule that ICS carriers must "clearly accurately, and conspicuously disclose their interstate, intrastate, and international rates . . . to consumers on their Web sites."¹⁰

III. Conclusion and Request for Expedited Consideration

Because Encartele's ancillary fees and published rates do not comply with applicable Commission rules, we submit this informal complaint and request that Encartele cease passing through third-party transaction fees on any payment that is also subject to an automated-payment or live-agent fee and publish its rates based on the per-minute cost of voice calling.

Encartele is already aware of this issue due to the Iowa proceedings, and we are also serving Encartele with a copy of this complaint. We therefore request the Commission set a reply deadline under 47 C.F.R. § 1.717 of no more than 21 days from the date of this filing.

⁹ 47 C.F.R. § 64.6000(a)(5) (emphasis added).

¹⁰ 47 C.F.R. § 64.6110.

Dated: March 4, 2021

PRISON POLICY INITIATIVE, INC.



Andrea Fenster, Staff Attorney

Peter Wagner, Executive Director

Stephen Rahe, Pro Bono Counsel

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STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: ENCARTELE, INC.

DOCKET NO. TF-2019-0039

DECLARATION OF ANDREA L. FENSTER

I, Andrea L. Fenster, declare as follows:

1. I am employed as a policy analyst at the Prison Policy Initiative. I am over the age of eighteen, and I make the following declaration based on my own personal knowledge. If called upon to testify concerning the matters expressed herein, I could and would competently do so under oath.

2. On November 13, 2020, I accessed the website <https://cidnet.net/friends-and-family-portal/>, operated by Encartele, Inc., for the purpose of initiating a prepayment for inmate calling service.

3. In order to make a prepayment, Encartele requires customers to create an account at the domain <https://customer.cidnet.net>. As part of the account creation process, customers are required to agree to Encartele's "Terms of Use." A true and accurate copy of the Terms of Use is attached hereto as **Exhibit 1**.

4. According to the Terms of Use, Encartele charges a "convenience fee" of \$2.99 for deposits, in addition to a "credit card processing fee" equal to 5% of the total deposit amount. Exh. 1 at 2-3.

5. I initiated a deposit via Encartele's website, and found that the fee calculation is consistent with the Terms of Use, as noted above.

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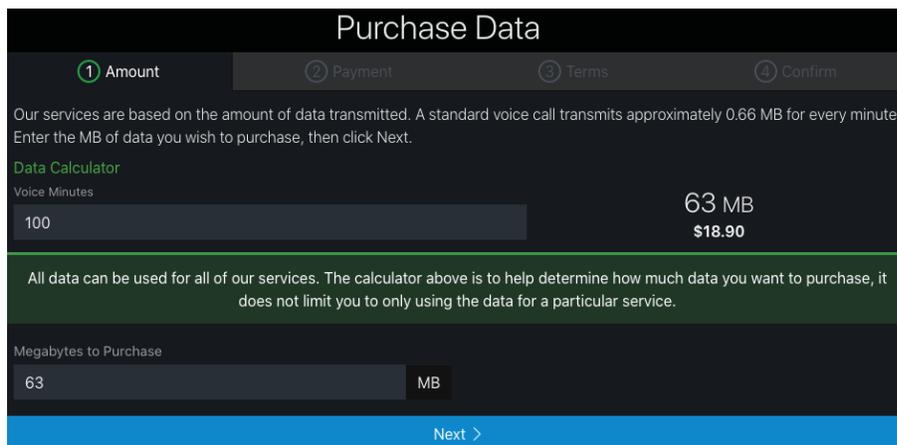
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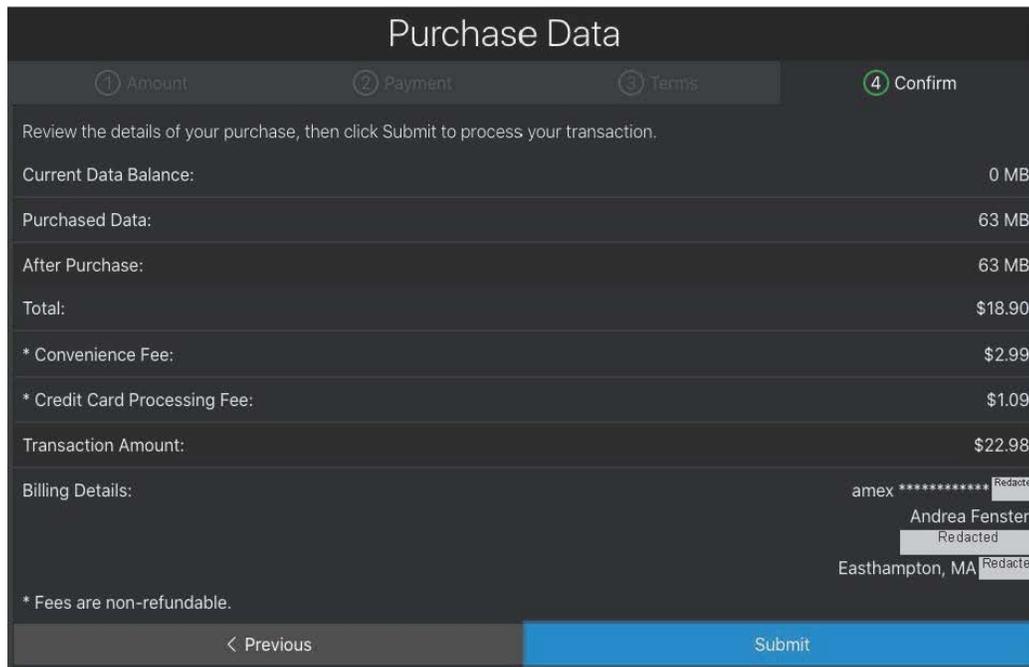
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6. For voice calling, Encartele requires customers to convert the amount of calling time into “data.” As illustrated in the following screenshot, to prepay for 100 minutes of voice calling service, a customer must purchase 63 megabytes of data:



7. A purchase of data equivalent to 100 minutes of calling costs \$18.90. To make a prepayment of this amount, Encartele’s website quoted me a convenience fee of \$2.99 plus a credit card processing fee of \$1.09. The \$1.09 appears to be 5% of the principal amount plus the convenience fee (i.e., $(18.90 + 2.99) \times .05 = 1.09$). The details of the applicable fees are displayed in the following screenshot:



I have redacted the payment-card digits and billing associated with the transaction, but in all other respects the preceding screenshot is a true and accurate record of the information displayed by Encartele's website.

I certify under penalty of perjury and pursuant to Iowa Code § 622.1 that the preceding is true and correct.

/s/ Andrea L. Fenster
Andrea L. Fenster

11/13/2020
Date

Terms of Use

Scroll Down to Agree

Please read these Terms of Service carefully. Your access to services and data will be authorized upon your acceptance of and compliance with these terms. These Terms shall also apply equally to any party using the account for which you will be responsible.

THIS IS AN AGREEMENT BETWEEN YOU AND ENCARTELE INC.

Acceptance of the Terms

You must be of legal age to enter into this binding agreement and accept its Terms. If you do not agree to the General Terms, you may not use any of our Services. If you agree to the General Terms and do not agree to any Service Specific Terms, you may not use the corresponding Service.

Definitions

Data: bandwidth that can be transmitted for the use of Encartele services available for your use.

Services: applications in which data can be transmitted to communicate with your family or friend confined in a correctional institute.

Description of Service

We provide an array of services for online communication with your friends or family members who are incarcerated in a jail that is contracted to provide Encartele. With Encartele you must purchase data to use the services available. When data is purchased it becomes your data that can be used in any way you choose as it relates to the available services. Abusing any service available on your account can lead to account termination at any time at our discretion.

Modification of Terms of Service

We may modify the Terms upon notice to you at any time through a service announcement or by sending email to your primary email address. Your continued use of the Service after the effective date of any change to the Terms will be deemed to be your agreement to the modified Terms.

Communications from Encartele Inc.

The Service may include certain communications from Encartele Inc., such as service announcements, receipts, or account updates. You understand that these communications shall be

considered part of the available Services. You will not be able to opt-out from receiving service announcements.

Fees and Payments

You acknowledge that the Payment Method and other information you provide is true, accurate, current, and complete, and promise to maintain and promptly update that information to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Encartele Inc. has reason to suspect that such information is untrue, inaccurate, not current or incomplete, that you have otherwise acted in a fraudulent manner, or that your account is otherwise subject to fraud or misrepresentation, Encartele Inc. has the right to terminate your account and refuse all current or future access to or use of your account and data. You also authorize Encartele Inc. to update your Payment Method information with data Encartele Inc. may obtain from the issuer of your Payment Method.

When you supply Encartele Inc. with a Payment Method, you authorize Encartele Inc. to bill that Payment Method for all charges and fees incurred relating to the selected Data. The terms of your Payment Method are determined by an agreement(s) between you and your financial institution. If Encartele Inc. is unable to receive payment from your Payment Method successfully, or if Encartele Inc. does not otherwise receive timely payment, you will pay all amounts then owing to Encartele Inc. upon demand and, in addition to other rights, Encartele Inc. may suspend or terminate the Services and the associated terms, and all the information contained within your account may be deleted permanently. Encartele Inc. accepts no liability for information that is deleted due to an invalid Payment Method.

Encartele Inc. is PCI compliant, and to protect against potential fraud, Encartele Inc. may take steps to verify the validity of the credit card information you provide. The verification process may include asking you to verify the amount debited to confirm that you are in possession of your credit card, AVS checks, and tokenization. Encartele Inc. will only use this process to screen for fraud.

Your Payment Method will automatically be charged the fees for the Data that you choose. All payments will be made in US dollars. When your payment is processed you will immediately receive a receipt to your email for your records. This receipt can also be found under your account history. Each payment will be identified as CIDNET 402-378-9020 on your credit card statement for you to reference.

The types of Payment Methods that we accept and the timing for billing of any fees may vary, and Encartele Inc. may, upon notice required by applicable laws, at any time change: (a) the amount of or basis for determining any fee or charge, (b) institute new fees or charges with respect to the Data and Services, (c) Payment Methods that we accept, or (d) the timing for billing of any fees.

Calculation of Fees

A convenience fee of \$2.99 will be charged at the time data is purchased. There will also be a credit card processing fee 5% of your total purchase.

Sale of Unused Data

For data that is purchased and not used, Encartele allows you to sell back your data at the price then in effect. If you agree to sell back your unused data at the price then in effect, funds will be paid via check sent to you in the mail.

Restrictions on Use

In addition to all other terms and conditions of this Agreement, you shall not: transfer the Services or otherwise make it available to any third party; post links to third party sites or use the Cidnet logo, company name, etc. without their prior written permission; violate any applicable local, state, national or international law; and create a false identity to mislead any person as to the identity or origin of any communication.

Trademark

Cidnet, Cidnet logo, the names of individual Services and their logos are trademarks of Encartele Inc. You agree not to display or use, in any manner, the Encartele Inc. trademarks, without Encartele's prior permission.

Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. Encartele Inc. EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, Encartele Inc. MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM Encartele Inc., ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

Limitation of Liability

YOU AGREE THAT Encartele Inc. SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I filed the following document with the Federal Communications Commission, using the online consumer complaint form, located at https://consumercomplaints.fcc.gov/hc/en-us/requests/new?ticket_form_id=39744:

INFORMAL COMPLAINT RE: ENCARTELE, INC., FRN 0015341019

and I also served a copy of the above-referenced document on the following recipient by first-class mail and email:

Encartele, Inc.
Attn: Brenda Cortez, Exec. Assistant
PO Box 540547
Omaha, NE 68154
nancy.clausen@hotmail.com

Dated: March 4, 2021

/s/ Andrea L. Fenster
Andrea L. Fenster
Staff Attorney
Prison Policy Initiative, Inc.
P.O. Box 127
Northampton, MA 01060