

Law Offices

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1500 K Street N. W.  
Suite 1100  
Washington, D.C.  
20005-1209

(202) 842-8800  
(202) 842-8465 fax  
www.drinkerbiddle.com

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**By ECFS**

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

RE: *Ex Parte* Notice  
*Rates for Interstate Inmate Calling Services*  
**WC Docket No. 12-375**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the FCC's rules, the Martha Wright Petitioners hereby submits the following response to the ex parte submission of Global Tel\*Link (GTL) seeking a blanket exemption for past unjust, unreasonable and unfair Inmate Calling Service (ICS) rates and charges.

In particular, GTL seeks to have the FCC adopt as part of its future Second Report and Order in this proceeding language that would effectively eliminate third-party lawsuits regarding their past unjust, unreasonable and unfair rates and charges. GTL has proposed that the FCC "guide" federal courts into determining that GTL's past actions did not violate Sections 201 and 276 of the Communications Act of 1934.<sup>1</sup>

GTL argues that because the ICS industry was largely unregulated prior to August 2013, federal courts should grant a "presumption of lawfulness" regarding the subsequently-found unjust, unreasonable, and unfair ICS rates and charges.<sup>2</sup> Of course, GTL fails to provide any support for its proposition that an unregulated industry is incapable of generating unjust, unreasonable and unfair ICS rates because it is simply not true. In fact, the reason why the FCC was obligated to create a "new regulatory regime" was that the ICS providers were imposing unjust, unreasonable and unfair rates and charges on customers that lack any other choice.

<sup>1</sup> *Ex Parte Submission of Global Tel\*Link*, filed Sept. 17, 2015, pg. 2 ("[c]larification 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 adoption of the August 2013 Report and Order in this proceeding.).

<sup>2</sup> *Id.*, pg. 4.

The FCC specifically determined that the need for regulation of ICS rates and charges was the direct result of the past actions of ICS providers. In particular, the following findings by the FCC in its August 2013 Report and Order support this conclusion:

- Based on the record, we conclude that the marketplace alone has not ensured that interstate ICS rates are just and reasonable and that they are fair to consumers, as well as providers. *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, ¶ 45 (2013).
- Given our findings above that the rates for ICS frequently are well in excess of the costs reasonably incurred in providing those services, we conclude that the rate reforms we begin in this Order are necessary to ensure they are just and reasonable. *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, ¶ 45 (2013).
- Given the significant record evidence regarding the many exorbitant rates for ICS today, except in areas where states have undertaken reform, continuing to rely upon negotiated agreements in this context will not adequately ensure fairness to the end-user paying the cost of the ICS because evidence is clear that this process does not constrain unreasonably high rates. We thus find the rate reforms begun in this Order are necessary to implement section 276(b)(1)'s "fair compensation" directive. *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, ¶ 46 (2013).

Moreover, when the FCC sought additional comment in the September 2014 Second Further NPRM, it stated:

- While the Commission prefers to promote competition to ensure rates are just and reasonable, it remains clear that in the inmate calling service market, as currently structured, competition is failing to do so. Second Further Notice of Proposed Rule Making, 29 FCC Rcd 13170, ¶ 3 (2014).
- Because we seek comment on a comprehensive solution – rather than just reforming interstate rates – we seek comment on moving to a market-based approach to encourage competition in order to reduce rates to just and reasonable levels and to ensure fair but not excessive ICS compensation. *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rule Making, 29 FCC Rcd 13170, ¶ 6 (2014).

- On August 9, 2013, the Commission adopted the Inmate Calling Report and Order and FNPRM, finding that interstate ICS rates were not just and reasonable as required by section 201 of the Act, and did not ensure fair, and not excessive, compensation for ICS providers as required by section 276 of the Act. In response, the Commission adopted reforms to ensure interstate rates were just, reasonable, and fair as required by Sections 201 and 276 and focused on reforming interstate site commission payments, rates, and ancillary charges. *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rule Making, 29 FCC Rcd 13170, ¶ 9 (2014).
- Given the high rates, excessive compensation and market failure we see today, we seek comment on adopting permanent rate caps to ensure that ICS rates are just and reasonable. *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rule Making, 29 FCC Rcd 13170, ¶ 47 (2014).
- In the Order, the Commission adopted a requirement that rates be cost-based. At that time, because reform was limited to interstate rates, market forces alone would not bring all rates down to just and reasonable levels because intrastate rates, ancillary charges and site commission payments on intrastate rates would still thwart market forces. *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rule Making, 29 FCC Rcd 13170, ¶ 48 (2014).

Thus, it is clear that the FCC took action in the August 2013 Report and Order in light of market failures that led to unjust, unreasonable and unfair ICS rates and charges, and the FCC has stated that its regulations were necessary to “bring all rates down to just and reasonable levels.” Only through a tortured reading of the FCC’s statements could anyone (including GTL) conclude that the FCC ruled that, prior to August 2013, ICS rates and charges were just, reasonable and fair.

Of course, the FCC cannot and should not rule on disputes that are before state and federal courts. At the same time, though, the FCC cannot and should not thwart third-party lawsuits by adopting language in a future report and order that would preclude a state or federal court from exercising its jurisdiction. GTL’s attempt to dictate language for the future report and order would do exactly that, and therefore the FCC must reject its request.

Should there be any questions regarding this submission, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

**DRINKER BIDDLE & REATH LLP**

1500 K Street N.W., Suite 1100

Washington, DC 20005-1209

202-230-5857 - Telephone

202-842-8465 - Telecopier

*Counsel for Martha Wright, et al.*

cc (by/email):

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Rielly  
Matthew DelNero, Bureau Chief  
John Sallet  
Sarah Citrin  
Richard D. Mallen  
Daniel Alvarez  
Rebekah Goodheart  
Travis Litman  
Alison Nemeth  
Matthew Berry  
Amy Bender  
Madeleine Findley  
Pamela Arluk  
Lynne Engledow  
Rhonda Lien