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*ADMITTED IN DC ONLY

March 1, 2019

Via ECFS (Public Version) and
Hand Delivery (Confidential Version)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 12-375
Global Tel*Link Corporation and Its Subsidiaries
Response to Second, One-Time Mandatory Data Collection

Dear Secretary Dortch:

Global Tel*Link Corporation and its subsidiaries (collectively, “GTL”),¹ by their attorneys, respectfully submit their response to the second, one-time mandatory data collection adopted by the Federal Communications Commission (“Commission”) in its *2015 ICS Order*.² GTL provides its data and supporting documents in accordance with the requirements of the

¹ This response to the second, one-time mandatory data collection is being filed by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, Inc., Public Communications Services, Inc., Value-Added Communications, Inc., and Telmate, LLC.

² *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (“2015 ICS Order”), *pets. for stay granted in part sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016), *vacated in part, rev’d and remanded in part by Global Tel*Link Corporation v. FCC*, 859 F.3d 39 (D.C. Cir. 2017).

Protective Order adopted in this proceeding.³ Specifically, GTL provides a REDACTED version of its response via ECFS, and a CONFIDENTIAL version to the Secretary's Office in hard copy with the completed Form 2300 submitted on a flash drive.⁴

Under the *Protective Order*, "Confidential Information" is "information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Commission's implementing rules."⁵ The *Protective Order* states that a party "designating documents and information as Confidential" pursuant to the *Protective Order* "will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules."⁶

FOIA exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information.⁷ Similarly, the Commission's rules state that such information is not routinely available for public inspection.⁸ The Commission's rules also allow parties to seek protection for information that is "commercial or financial, or contains a trade secret or is privileged" or when "disclosure of the information could result in substantial competitive harm."⁹

GTL has designated the majority of its response to the second, one-time mandatory data collection as "Confidential Information" under the *Protective Order* including (but not limited to) information concerning GTL's costs of providing inmate calling services, revenue, customers, costs of ancillary services and fees, and minutes of use.

³ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16954 (2013) ("*Protective Order*"); see also *2015 ICS Order* ¶ 201 ("Information in response to the forthcoming data collection may be filed under the *Protective Order* in this proceeding and will be treated as confidential.").

⁴ Recognizing the Commission's initiative to reduce paper, and in light of the volume of information required by FCC Form 2300, which printed would require hundreds of pages, GTL is submitting the completed Form 2300 on a flash drive. See, e.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, 31 FCC Rcd 10339, ¶ 38 (2016) (adopting an "initiative to reduce paper" for regulatory fee filings, noting "the Commission is moving towards a paperless environment"); MB Docket No. 18-4, *Amendment of Section 73.3613 of the Commission's Rules Regarding Filing of Contracts*, Report and Order, ¶ 6 (2018) (eliminating paper filing obligations for certain broadcaster contracts so that "stations will no longer have to spend time and money preparing paper copies of Section 73.3613 documents and having them mailed or hand-delivered to the Commission, often by outside legal counsel" and finding that the elimination of the paper filing requirement would not "meaningfully impact the ability of the Commission" to review the documents); *National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, 32 FCC Rcd 5269, ¶ 6 (2017) (noting one of the benefits of permitting e-mail delivery of certain customer notices by cable providers "include the positive environmental aspects of saving substantial amounts of paper annually").

⁵ *Protective Order* ¶ 2.

⁶ *Protective Order* ¶ 3 (citing 47 C.F.R. §§ 0.459(a), 0.459(a)(3)).

⁷ 5 U.S.C. § 552(b)(4).

⁸ 47 C.F.R. § 0.457(d).

⁹ 47 C.F.R. §§ 0.459(b)(3), 0.459(b)(5).

Information concerning “business operations and plans” routinely has been withheld as disclosure could damage a company’s “competitive position by giving the competitors insight into [the company]’s business methods and strategies.”¹⁰ Further, information that has “the potential of revealing [a company]’s market plans and positions” or providing “insight into [a company]’s business strategies” also has been deemed exempt from mandatory public disclosure.¹¹ As the Commission has found, “public disclosure of a list of names a business holds out as its customers is likely to cause substantial harm to the competitive position of that business” because “this information would be of interest and benefit to the business’s competitors, who could use the list to contact these persons as potential customers.”¹²

The Commission also has held “revenue information to be the type of competitively sensitive material that should be withheld under” FOIA.¹³ The Commission has found financial information should be withheld from disclosure “because this material is competitively sensitive and therefore confidential” under FOIA.¹⁴ Granular information about an entity’s “current costs, market share, marginal revenue, and firm-specific price elasticities” or “current or future procurement strategies, pricing strategies, product strategies, or advertising or marketing strategies” also should be protected from disclosure.¹⁵

¹⁰ *Josh Wein, Warren Communications News on Request for Inspection of Records*, 24 FCC Rcd 12347, ¶ 13 (2009).

¹¹ *Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport*, 13 FCC Rcd 13354, ¶ 9 (1998); *see also Jonathan E. Canis, Frank W. Krogh, Richard J. Metzger*, 9 FCC Rcd 6495 (1994); *see also Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶¶ 118-22 (1991) (subsequent history omitted) (discussing concerns that the filing of contracts could release competitively sensitive information); 47 C.F.R. § 61.55 (contract-based tariff rule does not require carriers to provide the name of the customer receiving service).

¹² *Mobile Relay Associates*, 14 FCC Rcd 18919, ¶¶ 8-9 (1999) (finding “customer records are among the most basic business records that a company uses in furtherance of its commercial activities” and a “customer list constitutes the type of business information that may be properly withheld under FOIA”); *see also Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and Its Subsidiaries to Sprint Corporation*, 20 FCC Rcd 9280, ¶ 3 (2005) (“a company’s list of specific customers, customer data aggregated to a relatively detailed level (*e.g.*, zip code, county or MSA), and specific future business, build out or marketing plans, could all allow competitors to target customers and gain an unfair competitive advantage if they were to obtain the information”); *New York Public Interest Research Group v. EPA*, 249 F. Supp. 2d 327 (S.D.N.Y. 2003) (“Congress contemplated that business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiating positions, and like information that customarily would not be made public should not lose their character because the government required that information or otherwise obtained it”).

¹³ *The Consumer Law Group*, 28 FCC Rcd 684, ¶ 6 (2013); *see also The Lakin Law Firm, P.C.*, 19 FCC Rcd 12727 ¶ 6 (2004); FOIA Control No. 2002-268, Letter from Joseph T. Hall to Fred B. Campbell, Harris Wiltshire & Grannis (July 8, 2002); FOIA Control No. 2002-351, Letter from Joseph T. Hall to Roy Thompson, Black Radio Network (Aug. 19, 2002); *John E. Wall, Jr.*, 22 FCC Rcd 2561 (2007).

¹⁴ *Sandwich Isles Communications, Inc. on Request for Inspection of Records*, 28 FCC Rcd 15253, ¶ 7 (2013).

¹⁵ *Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and Its Subsidiaries to Sprint Corporation*, 20 FCC Rcd 9280, ¶ 4 (2005); *see also Stuart A. Whitaker on Request for Inspection of Records*, 6 FCC Rcd 5058, ¶ 13 (1991) (“Cost data and other information that would reveal a company’s profit margins have been recognized by the courts as a category of information with considerable competitive implications.”).

Accordingly, the information designated by GTL as Confidential Information is the type of material routinely protected from disclosure under FOIA and the Commission's rules. In the event there is a challenge to GTL's designation of information as Confidential Information under the *Protective Order*, GTL respectfully requests notice of that determination and an opportunity to make a showing for confidentiality under Section 0.459 of the Commission's rules prior to making GTL's response available for public inspection.¹⁶

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser
Angela F. Collins

Counsel for Global Tel*Link Corporation
and Its Subsidiaries

Enclosure

cc: Lynne Engledow (per *Protective Order*)

¹⁶ 47 C.F.R. § 0.459.

REDACTED - FOR PUBLIC INSPECTION

WC Docket No. 12-375
Global Tel*Link Corporation and Subsidiaries
Response to Data Collection FCC Form 2300
March 1, 2019

FCC Form 2300 has been provided on the enclosed thumb drive and is designated as **CONFIDENTIAL INFORMATION** under the *Protective Order* issued in WC Docket No. 12-375.

[REDACTED – FOR PUBLIC INSPECTION]

VERIFICATION

I, John Pitsenberger, Chief Financial Officer of Global Tel*Link Corporation and its subsidiaries DSI-ITI, Inc., Public Communications Services, Inc., Value-Added Communications, Inc., and Telmate, LLC (collectively, "GTL"), hereby certify under penalty of perjury that the statements in GTL's Response to Inmate Calling Services Mandatory Data Collection (FCC Form 2300) and accompanying Description and Justification are true, complete, and correct to the best of my knowledge, information, and belief.

Dated: March 1, 2019



John Pitsenberger
Chief Financial Officer
Global Tel*Link Corporation and its subsidiaries
DSI-ITI, Inc.,
Public Communications Services, Inc.,
Value-Added Communications, Inc., and
Telmate, LLC

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	

Global Tel*Link Corporation and Its Subsidiaries

Response to Second, One-Time Mandatory Data Collection

Description & Justification

March 1, 2019

Global Tel*Link Corporation and its subsidiaries (collectively, “GTL”)¹ that provide inmate calling services (“ICS”) submit this Description & Justification (“D&J”) in support of their response to the second, mandatory one-time data collection (“Data Collection”) adopted by the Federal Communications Commission (“FCC” or “Commission”) in the *2015 ICS Order*.² GTL provides its response to the Data Collection in accordance with applicable law and the *Inmate Calling Services Mandatory Data Collection* instructions (the “Instructions”) issued by the FCC.³

Introduction and Background

1. In the *2015 ICS Order*, the Commission adopted the Data Collection to facilitate “a review of the ICS market including ICS costs, rates and ancillary service charges.”⁴ The Commission stated the Data Collection would review “the ICS market including ICS costs, rates and ancillary service charges to ensure that any regulations continue to be necessary to fulfill [the FCC’s] statutory objectives and to ensure that any such reforms and rate caps reflect current

¹ This response to the second, one-time mandatory data collection is being filed by GTL on behalf of itself and its wholly owned subsidiaries providing ICS: DSI-ITI, Inc. (“DSI”), Public Communications Services, Inc. (“PCS”), Value-Added Communications, Inc. (“VAC”), and Telmate, LLC (“Telmate”). Telmate became a subsidiary of Global Tel*Link Corporation effective July 31, 2017.

² *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (“*2015 ICS Order*”), *pets. for stay granted in part sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016), *vacated in part, rev’d and remanded in part by Global Tel*Link Corporation v. FCC*, 859 F.3d 39 (D.C. Cir. 2017); *see also Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*2013 ICS Order*”), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan.13, 2014), *superseded as stated in Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Dec. 21, 2017); *Rates for Interstate Inmate Calling Services*, 31 FCC Rcd 9300 (2016) (“*2016 ICS Reconsideration Order*”), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 16-1321, Order (D.C. Cir. Nov. 2, 2016), *vacated and remanded by Securus Tech., Inc. v. FCC*, No. 16-1321, Order (D.C. Cir. Dec. 21, 2017). GTL refers to all of the decisions issued by the DC Circuit in these matters collectively, as the “*DC Cir. Decision*.”

³ Instructions to *Inmate Calling Services Mandatory Data Collection* available <https://www.fcc.gov/general/ics-data-collections>; *see also* WC Docket No. 12-375, *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, Public Notice (rel. February 14, 2019); *Wireline Competition Bureau Announces Due Dates for Inmate Calling Services Information Collections and Consumer Disclosure Requirements*, 32 FCC Rcd 1522 (2017) (“*2017 Public Notice*”).

⁴ *2015 ICS Order* ¶ 198.

market dynamics and costs.”⁵ The Instructions state the data will be used by the Commission “to take further ICS reform action, identify and track trends in the ICS market, as well as monitor compliance with the reforms adopted in” the *2015 ICS Order*.⁶

2. In response to the Commission’s request for comments on the Data Collection under the Paperwork Reduction Act, GTL suggested that the Commission wait for the appeals of the *2015 ICS Order* to be resolved before implementing the Data Collection.⁷ GTL reasoned the Commission should not require ICS providers to submit data on items for which the Commission’s jurisdiction was being challenged, such as information regarding costs, intrastate ICS, and video visitation. GTL also explained that the burden of compliance with the Data Collection significantly outweighed the benefit, especially given that ICS providers are not cost-based, rate-of-return operating companies and do not maintain information in the manner requested by the Data Collection.⁸

3. In response to GTL’s PRA Comments, the Commission claimed the Data Collection was necessary to ensure ICS rates are “just, reasonable, and fair,” and that “the data will be used to assess costs and revenues related to ICS.”⁹ It further determined “there is no

⁵ *2015 ICS Order* ¶ 198.

⁶ Instructions at 1. Many of those reforms have since been vacated by the *DC Cir. Decision*.

⁷ WC Docket No. 12-375, Paperwork Reduction Act Comments of Global Tel*Link Corporation (filed Sept. 30, 2016); WC Docket No. 12-375, Paperwork Reduction Act Comments of Global Tel*Link Corporation (filed Dec. 5, 2016) (collectively, “GTL PRA Comments”).

⁸ See generally GTL PRA Comments; see also, e.g., *Updating Part 1 Competitive Bidding Rules*, 30 FCC Rcd 7493, ¶ 150 (2015) (rejecting a proposal after determining “that any potential benefit that might be gained from adopting such a requirement would be outweighed by the harms it would cause” because it would “impose unnecessary administrative and operational burdens with no demonstrated benefit”); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, ¶ 19 (2012) (declining to adopt certain proposals “to further ensure that the costs of compliance with the new posting procedures are outweighed by the benefits of online disclosure”).

⁹ FCC Supporting Statement for FCC Form 2300 at 1-3. However, the Commission’s expressed “standard” has since been vacated by the DC Circuit ruling that the *2015 ICS Order* “conflates two distinct statutory grants of authority into a synthetic ‘just, reasonable and fair’ standard,” which “is impermissible.” *GTL*, 859 F.3d 39 at 52;

indication that the court will take any action that would affect the mandatory data collection.”¹⁰

The Commission also rejected GTL’s concerns about the estimated time that would be required to comply with the Data Collection, concluding the FCC’s estimate of “100 hours is sufficient time to allow the average ICS provider to report, in the format requested, the requested information.”¹¹ In response to requests by non-ICS providers, the Commission added additional questions concerning credit card processing services, collect calls, and video visitation to the Data Collection.¹²

4. The Office of Management and Budget approved the Data Collection effective March 1, 2017, and the Commission set March 1, 2019 as the due date for the Data Collection.¹³ The Wireline Competition Bureau developed the template for the Data Collection and issued the Instructions for submission of the Data Collection in March 2017.¹⁴

5. On June 13, 2017, the United States Court of Appeals for the District of Columbia Circuit (“DC Circuit”) addressed numerous petitions for review of the Commission’s *2015 ICS Order* and, among other things: (1) vacated the FCC’s rate caps on intrastate ICS and the ancillary fees associated with those calls, finding the FCC does not have statutory authority to set

see also id. (finding the *2015 ICS Order* “erroneously treats the Commission’s authority under § 201 and § 276 as coterminous. . . . The language and purpose of § 201 in the 1934 Act are fundamentally different from the language and purpose of § 276 in the 1996 Act. The [*2015 ICS Order*] glosses over these differences in declaring that the Commission has authority to ensure that rates are ‘just, reasonable and fair.’ This is not what § 201(b) and § 276 say.”).

¹⁰ FCC Supporting Statement for FCC Form 2300 at 3.

¹¹ FCC Supporting Statement for FCC Form 2300 at 5 (citing to comments by GTL). In its PRA Comments, GTL submitted that the original time estimated by the FCC for completion of the Data Collection (80 hours per ICS provider) was too low. GTL explained that, even if GTL spent only one (1) hour per correctional facility to collect, compile, and formulate the many data categories (which is an unrealistically low estimate), GTL alone would spend hundreds of hours on the Data Collection. The FCC’s decision to increase the estimated time for completion of the Data Collection to 100 hours per ICS provider did not address GTL’s concerns.

¹² FCC Supporting Statement for FCC Form 2300 at 4 (making changes suggested by the Wright Petitioners).

¹³ *2017 Public Notice* at 2.

¹⁴ *2015 ICS Order* ¶ 201.

intrastate rates; (2) vacated the FCC's tiered rates and its use of industry-averaged cost data to set the permanent ICS rates as arbitrary and capricious, finding the rates were not supported by the record or reasoned decision making; (3) vacated the FCC's imposition of video visitation reporting requirements as beyond the FCC's statutory authority; (4) vacated the FCC's exclusion of site commission payments from the cost calculus to set ICS rate caps as arbitrary and capricious; and (5) remanded the issues concerning site commissions and whether ancillary fees can be segregated between interstate calls (which are permissible) and intrastate calls (which are not permissible).¹⁵ In orders dated December 21, 2017, the DC Circuit determined the *2013 ICS Order* had been superseded by the *2015 ICS Order* and vacated the *2016 ICS Reconsideration Order*.¹⁶

Request for Data on Intrastate Matters

6. GTL has elected to include certain intrastate data in its response to the Data Collection. The submission of this information in light of the *DC Cir. Decision* finding the FCC has no jurisdiction over intrastate ICS¹⁷ should not be viewed as a waiver of GTL's rights, and GTL reserves all rights regarding the Commission's authority to collect data from ICS providers regarding intrastate ICS matters.

¹⁵ *Global Tel*Link v. FCC*, 859 F.3d 39 (D.C. Cir. 2017). On September 26, 2017, the DC Circuit denied a Petition for Rehearing En Banc filed by the Wright Petitioners, and on October 5, 2017, issued the formal mandate in connection with its opinion.

¹⁶ *Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Dec. 21, 2017); *Securus Tech., Inc. v. FCC*, No. 16-1321, Order (D.C. Cir. Dec. 21, 2017).

¹⁷ *GTL*, 859 F.3d at 55.

Request for Data on Costs Generally

7. The *2015 ICS Order* was the Commission's effort to establish *market-based* ICS rates after its *2013 ICS Order* establishing cost-based ratemaking was challenged.¹⁸ The Data Collection, however, continues to focus on cost in contravention of the Commission's own statements that it was abandoning cost-based regulation of ICS¹⁹ and the DC Circuit's decision to stay implementation of the cost-based rules adopted by the Commission in the *2013 ICS Order*.²⁰

8. As competitive, non-dominant carriers, ICS providers have not been required to establish cost-based rates or develop cost justification data to support their rates. The Commission eliminated requirements for non-dominant carriers to justify rates "with extensive cost and other economic data" given that "the cost of developing this information is relatively great" and the requirement "serves no useful purpose commensurate with the costs of compliance."²¹

9. As a result and as previously stated in GTL's PRA Comments, GTL does not maintain cost data in the format requested in the Data Collection. While GTL provides some cost data in its response to the Data Collection, GTL reserves all rights regarding the Commission's authority to collect cost data from ICS providers.

¹⁸ *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170, ¶¶ 6, 48 (2014) ("*2014 Second ICS FNPRM*") ("we seek comment on moving to a market-based approach to encourage competition in order to reduce rates"); *see also 2015 ICS Order* ¶ 16 (stating the DC Circuit stayed three rules adopted in the *2013 ICS Order* including "the rule requiring rates to be based on costs").

¹⁹ *2014 Second ICS FNPRM* ¶¶ 47-48 ("While we continue to see the benefits of a cost-based approach as adopted in the *Order* last year, the Commission prefers to allow market forces to ensure that rates are just and reasonable.").

²⁰ *Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan.13, 2014),

²¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶¶ 6, 97, 99 (1980) ("*Competitive Carrier Order*").

Request for Data on Video Visitation

10. The Data Collection asks several questions about video visitation revenue, minutes of use, and costs. The DC Circuit determined the Commission's video visitation services reporting requirement "is too attenuated to the Commission's statutory authority to justify this requirement" and "vacate[d] the reporting requirement for video visitation services."²² Accordingly, GTL has marked the requests concerning video visitation as "N/A" or not applicable.

Request for Audited Financial Statements

11. The Instructions require "all ICS providers to provide audited financial statements or reports for 2014-2018, or similar documentation, to the extent they have been produced in the ordinary course of business."²³ For years 2014-2017, GTL provides the audited financial statements for GTEL Holdings, Inc. and Subsidiaries, which include GTL, VAC, PCS, and DSI, along with other non-regulated, non-ICS operations. The audited financial statements for 2018 have not been completed. GTL will supplement this submission when audited financial statements for 2018 have been produced.

12. Telmate became an indirect subsidiary of GTEL Holdings, Inc. effective July 31, 2017. Telmate is included in the audited financial statements of GTEL Holdings, Inc. and Subsidiaries for 2017 from July 31, 2017 going forward. GTL also provides copies of Telmate's financial statements for 2014-2016.

²² *GTL*, 859 F.3d at 58.

²³ Instructions at 1.

Requests for Data on GTL's Costs

13. GTL does not track costs in the manner requested by the Data Collection. Where the Data Collection requests cost information on a correctional facility or contract level, GTL's ICS costs cannot be attributed to a specific correctional facility or contract (except for bad debt expense associated with collect calling and site commissions as explained below). Centralization and consolidation in the ICS industry also make it impossible to trace ICS costs to individual correctional facility contracts or to allocate ICS costs to individual calling jurisdictions.²⁴ Accordingly, GTL has responded to some of the requests in the Data Collection concerning costs as "N/A" or not applicable.

14. For purposes of the Data Collection, GTL considers "ICS costs" to be those costs that are reasonably and directly related to the provision of ICS, including but not limited to: the cost of capital (reasonable return on investment); expenses for originating, switching, transporting, and terminating ICS calls; costs associated with security features relating to the provision of ICS; costs associated with the payment of site commissions; costs associated with billing, collection, and customer care (such as payment processing costs and call center support costs); costs associated with the service, maintenance, and repair of equipment; depreciation on capital, such as the deployment of managed access or contraband detection systems; bad debt expense; and selling, general, and administrative ("SG&A") expenses.²⁵

15. GTL relied on the audited financial statements of its parent (GTEL Holdings, Inc.) and other financial information to determine its aggregate or "total" ICS costs. However,

²⁴ See, e.g., *2013 ICS Order* ¶ 29 (noting the "ability to centrally provision across multiple facilities" and "the centralized application of requested security measures"); *2015 ICS Order* ¶ 34 (noting "ongoing industry consolidation" results in "economies of scale in the provision of ICS, i.e., the incentive to become more efficient through scale is an incentive for providers to enter into mergers").

²⁵ *2013 ICS Order* ¶ 53; *GTL*, 859 F.3d at 56-57.

the expenses set forth in the audited financial statements include more than just ICS costs as the financial statements cover all subsidiaries of GTEL Holdings, Inc. To determine total ICS costs, GTL identified ICS direct costs and used an allocation methodology to identify indirect costs attributable to ICS. To determine the indirect costs attributable to ICS, GTL multiplied its total indirect costs by a percentage equal to the revenue received from ICS divided by total revenue.

16. In several places, the Data Collection asks for information on “direct costs.” Direct costs are those costs incurred only because a revenue-producing transaction or activity occurred. Capital costs and SG&A expenses represent a large portion of GTL’s overall costs, but these costs cannot be associated with any particular correctional facility contract or with ICS specifically because those costs support the business as a whole. The only ICS costs that could be considered direct costs are bad debt expense, which is associated only with collect calls, and the costs related to the payment of site commissions. These are the only two ICS costs that could be directly attributable to a particular correctional facility contract.²⁶

17. The Data Collection requests information on “Total International ICS Costs” and “Total International ICS Costs Paid to An Affiliate.” GTL does not track or separate its costs based on the jurisdiction of calls. Costs relating to international ICS are included in the data provided for “Total ICS Costs.” For this reason, GTL has marked the requests for Total International ICS Costs and Total International ICS Costs Paid to An Affiliate as “N/A” or not applicable.

²⁶ Prior to July 31, 2017 (the date on which GTEL Holdings, Inc. acquired Telmate), Telmate booked its bad debt expense as a general offset to revenue. As a result, Telmate’s bad debt expense cannot be attributed to any specific correctional facility contract. For time periods prior to July 31, 2017, GTL reports Telmate’s bad debt expense on an aggregated basis.

18. GTL calculated its annual return-on-capital costs by determining the invested capital of GTL at the end of each year and applying a defined rate-of-return in each year consistent with Commission precedent:

- January 1, 2014 to June 30, 2016 - 11.25%
- July 1, 2016 to June 30, 2017 – 11.00 %
- July 1, 2017 to June 30, 2018 – 10.75%
- July 1, 2018 to December 31, 2018 – 10.50%²⁷

The invested capital value of GTL was based on its December 2011 purchase valuation, and its market value in subsequent years was determined by adding the consideration paid for subsequent acquisitions to the 2011 purchase valuation.

Explanatory Notes on the Data Provided by GTL in Response to Data Collection

19. GTL provides data for each calendar year for the period from January 1, 2014 to December 31, 2018, unless otherwise noted. The data is not separated by each individual ICS provider covered by this Data Collection submission, unless otherwise noted.

20. GTL's response to the Data Collection provides data on a contract-by-contract basis, which is similar to how GTL submitted data in its annual reports for calendar years 2016 and 2017 and in its first, one-time mandatory data collection submission in 2014. GTL notes that each contract may be associated with multiple correctional facility locations.

21. The Data Collection asks for the "Facility Address," which is defined as the physical location of the correctional facility. GTL provides the address to which it sends correspondence and/or site commission payments under its contract with the correctional facility customer, which may not be the same as the physical location of the correctional facility. In addition, GTL provides the mailing address only for its current correctional facility customers.

²⁷ See, e.g., *Connect America Fund*; *ETC Annual Reports and Certifications*; *Developing a Unified Intercarrier Compensation Regime*, 31 FCC Rcd 3087 (2016).

GTL does not maintain historical records of mailing addresses for its prior correctional facility customers.²⁸

22. The Data Collection asks for the “Counter-Party to Contract,” which is defined as the name of the party or entity that entered into the contract with GTL. GTL provides the account name that GTL maintains in its billing system for each contract. In some instances, the account name may not be the actual counter-party to the contract. This is consistent with GTL’s annual report submissions for calendar years 2016 and 2017.

23. The Data Collection asks for “Average Daily Population (ADP),” which is defined as the sum of all inmates in a facility for each day of the preceding year, divided by the number of days in the year. GTL cannot provide historical ADP on a contract-by-contract basis for calendar years 2014 and 2015. Prior to the adoption of the *2015 ICS Order*, GTL had no reason to retain historical information regarding ADP for each of its correctional facility customers.²⁹ Further, the rules adopted in the *2015 ICS Order* and *2016 ICS Reconsideration Order* that otherwise would have required GTL to know the ADP were stayed by the DC Circuit prior to their implementation.³⁰ Accordingly, GTL has marked the requests concerning ADP for calendar years 2014 and 2015 as “N/A” or not applicable.

24. The Data Collection asks for information on “Unpaid Calls,” which is defined as calls that GTL is required to provide free of charge or any other calls for which GTL did not receive compensation. The Data Collection also asks for information on “Unpaid MOU,” which

²⁸ To reduce the length of the Data Collection submission, GTL does not provide repetitive mailing address information for numerous calendar years. GTL provides the mailing address only in the spreadsheet relating to calendar year 2018 even if GTL served the correctional facility customer in 2014-2017.

²⁹ In addition, ADP information must be provided to GTL by the correctional facility customer. This is not information readily known to GTL.

³⁰ *Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016); *Securus Tech., Inc. v. FCC*, No. 16-1321, Order (D.C. Cir. Nov. 2, 2016).

is defined as any minute of use provided to an end user for which GTL did not receive compensation. For GTL, VAC, PCS, and DSI, GTL provides data for “Unpaid Calls” based on any call that had a recorded duration higher than zero and had no revenue associated with the call in GTL’s billing system. Telmate, however, does not track Unpaid Calls by contract. To reach the number of Unpaid Calls for correctional facility contracts held by Telmate, GTL divided the total number of Unpaid MOU by contract by the duration of an Unpaid Call (which GTL estimates to be an average of 2.5 minutes per call) to determine the number of Unpaid Calls by contract for Telmate.

25. The Data Collection requests information on “Total MOU,” “Total Paid MOU,” “Total Unpaid MOU,” and MOU by jurisdiction (intrastate, interstate, etc.). There is a discrepancy between the Total MOU versus the breakout of MOU by jurisdiction. This difference is attributable to Unpaid MOU because GTL does not track the jurisdictional classification of every Unpaid MOU. Jurisdiction is relevant for purposes of determining the charge to be applied to a call, and there is no charge applied to Unpaid MOUs.

26. The Data Collection requests information on “Debit MOU Revenue.” The term “Debit” refers to a billing and collection arrangement that allows an inmate (or someone acting on the inmate’s behalf) to establish and fund an account that allows the inmate to pay for ICS calls originated by the inmate. Based on accounting rules and the method of purchase, revenue from debit accounts may be recorded when the debit account is funded (or sold), or when the funds in the debit account are used. For purposes of GTL’s Data Collection submission, the information provided for Debit MOU Revenue is based on usage of the debit account, not the funding (or sale) of the debit account.

27. The Data Collection requests information on “Maximum Call Duration,” which means the maximum limit, if any, that an ICS provider or a correctional facility imposes on the length of ICS calls. In most instances, maximum call limits are set by the correctional facility or state law.³¹ If a call limit is to be applied, GTL implements the call limitation within its billing system. GTL provides maximum call duration information for calendar year 2018 based on the current settings in GTL’s billing system. GTL does not track or maintain historical information regarding maximum call duration, and cannot provide such information for 2014-2017. Accordingly, GTL has marked the requests concerning maximum call duration for calendar years 2014-2017 as “N/A” or not applicable.

28. The Data Collection requests information on “Automated Payment Fee (APF) Revenues,” which are revenues earned from credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or kiosk. GTL does not have APF Revenue data on a contract-by-contract basis for calendar years 2014 and 2015, and provides only aggregated data for those years. For calendar years 2016-2018, GTL provides APF Revenue data on a contract basis. Once an end user opens an account, that account can be used to receive inmate-initiated calls from any correctional facility served by GTL. After the APF is applied to an end user account, GTL’s billing system relies on the first

³¹ See, e.g., Massachusetts Department of Correction, Telephone access and use, 103 CMR 482.06(3)(e) (“All inmate telephone calls are subject to duration limits, or other restrictions such as authorized calling hours as determined by procedures developed by the Superintendent of each institution.”); State of North Carolina Department of Public Safety, Policy & Procedures, Chapter D, Section .0803(b)(2) (issued May 13, 2014) (“Inmates are permitted to make only collect and debit calls, and each call will be limited to fifteen (15) minutes. Telephones will automatically terminate the call when the time limit expires.”), https://www.doc.state.nc.us/dop/policy_procedure_manual/D0800.pdf; York County, Pennsylvania, Telephone System (“There is an automatic twenty (20) minute time limit on all calls.”), <https://yorkcountypa.gov/courts-criminal-justice/prison/inmate-rules-and-policies/telephone-system.html>; Douglas County, Nebraska Department of Corrections, Telephone Service (“All calls are limited to 15-minutes.”), <https://corrections.dccorr.com/inmate-services/telephone-service>.

call for which that account is used to allocate the APF to an individual correctional facility contract.

29. In addition, the APF Revenue reported for correctional facility contracts served by Telmate includes APFs that could be associated with payments for services beyond ICS. Telmate offers consumers the ability to open and fund a single account that can be used to pay for services including but not limited to ICS, messaging services, tablet content, and/or video visitation services. GTL cannot distinguish between APFs for automated payments related to ICS and APFs for automated payments related to other non-ICS services. GTL therefore provides the total amount of APF Revenue for correctional facility contracts served by Telmate.

30. The Data Collection requests data on “Paper Bill/Statement Fee Revenues (PBFs),” which are revenues earned from fees associated with providing ICS customers an optional paper billing statement. For calendar years 2014, 2015, and 2018, GTL provides its total PBF Revenue on an aggregated basis. For calendar years 2016 and 2017, GTL provides PBF Revenue on a contract-by-contract basis as reflected on its annual report submissions for those calendar years.

31. The Data Collection requests data regarding site commissions, which are defined to mean any form of monetary payment, in kind payment, gift, exchange of services or goods, fee, technology allowance, or product that an ICS provider may pay, give, donate, or otherwise provide to a correctional facility. The site commission data provided by GTL in response to the Data Collection includes only monetary payments made to correctional facilities. Under some contracts, GTL may provide services that could be deemed to fall within the Commission’s definition of “site commission.”

32. The Data Collection requests data regarding fixed and variable site commissions. For calendar years 2014-2015 and 2018, GTL provides the total commission paid under the variable commission category, and does not provide any amount for fixed commission. For calendar years 2016-2017, GTL reports any fixed commission amounts. The vast majority of GTL's site commission payment requirements are variable commissions. GTL is continuing to review fixed commission data for calendar years 2014-2015 and 2018, and will supplement its response to the Data Collection as needed.

33. The Data Collection requests data regarding the "Number of International ICS Calls." GTL does not have the Number of International ICS Calls for correctional facility contracts held by Telmate. GTL is continuing to review this information, and will supplement its response to the Data Collection if information is available.

Report Format

34. GTL has modified the Commission-provided Excel template to produce its data in a more user-friendly format. Given the number of correctional facility contracts to be listed, GTL provides the correctional facility contracts in the rows, and the Commission-requested data in the columns. This format is consistent with the format used by GTL in its annual report submissions for calendar year 2016 and 2017.