

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)
)
_____)

**GLOBAL TEL*LINK CORPORATION
OBJECTION TO DISCLOSURE OF CONFIDENTIAL INFORMATION**

Global Tel*Link Corporation (“GTL”),¹ by its attorneys, hereby objects to the request of counsel for CenturyLink, Inc. (“CenturyLink”) to obtain GTL’s confidential information previously submitted to the Federal Communications Commission (“Commission”) pursuant to the *Protective Order* adopted by the Commission in the above-referenced matter (hereinafter “Confidential Information”).²

GTL has designated certain information filed with the Commission as “Confidential Information” pursuant the *Protective Order*, including its costs of providing inmate calling services (“ICS”), revenue-producing minutes of use, costs associated with ancillary services and fees, and portions of its Description & Justification prepared by Economists, Inc. On October 13, 2015, outside counsel for CenturyLink served GTL with copies of signed Acknowledgements, indicating such Acknowledgements were being served “in advance of making any request for access.”³ While counsel for CenturyLink has not indicated the specific

¹ This Objection is being filed by GTL on behalf of itself and its wholly owned subsidiaries that also provide interstate inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

² *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16954 (2013) (“*Protective Order*”); *see also 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, Order (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*”).

³ *See* attached email correspondence from counsel for CenturyLink.

confidential information it seeks, GTL files this Objection out of an abundance of caution within three (3) business days from its receipt of signed Acknowledgments from CenturyLink’s counsel, which also were filed with the Commission.⁴ GTL has no objection to providing outside consultants with access to its Confidential Information, but objects to permitting the outside counsel for one of GTL’s competitors to obtain access to the information.⁵ To date, no competitor of GTL or counsel for a competitor of GTL has received access to GTL’s Confidential Information.

ARGUMENT

Under the *Protective Order* adopted by the Commission, “Confidential Information” is “information that is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (‘FOIA’), 5 U.S.C. § 552, and the Commission’s implementing rules.”⁶ The *Protective Order* states that a party “designating documents and information as Confidential” pursuant to the *Protective Order* “will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.”⁷

FOIA specifically exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential” information.⁸ Similarly, the

⁴ WC Docket No. 12-375, Letter from CenturyLink, Inc. (dated Oct. 13, 2015). GTL therefore also reserves its right to supplement its objection to the extent CenturyLink’s counsel specifically identifies the confidential information to which it seeks access.

⁵ See, e.g., WC Docket No. 12-375, Global Tel*Link Corporation Objection to Disclosure of Confidential Information (dated Sept. 12, 2014); WC Docket No. 12-375, Letter from Global Tel*Link Corporation (dated Oct. 6, 2014) (renewing its objection for supplemental data filed).

⁶ *Protective Order* ¶ 2.

⁷ *Protective Order* ¶ 3 (citing 47 C.F.R. §§ 0.459(a), 0.459(a)(3)).

⁸ 5 U.S.C. § 552(b)(4).

Commission’s rules state that such information is not routinely available for public inspection.⁹ The Commission’s rules also allow parties to seek protection for information that is “commercial or financial, or contains a trade secret or is privileged” or when “disclosure of the information could result in substantial competitive harm.”¹⁰

I. THE COMMISSION ROUTINELY PROTECTS THE TYPE OF DATA GTL HAS DESIGNATED AS CONFIDENTIAL INFORMATION

It is well-established that the requirements of FOIA and Commission policy afford confidentiality to information that could cause competitive harm when publicly disclosed.¹¹ The language of FOIA itself demonstrates that Congress did not intend to allow the disclosure of confidential “trade secrets and commercial or financial information” obtained from private parties.¹² This exemption, known as FOIA Exemption 4, is reflected in the Commission’s rules, and states “[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential” are “categories of materials not routinely available for public inspection.”¹³ The Commission therefore “need not disclose information that is ‘trade secrets and commercial or financial information obtained from a person and privileged or confidential.’”¹⁴

⁹ 47 C.F.R. § 0.457(d).

¹⁰ 47 C.F.R. §§ 0.459(b)(3), 0.459(b)(5).

¹¹ See, e.g., *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (considering under FOIA whether disclosure would “cause substantial harm to the competitive position of the person from whom the information was obtained”); *Request for Confidential Treatment of Nexus Communications, Inc. Filing of FCC Form*, 28 FCC Rcd 5535, ¶ 5 (2013) (“To determine whether this information should be kept confidential, we must determine whether the preponderance of the evidence shows that disclosure of the information will cause Nexus substantial competitive harm.”); 47 C.F.R. § 0.459(a)(5) (looking at how “disclosure of the information could result in substantial competitive harm”).

¹² 5 U.S.C. § 552(b)(4).

¹³ 47 C.F.R. § 0.457(d).

¹⁴ *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 281 (D.C. Cir. 1997) (citing 5 U.S.C. § 552(b)(4)).

There is no question that GTL's Confidential Information qualifies as "trade secrets and commercial or financial information." Under FOIA, the terms "commercial" and "financial" are given "their ordinary meanings."¹⁵ The test as to whether information is "confidential" depends on "whether the information was voluntarily or involuntarily disclosed to the government."¹⁶ If "the information was obtained under compulsion," as GTL's Confidential Information was, it will be considered confidential "if disclosure. . . is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."¹⁷

As the Commission has recognized, the process of awarding ICS contracts is based on competitive bidding.¹⁸ Disclosure of GTL's Confidential Information to a competitor would cause substantial and irreparable harm to GTL. The Commission previously has found financial information and corporate operating expenses should be withheld from disclosure "because this material is competitively sensitive and therefore confidential" under FOIA.¹⁹ Similarly, the Commission consistently has held "revenue information to be the type of competitively sensitive material that should be withheld under" FOIA.²⁰ Information concerning "business operations and plans" also has been withheld because disclosure could damage a company's "competitive position by giving the competitors insight into [the company]'s business methods and

¹⁵ *Allnet Commc'ns Servs, Inc. v. FCC*, 800 F. Supp. 984, 988 (D.D.C. 1992).

¹⁶ *Bartholdi Cable*, 114 F.3d at 281.

¹⁷ *Bartholdi Cable*, 114 F.3d at 281 (quoting *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)).

¹⁸ *ICS Order and First FNPRM* ¶ 40.

¹⁹ *Sandwich Isles Communications, Inc. on Request for Inspection of Records*, 28 FCC Rcd 15253, ¶ 7 (2013).

²⁰ *The Consumer Law Group*, 28 FCC Rcd 684, ¶ 6 (2013); see also *The Lakin Law Firm, P.C.*, 19 FCC Rcd 12727 ¶ 6 (2004); FOIA Control No. 2002-268, Letter from Joseph T. Hall to Fred B. Campbell, Harris Wiltshire & Grannis (July 8, 2002); FOIA Control No. 2002-351, Letter from Joseph T. Hall to Roy Thompson, Black Radio Network (Aug. 19, 2002); *John E. Wall, Jr.*, 22 FCC Rcd 2561 (2007).

strategies.”²¹ Disclosure also “would help rivals to identify and exploit [GTL’s] competitive weaknesses.”²²

The type of cost support data found in GTL’s Confidential Information, including “disaggregated cost data” that “have the potential of revealing [a company]’s market plans and positions” or “provide insight into [a company]’s business strategies,” also has been deemed exempt from mandatory public disclosure.²³ Access to GTL’s Confidential Information, “when combined with other publicly available information, would enable competitors to estimate [GTL’s] revenues for specific product families, particular companies, and geographic areas, giving competitors a substantial competitive advantage.”²⁴ The Commission consistently has afforded “disaggregated customer data, detailed financial data or current or forward-looking business strategies or plans” a higher level of confidentiality than other information,²⁵ even when a protective order is in place.²⁶ The release of GTL’s “raw” data is not necessary “to achieve meaningful public comment”²⁷ or participation in this proceeding before the Commission or the courts. Accordingly, the information designated by GTL as Confidential Information is the type of material routinely protected from disclosure under FOIA and the Commission’s rules.

²¹ *Josh Wein, Warren Communications News on Request for Inspection of Records*, 24 FCC Rcd 12347, ¶ 13 (2009).

²² *Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 320 (D.C. Cir. 2006) (citing *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 830 F.2d 278, 281 (D.C. Cir. 1987) and *Pub. Citizen Health Research Group*, 704 F.2d 1280, 1290 (D.C. Cir. 1983).

²³ *Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport*, 13 FCC Rcd 13354, ¶ 9 (1998); see also *Jonathan E. Canis, Frank W. Krogh, Richard J. Metzger*, 9 FCC Rcd 6495 (1994).

²⁴ *Wall* ¶ 3 (citing *Lakin* ¶ 6).

²⁵ *Pantelis Michalopoulos, Esquire, Christopher Bjornson, Esquire*, 25 FCC Rcd 7479, 2 (2010).

²⁶ *Randy H. Herschaft, Associated Press on Requests for Inspection of Records*, 22 FCC Rcd 5880, ¶ 24 (2007).

²⁷ *Qwest Commc’ns Int’l Inc. v. FCC*, 229 F.3d 1172, 1184 (D.C. Cir. 2000).

II. GTL'S CONFIDENTIAL INFORMATION SHOULD BE WITHHELD FROM COUNSEL FOR CENTURYLINK PURSUANT TO INDUSTRY PRACTICES AND UNDER THE COMMISSION'S RULES

While the *Protective Order* is intended to protect confidential information from disclosure to the general public, GTL continues to have significant concerns about the disclosure of its Confidential Information to in-house personnel and counsel or outside counsel for its competitors even under the safeguards afforded by the *Protective Order*.²⁸ The ICS providers participating in this proceeding previously recognized the potential harm of sharing confidential data with competitors. In 2008, numerous ICS providers worked together to provide cost information to the Commission.²⁹ As part of that process, the ICS providers agreed that each carrier would provide their individual company data to outside consultant Don Wood, but the data would not be shared among the ICS providers, and the individual company data would remain proprietary and confidential to each company.³⁰ Each company provided their confidential data directly to Mr. Wood, who agreed that no company-specific information would be provided to anyone at any time. Maintaining the practice first established in 2008 of only sharing confidential information with outside consultants would alleviate many of the concerns that have been raised in this proceeding regarding competitor access to data.³¹

²⁸ *Qwest Commc'ns Int'l Inc. v. FCC*, 229 F.3d 1172, 1184 (D.C. Cir. 2000) (“A response that the protective order adequately protects Qwest against competitive injury misses the mark. The Commission must explain why only the release of raw audit data will achieve meaningful public comment.”).

²⁹ *ICS Order and First FNPRM* ¶ 9; see also CC Docket No. 96-128, Don J. Wood, Inmate Calling Services Interstate Call Cost Study (filed Aug. 15, 2008); CC Docket No. 96-128, Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch (filed Aug. 22, 2008) (attaching supplemental cost and usage data); CC Docket No. 96-128, Record submission by “several providers of inmate telephone service,” (filed Oct. 15, 2008) (amending supplemental cost and usage data).

³⁰ See WC Docket No. 12-375, Global Tel*Link Corporation Objection to Disclosure of Confidential Information at Attachment 1 (filed Oct. 28, 2014).

³¹ GTL, Securus, and Telmate have objected to providing their confidential data to outside counsel for one of their competitors. See, e.g., WC Docket No. 12-375, Securus Technologies, Inc. Objection to Disclosure of Confidential Information (filed July 17, 2014); WC Docket No. 12-375, Global Tel*Link Corporation Objection to

Further, under the Commission’s rules, any person submitting information to the Commission may request that such information not be made routinely available for public inspection.³² Under the *Protective Order*, a party “designating documents and information as Confidential” pursuant to the *Protective Order* “will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission’s rules.”³³ No such request, however, is necessary when the information is of the type specifically listed in 47 C.F.R. § 0.457 as exempt from disclosure.³⁴ As discussed above, trade secrets and commercial or financial information are exempt from disclosure as confidential under 47 C.F.R. § 0.457(d), and no specific request for confidential treatment is necessary.³⁵ Nonetheless, GTL’s Confidential Information meets the criteria established in § 0.459(b) for withholding the information from public inspection:

(1) Identification of the specific information for which confidential treatment is sought.

GTL sought confidential treatment for its costs of providing ICS, its revenue-producing minutes of use, its costs associated with ancillary services and fees, and certain portions of its Description & Justification prepared by Economists, Inc., including a summary of its ICS costs, the percent of minutes of use associated with debit calling, and the amount of costs allocated to debit calls.

Disclosure of Confidential Information (filed Sept. 12, 2014); WC Docket No. 12-375, Telmate, LLC Objection to Disclosure of Confidential Information (filed Sept. 12, 2014); WC Docket No. 12-375, Letter from Global Tel*Link Corporation (filed Oct. 6, 2014).

³² 47 C.F.R. § 0.459(a)(1).

³³ *Protective Order* ¶ 3 (citing 47 C.F.R. §§ 0.459(a), 0.459(a)(3)).

³⁴ 47 C.F.R. § 0.459(a)(1).

³⁵ 47 C.F.R. § 0.457(d).

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

GTL filed its Confidential Information in accordance with the Commission's one-time mandatory data collection adopted in the *ICS Order and First FNPRM* and as required by the Commission's Instructions for Inmate Calling Services Mandatory Data Collection, as well as filed supplements and updates to that information.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The information identified in (1) is company-specific proprietary financial and commercial information that is not routinely disclosed by GTL. The GTL's Confidential Information is highly sensitive and can be manipulated by competitors to gain an unfair advantage over GTL in the marketplace. As discussed above, the Commission has recognized the sensitivity of this trade secret, commercial or financial data and routinely protects its confidentiality.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

The data for which confidential treatment has been sought involves the provision of inmate calling services. The inmate calling market is subject to competition from a multitude of inmate telephone providers. Competition for inmate service contracts is robust, and service providers compete with respect to rates.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

As explained above, GTL's Confidential Information could easily be used by competitors to cause substantial harm to GTL. The data could be used to monitor GTL's inmate calling products and to devise competitive marketing strategies. The historical data can be manipulated

by competitors to determine the effectiveness of GTL's ongoing business plans. The projected data can be manipulated by competitors to gain insight into the future business plans and strategies of GTL.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

The data for which GTL sought confidential treatment as identified in (1) above are not routinely disclosed to the public.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

The data for which GTL sought confidential treatment as identified in (1) above have not been disclosed to any competitor of GTL or counsel for any competitor of GTL.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

GTL asserts the confidential data identified in (1) above should be withheld from public disclosure permanently consistent with the Commission's determination that release of such types of information would "give[] competitors a substantial competitive advantage."³⁶

³⁶ *Lakin* ¶ 6.

CONCLUSION

Accordingly, and for the foregoing reasons, GTL respectfully requests that the Commission limit access to GTL's Confidential Information to outside consultants only, and not permit outside counsel for CenturyLink, one of GTL's competitors, to obtain access to the information.

Respectfully submitted,

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Its Attorneys

Dated: October 16, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on this 16th day of October, 2015, I served a copy of the foregoing
Global Tel*Link Corporation Objection to Disclosure of Confidential Information on the
following via the method indicated:

Marlene H. Dortch
Secretary
Federal Communications Commission
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Via ECFS

Robert Long (rlong@cov.com)
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/s/ Angela F. Collins

Collins, Angela

Subject: FW: Protective Order Acknowledgements - WC Docket 12-375 (FCC)
Attachments: CenturyLink - Protective Order Acknowledgements.pdf

From: King, Kevin [<mailto:KKing@cov.com>]
Sent: Tuesday, October 13, 2015 6:18 PM
To: Kiser, Chérie R.
Cc: Long, Robert
Subject: Protective Order Acknowledgements - WC Docket 12-375 (FCC)

Counsel-

Attached please find Acknowledgements of Confidentiality filed today by outside counsel for CenturyLink, Inc. in WC Docket No. 12-375. Pursuant to paragraph 5 of the Protective Order dated December 19, 2013 in this proceeding, we are serving you with the Acknowledgements forms in advance of making any request for access to your client's Stamped Confidential Documents or Confidential Information.

Sincerely,

Kevin King
Counsel for CenturyLink, Inc.

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