

**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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**RESPONSE OF GLOBAL TEL\*LINK CORPORATION TO MOTION TO STRIKE**

Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its undersigned counsel, respectfully submits this response to the Motion to Strike Prohibited Ex Parte Presentations (“Motion”) filed by the Martha Wright Petitioners (the “Petitioners”) in the above-referenced proceeding. For the reasons stated below, the Federal Communications Commission (“Commission”) should reject Petitioners’ Motion.

GTL’s October 27 letter is not part of the record for the Commission’s inmate calling service (“ICS”) proceeding (WC Docket No. 12-375), and thus Petitioners’ Motion is not ripe. To the extent GTL’s October 27 letter is considered an *ex parte* presentation at all (which it is not as explained below), it cannot be made part of the record without a Commission determination to that effect and notice to the parties.<sup>2</sup> Such a determination has not been made, and thus Petitioners’ request to have the October 27 letter “stricken from the record”<sup>3</sup> is moot.<sup>4</sup>

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<sup>1</sup> This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

<sup>2</sup> 47 C.F.R. § 1.1212(d); *see also Notice of Violation and Modification of Ex Parte Rules in the Matter of Rates for Inmate Calling Services*, Public Notice (rel. Oct. 21, 2015) (giving notice that “it will serve the public interest to allow [GTL’s] filing to become part of the record in WC Docket No. 12-375”).

<sup>3</sup> Motion at 1.

<sup>4</sup> *See, e.g., Billiot v. Key Energy Services*, 2011 WL 1841433 (W.D. La. May 12, 2011) (denying as moot a motion to strike certain statements that “do not appear of record”); *Matney v. The Hartford Life Insurance Co.*, 2005 WL 578476 (N.D. Tx. Mar. 10, 2005) (denying as moot motion to strike evidence outside of administrative record when court did not consider any evidence outside of administrative record in making its decision); *United States v. Marisol, Inc.*, 725 F. Supp. 833, 845 (M.D. Pa. 1989) (finding it “would be premature” to grant a motion to strike “before a factual record has been developed”).

GTL did not submit the October 27 letter “to affect the FCC’s decision-making process.”<sup>5</sup> Instead, GTL filed the letter in WC Docket No. 12-375 in the interest of full disclosure, which appeared to be consistent with the direction given by Commission staff to Securus regarding similar matters.<sup>6</sup> Staff’s advice was sound as it would ensure that all parties in the Commission’s ICS proceeding would be made aware of the communication between GTL and the Commission. GTL did not intend the October 27 letter to be included in the “record.”

GTL’s October 27 letter is not a “presentation” within the context of the Commission’s *ex parte* rules. A “presentation” is a “communication directed to the merits or outcome of a proceeding.”<sup>7</sup> The Commission has found this “means, in general, a communication advocating an outcome on the merits.”<sup>8</sup> GTL’s October 27 letter does not fall within the definition of a “presentation” as it did not address nor intend to influence the merits, outcome, or content of the forthcoming order adopted by the Commission on October 22, 2015. GTL’s October 27 letter was intended merely to give the Commission notice that threats of physical harm were being made to GTL employees in response to news releases issued by the Commission in connection with the October 22, 2015 action.<sup>9</sup> As such, there is nothing in the October 27 letter that comes

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<sup>5</sup> Motion at 2.

<sup>6</sup> WC Docket No. 12-375, Letter from Securus Technologies, Inc. (dated Oct. 26, 2015) (“I have been instructed to use this filing method.”); *see also* WC Docket No. 12-375, Securus Technologies, Inc. Response to Notice of Apparent Ex Parte Violation and Motion to Strike Prohibited Ex Parte Presentations, at 2 (dated Nov. 3, 2015) (“Securus also contacted FCC Staff to ask how, during the ongoing Sunshine period, it could bring these threats to the Commission’s attention. . . . Securus believes that it conformed its filing to Staff’s guidelines.”).

<sup>7</sup> 47 C.F.R. § 1.1202(a).

<sup>8</sup> *Charter Communications Entertainment I LLC*, 29 FCC Rcd 5975, ¶ 24 (2011).

<sup>9</sup> *Amendment of Subpart H, Part 1 of the Commission’s Rules and Regulations Concerning Ex Parte Communications and Presentations in Commission Proceedings*, 2 FCC Rcd 3011, ¶ 21 (1987) (“Nor do we intend to prohibit such a party in a non-restricted proceeding from engaging in ‘communications regarding ‘general industry problems,’ so long as they do not deal with the merits of the restricted proceeding.”) (citing *Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings*, 78 FCC 2d 1384, n.21 (1980)).

close to an “attempt to alter the rules to be contained in the” Commission’s forthcoming decision.<sup>10</sup>

GTL management did not consider the threats to its executives and employees as anything other than a “safety of life” issue.<sup>11</sup> On October 24, 2015, GTL learned that several death threats against its executives had been posted on the Internet in response to various news stories on the Commission’s October 22 action in the ICS proceeding.<sup>12</sup> Many of the threats were made in connection with press reports of the Commission’s statement that some ICS calls cost \$14 per minute.<sup>13</sup> Some GTL executives learned of the threatening posts from their children who had seen them on the Internet.<sup>14</sup> Petitioners themselves admit that the threatening Internet posts likely violated the Internet web host’s terms of use.<sup>15</sup>

GTL did not hesitate to view these threats as anything other than credible and serious. Upon learning of the threats, GTL immediately alerted the appropriate law enforcement officials, and removed information regarding its executives from its website. The Commission’s *ex parte* rules provide for certain exemptions to the rules, such as when the communication “directly

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<sup>10</sup> Cf. Motion at 2.

<sup>11</sup> 47 C.F.R. § 1.1204(a)(3).

<sup>12</sup> Some examples of the threats against GTL were identified in correspondence filed by Securus Technologies, Inc. dated October 26, 2015 and October 30, 2015 in WC Docket No. 12-375.

<sup>13</sup> *FCC Takes Next Big Steps in Reducing Inmate Calling Rates*, News Release (Oct. 22, 2015), available at <https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates>. The Data Quality Act requires federal agencies to ensure and maximize the “quality, objectivity, utility, and integrity of information (including statistical information) disseminated by” the agency, and orders the establishment of “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply” with those requirements. See Treasury and General Government Appropriation Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515 Appendix C, 114 Stat. 2763A-153 (2000); see also Information Quality Guidelines of the FCC, available at <https://www.fcc.gov/encyclopedia/information-quality-guidelines-fcc>.

<sup>14</sup> *Inmate Call Provider Says Execs Threatened After FCC Vote*, Law 360 (Oct. 28, 2015) (“GTL’s president and chief operating officer, Jeff Haidinger, told Law360 he was first alerted to the online posts threatening company executives by his son, who had seen them on a website. Haidinger said he has now seen a total of about a dozen threatening posts.”), available at [http://www.law360.com/articles/720187/inmate-call-provider-says-exec-threatened-after-fcc-vote?article\\_related\\_content=1](http://www.law360.com/articles/720187/inmate-call-provider-says-exec-threatened-after-fcc-vote?article_related_content=1).

<sup>15</sup> Motion at 2.

relates to an emergency in which the safety of life is endangered or substantial loss of property is threatened” as set forth in 47 C.F.R. § 1.1204(a)(3). The Commission has recognized that “emergency” is not defined in the *ex parte* rules, but that a “general description of an emergency” is “a sudden, generally unexpected occurrence or set of occurrences demanding immediate action.”<sup>16</sup> Rule 1.1204(a)(3) contemplates that communications relating to safety of life issues should be filed in the docket and disclosed to other parties, which is precisely what GTL did.

One of the Commission’s core mandates is “promoting safety of life,”<sup>17</sup> and GTL’s October 27 letter was submitted with that purpose in mind. While negative Internet posts are not unheard of, GTL views these recent threats as more than idle Internet chatter and took all actions deemed appropriate and necessary. Petitioners’ perception that life-threatening posts directed at GTL employees and executives are “[m]ere threats” and a “false ‘emergency’”<sup>18</sup> should be given no weight. The threats were not directed at Petitioners and their observations as unaffected bystanders provide nothing to alter the clear standard of the rule.<sup>19</sup> The relevant perspective is that of GTL and its executives who are the victims here, not Petitioners. Actual bodily harm is not necessary to constitute an “emergency situation.”<sup>20</sup> GTL values the lives of its employees,

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<sup>16</sup> Letter from Federal Communications Commission to Henry M. Rivera, *et al.*, 11 FCC Rcd 5583 (1995) (citing *Webster’s New World Dictionary* (2d Ed. 1972)).

<sup>17</sup> 47 U.S.C. § 151; *see also Nuvio Corp. v. FCC*, 473 F.3d 302, 311 (D.C. Cir. 2006) (concurring opinion of Kavanaugh) (“Congress established the FCC in part ‘for the purpose of promoting safety of life and property through the use of wire and radio communications.’”).

<sup>18</sup> Motion at 2.

<sup>19</sup> Rule 1.1204(a)(3); *see also supra* n.16.

<sup>20</sup> *Cf.* Motion at 2; *see also* David Kaut, *Securus Defends Filings on Threats, Reveals FCC Finding of Apparent Violation*, COMMUNICATIONS DAILY, Nov. 5, 2015, at 4 (quoting Robert McCrie, a professor of security management, that “the Securus concerns were understandable” because any “‘threat against a CEO or company employees should be taken seriously and not dismissed out of hand, and it should be reported to law enforcement, as is the case in this instance’”).

and responded swiftly and appropriately by contacting law enforcement and alerting the Commission consistent with 47 C.F.R. § 1.1204(a)(3).

Accordingly, Petitioners' Motion should be rejected as unnecessary and unsupported. GTL's October 27 letter is not part of the record of WC Docket No. 12-375, was never intended to be placed in the record, does not constitute a "presentation" within the meaning of the *ex parte* rules, and falls within the exemption for communications relating to safety of life.

Respectfully submitted,

**GLOBAL TEL\*LINK CORPORATION**

*/s/ Cherie R. Kiser*

David Silverman  
Executive Vice President and  
Chief Legal Officer  
GLOBAL TEL\*LINK CORPORATION  
12021 Sunset Hills Road, Suite 100  
Reston, VA 20190  
(703) 955-3886  
dsilverman@gtl.net

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Cherie R. Kiser  
Angela F. Collins  
CAHILL GORDON & REINDEL LLP  
1990 K Street, NW, Suite 950  
Washington, DC 20006  
(202) 862-8900  
ckiser@cahill.com  
acollins@cahill.com

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Its Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of November 2015, the foregoing Response of Global Tel\*Link Corporation to Motion to Strike was filed with the Federal Communications Commission via its Electronic Comment Filing System (ECFS) and served on the following via electronic mail:

Lee G. Petro  
Counsel for Martha Wright Petitioners  
Drinker Biddle & Reath LLP  
1500 K Street, NW  
Suite 1100  
Washington, DC 20005  
Lee.Petro@dbr.com

*/s/ Angela F. Collins* \_\_\_\_\_

Angela F. Collins