

**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)	
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REPLY COMMENTS OF GLOBAL TEL*LINK CORPORATION

Global Tel*Link Corporation (“GTL”),¹ by its undersigned counsel, hereby submits these reply comments pursuant to the Public Notice issued April 21, 2015, in which the Federal Communications Commission (“FCC” or “Commission”) sought comment on the Supplement to Global Tel*Link Corporation Petition for Expedited Clarification and Declaratory Ruling (“Petition”) filed in the above-referenced proceeding.² GTL has asked the Commission to confirm that the Telephone Consumer Protection Act of 1991 (“TCPA”)³ and the Commission’s implementing regulations⁴ are inapplicable to GTL’s use of prerecorded notifications before completing inmate-initiated calls to the general public. GTL submitted its Supplement to provide additional information in support of the Petition, and to ask the Commission also to confirm that the TCPA and the Commission’s rules do not apply to the informational messages

¹ 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.

² *Consumer and Governmental Affairs Bureau Seeks Comment on Supplement to Petition for Expedited Clarification and Declaratory Ruling from Global Tel*Link*, DA 15-482, Public Notice (rel. Apr. 21, 2015) (“Public Notice”).

³ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (“TCPA”), *codified at* 47 U.S.C. § 227.

⁴ 47 C.F.R. § 64.1200.

GTL sends to notify its customers about the status of their accounts and their ability to receive additional inmate-initiated calls in the future. Only one party, Joe Shields,⁵ filed comments in response to the Supplement, and GTL responds to each of his points below. Mr. Shields provides no legal or factual support for his objections to GTL's use of interactive voice response notifications ("IVR Notifications"). Accordingly, the Commission should expeditiously issue the Declaratory Ruling requested by GTL.⁶

First, Mr. Shields claims that GTL's interactive voice response system "captures" the called party's number.⁷ This is not correct. GTL does not "capture" telephone numbers in the sense that Mr. Shields uses the word. As explained in GTL's Petition and Supplement, once a telephone number is dialed by an inmate, GTL's equipment recognizes whether an account needs to be established for completion of the call to the called telephone number and the IVR Notification is used to inform the called party of that fact.⁸ The initial call attempt IVR Notification is sent to the telephone number that has been dialed by an inmate in the first instance. If the inmate's first call attempt is not answered, additional IVR Notifications are made on behalf of the inmate to assist the inmate in reaching the called party of the inmate's choosing.

⁵ A quick search of the federal court database reflects that Mr. Shields has been a plaintiff in numerous TCPA court cases over the past three years, including a case against an inmate calling service provider. *See, e.g., Shields v. TIP Systems LLC and Mark A. Styron Individually*, No. 14:14-cv-03592, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Dec. 16, 2014); *Shields v. Wisam A Muharib Individually and d/b/a All Access Bail Bonds*, No. 14:14-cv-03455, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Dec. 2, 2014); *Shields v. Barclays Bank PLC*, No. 4:14-cv-02576, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Sept. 8, 2014); *Shields v. Sears, Roebuck and Company, et al.*, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Aug. 19, 2013); *Shields v. Pac-West Telecomm Inc. and John Does 1-10*, No. 4:13-cv-00518, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed Feb. 26, 2013); *Shields v. Smiley Media Inc.*, No. 4:12-cv-01687, Complaint for Civil Damages and Permanent Injunctive Relief (S.D. Tx. filed June 5, 2012).

⁶ In response to GTL's original Petition, only one commenter, Gerald Roylance, opposed the Petition. GTL responded to each of Mr. Roylance's arguments in its July 26, 2010 Reply Comments filed in this docket. The other substantive comments filed in response to GTL's Petition overwhelmingly support GTL's position that the practice of providing IVR Notifications serves the public interest and does not run afoul of the TCPA or Congress's objectives in enacting the legislation.

⁷ Joe Shields at 2.

⁸ Petition at 4; Supplement at 2-4; *see also* GTL July 26, 2010 Reply Comments at 9-10.

These additional IVR Notifications are a continuation of the inmate's initial attempt to contact the called party. No automated notification is sent unless an inmate makes a call to a telephone number that cannot be completed as a collect call. Further, GTL does not deliver its IVR Notifications using a predictive dialer or other type of automatic telephone dialing system.⁹ GTL's equipment has no capability to select the numbers to be dialed; the equipment is designed solely to notify the called party of an attempted inmate call as soon as possible after the initial call has been placed using the telephone number dialed by the inmate.

Second, Mr. Shields contends that GTL determines whether or not to use a prerecorded message, the content of the prerecorded message, and whether or not to deliver the message to a cellular telephone number.¹⁰ This is not the case. As explained in both its Petition and Supplement, correctional facility policies require that GTL use a prerecorded message to interact with a called party, establish the content of that prerecorded message,¹¹ and dictate whether GTL may complete inmate-initiated calls to wireless telephone numbers in the first instance.¹² GTL

⁹ Supplement at n.17.

¹⁰ Joe Shields at 2.

¹¹ Petition at 10; Supplement at 4; *see also, e.g.*, Department of Correctional Services, State of Nebraska, Administrative Regulation Number 205.03 (Dec. 5, 2014) (requiring the use of “a pre-recorded automated announcement” providing the name and location of the correctional facility, call acceptance instructions, and various other information), *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” with a “pre-recorded announcement identifying that the collect call is originating from an inmate at a Massachusetts Department of Correction (institution)” and “a pre-recorded name to announce who the call is from” along with a requirement for “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>.

¹² Petition at 13-14 (explaining how inmate calls to wireless phones was widely prohibited in the past, but is gaining acceptance as more people switch their primary telephone service from wireline service to wireless service); *see also, e.g.*, Florida Department of Corrections, Frequently Asked Questions Regarding Calling an Inmate (indicating that calls to cell phone numbers are being permitted beginning in May 2012 subject to verification and approval of the requested number), *available at* <http://www.dc.state.fl.us/oth/inmates/calling.html>; New York State Department of Corrections and Community Supervision, Handbook for the Families and Friends of New York State DOCCS Offenders, Telephone Calls (March 2013) (“Offenders are also prohibited from placing calls to wireless communication devices (*i.e.*, cellular or PCS phone, pagers, etc.)”), *available at* <http://www.doccs.ny.gov/FamilyGuide/FamilyHandbook.pdf>; Virginia Department of Corrections, Offender Telephone System (“Offenders can not call cell phone numbers using their debit account. . . . As of February 1, 2010, offenders may make phone calls to cell phones. . . . The following stipulations apply: . . . The cell phone

must operate within the safety and security policies established by the correctional facility for inmate calling, and pursuant to those correctional facility policies, the IVR Notifications are the only way the called party will know that an inmate is trying to reach the called party.

Third, Mr. Shields argues that GTL could use a live operator to interact with the called party to complete inmate-initiated calls.¹³ Mr. Shields is wrong. Inmate phone service providers are prohibited from permitting inmates to speak to live operators pursuant to their contractual arrangements with the correctional facility.¹⁴ For security and safety reasons, most correctional facilities do not permit inmates to communicate with any person other than the individual the inmate is allowed to speak with to prevent harassment, fraudulent behavior, etc.¹⁵ GTL also is required by correctional facilities to use an automated message 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.¹⁶ Moreover, even if the use of live operators were permitted, this approach would be impractical given the millions of inmate-initiated calls that take place daily.¹⁷ Use of

number must match the residential address of the family member or friend.”), *available at* <https://vadoc.virginia.gov/offenders/prison-life/phoneSystem.shtm>.

¹³ Joe Shields at 2.

¹⁴ Supplement at 4 (providing examples); *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”).

¹⁵ *See, e.g.*, 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 of calling a live customer service representative of GTL to seek more information about inmate call accounts, payment options, etc.

¹⁶ Supplement at 4 (providing examples); *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”).

¹⁷ CG Docket No. 02-278, Initial Comments of Securus Technologies, Inc., at 2 (dated May 21, 2010).

live operators would interfere with the provision of services to inmates in a cost-effective, efficient manner.¹⁸

Fourth, Mr. Shields' arguments regarding consent ignore the important fact that the initial call attempt IVR Notifications are for the purpose of informing the called party that an inmate is attempting to make contact and are sent only when an inmate has initiated a call to that individual.¹⁹ As discussed in GTL's Petition, it can be presumed that the inmate has dialed a wireless number because that is the number that the called party gave to the inmate and is the number at which the called party wishes to be contacted.²⁰ The wireless telephone number may be the only way for the inmate to reach the called party, and using a wireless number provides more freedom in terms of calling times. When a correctional facility allows inmates to call wireless numbers, GTL cannot ignore its obligations to complete those inmate-initiated calls assuming all safety and verification procedures have been met. The IVR Notifications are required to give the called party an opportunity to choose whether or not to receive the inmate call. Thus, 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

¹⁸ Cf. CG Docket No. 02-278, Comments of United Parcel Service, Inc. in Response to Global Tel*Link Corporation's Petition for Declaratory Ruling, at 2 (dated July 15, 2010) (discussing how automated notifications "allow UPS to provide delivery services in a cost-effective, efficient manner").

¹⁹ Cf. Joe Shields at 3. In addition, Mr. Shields incorrectly deems GTL's initial inmate call attempt IVR Notification to be a "telemarketing call." See Joe Shields at n.2. These notifications 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. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 27 FCC Rcd 1830, ¶ 30 (2012) ("2012 TCPA Order"). The notifications strictly inform a called party how to establish an account for the purpose of receiving calls from an inmate; GTL has no influence on whether or not the called party chooses to do so or if the inmate chooses to call the person again.

²⁰ GTL Petition at 13; see also 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").

both through the initial IVR Notification and the continuing, additional IVR Notifications triggered by the inmate's first call attempt.²¹

Fifth, pending proceedings regarding GTL's inmate calling service rates have no bearing on the Declaratory Ruling requested by GTL and the applicability of the TCPA to GTL's IVR Notifications.²² 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, within the safety and security parameters established by the correctional facility.²³ GTL employs its IVR Notifications to satisfy those contractual responsibilities, and the IVR Notifications have no relation to inmate calling service rates. Further, grant of GTL's Petition would further the Commission's goal in its inmate calling service rate proceeding "by making it easier for inmates to stay connected to their families and friends while taking full account of the security needs of correctional facilities."²⁴

Finally, it is important to point out that Mr. Shields does not appear to take issue with GTL's use of IVR Notifications to inform its existing account holders that their prepaid account balance is low, which could jeopardize their ability to receive additional inmate-initiated calls.²⁵

²¹ *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling*, 29 FCC Rcd 3442, ¶ 9 (2014) ("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).

²² *Cf.* Joe Shields at 4. GTL also disagrees with Mr. Shields' characterization of the Commission's decisions with respect to inmate calling service rates. Those decisions speak for themselves.

²³ GTL Petition at 3.

²⁴ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107, ¶ 2 (2013), *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).

²⁵ As explained in its Supplement (at n.9), in limited situations GTL also uses automated 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

These notifications are consistent with the requirements of the TCPA as GTL obtains prior express consent to send these informational notifications²⁶ to its existing account holders.²⁷

These informational notifications are sent as a convenience, and are precisely the type of informational messages consumers want to receive on their wireless devices.²⁸

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.

²⁶ 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).

²⁷ Supplement at 5-6, 13. When a customer creates a GTL account to receive inmate phone calls, the customer (i) provides its telephone number to GTL and (ii) consents to GTL's terms of use and privacy policies. GTL account holders are informed about and consent to receiving informational calls at the telephone number provided. See *id.* at n.10 (describing GTL's service and privacy policies, namely, how customers who sign up for a GTL AdvancePay account are informed about and consent to receiving informational calls from an automated system).

²⁸ 2012 TCPA Order ¶ 21 (finding the Commission should not “unnecessarily restrict consumer access to information communicated through purely informational calls”).

CONCLUSION

For the foregoing reasons and those stated in GTL's Petition, GTL's Supplement, and GTL's June 26, 2010 Reply Comments, 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.

Respectfully submitted,

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