

Law Offices

July 13, 2017

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By ECFS

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

RE: *Ex Parte* Submission
WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Wright Petitioners submit this notice of an *ex parte* telephonic presentation made to Pamela Arluk, Chief, and Gil Strobel, Deputy Division Chief, of the Pricing Policy Division of the Wireless Competition Bureau, on July 11, 2017.

Undersigned counsel for the Wright Petitioners raised concerns that certain ICS providers failed to provide the required information requested in Section VI – Video Calling Services of the FCC Form 2301(a). Those forms were required to be filed by July 1, 2017.¹ Undersigned counsel noted that several of the ICS providers who failed to submit the forms had referenced a recent court of appeals decision² as the basis for not submitting the required information in their public, redacted submissions.³ Other providers left the entire section blank in their public, redacted submissions, and their representatives subsequently informed undersigned counsel they would not be providing that information due to the *GTL Decision*. Notably, no ICS provider that failed to submit the required video calling services information cited a public notice or other Commission order permitting such action.

Undersigned counsel noted in the conversation that Rule 40 of the Federal Rules of Appellate Procedure provides forty-five (45) days from the issuance of the *GTL Decision* for a petition for panel rehearing to be submitted. Only after that 45-day period expires, with no petition for

¹ *Rates for Interstate Inmate Calling Services*, Order, 32 FCC Rcd 3816 (2017).

² *Global Tel*Link v. F.C.C.*, (D.C. Cir. No. 15-1461), Slip Op., June 13, 2017 (the "*GTL Decision*")

³ See, e.g., Annual Report Form, FCC Form 2301(a) ([CenturyLink](#) – "Video Calling not reported due to June 13, 2017 DC Circuit Court of Appeals Ruling.") ([Pay Tel Communications](#) – "This requirement vacated by the DC Circuit in *Global Tel*Link, et al. v. FCC.*")

rehearing being filed, will the court's mandate associated with the *GTL Decision* be issued.⁴ Specifically, Rule 41(b) of the Federal Rules of Appellate Procedure states that "[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires."⁵ Equally as important as the timing of the issuance of the mandate is the fact that a "timely filing of a petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate, stays the mandate until disposition of the petition or motion."⁶

Thus, undersigned counsel commented that the ICS providers' reliance on a decision that has yet to become final, and for which the issuance of the mandate may be delayed should parties such as the Wright Petitioners seek rehearing, was misplaced. Until the *GTL Decision* becomes final, undersigned counsel noted, the requirement to comply with the Commission's rules is required, including the requirement to submit a complete FCC Form 2301(a) prior to the July 1st deadline.

Because certain ICS providers failed to comply with the Commission's rules, and failed to cite any Commission public notice or order in support their otherwise *ultra vires* interpretation of the Commission's rules, undersigned counsel requested that the Wireline Competition Bureau issue a Public Notice requiring ICS providers to file the Video Calling Services information as soon as possible.

Respectfully submitted,



Lee G. Petro

Counsel for the Wright Petitioners

cc (by email):

Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Brendan Carr, General Counsel
Kris Monteith, Chief, Wireline Competition Bureau
Pamela Aruluk, Chief, Pricing Competition Division, WCB
Gil Strobel, Deputy Division Chief, Pricing Competition Division, WCB

⁴ F.R. App. P. 40.

⁵ F.R. App. P. 41.

⁶ F.R. App. P. 41(d).