Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	
Comment Sought on Pay Tel Communications, Inc. Petition for Extension of Waiver	)	DA 14-1606
	)	

OPPOSITION OF GLOBAL TEL*LINK CORPORATION TO PAY TEL COMMUNICATIONS, INC.'S PETITION FOR EXTENSION OF WAIVER

Global Tel*Link Corporation ("GTL")[1] hereby submits this Opposition to Pay Tel Communications, Inc.'s Petition for Extension of Waiver filed October 31, 2014 in the above-referenced docket.[2]

On February 11, 2014, the Commission granted Pay Tel a "limited, temporary waiver" of the interim interstate inmate calling service ("ICS") rate caps[3] adopted by the Commission in September 2013.[4] By granting the waiver, the Commission placed Pay Tel in a uniquely advantageous position among ICS providers by allowing it to charge higher rates than its competitors while simultaneously disadvantaging Pay Tel's customers who were required to pay those higher rates. In return, Pay Tel ignored the clear directive of the Commission regarding the purpose for the waiver and Pay Tel's responsibilities thereunder. Because Pay Tel disregarded the Commission's reason for granting the waiver and no justification exists to extend Pay Tel's

1 These comments are filed by GTL on behalf of itself and its wholly owned subsidiaries that also provide interstate inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc. and Value-Added Communications, Inc.

2 WC Docket No. 12-375, Pay Tel Communications, Inc.'s Petition for Extension of Waiver (Oct. 31, 2014) ("*Extension Petition*").

3 *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 1302, ¶ 1 (2014) ("*Waiver Order*").

4 *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*Order and FNPRM*").

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special treatment, GTL respectfully urges the Commission to deny Pay Tel's *Extension Petition* and return all ICS providers and customers to a level economic playing field.

When the Commission granted the waiver to Pay Tel, it specifically limited the waiver's duration and stated that the "waiver will provide Pay Tel with sufficient time to pursue any necessary intrastate rate changes through the applicable state processes in light of the aggregate impact of Pay Tel's ability to recover its costs with the application of the interim interstate ICS rate caps."[5] The waiver was not meant to grant Pay Tel a carte blanche exception to the Commission's adopted rates. It was designed to give Pay Tel a limited nine-month window to work with the states on intrastate rates. Reiterating this point, the Commission stated:

- "We . . . grant this temporary waiver to afford Pay Tel additional time to pursue appropriate changes to its intrastate requirements."[6]

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- "We grant Pay Tel a temporary waiver in order to provide it with an opportunity to address below-average-cost rate mandates at their source – at the state level and with the individual facilities it serves."[7]

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- "Specifically, Pay Tel can follow existing processes within the relevant states to seek necessary intrastate rate changes, or waivers, in light of the impact of the interim interstate ICS rate caps."[8]

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- "[W]e find it is in the public interest to grant Pay Tel temporary relief while it pursues relief in the states, and we therefore limit the duration of the waiver to nine months unless the Commission decides to take action on intrastate ICS rate caps sooner, then such Commission Order would supersede this waiver."[9]

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- "We authorize such rates for a period of nine months unless the Commission decides to take action on intrastate ICS rate caps sooner, then such Commission Order would supersede this waiver. This period of time will

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5 *Waiver Order* ¶ 1.

6 *Id.* ¶ 11.

7 *Id.* ¶ 19.

8 *Id.*

9 *Id.*

> provide Pay Tel an opportunity to seek modification of the intrastate rates it cites in its Petition."[10]

Given the reason for the waiver, Pay Tel's request for an extension presumably should provide extensive details about the company's efforts to address intrastate rates at the state and facility level. Pay Tel's petition does not. Instead, the *Extension Petition* only addresses this issue in a single sentence and footnote on page 10 of the petition and in the attached declarations.[11] According to Pay Tel, the declarations "document Pay Tel's efforts to date,"[12] but a review of those declarations confirms that Pay Tel did next to nothing in the nine months afforded it by the Commission to address intrastate rates.

In his declaration, Vincent Townsend, President of Pay Tel, states that in February 2014, he and Pay Tel's vice president of sales spoke with an unnamed administrator of a single unnamed client in Virginia.[13] He also says that he and certain unnamed staff members had similar meetings with other unnamed clients in three other states, but he provides no names, dates, or details of those conversations. He also claims that prior to the *Waiver Order* ("during the Fourth Quarter of 2013 and during January 2014") Pay Tel "attempted" to meet with each of its clients,[14] but he provides no details about those attempts (no dates, no names, no correspondence). He also offers no explanation why "attempts" made prior to the *Waiver Order* are relevant to an extension of that order, or why no such "attempts" were made in the nine months provided by the Commission. Pay Tel also provides a declaration from one of its lawyers, Marcus W. Trathen, who states that he had two telephone conversations and three

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10 *Id.* ¶ 21.

11 *Extension Petition* at n.46.

12 *Id.*

13 *Extension Petition*, Exhibit A ¶ 9.

14 *Id.* ¶ 10.

meetings with North Carolina officials; with the last such contact occurring on April 9, 2014 – almost seven months before the *Extension Petition* was filed.[15] Like Mr. Townsend, Mr. Trathen submitted no documentation regarding these discussions.

Finally, Pay Tel submitted an affidavit from another lawyer, Newton M. Galloway, who states that on October 27, 2014 – **four days before the *Extension Petition* was filed** – Pay Tel "advised" the Georgia Public Service Commission's Staff of the *Waiver Order* and reviewed "the recent FCC ICS Order in Docket FCC 13-133" with two Commission Staff members.[16] Again, Pay Tel submitted no documentation regarding this meeting, and Pay Tel provided no explanation why it waited until the week it filed the *Extension Petition* to "advise" Georgia officials of the *Waiver Order*, which was issued February 11, 2014. Surely, Pay Tel did not expect Georgia to take significant action in four days after Pay Tel had wasted 258 days of the waiver period. Pay Tel's efforts were quite simply too little, too late.

In its initial petition for a waiver of the ICS rates, Pay Tel stated that it "serves 163 distinct clients and 184 separate facilities in 13 states."[17] Pay Tel clearly made no effort to contact all of these facilities or all of the states involved after the issuance of the *Waiver Order*. Mr. Townsend's declaration provides insight into Pay Tel's lack of effort. According to Mr. Townsend: "Based on my extensive experience in dealing with state regulatory commissions, I believe it would be time-consuming, expensive and of unlikely success to seek rate increases in

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15 *Extension Petition*, Exhibit B ¶¶ 3-4.

16 *Extension Petition*, Exhibit C ¶ 6. Reportedly other discussions were held with the Georgia Public Service Commission's Staff in Spring 2013 – long before the *Waiver Order* was issued or Pay Tel submitted its first petition for a waiver in January 2014. *Id.* ¶ 4.

17 WC Docket No. 12-375, Pay Tel Communications, Inc.'s Petition for Waiver of Interim Interstate ICS Rates, n.4 (Jan. 8, 2014)

each below-cost intrastate rate cap jurisdiction."[18] This statement and Pay Tel's lackluster efforts are clearly at odds with the Commission's intent that Pay Tel pursue relief in the states.

Not only did Pay Tel fail to act when given an opportunity, it now relies on that failure to seek an extension, arguing that its extension request should be granted because the circumstances which led to the Commission granting the initial waiver "have not changed and remain in place."[19] Pay Tel's argument ignores the fact that it was Pay Tel's obligation to work to change those circumstances. Pay Tel should not be rewarded for its failure to act by being granted a further waiver extension.

Section 1.3 of the Commission's rules states that the Commission's rules may be waived for good cause shown.[20] Waiver of the Commission's rules "is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[21] In the *Order and FNPRM* the Commission stated that "the petitioner bears the burden of proof to show that good cause exists to support the request" and identified factors to be considered in reviewing a waiver request.[22]

Although waivers may be granted in certain limited circumstances, the Commission should not be in the business of subsidizing one company to the detriment of its competitors.[23]

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18 *Extension Petition*, Exhibit A ¶ 7.

19 *Extension Petition*, 1.

20 "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3.

21 *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

22 *Order and FNPRM* ¶ 82.

23 Jon Sallet, Acting General Counsel, Fed. Commc'ns Comm'n, Remarks at Conference on Competition & IP Policy in High-Technology Industries, Stanford, California (Jan. 22, 2014) (*available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-325267A1.pdf) ("in a competitive marketplace, we must understand that there will be winners and losers. It is not the government's job to tilt the playing field by punishing the winners or helping the losers") (quoting Ajit Pai, Commissioner, Fed. Commc'ns Comm'n, Remarks at TechFreedom's Forum on the 100th Anniversary of the Kingsbury Commitment (Dec. 19, 2013) (*available at* http:// transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1219/DOC-324810A1.pdf)).

The Commission's policies should not "unfairly advantage nor disadvantage one provider over another."[24] Granting Pay Tel a further waiver of the interim interstate rate caps would exacerbate the unequal advantage that the Commission granted to Pay Tel in February. If the extension is granted, Pay Tel will be able to continue to charge ICS rates up to $0.46 per minute while its competitors are required to charge no more than the interim rates of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. Conversely, if the Commission denies the extension, it will return all ICS to an equal footing where all ICS providers are subject to the same rules and rate structure.

Pay Tel argues that the waiver extension is needed to prevent it from being forced to substantially curtail its operations or go out of business.[25] Pay Tel's actions, however, suggest these doomsday predictions are hyperbole. Logically, if the extension of the waiver were crucial to the survival of its business, Pay Tel would have taken a more proactive approach to addressing intrastate rates – both to directly increase its revenue during the intervening nine months and to justify a further waiver of interstate rates if it were not successful. Pay Tel's demonstrated lack of effort over the past nine months thus raises questions about the necessity for the waiver.

Pay Tel further argues that it needs the extension because it has been losing contracts and bids. Although Pay Tel does not state that it actually proposed to set inmate rates at $0.46 per minute, it seems likely that it did so given its claims of financial distress. In other words, Pay Tel may have submitted bids with debit and prepaid calling rates that were nearly double the maximum rate that other ICS providers are allowed to propose. It is hardly surprising that jail or prison facility managers would be hesitant to award Pay Tel a contract if they have to explain

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24 *Connect America Fund, et al.*, 26 FCC Rcd 17663, ¶ 176 (2011) (quoting *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 47 (1997).

25 *Extension Petition*, 2.

publicly why they chose a company with calling rates significantly above all other bidders. Such a decision would not be in the public interest, any more than extending the waiver would be.

Finally, Pay Tel's argument that it needs special rates of $0.46 per minute is belied by its so-called "Ethical Proposal" submitted to the Commission a few weeks before the *Extension Petition*.[26] In that proposal, Pay Tel suggested that rates for city, county and regional jails (*i.e.*, the facilities Pay Tel serves) be set at $0.26 or $0.22 per minute, not the $0.46 per minute it claims it needs in the *Extension Petition*.[27]

For the above reasons, the Commission should deny the Petition, and the existing waiver should expire as planned.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

Chérie R. Kiser
Gail Johnston*
CAHILL GORDON & REINDEL LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
(202) 869-8900
ckiser@cahill.com
gjohnston@cahill.com

Its Attorneys

David Silverman
Senior Vice President and General Counsel
GLOBAL TEL*LINK CORPORATION
12021 Sunset Hills Road
Suite 100
Reston, VA 20190
(703) 955-3886
dsilverman@gtl.net

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*Resident in New York

[26] WC Docket No. 12-375, Pay Tel Communications, Inc.'s Ethical Proposal for Reform of Inmate Calling Rates and Fees (Oct. 3, 2014).

[27] The bias behind Pay Tel's "ethical" proposal is patently obvious where it suggests rates of $0.26 or $0.22 per minute for the types of facilities it serves but rates of only $0.08 per minute for those facilities it does not serve.