

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

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	
Petition of Global Tel*Link Corporation	)	
for Expedited Clarification and Declaratory	)	
Ruling	)	
_____	)	

**SUPPLEMENT TO  
GLOBAL TEL\*LINK CORPORATION PETITION FOR  
EXPEDITED CLARIFICATION AND DECLARATORY RULING**

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Dated: April 3, 2015

Its Attorneys

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Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its undersigned counsel, hereby submits this Supplement to the Petition for Expedited Clarification and Declaratory Ruling (“Petition”) filed in the above-referenced docket on March 4, 2010 and the Reply Comments submitted by GTL in support of its Petition on July 26, 2010. In its Petition, GTL asked the Federal Communications Commission (“FCC” or “Commission”) to confirm that the Telephone Consumer Protection Act of 1991 (“TCPA”)<sup>2</sup> and the Commission’s implementing regulations<sup>3</sup> are inapplicable to GTL’s use of prerecorded notifications before completing inmate-initiated calls to the general public. GTL submits this Supplement to provide additional information in support of its Petition, and to ask the Commission also to confirm that the TCPA and the Commission’s rules do not apply to the informational messages GTL sends to notify its customers about the status of their accounts and their ability to receive additional inmate-initiated calls in the future. These messages, like

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

<sup>2</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (“TCPA”), *codified at* 47 U.S.C. § 227.

<sup>3</sup> 47 C.F.R. § 64.1200.

those described in GTL's Petition, serve the public interest and do not run afoul of the TCPA or Congress's objectives in enacting the legislation. Consistent with the purposes of the TCPA, the interactive voice response notifications ("IVR Notifications") employed by GTL maximize convenience to inmates and the persons they are attempting to call, help facilitate communications between inmates and their loved ones or legal counsel, protect the general public from receiving unwanted inmate calls, and allow GTL to provide its inmate calling services in a secure, cost-effective, and efficient manner. Accordingly, GTL's Petition, as supplemented herein, should be granted to ensure GTL can continue to provide informational messages that benefit the public without being subject to potential liability from numerous frivolous lawsuits under the TCPA.<sup>4</sup>

#### **SUPPLEMENTAL INFORMATION ON GTL'S NOTIFICATION PRACTICES**

GTL's Petition sought a declaratory ruling regarding the automated IVR Notifications GTL uses when an inmate attempts to make a collect call to an individual who does not have the ability to accept collect call charges on the telephone number dialed by the inmate. This can occur when the called party is served by a local exchange carrier ("LEC") with whom GTL does not have a billing arrangement, or the called party is being served by a Voice over Internet Protocol ("VoIP") service provider or wireless service provider, which generally do not allow their customers to accept collect call charges.<sup>5</sup> In these situations, the inmate-initiated call cannot be completed until a billing arrangement between GTL and the called party is established.

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<sup>4</sup> While GTL's Petition relates to IVR Notifications sent to both wireline and wireless telephone numbers, most TCPA liability cases arise in the context of automated messages sent to wireless telephone numbers given that there is no prior consent required to send non-telemarketing, non-commercial, informational automated messages to residential wireline telephone numbers. *See* 47 C.F.R. § 64.1200(a)(3)(ii), (iii).

<sup>5</sup> *See, e.g., Terms of Service, VONAGE*, § 5(E), <http://www.vonage.com/tos> (last visited Apr. 2, 2015) (stating that the service does not support collect calls, third party billing calls, 900 calls or calling card calls); *Digital Voice Support, VERIZON*,

In order to complete the inmate's call, GTL uses an automated IVR Notification to inform the called party that an inmate is trying to make contact. The IVR Notification announces that the inmate will be permitted to make contact if, and only if, the called party agrees to the contact, and then creates an account that can be billed for the call. The called party is prompted to respond during the message by either declining to receive calls from the inmate or agreeing to receive calls by creating an account to which the calls can be billed. By following the prompts in the message, the called party can create an account on the spot or can choose to do so at a later date by calling a supplied toll free number that connects the called party to a customer service representative. If the called party does not answer the inmate's initial call, up to three additional IVR Notifications to the called party are attempted on behalf of the inmate to inform the called party that the inmate is trying to make contact. The additional IVR Notifications are a continuation of the inmate's initial attempt to contact the called party. If the inmate-initiated call or any of the follow-up IVR Notifications made on behalf of the inmate result in a live answer or the ability to leave a voicemail, no further IVR Notification attempts are made on behalf of the inmate. No further attempts to notify the called party are made after three unsuccessful attempts.

Receipt of the inmate-initiated call via the IVR Notification is the only way the called party will know that an inmate is trying to reach the called party. Pursuant to correctional facility requirements and state laws, GTL must use an automated message to attempt to complete

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<http://www.verizon.com/support/residential/phone/homephone/general+support/fios+phone/questions+and+answers/127847.htm> (last visited Apr. 2, 2015) ("You cannot make or receive collect calls"); *View Bill/Online Statement FAQs*, VERIZON WIRELESS, <http://www.verizonwireless.com/support/view-bill-online-faqs/> (last visited Apr. 2, 2015) ("Am I able to place or receive collect calls on my mobile phone? No, collect calls can't be made from or received on mobile phones.").

an inmate-initiated call because the use of live operators is not permitted.<sup>6</sup> For security and safety reasons, correctional facilities do not permit inmates to communicate with any person other than the intended called party in order to prevent harassment, fraudulent activity, and other potential unlawful behavior.<sup>7</sup> GTL also is required to announce to called parties that the call is from a correctional institution and to obtain positive acceptance of the call prior to completing the call.<sup>8</sup> The initial inmate call attempt IVR Notifications satisfy these important safety and security requirements.

The use of the additional IVR Notifications made on behalf of the inmate increase the probability that the inmate will be able to speak to the called party during the inmate's next opportunity to use the telephone. Inmates do not have unlimited access and freedom to make telephone calls. Correctional facilities establish the time and manner in which inmates may use the telephones. The follow-up IVR Notifications to the called party occur as a continuation of

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<sup>6</sup> For example, the Delaware Department of Corrections requires an inmate calling provider to “provide fully automated collect calling without the need for live operator intervention.” State of Delaware Department of Technology and Information, Request for Proposal Inmate & Public Coin Telephone Services, at 36 (Mar. 3, 2015), *available at* [http://bidcondocs.delaware.gov/DTI/DTI\\_15001InmatePhone\\_RFP.pdf](http://bidcondocs.delaware.gov/DTI/DTI_15001InmatePhone_RFP.pdf). Likewise, Montgomery County, Virginia specifies that “[a]ll inmate calls shall be processed by an ‘automated’ operator, and shall not allow any inmate contact or access to a ‘live’ operator.” Montgomery County, Virginia Purchasing Department, Request for Proposal (Aug. 21, 2014), *available at* <http://www.montgomerycountyva.gov/filestorage/1146/98/175/384/rfp15-05.pdf>; *see also* CG Docket No. 02-278, Initial Comments of Securus Technologies, Inc., at 2 (dated May 21, 2010) (stating “announcements of necessity use prerecorded voice messages”).

<sup>7</sup> GTL Petition at 9-10. While all calls from an inmate must be attended by an automated operator service, called parties who receive IVR Notifications are always given the option to reach a live customer service representative to seek more information about inmate call accounts, payment options, etc.

<sup>8</sup> *See, e.g.*, Department of Correctional Services, State of Nebraska, Administrative Regulation Number 205.03 (V)(C) (Dec. 4, 2014) (requiring a “prerecorded automated announcement” providing the name and location of the correctional facility and call acceptance instructions), *available at* <http://www.corrections.state.ne.us/pdf/ar/mail/AR%20205.03.pdf>; Massachusetts Department of Correction, Telephone Access and Use, 103 CMR 482.00 *et seq.* (requiring calls to be placed “utilizing an automated operator,” an “announcement identifying that the collect call is originating from an inmate at a Massachusetts Department of Correction (institution),” and “positive call acceptance by the called party prior to the call being connected”), *available at* <http://www.mass.gov/courts/docs/lawlib/101-103cmr/103cmr482.pdf>; *see also* CG Docket No. 02-278, Initial Comments of Securus Technologies, Inc., at 2 (dated May 21, 2010) (“for safety and security purposes, providers of [inmate telephone service] in correctional institutions are required by contract to announce to the called party that the call is from a correctional institution and obtain positive acceptance from that party before allowing the inmate-initiated call to be completed”).

the inmate initial call that was unanswered. The additional attempts to complete the inmate call are necessary to ensure that inmates are able to complete their desired calls when the inmate is once again permitted to use the telephone. If the additional IVR Notifications were not made, the inmate may be in the position of continually waiting for an account to be established, and never actually reaching the person the inmate wishes to contact.

GTL now supplements its Petition to include the IVR Notifications it uses to inform its existing customers that their prepaid account balance is low, which could jeopardize their ability to receive additional inmate-initiated calls.<sup>9</sup> Once a called party receives a message that an inmate is attempting to make contact, the called party can choose to set up a prepaid account with GTL. The prepaid account, known as AdvancePay, allows the inmate's friends and family to deposit money in advance, and the funds decrease as the inmate makes calls to the telephone numbers associated with the prepaid account. When signing up for an AdvancePay account, the customer is informed that an automated system will contact the customer when funds on the prepaid account are low or for other billing-related purposes.<sup>10</sup> The IVR Notification an AdvancePay customer receives explains how the customer can deposit additional funds into its prepaid account and how the customer can stop receiving these informational messages in the future. These messages are sent to the telephone number the customer uses to establish the

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<sup>9</sup> In limited situations, GTL also uses IVR Notifications to inform its existing customers of other billing issues, such as when the customer has reached its limit on collect calls billed to its wireline telephone number, when a direct-billed customer (such as an attorney or bail bond agent) has reached its billing limit for a particular month, or when a direct-billed customer has a past due invoice. All of these message types fall under the same rubric as the IVR Notifications GTL uses to inform its prepaid customers of a low balance as they would also jeopardize a customer's ability to receive additional inmate-initiated calls. GTL's supplement to its Petition for a declaratory ruling encompasses these other types of IVR Notifications made to existing customers. For convenience, however, GTL will refer herein only to those IVR Notifications sent when a prepaid account balance is low as that is the predominant use of IVR Notifications to existing customers.

<sup>10</sup> GTL AdvancePay Brochure, *available at* [http://www.doc.sc.gov/pubweb/family/GTL\\_English.pdf](http://www.doc.sc.gov/pubweb/family/GTL_English.pdf). In addition, the Privacy Statement on GTL's online payment and billing website (ConnectNetwork.com) informs customers that GTL may use the customer's information to manage and service the customer's account with GTL, or to contact the customer when necessary about its account or its use of GTL's services. *See Your Privacy Rights* (Mar. 20, 2015), *available at* <https://www.connectnetwork.com/learnmore/privacy.jsp> (last visited Apr. 3, 2015).

prepaid account with GTL. GTL sends these informational messages as a convenience to its customers that may not realize their account balance is too low to accept additional inmate-initiated calls.

### **SUPPLEMENTAL INFORMATION ON NEED FOR EXPEDITED RELIEF**

As noted in GTL's Petition, it has been subject to numerous TCPA liability cases relating to its initial inmate call attempt IVR Notifications.<sup>11</sup> GTL has an obligation to notify a called party without an established account that an inmate is attempting to make contact, but such notifications expose GTL to potential litigation each and every time an inmate initiates a call for which an account must be established. The potential is there whether the inmate has misdialed and the message is received by someone who knows no one in prison, whether the inmate dials the cell phone number of the person they wish to contact, or whether the inmate has placed a call to a true family member who seizes the notification as an opportunity to generate some income through a settlement with the provider via the TCPA private right of action.

In the five years since GTL filed its Petition, private actions under the TCPA have become even more commonplace given the ease with which a consumer can file a claim for monetary damages.<sup>12</sup> In addition to the court actions mentioned in its Petition,<sup>13</sup> GTL has been subjected to numerous other private actions initiated by consumers who allege they have received IVR Notifications (either an initial inmate attempt or a subsequent billing-related

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<sup>11</sup> GTL Petition at 7-8.

<sup>12</sup> See, e.g., CG Docket No. 02-278, Letter from the U.S. Chamber of Commerce and various other trade associations and business groups (dated Feb. 2, 2015) ("Given that compliance-minded organizations in a variety of sectors are being dragged into court and strong-armed into large settlements on an almost daily basis under the TCPA, for actions that do not remotely threaten the privacy interests that the statute was intended to protect, regulatory relief by the Commission is desperately required. We ask for clarification from the FCC to help curb abusive lawsuits that likely harm consumers overall.").

<sup>13</sup> GTL Petition at 7-8.

notification) on their wireless devices without their “prior express consent” or in error.<sup>14</sup> It is inconsistent with the purpose of the TCPA to allow the statute to be used as the basis for litigation against GTL when GTL uses IVR Notifications only to ensure that inmates can engage and continue to engage in communications with those individuals the inmate seeks to contact. Other entities have raised similar concerns arguing that the “significant and growing litigation risk from such calls - and the potential for devastating TCPA class action damage awards - threatens organizations that have earnestly and in good faith attempted to meet their TCPA obligations.”<sup>15</sup> Therefore, as requested in GTL’s Petition and herein, the Commission should expeditiously implement “common-sense reforms to facilitate the delivery of time-sensitive consumer information to mobile devices while continuing to protect consumers from unwanted telemarketing calls.”<sup>16</sup>

### **SUPPLEMENTAL ARGUMENT**

Under the TCPA and the Commission’s implementing rules, an entity may not use an automatic telephone dialing system<sup>17</sup> or an artificial or prerecorded voice to make or initiate a

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<sup>14</sup> GTL also supports the numerous petitions that have been filed regarding the applicability of the TCPA to automated messages sent to a wireless telephone number in error, either due to disconnection and reassignment of wireless numbers, use of call forwarding services, or simple human error. *See, e.g.*, CG Docket No. 02-278, Rubio’s Restaurant, Inc. Petition for Expedited Declaratory Ruling (dated Aug. 11, 2014); CG Docket No. 02-278, Petition for Declaratory Ruling of the Consumer Bankers Association (dated Sept. 19, 2014); CG Docket No. 02-278, Blackboard Inc. Petition for Expedited Declaratory Ruling (dated Feb. 24, 2014).

<sup>15</sup> CG Docket No. 02-278, United Healthcare Services, Inc. Petition for Expedited Declaratory Ruling, at 3 (dated Jan. 16, 2014).

<sup>16</sup> Letter from Rep. Marsha Blackburn, *et al.* to Tom Wheeler, FCC, at 2 (Aug. 1, 2014), *available at* <http://www.ballardspahr.com/~media/files/alerts/2014-08-07-letter1.pdf>.

<sup>17</sup> GTL does not use an “automatic telephone dialing system” to send its IVR Notifications. *Cf.* 47 C.F.R. § 64.1200(f)(2). An “automatic telephone dialing system” or “autodialer” is “equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.” 47 C.F.R. § 64.1200(f)(2). The definition also includes predictive dialers, which dial numbers using a database of numbers. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559, ¶ 12 (2008). The key distinguishing factor is whether the technology has, as a basic function, “the capacity to dial numbers without human intervention.” *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, ¶ 132 (2003) (“2003 TCPA Order”); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 15391, n.5 (2012) (finding the “autodialer” definition “covers any equipment that has the specified capacity to generate numbers and dial them

telephone call to a telephone number assigned to a wireless service unless the call is made “for emergency purposes” or the call is made with the “prior express consent” of the called party.<sup>18</sup> When the call contains an advertisement or otherwise constitutes telemarketing, “prior express written consent” is required to initiate a telephone call to a telephone number assigned to a wireless service using an automatic telephone dialing system or an artificial or prerecorded voice.<sup>19</sup> If a call does not contain a telemarketing message, no consent is required when made to a residential wireline number, and consent may be “either written or oral” if made to a wireless number.<sup>20</sup>

## **I. GTL’S IVR NOTIFICATIONS ARE NOT THE TYPE OF MESSAGES THE TCPA WAS INTENDED TO ADDRESS**

As explained in GTL’s Petition, its initial inmate call attempt IVR Notifications are not the type of automated message the TCPA seeks to prevent.<sup>21</sup> The same is true with the IVR Notifications used to notify GTL’s existing customers of a low prepaid account balance or other billing-related issues. The TCPA was drafted for the purpose of balancing the interests of the public and the legitimate telemarketing industry, and specifically cites the need to square “[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms of speech and trade . . . in a way that protects the privacy of individuals and permits legitimate telemarketing

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without human intervention regardless of whether the numbers called are randomly or sequentially generated or come from calling lists”) (emphasis in original); *Glauser v. GROUPEME, Inc.*, No. C 11-2584 PJH, Order Granting Motion for Summary Judgment, at 11 (N.D. Ca. Feb. 4, 2015) (finding “no basis for plaintiff’s argument that the Welcome Texts were sent without human intervention. Plaintiff admits that the Welcome Texts were triggered when ‘GroupMe obtained the telephone numbers of the newly added group members’ (including himself), and ignores the fact that GroupMe obtained those numbers through the actions of the group’s creator”). GTL does not use a random or sequential number generator, does not maintain a database of numbers to be called, and has no capability to select the telephone numbers to be dialed “without human intervention” by the inmate, who is the sole determiner of what telephone number will be called.

<sup>18</sup> 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>19</sup> 47 C.F.R. § 64.1200(a)(2).

<sup>20</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, ¶ 28 (2012) (“2012 TCPA Order”).

<sup>21</sup> GTL Petition at 9-10.

practices.”<sup>22</sup> Congress has specifically recognized that the Commission “should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy.”<sup>23</sup>

The GTL IVR Notifications are informational, non-commercial, non-advertising, and non-telemarketing messages.<sup>24</sup> The messages are not “intended to offer property, goods, or services for sale either during the call, or in the future,” and thus do not qualify as an advertisement or solicitation under the TCPA or the Commission’s rules.<sup>25</sup> The IVR Notifications are non-commercial in nature; each is the continuation of a contact initiated by an inmate that contains the information required to either communicate with the inmate, decline to communicate with the inmate, or to continue communicating with the inmate in the future. GTL has no influence on whether or not the called party chooses to accept an inmate’s call or to set up an account, or if the inmate chooses to call the person again. Pursuant to its contracts with correctional facilities, GTL’s sole responsibility is to facilitate the completion of inmate-initiated calls to individuals with whom the inmate is permitted to communicate.<sup>26</sup> GTL neither entices nor encourages the called party to communicate with the inmate; it merely provides the

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<sup>22</sup> TCPA at § 2(9).

<sup>23</sup> TCPA Congressional Finding 13; *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 25 FCC Rcd 1501, n.57 (2010). In this vein, the Commission relied on “the flexibility Congress afforded [the Commission] to address new and existing technologies” when determining that informational, non-telemarketing messages should be exempt from the prior written consent requirements otherwise applicable to other prerecorded messages. *See 2012 TCPA Order* ¶ 29 (citing 137 Cong. Rec. S18781, 18784 (Daily Ed. Nov. 27, 1991)).

<sup>24</sup> *2012 TCPA Order* ¶ 28 (discussing “non-telemarketing, informational calls . . . and calls for other noncommercial purposes, including those that deliver purely informational messages,” such as “debt collection calls, airline notification calls, bank account fraud alerts, school and university notifications, research or survey calls, and wireless usage notifications”) (emphasis in original).

<sup>25</sup> *2012 TCPA Order* ¶ 30 (citing *2003 TCPA Order* ¶ 142).

<sup>26</sup> GTL Petition at 3.

instructions to follow should the initial and future communications be desired, or to prevent future contact attempts.

The Commission’s “goal is to make sure the TCPA is not interpreted to inhibit communications consumers may want and that do not implicate the harms [the] TCPA was designed to prevent.”<sup>27</sup> As GTL discussed in its Petition, more and more correctional facilities are recognizing the inherent benefits of permitting inmates to call wireless phones.<sup>28</sup> The number of people relying on wireless devices as their primary communication method has increased significantly in the years since GTL’s Petition was filed. This is consistent with the Commission’s finding that “wireless services offer access to information that consumers find highly desirable”<sup>29</sup> and thus the Commission should not “unnecessarily restrict consumer access to information communicated through purely informational calls.”<sup>30</sup>

GTL cannot ignore its obligations to complete inmate calls to cell phones (assuming such calls are permitted by the correctional facility and all security and verification procedures have been met). The initial inmate call IVR Notifications are necessary to give the called party an opportunity to choose whether or not to receive the inmate call, and subsequent IVR Notifications after an account has been established are necessary to give the called party an opportunity to receive additional inmate calls on that wireless telephone number. The TCPA should not act as a barrier “to normal, expected, and desired business communications”<sup>31</sup> that occur via wireless devices.

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<sup>27</sup> *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, 29 FCC Rcd 3442, ¶ 1 (2014) (“*GroupMe Declaratory Ruling*”).

<sup>28</sup> GTL Petition at 14.

<sup>29</sup> *2012 TCPA Order* ¶ 29.

<sup>30</sup> *2012 TCPA Order* ¶ 21.

<sup>31</sup> *GroupMe Declaratory Ruling* ¶ 8.

## II. GTL HAS THE NECESSARY PRIOR EXPRESS CONSENT TO SEND AUTOMATED MESSAGES TO WIRELESS DEVICES

Automated or prerecorded informational calls made to wireless telephone numbers are permitted under the TCPA when the caller has received the “prior express consent” of the called party.<sup>32</sup> The consent may be “either written or oral” when the call does not include an advertisement or constitute telemarketing.<sup>33</sup> The Commission has not designated a specific format for such consent, leaving it to the caller “to determine, when making an autodialed or prerecorded *non-telemarketing* call to a wireless number, whether to rely on oral or written consent in complying with the statutory consent requirement.”<sup>34</sup> Prior express consent also may be obtained and conveyed via intermediaries or third-parties, when such consent allows for “normal, expected, and desired business communications in a manner that preserves the intended protections of the TCPA.”<sup>35</sup>

It is well-established that “persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.”<sup>36</sup> Congress contemplated that “[t]he restriction on calls to emergency lines, pagers, and the like” would not “apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications.”<sup>37</sup> The Commission has determined that autodialed and prerecorded messages sent to wireless numbers

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<sup>32</sup> 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1)(iii).

<sup>33</sup> *2012 TCPA Order* ¶ 28. As noted above, when an automated or prerecorded call to a wireless device constitutes telemarketing, an advertisement, or a solicitation, “prior written express consent” is required. 47 C.F.R. § 64.1200(a)(2); *see also 2012 TCPA Order* ¶ 28.

<sup>34</sup> *2012 TCPA Order* ¶ 29 (emphasis in original).

<sup>35</sup> *GroupMe Declaratory Ruling* ¶ 9.

<sup>36</sup> *Rules and Regulating Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752, ¶ 31 (1992) (citing House Report, 102-317, 1st Sess., 102nd Cong. (1991) at 13 (“noting that in such instances ‘the called party has in essence requested the contact by providing the caller with their telephone number for use in normal business communications’”).

<sup>37</sup> H.R. Rep. 102-317 at 17.

in connection with an existing debt are made with the “prior express consent” of the called party.<sup>38</sup> In this respect, when a consumer provides its cell phone number to a creditor as part of a credit application, there is reasonable evidence that the consumer provides prior express consent to be contacted at that number regarding the debt.<sup>39</sup>

Applying these standards, GTL has received the necessary “prior express consent” to send its informational, non-telemarketing IVR Notifications to wireless telephone numbers. As the Commission recognized in the *GroupMe Declaratory Order*, “the TCPA plainly requires a caller to obtain such consent,” but “both the text of the TCPA and its legislative history are silent on the method, including by whom, that must be done.”<sup>40</sup> The IVR Notifications notifying the called party that an inmate is attempting to make contact are sent only when an inmate has initiated a call to that individual.<sup>41</sup> As discussed in GTL’s Petition, it can be presumed that the inmate has dialed the wireless number because that is the number at which the called party wishes to be reached.<sup>42</sup> Similar to the situation presented in the *GroupMe Declaratory Order*, the inmate’s initiation of a call to a particular individual represents the necessary prior express consent needed for GTL to attempt to contact that person on the inmate’s behalf both through the

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<sup>38</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559, ¶ 9 (2008) (“2008 Declaratory Ruling”).

<sup>39</sup> *2008 Declaratory Ruling* ¶ 9.

<sup>40</sup> *GroupMe Declaratory Ruling* ¶ 7. Similar to GroupMe, GTL identifies itself as the sender of the message and ensures there is an effective opt-out mechanism if the called party does not want to receive future IVR Notifications. See GTL Petition at 16; see also *GroupMe Declaratory Ruling* ¶ 9. As explained, GTL’s IVR Notifications meet the technical and procedural standards of the TCPA. See GTL Petition at 16; see also 47 U.S.C. § 227(d)(3); 47 C.F.R. § 64.1200(b).

<sup>41</sup> CG Docket No. 02-278, 3G Collect Inc. and 3G Collect LLC Petition for Expedited Declaration Ruling, at 4 (filed Oct. 28, 2011) (“it is collectively understood that called parties consent to receiving such calls to have notice that someone is trying to contact them”).

<sup>42</sup> GTL Petition at 13.

initial IVR Notification and the continuing, additional IVR Notifications triggered by the inmate's first call attempt.<sup>43</sup>

GTL also has obtained “prior express consent” to send informational IVR Notifications to its customers that have an established account with GTL. When an individual provides its wireless telephone number to GTL to establish an account, she is giving her “prior express consent” to be contacted and receive automated informational messages via that number.<sup>44</sup> The wireless number is being provided to GTL as part of the “transaction” between GTL and the customer to establish the account, and thus “reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number” regarding the customer's account with GTL.<sup>45</sup>

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<sup>43</sup> *GroupMe Declaratory Ruling* ¶ 9 (“we agree that allowing intermediaries to obtain and convey consent in this case is efficient . . . without significantly diminishing the TCPA's consumer protection goals underlying the prior express consent requirement”); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991: Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, 20 FCC Rcd 13664 (2005) (determining consent to receive calls can be provided by an associated party).

<sup>44</sup> *Cf.* CG Docket No. 02-278, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling, at 2 (dated Feb. 12, 2015) (asking the Commission “to confirm that providing a telephone number to an energy utility constitutes ‘prior express consent’ to receive non-telemarketing, informational calls at that number related to the customer's utility service”).

<sup>45</sup> *2008 Declaratory Ruling* ¶¶ 9, 10.

## CONCLUSION

For the foregoing reasons and those stated in GTL's Petition, the Commission should promptly issue the Declaratory Ruling requested by GTL to confirm that the TCPA and the Commission's implementing rules are not applicable to the IVR Notifications GTL uses to notify the general public that an inmate is attempting to make contact and to inform its existing customers that their ability to receive further inmate-initiated calls may be jeopardized. Grant of GTL's Petition, as supplemented herein, would ensure inmates can continue to reach their friends and family consistent with existing correctional facility security practices and requirements without subjecting GTL to potential TCPA liability for facilitating those calls.

Respectfully submitted,

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Dated: April 3, 2015

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