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\*ADMITTED IN DC ONLY

October 19, 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”), by its attorneys, hereby respectfully submits this response to the four (4) *Ex-Parte* Notices submitted October 15, 2015 on behalf of Martha Wright, *et al.* (the “Petitioners”) in the above-referenced docket.<sup>1</sup> GTL submits this response pursuant to 47 C.F.R. § 1.1204(a)(10), 47 C.F.R. § 1.1206(b)(2)(iv), and the Motion filed by GTL on October 16, 2015, a copy of which is attached hereto.

On behalf of GTL, Economists Inc. (“EI”) obtained the confidential versions of Petitioners’ filings to evaluate the analysis conducted by Coleman Bazelon, which compared the per-minute inmate calling service (“ICS”) rates proposed in the Fact Sheet to the cost data previously submitted by ICS providers. When EI performed the same analysis, it determined

<sup>1</sup> FACT SHEET: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services (rel. Sept. 30, 2015) (the “Fact Sheet”), available at <https://www.fcc.gov/document/fact-sheet-ensuring-just-reasonable-fair-rates-inmate-calling>; 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*”).

that approximately 40 percent (40%) of all debit/prepaid minutes of use would be provided at below-cost rates if the rates in the Fact Sheet were adopted.<sup>2</sup>

Mr. Bazelon's analysis is not in conflict with EI's analysis; it just takes a different approach to analyzing the data. EI's analysis looked at the number of minutes of use associated with costs that were in excess of the Fact Sheet's proposed rate caps. For example, if a provider's average cost to serve jails with 0-99 average daily population was \$0.25, all minutes of use for this carrier and size category were counted as being in excess of the proposed rate cap under the EI analysis. By contrast, Mr. Bazelon's analysis looked at the dollar amount by which costs are in excess of or below the proposed rate caps. For example, if a provider's costs are \$0.25 per minute of use for small jails, this is \$0.03 per minute over the proposed rate cap. If that provider had 1000 minutes of use in 2013, this would yield  $\$0.03 \times 1000 = \$30$  in costs above the proposed rate cap. Mr. Bazelon's analysis is simply a different way of looking at the same thing.

As previously explained by GTL, the Fact Sheet's proposed rates would reduce all ICS rates to levels that are not supported by the record cost data and would not ensure fair compensation for ICS providers as required by law.<sup>3</sup> It is not enough for a rate cap to be placed squarely at cost. This means that a significant portion of the ICS industry would face costs in excess of the proposed caps.<sup>4</sup> It also does not reflect well-established ratemaking requirements, as "rates must be based primarily on the cost of service, including a reasonable return on investment (*i.e.*, profit)."<sup>5</sup> Setting rates at cost eliminates the ability of ICS providers to recover a reasonable return on their investment as required under the law.<sup>6</sup> Mr. Bazelon's analysis does not change the irreparable harm that will result from adoption of the Fact Sheet's proposals as explained by GTL and other ICS providers.<sup>7</sup>

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<sup>2</sup> Stephen E. Siwek and Christopher C. Holt, Comments on Wheeler/Clyburn ICS Proposal, at 2 (dated Oct. 10, 2015) ("Siwek/Holt Comments"), *attached to* WC Docket No. 12-375, Letter from Global Tel\*Link Corporation (dated Oct. 10, 2015).

<sup>3</sup> WC Docket No. 12-375, Letter from Global Tel\*Link Corporation (dated Oct. 10, 2015).

<sup>4</sup> Siwek/Holt Comments at 3; *see also ICS Order and First FNPRM*, Pai Dissent at 120-21 (explaining that setting the rate cap based on average costs only means that a significant number of facilities will be capped at below-cost rates).

<sup>5</sup> Letter filed by Andrew D. Lipman at 2 (dated Feb. 20, 2015); *Alabama Cable Telecomms. Ass'n v. Alabama Power Co.*, 16 FCC Rcd 12209, ¶ 51 (2001) ("if the end results of the regulations are '[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed' then the regulations are constitutionally valid") (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944)).

<sup>6</sup> WC Docket No. 12-375, Letter from Securus Technologies, Inc. (dated Oct. 7, 2015) ("Setting below-cost rates violates fundamental precepts of regulatory ratemaking. . . ."); *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (finding the Fifth Amendment to the Constitution protects regulated entities from regulations that are "so unjust as to be confiscatory"); *AT&T v. FCC*, 836 F.2d 1386, 1391-92 (D.C. Cir. 1988) (rejecting FCC rule that would "guarantee the regulated company an economic loss").

<sup>7</sup> *See, e.g.*, WC Docket 12-375, Letter from Global Tel\*Link Corporation (dated Oct. 10, 2015); WC Docket No. 12-375, Letter from Pay Tel Communications, Inc. (dated Oct. 7, 2015); WC Docket No. 12-375, Letter from Securus Technologies, Inc. (dated Oct. 7, 2015); WC Docket No. 12-375, Letter from CenturyLink (dated Oct. 13, 2015).

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

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  
Richard D. Mallen  
Suzanne Tetreault  
Stephanie Weiner  
Rebekah Goodheart  
Travis Litman  
Nicholas Degani  
Amy Bender  
Madeleine Findley  
Pamela Arluk  
Lynne Engledow  
Rhonda Lien  
Bakari Middleton  
Thomas Parisi  
Gil Strobel

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

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

**MOTION OF GLOBAL TEL\*LINK CORPORATION**

Global Tel\*Link Corporation (“GTL”), by its attorneys, respectfully submits this Motion to obtain an exemption under 47 C.F.R. § 1.1204(a)(10) allowing GTL to file by October 19, 2015, a written presentation in response to the *ex parte* notices filed with the Federal Communications Commission (“Commission”) on October 15, 2015 by Martha Wright, *et al.* (the “Petitioners”). In the alternative, GTL moves to strike from the record the information in Petitioners’ *ex parte* notification that was redacted as confidential. In support of this Motion, GTL states:

1. On October 15, 2015, at approximately 5:00 p.m., the Commission issued its Sunshine Agenda for its October 22, 2015 agenda meeting. The above-referenced proceeding was listed on the Agenda. The Sunshine period therefore commenced at 12:00:00 a.m. on October 16, 2015.<sup>1</sup>

2. On October 15, 2015, at approximately 5:02 p.m., Petitioners filed four (4) separate notifications summarizing four (4) oral *ex parte* presentations they made to various members of Commission staff on October 14, 2015. The notifications each provided a redacted version of an analysis conducted by Coleman Bazelon of the confidential cost data in the record previously filed by inmate calling service (“ICS”) providers. Petitioners used the analysis

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<sup>1</sup> 47 C.F.R. § 1.1203(a)-(b).

conducted by Mr. Bazelon to present their views on the proposals contained in the Fact Sheet in this proceeding.<sup>2</sup> The confidential versions of Petitioners' *ex parte* notifications were filed with the Commission under seal.

3. On October 16, 2015, GTL requested that copies of the confidential versions of Petitioners' *ex parte* notifications be sent to GTL's outside economic consultants.<sup>3</sup>

4. In light of the issuance of the Commission's Sunshine Agenda, GTL has until 11:59:59 p.m. today, October 16, 2015, to file a response to Petitioners' *ex parte* notification.<sup>4</sup> GTL's outside consultants did not receive the confidential versions from Petitioners, however, until approximately 2:56 p.m. today. It is simply not feasible for GTL's third-party economic consultants to analyze fully the information in time for GTL to file a meaningful response before the deadline passes.

5. GTL has therefore been deprived of its right to a full business day to prepare its response, and worse yet is now prohibited from ever filing a response because the Sunshine period has begun.<sup>5</sup> This is fundamentally unfair to GTL, substantially undermines the

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<sup>2</sup> FACT SHEET: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services (rel. Sept. 30, 2015), available at <https://www.fcc.gov/document/fact-sheet-ensuring-just-reasonable-fair-rates-inmate-calling>; 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*").

<sup>3</sup> WC Docket No. 12-375, Letter from Global Tel\*Link Corporation (dated Oct. 16, 2015) (asking the confidential versions to be sent to Economists Inc.).

<sup>4</sup> 47 C.F.R. § 1.1206(b)(2)(iv) (providing that when an *ex parte* notification is filed the day prior to the start of the Sunshine period, responses must be filed by the end of the next business day).

<sup>5</sup> 47 C.F.R. § 1.1216(d) (authorizing sanctions against parties that provide the Commission with information in violation of the Sunshine-period rules, to include "admonishment, monetary forfeiture, or to having his or her claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected").

Commission’s deliberative process, and runs counter to the principles that underlay the *ex parte* rules.<sup>6</sup>

6. The Commission has the authority to fix this situation. Section 1.1204(a)(10) of the Commission’s rules permits the Commission to request a written or oral presentation during the Sunshine period for the “clarification or adduction of evidence.”<sup>7</sup> The Commission has explained that this authority is vital because:

[a]s a practical matter important issues can arise late in the deliberative process, and efficient decision-making requires that staff and Commissioners be permitted to gather the information needed to resolve them. As the issues the Commission considers grow in both number and complexity, it is essential that the Commission have the ability to test its assumptions and conclusions, and that the information and arguments the Commission relies on in reaching its decisions are clear, compelling, and timely. Allowing the solicitation of *ex parte* presentations during the Sunshine period serves those needs . . . .<sup>8</sup>

7. The Commission should exercise its Section 1.1204(a)(10) authority to request a written presentation from GTL.<sup>9</sup> Doing so will ensure that GTL is given a fair opportunity to be heard and that the Commission is fully informed before its agenda meeting on October 22, 2015.

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<sup>6</sup> See, e.g., *Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, 26 FCC Rcd 4517, ¶ 15 (2011) (“*Ex Parte Order*”) (“The Commission’s *ex parte* rules attempt to assure that the Commission’s use of *ex parte* presentations as a means of obtaining timely information is consistent with the need to assure that interested parties, and the public, know what information and arguments are being presented to the Commission and who is presenting them.”); see also *Home Box Office v. FCC*, 567 F.2d 9, 54, 57 (D.C. Cir. 1977) (declaring that “[e]ven the possibility that there is . . . one administrative record for the public and this court and another for the Commission and ‘those in the know’ is intolerable,” and holding that “any written document or a summary of any oral communication must be placed in the public file established for each rulemaking docket immediately after the communication is received so that interested parties may comment thereon”).

<sup>7</sup> 47 C.F.R. § 1.1204(a)(10).

<sup>8</sup> *Ex Parte Order* ¶ 44.

<sup>9</sup> 47 C.F.R. § 1.1202(a) (defining “presentation” as a “communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding”).

More broadly, it will serve notice on parties in future proceedings that designating information as confidential in *ex parte* notifications filed on the eve of the Sunshine period will not deprive interested parties of their right to respond. In saying that, GTL does not mean to suggest that Petitioners acted with such purpose here. But the practical impact of their actions, if left uncorrected, will create an incentive for future parties to seek to exploit this loophole in the rules, to the detriment of other interested parties, the Commission, and the public at large.

8. GTL can submit the written presentation by October 19, 2015, which is in keeping with the spirit of the one business-day response deadline in 47 C.F.R. § 1.1206(b)(2)(iv). Petitioners will then have until the end of the next day to file any response, 47 C.F.R. § 1.1206(b)(2)(v), affording the Commission the full day of October 21, 2015, to review Petitioners' submission before the scheduled October 22, 2015 agenda meeting.

9. In the alternative to its request to be granted permission to file a written presentation, and for all the reasons discussed above about the inherent unfairness of the current situation, GTL moves to strike from the record the confidential information contained in Petitioners' *ex parte* notifications.<sup>10</sup>

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<sup>10</sup> Cf. *Ex Parte Order* ¶ 45 (“We find that fairness and transparency in these situations are protected by the requirement that all *ex parte* presentations solicited during the Sunshine period are subject to the same disclosure rules that apply whenever an *ex parte* presentation is made. We also believe that, out of fairness as well as the interest in a complete and accurate record, other parties should have an opportunity to reply to *ex parte* presentations made during the Sunshine period, just as they would if the *ex parte* presentation were made at any other time.”).

Accordingly and for the above-stated reasons, GTL respectfully requests that the Commission grant this Motion.

Respectfully submitted,

**GLOBAL TEL\*LINK CORPORATION**

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*/s/ Chérie R. Kiser*

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Dated: October 16, 2015

Its Attorneys

## Your submission has been accepted

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