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*ADMITTED IN DC ONLY

September 23, 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 law and record evidence in support of the Joint Provider Reform Proposal voluntary commitments for ICS provider ancillary charges, associated backstop rate caps, and disclosures.[1]

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

[1] WC Docket No. 12-375, Letter from Global Tel*Link Corporation, Securus Technologies, Inc., and Telmate, LLC (filed Sept. 15, 2014); WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation (dated July 2, 2015).

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. FCC ACCEPTANCE OF THE VOLUNTARY COMMITMENTS ON ICS ANCILLARY CHARGES WILL REDUCE THE NUMBER OF ANCILLARY CHARGES, ESTABLISH REASONABLE RATE CAPS, AND APPLY UNIFORM DISCLOSURES

The Federal Communications Commission ("FCC") lacks jurisdiction over ancillary charges related to financial services arrangements for inmate calling services ("ICS"). In an effort to support the FCC's goal to create a nationwide, comprehensive plan to lower ICS costs for inmates,[1] the Joint Provider Reform Proposal[2] offers a voluntary commitment to define an industry-wide, uniform list of ICS provider ancillary charges, associated backstop rate caps, and uniform disclosures. This voluntary commitment is offered to complement an FCC comprehensive regime that includes both (i) backstop rate caps for all ICS calls, and (ii) modification of the existing system of site commissions in favor of a defined, usage-based admin-support payment that covers legitimate correctional institution costs from allowing access to ICS.[3]

As outlined, the Joint Provider Reform Proposal offers to voluntarily commit to establish a short list of industry agreed-upon ancillary charges set at agreed-upon backstop rate caps. The Proposal identifies four types of ancillary charges: (1) transaction/deposit fees; (2) money transfer fees; (3) validation fees; and (4) convenience payment processing arrangement fees. The ancillary charges and the associated terms and conditions are set forth below in the Voluntary Commitments for ICS Ancillary Fees ("Voluntary Commitments").[4]

The ICS customer always has the option to pay for an inmate-initiated call without incurring any type of payment processing fee and to limit calls to pre-approved numbers per correctional facility requirements. Embracing the Voluntary Commitments would result in the elimination of approximately 19 ancillary charges applied in the ICS market today while

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[1] *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); *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) ("*Second ICS FNPRM*").

[2] WC Docket No. 12-375, Letter from Global Tel*Link Corporation, Securus Technologies, Inc., and Telmate, LLC (filed Sept. 15, 2014) (hereinafter "Joint Provider Reform Proposal" or the "Proposal").

[3] The Proposal is designed to achieve the FCC's goals of implementing "comprehensive, permanent ICS reforms" that rely on a market-based approach to encourage competition in order to reduce rates and to ensure fair ICS compensation. *See Second ICS FNPRM* ¶ 6. The FCC's goals are achievable only if all three prongs of the Proposal are adopted simultaneously: (1) establishing the Proposal's backstop rate caps for all ICS calls; (2) modifying the existing system of site commissions in favor of a defined, usage-based admin-support payment that covers the legitimate correctional institution costs arising from access to ICS in facilities; and (3) accepting a voluntary commitment from the ICS industry to limit ancillary charges to a uniform, industry-defined list of charges that are priced based on backstop rate caps. *See* WC Docket No. 12-375, Letter from Global Tel*Link Corporation at ii (dated Apr. 3, 2015) ("GTL April 3 Letter").

[4] *See* WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation (dated July 2, 2015); Proposal at 4-6; GTL April 3 Letter at 9-17.

ensuring ICS providers are compensated for their legitimate costs of providing these additional options to consumers.

A. The FCC Does Not Have Authority over ICS Providers' Ancillary Charges

ICS providers' ancillary charges are outside the scope of the FCC's jurisdiction because they go beyond the "telecommunications costs" of making an ICS call, which is the limit of the FCC's jurisdiction under Sections 201(b) and 276 of the Communications Act of 1934, as amended (the "Act").[5] The FCC "literally has no power to act . . . unless and until Congress confers power upon it,"[6] and such power must be found in the language of the enabling statute.[7] Sections 201(b) and 276 do not provide the FCC with the "power to act" on ICS providers' ancillary charges.

Section 201(b) applies only to "communications services,"[8] and billing and collection "is not a communications service for purposes of Title II of the Communications Act."[9] Billing and collection "does not employ wire or radio facilities" and does not allow customers to "'communicate or transmit intelligence of their own design and choosing.'"[10] Billing and collection service "is a financial and administrative service," not a communication service.[11] While the FCC previously has found that "billing and collection services provided by a common carrier for its own customers are subject to Title II,"[12] that finding applies only to the extent an ICS provider is billing for completed calls, and not when an ICS provider is billing a customer for some other product or service, such as credit card processing, a money transfer, or non-customary validation processing for correctional facility security purposes that are unrelated to

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[5] GTL January 2015 Comments at 26-30 (explaining the FCC's lack of jurisdiction over ICS provider ancillary charges); *see also* Securus January 2015 Comments at 25 (same).

[6] *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

[7] *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-62 (2002) (finding courts "will not alter the text [of the statute] in order to satisfy the policy preferences" of an administrative agency).

[8] 47 U.S.C. § 201(b).

[9] *Detariffing of Billing and Collection Services*, 102 FCC 2d 1150, ¶ 31 (1986) ("*Billing and Collection Order*"); *see also Capital Network Sys., Inc. v. FCC*, 3 F.3d 1526, 1528 (D.C. Cir. 1993).

[10] *Billing and Collection Order* ¶ 32 (quoting *NARUC v. FCC*, 525 F.2d 630, 641, n.58 (D.C. Cir. 1976)).

[11] *Billing and Collection Order* ¶ 32.

[12] *ICS Order and First FNPRM* ¶ 114; *see also* Pay Tel January 2015 Reply Comments at 42.

the completion of individual calls by the ICS provider.[13] The ancillary charges set forth in the Voluntary Commitments are not charges for completion of ICS calls.[14]

Section 276 also does not support the regulation of ICS provider ancillary charges.[15] The statute's reference to "ancillary services" does not equate to ICS provider ancillary charges. The FCC consistently has referred to "ancillary services" as services such as caller ID, voice mail, or call forwarding that are ancillary to the underlying telecommunications service.[16] Services such as call waiting, speed dialing, caller ID, and call forwarding are "ancillary services directly related to . . . basic service," and carriers may provide these "optional services to facilitate [consumers'] use of traditional telephone service."[17] These services also are known as "adjunct-to-basic services," and are intended to "facilitate the completion of calls through utilization of basic telephone service facilities."[18] In the ICS context, the FCC has determined that services such as call blocking, call tracking, and call screening are considered adjunct-to-basic services because they merely facilitate the inmate's use of the inmate calling service.[19]

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[13] *Cf. Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, ¶ 25 (referencing "billing and collection for [a carrier's] own service"); *see also* Andrew D. Lipman January 2015 Comments at 9 ("These are not charges for communications services, nor are they related to the completion of individual calls. . . . [The Commission's] analogy only holds up, however, to the extent that the ICS provider is billing for completed calls, since that is the extent of the Commission's regulatory ambit under Section 276. When the ICS provider is billing a customer for some other service, such as a money transfer, the Commission's jurisdiction is not applicable.").

[14] WC Docket No. 12-375, Letter from Andrew D. Lipman at 7 (dated Sept. 21, 2015) ("But their attempted analogy overlooks the critical distinction that site commissions are an element of cost that has been incorporated into the prices of *communications services*, while ancillary fees may include charges for *non-communications* services. By the Wright Petitioners' logic, if a food truck offered prepaid calling cards (a communications service) for sale alongside tacos and juice smoothies, the FCC would have jurisdiction to regulate the price of tacos.").

[15] 47 U.S.C. § 276(d). Section 276 gives the FCC jurisdiction over "payphone service," which is defined to mean "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."

[16] *See, e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, 19 FCC Rcd 5608, ¶ 42 (2004) (stating that wireless carriers "offer ancillary services" such as "caller ID, voice mail, call forwarding, long distance, push-to-talk"); *Local Exchange Carriers' Payphone Functions and Features, et al.*, 13 FCC Rcd 1961, ¶ 4, n.16 (1997) (noting Bell Atlantic's provision of "six unbundled payphone features" such as call blocking and call screening that assist independent payphone service providers "in making payphone services available to the public, for example, by helping them prevent fraudulent calls from their payphones" and noting the definition of "payphone service" includes "any ancillary services").

[17] *North American Telecommunications Association Petition for Declaratory Ruling under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, 3 FCC Rcd 4385, ¶ 30 (1998) (citing *Second Computer Inquiry*, 72 FCC 2d 358, n.60 (1979)).

[18] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, 16 FCC Rcd 6417, ¶ 77 (1999).

[19] *Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, 11 FCC Rcd 7362, ¶¶ 30-31, 33 (1996).

When reviewed in context, there is no link between the reference to "ancillary services" in Section 276 and the ancillary charges imposed by ICS providers.[20] The purpose of the Act is to make available "communication service"[21] and Section 276 specifically addresses "completed intrastate and interstate call[s]."[22] Offering alternative payment methods or engaging in non-customary validation processing are not necessary for a "completed" call under Section 276.[23] Therefore, the term "ancillary services" in the statute "must be construed as meaning communications services that are ancillary to the completion of interstate and intrastate ICS calls,"[24] just as the FCC consistently has used the term "ancillary services" in the past.

B. The FCC Routinely Has Relied on Industry-Developed Voluntary Commitments as a Substitute for Regulation

The use of industry-developed voluntary commitments in lieu of regulation is not a novel approach. For example, the FCC has relied on industry-created voluntary commitments to eliminate the need for the FCC to take regulatory action:

- Wireless bill shock - the wireless industry voluntarily agreed to provide usage alerts to consumers;[25]

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[20] WC Docket No. 12-375, Andrew D. Lipman Written Ex Parte at 20 (dated July 21, 2015) ("The FCC must seek to determine the meaning of the term 'ancillary services' in the context in which it was used by Congress in Section 276.").

[21] 47 U.S.C. § 151; *see also* 47 U.S.C. § 152(a) (stating provisions of the Act apply to "communication by wire or radio").

[22] 47 U.S.C. § 276(b)(1)(A).

[23] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, ¶ 63 (1996) (finding for purposes of Section 276(b)(1)(A) that "what constitutes a 'completed' call for purposes of per-call compensation . . . is a call that is answered by the called party") (subsequent history omitted).

[24] Andrew D. Lipman January 2015 Comments at 8 (noting "ancillary services" could include, for example, "charges for operator services or directory assistance that are in addition to the basic per-minute charges for a call"); *see also* WC Docket No. 12-375, Andrew D. Lipman Ex-Parte Presentation at 5 (dated Mar. 16, 2015) (noting that while Section 276 includes "ancillary" services in the scope of ICS, the context of the statute "requires that this term be limited to ancillary *communications* services, not to financial or other services that may be offered to ICS customers") (emphasis in original); WC Docket No. 12-375, Andrew D. Lipman Written Ex Parte at 21 (dated July 21, 2015) (stating the term "ancillary services" in Section 276(d) "must be construed as meaning *communications* services that are ancillary to the completion of interstate and intrastate ICS *calls*") (emphasis in original).

[25] Statement of Commissioner Mignon L. Clyburn Regarding Launch of FCC's New "Bill" Shock Website (Apr. 20, 2012) (commending the "recent commitments by wireless carriers to voluntarily provide usage alerts" and "applaud[ing] CTIA for its continuing efforts to push the industry on voluntary efforts"); Commissioner Michael J. Copps Statement on the Bill Shock Industry Guidelines (Oct. 17, 2011) ("Industry efforts to address consumer issues are always welcome and I think these guidelines can help."); Statement of Commissioner Robert M. McDowell (Oct. 17, 2012) ("I have long held that cooperative efforts, rather than forced mandates, yield the best results.").

- Wireless consumer code – the wireless industry voluntarily agreed to adopt certain consumer protection and service quality standards, such as disclosures on rates and terms of service, taxes, and fees;[26]

- Wireless device unlocking – the wireless industry adopted voluntary guidelines for the process of unlocking wireless devices; and[27]

- Cyber threats – Internet service providers adopted voluntary guidelines for protecting their networks.[28]

The use of industry-developed "voluntary efforts . . . are not only good for consumers; they are good for business too."[29]

C. Each of the Charges Outlined in the Voluntary Commitments Serves a Defined Purpose for Other Non-Communications Services

There is near uniform agreement in the record that ICS providers should be permitted to assess "a very narrow class of ancillary fees,"[30] especially when "the consumer makes a choice" to utilize a certain billing or payment option.[31] Other comments similarly recognize the need for ICS providers to impose ancillary charges on a limited basis.[32] The ancillary charges set forth in

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[26] Statement of Commissioner Kathleen Q. Abernathy in Response to CTIA Consumer Code for Wireless Service (Sept. 9, 2003) ("the industry's willingness to adopt a voluntary code of conduct avoids the need for costly regulatory oversight while delivering greater value to wireless customers"); *see also Federal-State Joint Board on Universal Service*, 19 FCC Rcd 1563, ¶ 30 (2004) (utilizing a carrier's agreement to comply with the CTIA Consumer Code for Wireless as evidence of compliance with required consumer protection and service quality standards).

[27] *See, e.g.*, Letter from Tom Wheeler, Chairman, FCC to CTIA – The Wireless Association (dated Nov. 14, 2013) ("We are anxious to work with you and your members to resolve this matter expeditiously. Enough time has passed, and it is now time for the industry to act voluntarily or for the FCC to regulate."); Letter from CTIA – The Wireless Association to FCC (dated Dec. 12, 2013) (committing "to adopt the attached set of voluntary industry principals"); Statement of Chairman Thomas E. Wheeler on the Industry Agreement on Device Unlocking (Dec. 12, 2013) ("Today, we see the manifestation of what I call the 'see-saw rule' – the more industry acts to meaningfully regulate itself, the less that has to be done by government.").

[28] *FCC Advisory Committee Adopts Recommendations to Minimize Three Major Cyber Threats, Including an Anti-Bot Code of Conduct, IP Route Hijacking Industry Framework and Secure DNS Best Practices*, News Release (Mar. 22, 2012) (applauding the "voluntary commitments by the nation's largest Internet Service Providers" and stating that "[v]oluntary, multi-stakeholder actions exemplified by the CSRIC's recommendations, and the corporate commitments announced today, are the most effective approach for securing our networks while preserving the Internet as an open platform for innovation and communication").

[29] FCC Chairman Michael Powell Statement on Wireless Industry Voluntary Consumer Code (Sept. 9, 2003) ("Ultimately, voluntary efforts, like the code, are not only good for consumers; they are good for business too. . . .").

[30] WC Docket No. 12-375, Letter from CenturyLink at 2 (dated Aug. 14, 2014).

[31] 2014 ICS Workshop Transcript at 140.

[32] *See, e.g.*, Alabama PSC January 2015 Comments at 13; Michael Hamden January 2015 Comments at 14; Combined Public Communications December 2014 Comments at 3; Legal Services for Prisoners with Children

the Voluntary Commitments reflect an ICS customer's choice to use alternative financial methods to pay for ICS or to call certain types of telephone numbers subject to additional correctional facility security screening. ICS providers incur costs as a result of these customer choices, which do not reflect "normal utility overhead."[33] Accordingly, there is no justification "to abolish . . . all ancillary fees related to ICS" as advocated by some parties.[34]

There also is no merit to the Wright Petitioners' unsupported claims that these ancillary charges will be imposed on ICS consumers "without any alternative."[35] ICS customers will have the option to pay for an inmate-initiated call without incurring any payment processing fee and the ancillary charges covered by the Voluntary Commitments are triggered only by choices made by the ICS customer. Further, as reflected in the Voluntary Commitments, the fee amounts are backstop *caps*, customers decide whether these fees will apply, and a fee can only be imposed when a correctional institution requests that the optional capability be available or otherwise approves the rate to be charged.

1. Transaction or Deposit Fee

The Voluntary Commitments include a transaction or deposit fee *up to* $7.95 per transaction when an ICS customer chooses to use a credit card, debit card, or other customer arranged payment outlet to: (1) fund either a prepaid ICS account (held by an inmate's friends and family) or a debit ICS account (held by an inmate), or (2) pay an amount due in arrears.[36] The transaction/deposit fee applies only when a customer chooses to use a credit card, debit card, or other customer arranged payment outlet, and does not apply to every transaction/deposit. The customer is informed of the fee amount prior to completion of the transaction, *and always has the ability to proceed with the transaction without incurring any fee (such as payment by check or money order)*. Further, under the Voluntary Commitments, ICS providers commit to not increase the transaction or deposit fee amount above $7.95 for three (3) years after the effective date of the Voluntary Commitments.

While some commenters have taken issue with the amount of the fee recommended by the Proposal and reflected in the Voluntary Commitments, this is only a *cap* and in GTL's experience, more than seventy-five percent (75%) of GTL's deposit transactions currently incur

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December 2014 Comments at 4.

[33] *Second ICS FNPRM* ¶ 89; *see also* Securus January 2015 Comments at ii ("Securus incurs substantial costs to make optional payment and calling methods available.").

[34] WC Docket No. 12-375, Letter from Human Rights Defense Center at 2 (dated Sept. 8, 2015).

[35] WC Docket No. 12-375, Martha Wright Petitioners Written Ex Parte Presentation at 8 (dated Sept. 8, 2015).

[36] As explained above, this is a "financial transaction" over which the FCC does not have authority. *See* GTL January 2015 Comments at 27-30; *see also* Andrew D. Lipman January 2015 Reply Comments at 6 ("In short, none of the commenting parties have offered any persuasive argument for an interpretation of Section 276 that would permit the Commission to regulate financial transactions. The statute simply does not confer that authority, and the Commission therefore cannot prohibit or limit fees for non-communications services.").

no fee or a fee already at or below the proposed $7.95 cap.[37] The record demonstrates that ICS providers incur costs for the administration and ongoing maintenance of prepaid accounts, including customers' initial funding and replenishing of prepaid accounts, customer service associated with prepaid accounts, and supporting the technology needed to manage prepaid accounts. As Securus has explained, "an ICS provider incurs real costs from third-party vendors as well as internal costs in order to offer this payment option," including "fees to the card processing agent, the cost of specialized security software used both on the website and by company representatives, the cost of training representatives, and, most importantly, the recovery of losses due to credit card fraud."[38]

2. Money Transfer Fee

The Voluntary Commitments include a money transfer fee *up to* $2.50 to administer payments processed by or generated through a third-party money transfer entity such as Western Union or MoneyGram, which would be in addition to the amounts charged by the third-party money transfer entity. Third-party money transmitters such as Western Union and MoneyGram establish the amount at which their services will be made available. The Voluntary Commitments recognize this, and would leave such fees in place as dictated by the third-party, but would allow ICS providers to impose a money transfer fee to cover the administrative costs of handling the money transfer and the funding of the ICS account.

The money transfer fee is reasonable because ICS providers incur costs associated with funding ICS accounts, whether the funds are being transferred to the ICS provider via credit card or via a third-party money transfer service. It is not accurate that the costs of third-party funding are borne only by the third-party provider.[39] Further, as with the transaction/deposit fee, the money transfer fee applies only when a customer chooses to use a third-party money transfer service to pay or fund its account. *Customers continue to have other options to pay or fund their accounts without incurring a fee.*

3. Validation Fee

The Voluntary Commitments include a per-call validation fee in an amount that is *up to* eight percent (8%) of the total amount charged for the call, excluding any per-minute admin-support payment that may be added to the per-minute rate for the call. The validation fee applies when an ICS provider incurs costs to validate a called party, such as when the ICS provider has not previously established an account for that telephone number, confirmed the telephone

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[37] GTL January 2015 Comments at 21.

[38] WC Docket No. 12-375, Letter from Securus Technologies, Inc. at 4 (dated Oct. 6, 2014).

[39] *See, e.g.*, WC Docket No. 12-375, Alabama Public Service Commission Ex Parte Presentation at 23 (dated Jan. 16, 2015); CenturyLink January 2015 Reply Comments at 28; WC Docket No. 12-375, Letter from Darrell Baker (dated July 12, 2015) (amending prior Baker/Wood submissions from July 1, 2015 and July 8, 2015) (proposing an ancillary fee regime different from the Alabama Public Service Commission approach, which would preclude recovery of any costs associated with third-party money transfer services).

number can receive collect calls billed to a local exchange carrier bill, or been able to identify the geographic location of the called party using traditional industry standards. The up to eight percent (8%) validation fee represents a *cap* on the amount that can be charged by an ICS provider, and the fee would apply only when allowed by a correctional institution and at the rate approved by the correctional institution.

Many of GTL's contracts with its correctional facility customers or general correctional facility policies impose conditions on the inmate's use of the telephone service, such as verifying the geographic location of a called party prior to completing the telephone call for safety and security reasons.[40] GTL must authenticate the called party by verifying the called party's telephone number and billing address to comply with these requirements. In some cases, GTL is contractually required to prohibit the completion of calls to telephone numbers that are not associated with the geographic billing address of the called party and/or GTL is not permitted to allow that party to set up an account to receive inmate calls.[41] This authentication capability is one aspect of GTL's integrated inmate communication system provided to the correctional facility.

The validation fee covers the substantial network and administrative costs incurred by ICS providers to perform out-of-the-ordinary validation associated with processing calls in a manner that complies with correctional facility security requirements. When the called party's billing name and address ("BNA") cannot be validated using standard industry tools such as the Line Information Database ("LIDB"), GTL must use proxies for the information normally supplied by the LIDB. In the case of wireless calls, geo-location information can be used to collect data regarding the location of the cell towers used during the call, which can then be added to the call detail record for future investigatory purposes to ensure the correctional facility understands where the called party was located during the duration of the call. When a correctional facility permits inmates to call wireless numbers that cannot otherwise be validated using standard industry tools, GTL incurs costs to augment its network with additional validation capability, as well as for the increased recording and data storage capacity required. Thus, while some validation costs may have been included in the ICS provider cost data submitted to the FCC as part of the mandatory data collection, those figures do not encompass all of the costs an ICS provider incurs when it is required to validate a called party.

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[40] *See, e.g.*, Mississippi Department of Corrections Letter at 2 (Sept. 10, 2009) ("MS DOC Letter") (noting that GTL must "implement and enforce contractually-prescribed calling rules that meet the MS DOC's security requirement to ascertain the true identity and verified address of every called party"); Inmate Telephone Service Agreement by DSI-ITI, LLC and Northwestern Regional Adult Detention Center, 17, 20 (April 8, 2014) ("Contractor shall subscribe to the Local Exchange Carrier ('LEC') Line Information Screening Data Base ('LIDB'). Contractor shall query this database as required to maintain a high degree of accuracy for each collect LEC billed inmate call and process only those calls which do not have Billed Number Screening ('BNS'). Contractor must assume all responsibilities for the cost and the accuracy of validation. . . . Validation of calls by Contractor shall occur real-time.").

[41] *See, e.g.*, MS DOC Letter at 2 (stating that "GTL is required to prohibit the completion of calls to numbers that are not associated with the billing address of the called party").

It is not a novel proposition that carriers sometimes incur additional costs other than the costs to complete a call.[42] In the local number portability ("LNP") context, for example, the FCC determined that incumbent local exchange carriers ("ILECs") could recover their carrier-specific LNP costs through a tariffed and levelized monthly end user charge over a period of five years.[43] Despite this, the carriers sought and received approval to treat their additional, unrecovered LNP implementation costs as "exogenous" and to recover those costs through a different cost recovery mechanism.[44] As discussed above, GTL is required to authenticate the called party by verifying the called party's telephone number and billing address to comply with correctional facility security policies. The costs associated with such validation are beyond GTL's control, and are not recovered elsewhere, which necessitates the validation fee.[45]

4. Convenience Payment Processing Arrangement Fee

The Voluntary Commitments include a charge for optional "convenience" payment processing arrangements for the payment of an ICS call subject to certain conditions. Optional "convenience" payment processing arrangements include, but are not limited to: (1) billing the cost of the ICS call directly to a credit or debit card; (2) billing the cost of the ICS call to an existing wireless telephone account; and (3) using a canteen, commissary, kiosk, barcode, or other payment processing arrangement. Under the Voluntary Commitments, the fees for these payment processing options would be capped based on the ICS provider's existing fee amounts for such options for a period of three (3) years.

ICS providers offer these services as a "convenience" to a customer who may not want to establish a prepaid ICS account, or may have no other way to accept a collect call from an inmate.[46] In the correctional environment, a consumer may not want to waste precious time to

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[42] *See generally, e.g.*, Letter filed by Andrew D. Lipman (dated Feb. 20, 2015) (discussing how the FCC and the courts have viewed the ratemaking process and the role of costs).

[43] *Telephone Number Portability*, 13 FCC Rcd 11701, ¶¶ 143-46 (1998).

[44] *See, e.g., Verizon's Petition for Waiver of the Commission's Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, 21 FCC Rcd 10140 (2006); *see also Petition of AT&T Inc. for Waiver of the Commission's Rules to Treat Certain Local Number Portability Costs as Exogenous Costs under Section 61.45(d)*, 21 FCC Rcd 8076 (2006).

[45] In the LNP context, the FCC determined that ILECs subject to rate-of-return or price cap regulation could recover their carrier-specific costs through an end user charge, but gave carriers not subject to rate regulation the ability to recover their carrier-specific LNP costs "in any lawful manner." *Telephone Number Portability*, 13 FCC Rcd 11701, ¶¶ 135-36 (1998). In this vein, the FCC later found that "precluding carriers subject to rate regulation from recovering their intermodal LNP costs, while allowing other carriers to recover such costs, would not be competitively neutral and thus would violate the statutory mandate." *Telephone Number Portability; BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, 19 FCC Rcd 6800, ¶ 15 (2004).

[46] There is no basis for Pay Tel's proposal that alternative payment options be prohibited "in prisons where pre-approved call lists are used." *See* Pay Tel January 2015 Reply Comments at n.146. Regardless of whether a pre-approved call list exists for a particular inmate (in either a prison or a jail), consumers should have the option to utilize alternative payment options if they so choose.

set up an account he knows he will never use again in the foreseeable future,[47] and the concept of paying more for a service or product for the convenience of using a preferred billing method is not unique to ICS.[48] The availability of these payment processing options neither "diverts" ICS traffic away from conventional billing methods nor is designed to "bypass" ICS rate caps.[49] As Securus notes, "these are *optional* conveniences offered to customers" and "are not intended as permanent methods for inmates to make collect calls."[50] Consumers should have the ability to utilize convenience payment options if they so choose, especially when they are advised of the amount of the charge and the availability of free payment options in advance as outlined in the Voluntary Commitments.

C. The Disclosures Contained in the Voluntary Commitments Provide Consumers with Detailed Information on Ancillary Charges

The Voluntary Commitments contain uniform disclosures to ensure ICS consumers receive a brief, clear, non-misleading, plain language description of the Voluntary Commitments, the list of ancillary charges that may apply, and the associated backstop rates for each type of charge. The disclosures are designed to ensure customers can make informed choices about the way in which they can pay for inmate-initiated calls.

The disclosures in the Voluntary Commitments call for information to be presented clearly and prominently so that it is actually noticed and understood by the customer.[51] For example, the ICS provider should provide a brief, clear, non-misleading, plain language description of the charges that apply to each payment option, *as well as the "no fee" options for payment.* The description should be sufficiently clear in presentation and specific enough in content so that the customer can accurately assess each of the available payment methods.[52] The disclosure includes a clear and concise statement of any information the customer may need to make inquiries about the available payment methods, such as a toll-free number, e-mail address, or web site address by which customers may inquire or dispute any charges. The disclosures

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[47] GTL April 3 Letter at 16.

[48] GTL January 2015 Comments at 31-34 (explaining how ancillary charges and convenience fees are used throughout various types of industries and in the federal government).

[49] *Cf.* WC Docket No. 12-375, Alabama Public Service Commission Ex Parte Presentation at 3, 17 (dated Jan. 16, 2015); *see also* Pay Tel January 2015 Reply Comments at 36-37.

[50] WC Docket No. 12-375, Letter from Securus Technologies, Inc. at 5 (dated Oct. 6, 2014) (emphasis in original).

[51] For these purposes, clear and concise means notice that would be apparent to the reasonable customer. *See, e.g.*, 47 C.F.R. § 64.2400 *et seq.*; *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654 (2000).

[52] In determining the effectiveness of the disclosure, the FCC could consider the prominence of the disclosure in comparison to other information, the proximity and placement of the information, the absence of distracting elements, and the clarity and understandability of the text of the disclosure. *See, e.g.*, 47 C.F.R. § 64.2400 *et seq.*; *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services*, 15 FCC Rcd 8654 (2000).

also would include any restrictions or limitations applicable to each payment method available. The disclosures set forth in the Voluntary Commitments satisfy the FCC's goal of ensuring that customers have all the necessary information prior to choosing an option that may incur an additional fee.[53]

The disclosures also build on the FCC's existing requirements regarding oral disclosures and the posting of rates, terms, and conditions.[54] The FCC specifically requires providers of inmate operator services to disclose certain rate information prior to call completion so "the billed party can decide whether to accept the call and can limit the length of the call"[55] and "have the opportunity to make informed choices" about inmate calling.[56] Similarly, the FCC imposes public posting rules to ensure "customers would have sufficient information to choose calling plans that best meet their needs and to enable them to bring potential violations of the Act to the Commission's attention."[57] ICS providers have "ongoing responsibilities" to comply with these existing rules, and violations of those responsibilities or failure to comply with those existing rules could subject ICS providers to enforcement action.[58] Compliance with the FCC's existing disclosure requirements as well as with the Voluntary Commitments will ensure transparency and compliance, as well as provide consumers with the information they need to determine the ultimate cost of their ICS calls.[59]

II. THE VOLUNTARY COMMITMENTS FOR ICS ANCILLARY CHARGES FURTHER THE FCC'S GOAL OF MARKET-BASED ICS REFORM

GTL and other providers have voluntarily committed to limit ancillary charges to a uniform, industry-defined list of charges that are priced based on backstop rate caps.[60] The voluntary commitment to limit ancillary charges is conditioned on the FCC's adoption of a

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53 *Second ICS FNPRM* ¶ 109 (asking how to make rates and fees "more transparent to consumers").

54 *See, e.g.*, 47 C.F.R. § 64.710 (requiring providers of inmate operator services to make certain oral disclosures prior to completing a call); 47 C.F.R. § 42.10 (requiring non-dominant interexchange carriers to make their current rates, terms, and conditions available to the public via their company website or at their place of business if they do not maintain a website).

55 *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, ¶ 49 (1998).

56 *Billed Party Preference for InterLATA 0+ Calls*, 16 FCC Rcd 22314, ¶ 15 (2001).

57 *Petition of USTelecom for Forbearance under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, 28 FCC Rcd 7627, ¶ 99 (2013) (citing *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 14 FCC Rcd 6004, ¶ 9 (1999)).

58 *ICS Order and First FNPRM* ¶ 118.

59 The Voluntary Commitments also address HRDC's request for disclosure of fee information. *See* WC Docket No. 12-375, Human Rights Defense Center Ex Parte Notification at 3 (dated July 14, 2015). However, ICS providers should not be required to provide correctional facility contracts to HRDC for its publications that sell advertising space and are available through paid subscriptions.

60 Proposal at 4.

comprehensive ICS rate regime as contemplated by the Joint Provider Reform Proposal.[61] In connection with that commitment, GTL submits the following Voluntary Commitments for ICS Ancillary Fees, which details the disclosures and practices GTL is willing to implement that would further define the parameters for applying ancillary charges.[62] These Voluntary Commitments will ensure consumers have the information needed to make informed choices about how they prefer to receive or initiate an ICS call.

[61] As explained in the Proposal and GTL's other filings in this docket, a comprehensive ICS regime would be simultaneous FCC action that establishes non-tiered backstop rate caps for all ICS rates, replaces site commissions with admin-support payments that reflect legitimate costs, and accepts the Proposal backstop rate caps for ancillary charges. *See* Proposal at 2 ("This consensus proposal consists of several inextricably-linked components."); *see also* GTL April 3 Letter at ii ("The Commission's goals are achievable only if all three prongs of the Proposal are adopted simultaneously.").

[62] GTL previously submitted these commitments to the FCC. *See* WC Docket No. 12-375, Global Tel*Link Corporation Written Ex Parte Presentation (dated July 2, 2015); *see also* Proposal at 4-6; GTL April 3 Letter at 9-17.

Voluntary Commitments for ICS Ancillary Fees

Definitions

1. Clear and concise means notice or disclosure that is apparent to and understood by the reasonable customer.

2. Debit Calling means a calling arrangement that allows an inmate to pay for ICS from an existing or established account funded by the inmate.

3. Effective Date means the date on which these Voluntary Commitments are first effective as reflected by the date on which the first signatory agrees to be bound by the commitments.

4. FCC means the Federal Communications Commission.

5. Inmate Calling Service or ICS means the offering of interstate or intrastate telephone calling capabilities from a telephone instrument set aside by authorities of a correctional institution for use by inmates.

6. Prepaid Calling means a calling arrangement that allows a consumer (non-inmate) to pay for ICS from an existing or established account funded by the consumer (non-inmate).

7. Prepaid Collect Calling means a calling arrangement that allows for an inmate to initiate an ICS call without having a pre-established billing arrangement and also provides a means, within that call, for the called party to establish an arrangement to be billed directly by the provider of ICS for future calls from the same inmate.

Voluntary Commitments

The ICS providers signing below, hereby voluntarily commit to adhere to the following principles, disclosures, and practices:

1. Each ICS provider shall offer the ability for consumers and inmates to pay for an inmate-initiated call without incurring a payment processing fee, such as a transaction or deposit fee, a money transfer fee, or a "convenience" payment processing fee. Such "no-charge" options include a mailed payment by check or money order.

2. ICS providers may impose four (4) types of ancillary fees in connection with their provision of ICS: (1) transaction or deposit fee; (2) money transfer fee; (3) validation fee; and (4) convenience payment processing arrangement fee.

3. ICS providers may impose a transaction or deposit fee up to $7.95 per transaction when a customer chooses to use a credit card, debit card, or other customer arranged payment outlet to (1) establish or replenish a Prepaid Calling, Prepaid Collect Calling, or Debit Calling account, or

(2) to pay an amount due in arrears. ICS providers shall inform the customer of the transaction or deposit fee amount prior to completion of the transaction. ICS providers may not increase the transaction or deposit fee amount above $7.95 for three (3) years after the Effective Date.

4. ICS providers may impose a money transfer fee up to $2.50 to administer payments processed by or generated through a third-party money transfer entity such as Western Union or MoneyGram. Such a fee would be in addition to the amounts charged by the third-party money transfer entity.

5. ICS providers may impose a per-call validation fee in an amount that is up to eight percent (8%) of the total amount charged for the call, excluding any per-minute admin-support payment that may be added to the per-minute rate for the call. The validation fee may be applied only when the fee is permitted to be imposed by a correctional institution and may be applied only at the rate approved by the correctional institution.

6. ICS providers may offer optional "convenience" payment processing arrangements for the payment of an ICS call subject to the conditions below. Optional "convenience" payment processing arrangements include, but are not limited to: (1) billing the cost of the ICS call directly to a credit or debit card; (2) billing the cost of the ICS call to an existing wireless telephone account; and (3) using a canteen, commissary, kiosk, barcode, or other payment processing arrangement.

ICS providers agree to satisfy the following conditions if optional payment processing arrangements are offered:

(a) the payment processing arrangement was offered on the Effective Date;

(b) the amount of the fee does not exceed the fee that the ICS provider applied for that same payment processing arrangement on the Effective Date;

(c) the ICS provider continues to accept payment methods that are free of charge;

(d) the ICS provider advises the consumer in clear and concise language of the amount of the fee and the availability of "no charge" payment options prior to imposition of the payment processing fee;

(e) the ICS provider may not increase the fee for any optional payment processing arrangement that existed on the Effective Date for three (3) years after the Effective Date; and

(f) the ICS provider shall fully inform customers of all payment methods available (including no-charge options), the payment processing charges associated with each payment method, the estimated time required to establish service applicable to each payment option, and any restrictions or limitations applicable to each

payment method available. An ICS provider may provide this information to customer: (1) on its website, (2) in its web-posted rates, terms, and conditions, (3) orally when provided in a slow and deliberate manner and in a reasonably understandable volume, or (4) in other printed materials provided to a customer.

7. Each ICS provider shall make available a brief, clear, non-misleading, plain language description of these Voluntary Commitments, the permissible ancillary fees, and the associated fee amounts.

(i) ICS providers shall make such information available on the ICS provider's website in an easily accessible location. ICS providers shall clearly and conspicuously identify the location of such information on their websites.

(ii) ICS providers shall make such information available to any member of the general public in at least one location during regular business hours, such as the ICS provider's principal business office.

(iii) Such information shall be made available in an easy to understand format, and shall be presented clearly and prominently so that it can be noticed and understood by a reasonable customer.

(iv) An ICS provider's description of these Voluntary Commitments, the types of ancillary charges, and the associated backstop rate cap amounts must be sufficiently clear in presentation and specific enough in content so that the customer can accurately assess the information. ICS providers will evaluate the effectiveness of the disclosure based on such factors as the prominence of the disclosure in comparison to other information, the proximity and placement of the information, the absence of distracting elements, and the clarity and understandability of the text of the disclosure.

(v) ICS providers shall update the required information regularly and in a timely manner.

(vi) ICS providers shall clearly and conspicuously disclose on their websites and in other printed material any information the customer may need to make inquiries about these Voluntary Commitments, the permissible ancillary fees, and the associated fee amounts, such as a toll-free number, e-mail address, or web site address by which customers may inquire or dispute any charges.

(vii) ICS providers shall respond promptly to consumer complaints relating to ancillary fees charged by the ICS provider.