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\*ADMITTED IN DC ONLY

May 18, 2015

**VIA ECFS**

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

**Re: WC Docket No. 12-375 – Written Ex Parte Presentation  
Global Tel\*Link Corporation**

Dear Secretary Dortch:

Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its attorneys, hereby submits this response to the May 12, 2015 *ex parte* filed by the Alabama Public Service Commission (“APSC”). The APSC argues that the Federal Communications Commission (“FCC”) has not prohibited the payment of site commissions on interstate inmate calling service (“ICS”) revenue.<sup>2</sup> The APSC is wrong on the law, and its position is contradicted by market evidence that reform of the existing site commission system leads to lower end user rates. The APSC’s approach should be rejected. It only serves to undermine the FCC’s goal of implementing comprehensive, market-based ICS reform to encourage competition, promote lower ICS rates, and ensure fair ICS provider compensation.<sup>3</sup> The APSC’s

<sup>1</sup> This filing is made 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> WC Docket No. 12-375, Letter from Darrell A. Baker, Director, Utility Services Division, Alabama Public Service Commission (dated May 12, 2015) (“APSC May 12 Ex Parte”).

<sup>3</sup> *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170, ¶ 6 (2014) (“*Second ICS FNPRM*”).

approach also would support its anti-competitive ICS policies that are antithetical to the FCC's goals.<sup>4</sup>

Contrary to the APSC's claims, ICS providers are no longer permitted to pay commissions to correctional facilities or make any "in-kind" payments similar to site commission payments from interstate ICS revenues.<sup>5</sup> The FCC concluded that "site commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates."<sup>6</sup> The payment of site commissions on interstate ICS calls is not permissible because the FCC's interim interstate rate caps were set to cover only ICS providers' costs, which are limited "to the cost of providing service."<sup>7</sup>

The APSC fails to mention that the FCC on August 20, 2014, reaffirmed its finding that the payment of site commissions based on interstate ICS revenues is not permissible.<sup>8</sup> The FCC also instructed that such continued payments are subject to the FCC's Section 208 complaint process,<sup>9</sup> and any ICS provider continuing to pay ICS commissions on interstate ICS calls should be reported to the FCC's Enforcement Bureau.<sup>10</sup> Therefore, any ICS provider continuing to pay site commissions or in-kind payments based on interstate ICS revenue is subject to FCC enforcement action,<sup>11</sup> which includes substantial forfeitures and penalties.<sup>12</sup>

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<sup>4</sup> WC Docket No. 12-375, Alabama Public Service Commission Ex Parte, Further Order, Appendix D (filed Jan. 16, 2015); *see also* APSC Docket No. 15957, *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Further Order Adopting Revised Inmate Phone Service Rules (Dec. 9, 2014). The APSC's decision established intrastate ICS rate caps and ancillary fee caps, but refused to address the payment of site commissions. GTL has appealed the APSC's decision arguing that the APSC's newly adopted rate caps are confiscatory in light of the APSC's failure to address the payment of site commissions.

<sup>5</sup> *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*ICS Order and First FNPRM*"), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan.13, 2014), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

<sup>6</sup> *ICS Order and First FNPRM* ¶ 54; *see also id.* ¶ 56 ("site commission payments as a category are not a compensable component of interstate ICS rates").

<sup>7</sup> *ICS Order and First FNPRM* at n.222; *see also* WC Docket No. 12-375, Letter filed by Andrew D. Lipman, at 3 (dated Feb. 20, 2015).

<sup>8</sup> *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 10043 (2014) ("*August 20 Public Notice*").

<sup>9</sup> *August 20 Public Notice* at 2 (warning that the FCC may *sua sponte* initiate investigations to determine whether ICS rates are just and reasonable in light of such payments, in addition to addressing any complaints filed by other parties).

<sup>10</sup> WC Docket No. 12-375, Securus Technologies, Inc., Notice of Permitted *Ex Parte* Meeting (May 15, 2014).

<sup>11</sup> *August 20 Public Notice* at 2.

<sup>12</sup> Failure to comply with "any of the provisions of the Communications Act of 1934, as amended; or of any rule, regulation or order issued by the" FCC may result in a forfeiture proceeding against a carrier. 47 C.F.R. § 1.80(a)(2). Under the rules, forfeiture penalties for common carriers, such as providers of ICS, can be up to \$160,000 for each violation, or day of continued violation, up to a total penalty of \$1.575 million for any single act or failure to act under the rules. *See* 47 C.F.R. § 1.80(b)(2).

The fact that Securus has asked the FCC to adopt a bright-line rule regarding the transition away from the existing site commission regime does not change the FCC's clear statements prohibiting the payment of site commissions on interstate ICS revenue.<sup>13</sup> There is no "discretion" in the payment of site commissions on interstate ICS revenues.<sup>14</sup>

The FCC repeatedly has articulated its views on the effect existing site commission practices have on the ICS market.<sup>15</sup> The FCC's goal of implementing a market-based approach to encourage competition, promote lower ICS rates, and ensure fair ICS provider compensation can only be achieved with comprehensive ICS reform, including adoption of a compensation regime for correctional facilities that is limited to their legitimate costs related to ICS.<sup>16</sup>

There are several recent examples supporting the FCC's conclusion that reform of the site commission system will "enable correctional institutions to prioritize lower rates and higher service quality as decisional criteria in their RFPs, thereby giving ICS providers an incentive to offer the lowest end-user rates."<sup>17</sup> In New Jersey<sup>18</sup> and Ohio,<sup>19</sup> the elimination of site commission payments has resulted in lower ICS rates. In West Virginia, the Division of Corrections recently reviewed bids for ICS without regard to the site commission payment offered, which resulted in competition between ICS providers solely on the basis of technology and end user rates.<sup>20</sup> Arkansas also selected

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<sup>13</sup> APSC May 12 Ex Parte at 2; *see also* WC Docket No. 12-375, Securus Technologies, Inc., Notice of Permitted Ex Parte Meeting, at Attachment (Feb. 9, 2015).

<sup>14</sup> APSC May 12 Ex Parte at 2.

<sup>15</sup> *See, e.g., Second ICS FNPRM* ¶ 3 ("Excessive rates are primarily caused by the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections to win the exclusive right to provide inmate calling service at a facility.").

<sup>16</sup> *Second ICS FNPRM* ¶ 6.

<sup>17</sup> *Second ICS FNPRM* ¶ 27.

<sup>18</sup> After the issuance of the *ICS Order and First FNPRM*, the New Jersey Department of Corrections eliminated all site commission payments, reduced the per-minute rate for all ICS calls to \$0.13 per minute, and recently awarded a new contract under which inmates will be charged less than \$0.05 per minute for all ICS calls. *See* WC Docket No. 12-375, New Jersey Advocates for Immigrant Detainees, *et al.* Ex Parte (dated May 15, 2015); *see also* Amendments to Contract #61616 between Global Tel\*Link Corporation and the Purchase Bureau, Division of Purchase and Property, Department of the Treasury, on behalf of the State of New Jersey, Department of Corrections (DOC) and Juvenile Justice Commission (JJC), *available at* [http://www.state.nj.us/treasury/purchase/nea/contracts/t1934\\_05-x-32533.shtml](http://www.state.nj.us/treasury/purchase/nea/contracts/t1934_05-x-32533.shtml). The New Jersey Board of Public Utilities also denied a petition for rulemaking regarding ICS rates in New Jersey based, in part, on the award of the new ICS contract and the ongoing proceedings before the FCC. *See* 47 N.J. Reg. 668(b) (Mar. 16, 2015) (noting the denial of the petition for rulemaking regarding intrastate ICS rates in New Jersey).

<sup>19</sup> The Ohio Department of Rehabilitation and Correction recently revised its ICS rate structure to eliminate all commissions and adopt a uniform rate of \$0.05 per minute for all ICS calls effective April 1, 2015. *See State Telecom, COMMUNICATIONS DAILY*, April 1, 2015, at 14; *see also* Amanda Seitz, *Phone calls from prison getting cheaper*, DAYTON DAILY NEWS (March 31, 2015), <http://www.daytondailynews.com/news/news/phone-calls-from-prison-getting-cheaper/nkjh3/>.

<sup>20</sup> Request for Proposal COR61453 - Inmate Telephone System, *available at* <http://www.state.wv.us/admin/purchase/rfq/fy2014/COR61453.pdf>.

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its ICS vendor using only technical criteria, with negotiations on pricing occurring after the selection of the vendor with the highest technical score.<sup>21</sup>

FCC action, however, still remains necessary in light of the ongoing practices endorsed by the APSC, which refuses to acknowledge the FCC's prior findings on the payment of site commissions or to address the issue of site commissions on intrastate ICS traffic. The positions taken by the APSC only perpetuate the "market failures" the FCC seeks to eliminate.<sup>22</sup>

Pursuant to Section 1.1206(b) of the FCC's rules, a copy of this notice is being filed in the appropriate docket. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ *Chérie R. Kiser*

Chérie R. Kiser

Counsel for Global Tel\*Link Corporation

cc (via e-mail): Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly  
Rebekah Goodheart  
Pamela Arluk  
Lynne Engledow  
Rhonda Lien  
David Zesiger

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<sup>21</sup> State of Arkansas, Office of State Procurement, Request for Technical Proposal Number SP-15-0016 (issued Sept. 11, 2014).

<sup>22</sup> *Second ICS FNPRM* ¶¶ 20, 21 ("The pressure to pay site commissions that exceed the direct and reasonable costs incurred by the correctional facility in connection with the provision of ICS continues to disrupt and even invert the competitive dynamics of the industry. These and other market failures demonstrate that the interstate-only reforms adopted in the *Order*, while an important first step, did not completely address the problems in the ICS marketplace. . . . Moreover, where states have eliminated site commissions, rates have fallen dramatically. We therefore predict that prohibiting such payments will enable the market to perform properly and encourage selection of ICS providers based on price, technology and services rather than on the highest site commission payment.").