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*ADMITTED IN DC ONLY

September 17, 2015

VIA ECFS

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

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

Dear Secretary Dortch:

Global Tel*Link Corporation (“GTL”), through its counsel, hereby submits the attached paper, which reviews the record evidence and law that supports that the Federal Communications Commission (“FCC”) 2013 *ICS Order* implemented a new, interim rate regime for interstate inmate calling services (“ICS”).¹ It did not undertake a review of the reasonableness of any ICS provider rates in effect pursuant to the existing regulatory framework governing those rates prior to the *ICS Order*.

Pursuant to Section 1.1206(b) of the FCC’s rules, a copy of this notice is being filed in the appropriate docket.

¹ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order*”), *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); *see also Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) (“*Second ICS FNPRM*”).

SEPTEMBER 17, 2015

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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

Attachment

cc (via e-mail): Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly
Jonathan Sallet
Sarah Citrin
Richard D. Mallen
Daniel Alvarez
Rebekah Goodheart
Travis Litman
Alison Nemeth
Amy Bender
Madeleine Findley
Pamela Arluk
Lynne Engledow
Rhonda Lien
Bakari Middleton
Thomas Parisi
Gil Strobel

I. THE FCC'S 2013 ICS ORDER DID NOT DETERMINE THAT PRIOR INTERSTATE ICS RATES VIOLATED SECTION 201(b)

In its 2013 *ICS Order*, the Federal Communications Commission (“FCC”) implemented a new, interim rate regime for interstate inmate calling services (“ICS”).¹ The FCC did not, however, undertake a review of the reasonableness of any ICS provider rates in effect pursuant to the existing regulatory framework governing those rates prior to the *ICS Order*. The FCC’s creation of a new regulatory framework for interstate ICS rates does not and cannot constitute a finding by the FCC that any individual ICS provider’s interstate ICS rates in effect prior to that decision were unjust or unreasonable under Section 201(b) of the Communications Act of 1934, as amended (the “Act”).²

Notwithstanding the clear purpose of the FCC’s *ICS Order*, complaints have been filed in federal court challenging the reasonableness of ICS provider rates and alleging the FCC’s decision adopting interim interstate ICS rate caps constitutes a finding by the FCC that the interstate ICS rates charged by GTL prior to the effective date of the *ICS Order* were unjust and unreasonable.³ For example, plaintiffs boldly have claimed that the *ICS Order* “unequivocally determined that GTL has, for many years, violated the [Act].”⁴ Such allegations misapprehend the FCC’s decision and ignore well-established law defining the standard of review for administrative agencies faced with questions of lawfulness regarding a carrier’s rates.⁵

¹ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order*”), *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); *see also Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) (“*Second ICS FNPRM*”).

² 47 U.S.C. § 201(b).

³ WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation at 21-23 (dated Apr. 3, 2015 (“GTL April 3 Letter”).

⁴ *See, e.g.*, No. 5:14-cv-5275-TLB, *In re Global Tel*Link Corporation ICS Litigation*, Amended Consolidated Class Action Complaint, ¶ 32 (W.D. Ark. filed Apr. 23, 2015); *see also* No. 2:15-cv-02197-MAM, *Reese, et al. v. Tel*Link Corporation*, Class Action Complaint, ¶¶ 32, 34 (E.D. Pa. filed Apr. 23, 2015); No. 2:13-cv-04989-WJM-MF, *James v. Global Tel*Link Corporation*, Complaint and Demand for Jury Trial (D.N.J. filed Aug. 20, 2013); No. 1:14-cv-456, *Chruby v. Global Tel*Link Corporation*, Complaint (E.D. Va. filed Apr. 24, 2014); No. 5:14-cv-5275, *Stuart, et al. v. Global Tel*Link Corporation*, Class Action Complaint (W.D. Ark. filed Sept. 4, 2014); No. 15-5048-PKH, *Murilla v. Global Tel*Link Corporation*, Class Action Complaint (W.D. Ark. filed Feb. 13, 2015); No. 1:15-cv-0593, *Cooper v. Global Tel*Link Corporation*, Class Action Complaint (N.D. Ga. filed Feb. 27, 2015).

⁵ *See, e.g.*, *Sprint Communications Company, L.P., Complainant v. MGC Communications, Inc., Defendant*, 15 FCC Rcd 14027, ¶ 5 (2000) (“it is well settled that the complainant bears the burden of establishing that the challenged rate is unreasonable”); *Consumer.Net, Complainant v. AT&T Corp., Defendant*, 15 FCC Rcd 281, ¶ 6 (1999) (“in order to prevail, the complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission’s rules actually occurred. In other words, a complainant must provide facts, which if true, are sufficient to constitute a violation of the Act or of a Commission rule or orders, and such facts must be persuasively supported by affidavit or other relevant documentation”).

While many courts are familiar with the FCC's special competence to determine whether carriers have violated Section 201(b) and the FCC's rate regulations in the first instance,⁶ others apparently believe they can supplant the FCC's expertise and judgment to render rulings regarding the reasonableness of telecommunications service rates.⁷ It would be contrary to law for a court to review the reasonableness of interstate ICS rates existing prior to the *ICS Order* before any such review by the FCC.⁸ It also would be highly unusual for a federal court to undertake such an analysis and would amount to a judge substituting his own judgment concerning carrier rates for that of the FCC.⁹ Accordingly, clarification from the FCC is necessary to guide the federal courts currently being asked to review the reasonableness of interstate ICS rates that existed prior to the FCC's creation of the new framework for ICS interstate rates adopted in the *ICS Order*.

**A. The FCC Did Not Regulate Interstate ICS Rates Prior to the *ICS Order*;
Prior Interstate ICS Rates Were Presumed Lawful**

The FCC did not “regulate interstate ICS rates” prior to the *ICS Order*.¹⁰ Instead, interstate ICS were treated as competitive, non-dominant services and were not subject to rate

⁶ See, e.g., *In re Long Distance Telecomm. Litigation*, 831 F.2d 627, 631 (6th Cir. 1987) (“[C]laims based on section 201(b) of the Communications Act are within the primary jurisdiction of the FCC” and an assessment of whether “the defendants engaged in unreasonable practices . . . is a determination that Congress has placed squarely in the hands of the FCC.”) (internal quotations omitted); *Southwestern Bell Telephone Co. v. Allnet Communications Services, Inc.*, 789 F. Supp. 302, 304-05 (E.D. Mo. 1992) (“Issues regarding the reasonableness of rates have been held by courts to be within the primary jurisdiction of the FCC. . . . The FCC has the authority, under the Communications Act, not only to determine the reasonableness of rates, practices, etc. but also grant relief to those victimized by unreasonable rates, practices, etc. and to order such other rates, practices, etc. that it may determine is reasonable within the telecommunications industry.”).

⁷ For example, an Arkansas federal district court judge has denied a request for a primary jurisdiction referral to the FCC, and has determined that he can make the assessment of whether GTL's interstate ICS rates prior to the *ICS Order* were reasonable. See No. 5:14-cv-5275, *Stuart, et al. v. Global Tel*Link Corporation*, Memorandum Opinion and Order (W.D. Ark. Jan. 29, 2015). However, as explained above, determinations of reasonableness under Section 201(b) are within the special competence of the FCC.

⁸ See, e.g., *North County Communications Corp. v. California Catalog & Technology*, 594 F.3d 1149, 1156 (9th Cir. 2010) (finding that Section 201(b) claims may be “fatally flawed” if the FCC has not made a determination that the practice constitutes a violation of Section 201(b) because, while “given the broad language of the statute, a more reasonable interpretation is that it is within the Commission’s purview to determine whether a particular practice constitutes a violation for which there is a private right to compensation”); *North County Communications Corp. v. Cricket Communications Inc.*, 2010 WL 2490621 (D. Ariz. June 16, 2010) (“it is within the Commission’s purview to determine whether a particular practice constitutes a violation for which there is a private right to compensation,” and the FCC’s determination “is integral to claims involving § 201(b)”).

⁹ See, e.g., *Iris Wireless LLC v. Syniverse Tech.*, 2014 WL 4436021, *3 (M.D. Fla. Sept. 8, 2014) (“a court should not ‘fill in the analytical gap’ where the Commission has not made a determination regarding whether a company’s action violates section 201(b)” (quoting *North County*, 594 F.3d at 1158); see also *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, ¶ 455, n.1367 (2015) (subsequent history omitted) (“if the Court were to make a declaratory ruling” on an issue that the FCC had not yet addressed, “it would ‘put interpretation of a finely-tuned regulatory scheme squarely in the hands of private parties and some 700 federal district judges, instead of in the hands of the Commission’”) (quoting *North County*, 594 F.3d at 1158).

¹⁰ *Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629, ¶ 2 (2012) (“*ICS NPRM*”).

regulation or cost justification requirements. In the 1980s, the FCC determined that its existing policy requiring non-dominant carriers to support their proposed rates “with extensive cost and other economic data” was no longer necessary.¹¹ The FCC found that, “[b]ecause the cost of developing this information is relatively great for a non-dominant carrier, the rates paid by its ultimate users are likely to be higher than if all competitive carriers were free from this unnecessary regulatory burden.”¹² The FCC concluded that the cost justification requirement “serves no useful purpose commensurate with the costs of compliance” and “nullifies many consumer benefits that competition produces.”¹³ The decision to eliminate rate oversight of non-dominant carriers was based on the FCC’s “conclusion that marketplace forces will operate to ensure that the rates and other tariff provisions of non-dominant carriers comply with the objectives of Sections 201 and 202 of the Act.”¹⁴

In 1996, the FCC further deregulated non-dominant carriers by eliminating the requirement that those carriers file tariffs. The FCC determined that tariff filings from non-dominant carriers were no longer necessary to ensure that those carriers’ charges, practices, or classifications are just and reasonable, or for the protection of consumers.¹⁵ Instead, the FCC required non-dominant carriers to make their detariffed rates, terms, and conditions available in a public location and on their website.¹⁶ The FCC emphasized that its detariffing actions did not “affect such carriers’ obligations under Sections 201 and 202 to charge rates, and to impose practices, classifications and regulations, that are just and reasonable and not unjustly or unreasonably discriminatory.”¹⁷

The FCC recognized that it “may be called upon to examine the reasonableness of a non-dominant interexchange carrier’s rates, terms, and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding.”¹⁸ In response to commenters concerns that tariffs would allow the FCC to better evaluate the reasonableness of rates under Section 201, the FCC determined that it had “other, more effective means of remedying” service offerings that violate Section 201 “through the exercise of [its]

¹¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶ 97 (1980) (“*Competitive Carrier Order*”).

¹² *Competitive Carrier Order* ¶ 99.

¹³ *Competitive Carrier Order* ¶¶ 6, 99.

¹⁴ *Competitive Carrier Order* ¶ 48.

¹⁵ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 20730, ¶¶ 21, 36 (1996) (subsequent history omitted) (“*Detariffing Order*”). The FCC applied its detariffing requirements to nearly all international and interstate, domestic interexchange services, including casual calling services, which the FCC defined as “services that do not require a consumer to open an account or otherwise presubscribe to a service, including use of a third-party credit card, collect calling, or dial-around through the use of an access code.” See *Detariffing Order* ¶ 58, n.127; see also 47 C.F.R. § 61.19.

¹⁶ 47 C.F.R. § 42.10.

¹⁷ *Detariffing Order* ¶ 27.

¹⁸ *Detariffing Order* ¶ 128.

authority to investigate and adjudicate complaints under Section 208.”¹⁹ The FCC also found that the public availability of the carrier’s rates, terms, and conditions would “enable the Commission to meet its statutory duty of ensuring that such carriers’ rates, terms, and conditions for service are just, reasonable, and not unreasonably discriminatory.”²⁰ With respect to ICS specifically, the FCC determined it would be “more efficient and less intrusive to proceed on a case-by-case basis, should the [FCC’s existing] rules . . . not lead to reasonable rates for calls from inmate phones.”²¹

Accordingly, “[p]rior to the *ICS Report and Order and FNPRM* . . . ICS providers, and their rates, were largely unregulated by the Commission.”²² Interstate ICS rates were given a “presumption of lawfulness”²³ and were subject to a market-based regime, which was influenced by the competitive bidding selection process, correctional facility site commissions, and the nature of the correctional setting and its corresponding security requirements.²⁴

B. The FCC’s Decision to Modify the Existing Interstate ICS Rate Regime Does Not Constitute a Finding that Prior Interstate ICS Rates Were Unlawful

The FCC’s actions in the *ICS Order* changed the way the FCC regulated the ICS industry.²⁵ The FCC expressly stated it was creating a new regulatory regime for interstate ICS rates to be applied on a prospective basis²⁶ and that its’ intent was to “create a *new framework* to

¹⁹ *Detariffing Order* ¶ 21.

²⁰ *Detariffing Order* ¶ 87.

²¹ *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, ¶ 48 (1998).

²² FCC Supporting Statement for Inmate Calling Service (ICS) One-Time Data Collection, at 1 (April 2014). As the FCC notes in reference to the cost data required to be filed in response to the one-time data collection, “prior to the *ICS Report and Order and FNPRM* ICS providers were not required to file such data with the Commission.” *See id.* at 3.

²³ *Implementation of the Non-Accounting Safeguards of Sections 271 and 273 of the Communications Act, as amended*, 11 FCC Rcd 21905, ¶ 351 (1996) (stating that non-dominant carrier rates and practices were given a “presumption of lawfulness” and “in the context of complaints alleging violations of sections 201(b) and 202(b),” the “complaint must demonstrate that the defendant’s rates and practices are ‘unjust and unreasonable’”); *see also Competitive Carrier Order* ¶ 96 (finding “tariffs of non-dominant carriers to be presumptively lawful” and carriers’ rates were presumed reasonable); *Halprin, Temple, Goodman & Sugrue, Complainant v. MCI Telecommunications Corporation, Defendant*, 13 FCC Rcd 22568, ¶ 6 (1998) (“tariffs of non-dominant carriers, such as MCI, are presumed reasonable”).

²⁴ *ICS Order* ¶¶ 40-41.

²⁵ FCC Supporting Statement for Inmate Calling Service (ICS) One-Time Data Collection, at 10 (April 2014). The FCC stated it “has not previously regulated the ICS industry in [the] manner” contemplated by the *ICS Order*. *See id.*

²⁶ The United States Supreme Court has concluded that “administrative rules will not be construed to have retroactive effect unless their language requires this result.” *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1998); *see also Simmons v. Lockhart*, 931 F.2d 1226, 1230 (8th Cir. 1991) (“we will not retroactively apply statutes or regulations without a clear indication that the legislature or administrative agency intends to diverge from the norm of acting prospectively.”). “[T]he principle that the legal effect of conduct should ordinarily be assessed

ensure that interstate ICS rates are just and reasonable.”²⁷ This is consistent with the stated purpose of the FCC’s ICS rulemaking proceeding, which was to “consider whether changes to [the] rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities.”²⁸ There is no question the FCC intended to adopt new rules to govern the largely unregulated ICS market, and sought comment:

- on how “any new ICS rules” or “any new Commission rules or obligations” would interact with existing contracts;²⁹
- to “examin[e] new ICS regulations;”³⁰
- on the effect of “any new ICS-related rules,” “any new ICS rules,” or “a new ICS regime” on existing contracts;³¹ and
- to implement “[p]ossible new rules [that] could affect all ICS providers, including small entities.”³²

The FCC’s statements are unambiguous; it intended to create a new regulatory framework for interstate ICS rates, and it did not undertake the administrative legal review necessary to make individualized determinations regarding the reasonableness of any ICS provider’s rates.

The FCC’s decision to modify the interstate ICS rate regime does not constitute a legal determination that the prior rates of ICS providers were unreasonable. The FCC only found that the “current state of the ICS market” was no longer adequate to ensure just and reasonable rates.³³ The FCC noted it “traditionally prefers to rely on market forces, rather than regulation, to constrain rates,” but in its view, “*continuing to rely* upon negotiated agreements in this context” was no longer appropriate.³⁴ The unique environment in which ICS is provided largely contributed to the FCC’s finding that “market forces do not appear to constrain ICS rates.”³⁵

under the law that existed when the conduct took place has timeless and universal appeal.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (internal quotation marks omitted).

²⁷ *ICS Order* ¶ 47 (emphasis added).

²⁸ *ICS NPRM* ¶ 1.

²⁹ *ICS Order* ¶ 98.

³⁰ *ICS Order* ¶ 106 (noting that the FCC “has been examining new ICS regulations for years”).

³¹ *ICS NPRM* ¶¶ 45-46; *see also id.*, Statement of Commissioner Ajit Pai (“Today we launch a proceeding to consider new rules for interstate inmate calling services. . .”).

³² *ICS NPRM*, Appendix C, ¶ 16.

³³ *ICS Order* ¶ 12.

³⁴ *ICS Order* ¶ 46 (emphasis added).

³⁵ *ICS Order* ¶ 41. The FCC found that competition did not exert downward pressure on ICS rates due to the nature of the correctional setting and its corresponding security requirements, the competitive bidding selection

The FCC's approach in its *ICS Order* is not novel; it has made similar determinations in other contexts. For example, in 2001 the FCC determined that the market-based regime for regulation of competitive local exchange carrier ("CLEC") access charges failed to keep those charges within a zone of reasonableness, and therefore took action to change how those charges were regulated going forward.³⁶ Similar to the ICS market, prior to the issuance of the *CLEC Access Charge Order*, CLECs had "been largely unregulated in the manner that they set their access rates" and the FCC had relied on the Section 208 complaint process to address any unreasonable rates.³⁷ In changing the governing regulatory regime for CLEC access rates, the FCC stated it was not making a reasonableness determination regarding any specific CLEC access rate:

We decline to conclude, in this order, that CLEC access rates, across the board, are unreasonable. Nevertheless, there is ample evidence that the combination of the market's failure to constrain CLEC access rates, our geographic rate averaging rules for IXCs, the absence of effective limits on CLEC rates and the tariff system create an arbitrage opportunity for CLECs to charge unreasonable access rates. Thus, we conclude that some action is necessary to prevent CLECs from exploiting the market power in the rates that they tariff for switched access services. . . . We do not decide, in this order, whether those rates were reasonable at the time they were being charged. Rather, we conclude, on a prospective basis, that CLEC access rates will be deemed to be reasonable if they fall within the declining safe harbor that we have established.³⁸

The *ICS Order* and the *CLEC Access Charge Order* reflect the FCC's understanding of the difference between reviewing specific rates for lawfulness and evaluating existing rate policies to determine whether a new rate regime should be applied on a prospective basis to achieve more reasonable rates. The FCC is fully aware of the standard of review necessary to support a finding that a carrier's rates are unlawful under 201(b).³⁹ The FCC did not undertake a "case-

process, and the site commission regime. See *ICS Order* ¶¶ 40-41. The FCC also found site commission payments to be "a significant factor contributing to high rates" that undermined the ability of market forces to constrain ICS rates. See *ICS Order* ¶ 34; see also *id.* ¶ 33.

³⁶ *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, ¶ 2 (2001) ("*CLEC Access Charge Order*").

³⁷ *CLEC Access Charge Order* ¶¶ 21, 25.

³⁸ *CLEC Access Charge Order* ¶ 34, n.131.

³⁹ See, e.g., *Consumer.Net, Complainant v. AT&T Corp., Defendant*, 15 FCC Rcd 281, ¶ 6 (1999) ("in order to prevail, the complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission's rules actually occurred. In other words, a complainant must provide facts, which if true, are sufficient to constitute a violation of the Act or of a Commission rule or orders, and such facts must be persuasively supported by affidavit or other relevant documentation"); see also *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, ¶ 48 (1998) (determining it would be "more efficient and less intrusive to proceed on a case-by-case basis, should the [FCC's existing] rules . . . not lead to reasonable rates for calls from inmate phones").

by-case” review⁴⁰ of individual ICS provider interstate rates to determine whether those rates were reasonable at the time they were being charged based on the FCC’s hands-off, competitive-carrier regulatory regime to which interstate ICS rates were subject.⁴¹ A Section 201(b) determination of “reasonableness ultimately depends on the special facts of each case.”⁴² The FCC conducted no such investigation as part of its *ICS Order*.

II. A CLEAR, UNEQUIVOCAL STATEMENT REGARDING INTERSTATE ICS RATES PRIOR TO THE *ICS ORDER* IS NECESSARY

A clear, unequivocal statement regarding the status of interstate ICS rates prior to the issuance of the *ICS Order* is required to provide guidance to the courts considering these issues and to quell the numerous court complaints that have misapprehended the FCC’s *ICS Order*. Such a statement will in no way act as a “blanket exemption” from class action lawsuits⁴³ or prevent potential plaintiffs from challenging ICS rates.⁴⁴ The language simply will eliminate the ability of plaintiffs to mischaracterize the *ICS Order* in court pleadings in an effort to support their allegations regarding interstate ICS rates in effect prior to the issuance of the FCC’s decision.

⁴⁰ See, e.g., *People’s Network Incorporated v. American Telephone and Telegraph Company*, 12 FCC Rcd 21081, ¶ 18 (1997) (noting it would review backbilling matters on a “case-by-case basis to determine compliance with the just and reasonable requirements of Section 201(b)”; *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, ¶ 57 (1999) (stating it will “take action on a case-by-case basis under section 201(b) of the Act against carriers who impose unjust or unreasonable line-item charges”) (subsequent history omitted).

⁴¹ See, e.g., *AT&T Corp., Complainant v. Business Telecom, Inc., Defendant*, 16 FCC Rcd 12312, ¶ 17 (2001) (determining in a Section 208 complaint proceeding regarding the reasonableness of an individual CLEC’s access charges that the FCC “should assess the reasonableness of [the carrier]’s access rates by evaluating the market for access services, rather than by ascertaining [the carrier]’s costs of providing access services”); *IT&E Overseas, Inc. v. Micronesian Telecommunications Corporation*, 13 FCC Rcd 16058, ¶ 9 (1998) (finding that a complainant must address the reasonableness of a price cap local exchange carrier’s rates “under the requirements of the price cap rules”); *RCA Communications, Inc.*, 86 FCC 2d 165, ¶ 22 (1981) (looking at “whether the notice and first refusal provisions of the contract were unreasonable at the time they were entered into in view of the particular characteristics of the domestic satellite industry and [its] policies for that industry”); *Metrock Corp Revisions to Tariff FCC No. 1.*, 73 FCC 2d 802, ¶ 9 (1979) (examining the reasonableness of a contract under Sections 201 and 202 of the Act, and stating “[o]ur decision must rest upon what is reasonable in light of the particular characteristics and circumstances relating to the MDS service and market”).

⁴² *RCA American Communications, Inc.*, 94 FCC 2d 1338, ¶ 6 (1983) (internal citations omitted); see also *Erdman Technologies Corporation, Complainant v. US Sprint Communications Company, Defendant*, 15 FCC Rcd 7232 (1999).

⁴³ WC Docket No. 12-375, Letter from Lee G. Petro, Counsel for Martha Wright Petitioners (dated Apr. 20, 2015).

⁴⁴ WC Docket No. 12-375, Letter from Kessler Topaz Meltzer Check LLP, Counsel for Plaintiffs in pending Arkansas litigation (dated May 22, 2015).

GTL proposes the following language be included in the FCC's upcoming decision:

Prior to the initiation of this proceeding, the Commission regulated ICS providers as competitive non-dominant carriers and relied on our existing rules and market forces to ensure just and reasonable interstate ICS rates. Neither the Commission's decision in the Inmate Calling Report and Order and FNPRM, nor our decision today in response to the Second FNPRM, determine that the interstate ICS rates of any individual ICS provider were unjust and unreasonable pursuant to section 201(b). The Commission only finds that the marketplace alone is no longer adequate to ensure just and reasonable rates going forward. We conclude that rate reforms, in addition to market forces, applied on a prospective basis, will ensure interstate [and intrastate] ICS rates are just and reasonable under section 201(b) and provide fair compensation to ICS providers consistent with section 276.⁴⁵

Inclusion of this language in the FCC's upcoming decision is consistent with the law and the FCC's prior statements, and will resolve ongoing controversy in the ICS market.

⁴⁵ WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation at 21-23 (dated Apr. 3, 2015); *see also* WC Docket No. 12-375, Global Tel*Link Corporation Notice of Ex Parte Presentation (dated March 25, 2015); WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation (dated April 29, 2015); WC Docket No. 12-375, Global Tel*Link Corporation Notice of Ex Parte Presentation (dated June 17, 2015); WC Docket No. 12-375, Global Tel*Link Corporation Notice of Ex Parte Presentation (dated June 29, 2015).