

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

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

**COMMENTS OF GLOBAL TEL*LINK CORPORATION
ON THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

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Its Attorneys

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Global Tel*Link Corporation (“GTL”),¹ by its undersigned counsel, respectfully submits these Comments in response to the Third Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced docket, which seeks further comment on the regulation of inmate calling services (“ICS”) in conjunction with the issuance of the Commission’s *Second ICS Order*.² The *Second ICS Order* is the Commission’s second attempt to regulate the ICS market after the majority of the Commission’s *First ICS Order* was stayed pending appeal by the D.C. Circuit.³ The *Second ICS Order* also is subject to appeal in the D.C. Circuit.⁴ GTL offers the following comments on the *Third ICS FNPRM*; however, in light of the shaky foundation upon which the Commission’s ICS

¹ 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.

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015) (“*Second ICS Order*” and “*Third ICS FNPRM*”), *pets. for review pending sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461 (D.C. Cir. filed Dec. 18, 2015); *see also Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*First ICS Order*” and “*First ICS 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 *Securus Tech., Inc. v. FCC*, No. 13-1280, Order (D.C. Cir. Jan.13, 2014).

⁴ *See, e.g., Global Tel*Link Corporation v. FCC*, No. 15-1461 (D.C. Cir. filed Dec. 18, 2015); *Securus Tech., Inc. v. FCC*, No. 15-1498 (D.C. Cir. filed Dec. 28, 2015).

policies currently rest, GTL recommends the Commission delay construction of additional ICS rules until the marketplace achieves some degree of regulatory stability.

I. THE COMMISSION SHOULD NOT ATTEMPT TO REGULATE ADVANCED COMMUNICATIONS PRODUCTS AND SERVICES

Advanced communications products and services benefit inmates and their families by offering additional communications options beyond plain old “payphone service.”⁵ New technological advancements like GTL Genesis offer significantly more to inmates and their friends and families than ICS payphone service. The “value” of these advanced inmate communications services that can provide inmates and their families additional and timelier methods of communication has been recognized by the Prison Policy Initiative.⁶ The nascent technologies being offered by GTL and other providers address “a real need” and provide “a more flexible approach to communication.”⁷ As the Commission has acknowledged, new technologies available in correctional settings will “offer improvements and innovations that benefit users and thus serve [the Commission’s] goals for ICS reform.”⁸ Numerous governmental and private reports also support that inmate access to new communications technology advances core correctional goals such as fighting recidivism and preparing inmates for reentry into society by, *inter alia*, encouraging increased contact with family members and promoting education.⁹

⁵ 47 U.S.C. § 276(d); *see also* GTL January 2015 Comments at 38-42; GTL January 2015 Reply Comments at 23-25; GTL April 3, 2015 Letter at 18-20 (all discussing the benefits of advanced services made available to inmates).

⁶ Prison Policy Initiative January 2015 Advanced Services Comments at 1.

⁷ Prison Policy Initiative January 2015 Advanced Services Comments at 1-2.

⁸ *Second ICS FNPRM* ¶ 145.

⁹ *See, e.g.*, Allison Hollihan, Michelle Portlock, National Institute of Corrections, Osborne Association, *Video Visiting in Corrections: Benefits, Limitations, and Implementing Considerations* (2014), available at <http://nicic.gov/library/files/029609.pdf> (“NIC Report”); *see also* Cindy Borden and Penny Richardson, *The Effective Use of Technology in Correctional Education*, John Jay College of Criminal Justice, Reentry Roundtable

New technologies and advanced services are not subject to Commission regulation under Section 276 of the Communications Act of 1934, as amended (the “Act”).¹⁰ As Commissioner O’Rielly notes, Section 276 is not “technology neutral” and does not expand beyond traditional payphone service.¹¹ Section 276 is a limited grant of power to the Commission, enacted to “promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.”¹² Congress defined “payphone service” to include “the provision of inmate *telephone service* in correctional institutions.”¹³ Section 276 is not an unlimited grant of authority over all technology or services provided in correctional institutions; it is limited to payphone service and promoting the deployment of such services only.

on Education at 14 (Spring 2008), *available at* <http://johnjay.jjay.cuny.edu/files/EffectiveUseofTechnology.pdf> (“The advantages of Internet-based technology in free society *and* prison schools are numerous. Immediate and unlimited access to countless high-quality programming, training, and resources would significantly increase educational opportunities and staff development. Connecting pre-release offenders to their families and communities through e-mail and video streaming could increase the probability of successful reentry. Practical experience with the Internet prior to release better prepares offenders for the ubiquitous nature of this resource.”); Lisa Harrison, *Prisoners and their Access to the Internet in the Pursuit of Education*, 39 Alt. L.J. 3 (2014) (reviewing prisoner access to the Internet in Australia and concluding that access to the Internet should be a priority both as a means to reduce recidivism and as an important matter of human rights); Anne Pike and Anne Adams, *Digital exclusion or learning exclusion? An ethnographic study of adult male distance learners in English prisons*, *Research in Learning Technology*, v. 20, Dec. 2012, *available at* <http://www.researchinlearningtechnology.net/index.php/rlt/article/view/18620> (surveying access to education technology in England and stating that technology-enhanced distance learning is perceived by many to be a lifeline in a desolate environment); JaPaula Kemp and Marcia Johnson, *The Effect of Educating Prisoners*, 7 U. Pa. J.L. & Soc. Change 1 (2003), *available at* <http://scholarship.law.upenn.edu/jlasc/vol17/iss1/2> (new technology makes distance education a viable alternative for education at correctional institutions at a lower cost than traditional education programs).

¹⁰ 47 U.S.C. § 276; *see also* *Second ICS FNPRM* ¶ 304 (asking about authority under Section 276).

¹¹ *Second ICS Order* at p. 209 (Dissenting Statement of Commissioner Michael O’Rielly).

¹² 47 U.S.C. § 276(b)(1).

¹³ 47 U.S.C. § 276(d) (emphasis added).

For example, video visitation or video calling service is interoperable video conferencing service, which is subject to very limited Commission regulation and oversight.¹⁴ Interoperable video conferencing service provides real-time video communications, including audio, to enable users to share information of the user's choosing.¹⁵ The Commission has determined that services and equipment that provide real-time video communications, including audio, between two or more users, are video conferencing services and equipment.¹⁶ This includes "videophones and software applications used for conversation between and among users," including "smart phones and computers with the capability of using interactive video, text and audio conferencing applications" such as Google Voice & Video Chat, AOL Instant Message Chat, WebEx, and Skype.¹⁷ Video conferencing is an information service,¹⁸ not a payphone service covered by Section 276.

Consistent with historical practice,¹⁹ the Commission should encourage the development and distribution of new products and technologies to inmates not stifle their innovation and deployment by unnecessarily regulating or restricting them.²⁰ Most of the new technologies being introduced by GTL and other ICS providers are broadband services or application-based products²¹ that will allow inmates access to a variety of voice, video, and data services. The

¹⁴ 47 U.S.C. § 153(1); 47 C.F.R. § 14.10(c); *see also Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 14557 (2011) ("2011 ACS Order").

¹⁵ 47 U.S.C. § 153(27); 47 C.F.R. § 14.10(m).

¹⁶ 2011 ACS Order ¶ 50.

¹⁷ *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 26 FCC Rcd 3133, ¶ 36 (2011).

¹⁸ *Framework for Broadband Internet Service*, 25 FCC Rcd 7866, ¶ 107 (2010).

¹⁹ GTL January 2015 Comments at 45-47; GTL January 2015 Reply Comments at 23-25; GTL April 3, 2015 Letter at 18-20.

²⁰ *Third ICS FNPRM* ¶¶ 298-304.

²¹ 47 C.F.R. § 14.10(d) (defining the term "application").

Commission has a statutory mandate to adopt rules and policies that encourage the deployment of broadband technology and advanced services to all Americans.²² The Commission repeatedly has said that its “end goal is to ensure the ubiquitous and affordable availability of broadband for all Americans” and that broadband is a “top priority” at the Commission.²³ Inmates should not be denied the benefits of advancements in technology, except to the extent necessary to ensure public safety and security, and to address the needs of law enforcement authorities.²⁴ This can best be achieved by allowing the continued development of these types of innovative services in the correctional setting with minimal regulation consistent with precedent and Congressional directives.²⁵

II. ICS PROVIDERS SHOULD NOT BE REQUIRED TO FILE COPIES OF THEIR ICS CONTRACTS WITH THE COMMISSION

The burdens imposed by a requirement that ICS providers file with the FCC every ICS contract (and any updates thereto) overwhelmingly outweighs any purpose or anticipated

²² See, e.g., 47 U.S.C. § 157(a) (“It shall be the policy of the United States to encourage the provision of new technologies and services to the public.”); 47 U.S.C. § 230(a), (b) (noting the benefits of Internet and interactive computer services and establishing it as “the policy of the United States . . . to promote the continued development of the Internet and other interactive computer services and other interactive media”); 47 U.S.C. § 254(b)(2) (stating the FCC shall base its policies on the principle that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation”); 47 U.S.C. § 1301, 1302 (finding that “deployment and adoption of broadband technology is vital” and stating the FCC “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans”).

²³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment pursuant to Section 706 of the Telecommunications Act of 1996*, 23 FCC Rcd 9615, ¶ 76 (2008); Letter from Chairman Wheeler to the Honorable Jim Bridenstine (Apr. 9, 2015) (“expanding high-speed broadband to all corners of the country is a top priority for the Commission”); see also Remarks of Commissioner Mignon L. Clyburn, “Realizing Broadband’s Grand Promise for Consumer Health IT” (Sept. 15, 2014) (“broadband in and of itself is not the goal, it is about what broadband enables”).

²⁴ 47 C.F.R. § 8.19(a).

²⁵ See, e.g., *Connect America Fund, et al.*, 26 FCC Rcd 17663, ¶ 5 (2011) (“extending and accelerating fixed and mobile broadband deployment has been one of the Commission’s top priorities over the past few years” by taking “a series of significant steps to better enable the private sector to deploy broadband facilities to all Americans”).

consumer benefit of such a requirement.²⁶ The Commission’s proposed requirement stems from its perceived concern over a lack of “transparency” regarding ICS rates and fees.²⁷ This concern has already been addressed and will be alleviated by the new consumer disclosure requirements adopted in the *Second ICS Order*. Under the new rule, ICS providers are required to “clearly, accurately, and conspicuously disclose their interstate, intrastate, and international rates and Ancillary Service Charges to consumers on their websites or in another reasonable manner readily available to consumers.”²⁸ The new consumer disclosure rule is intended to provide “transparency about the rates charged for ICS” because “transparency in rates, terms, and fees will facilitate compliance with the reforms and ensure that consumers are informed of their choices.”²⁹ Requiring ICS providers to file copies of their ICS contracts is not necessary to address the transparency in rates and fees issue raised by the Commission, would not provide information in a format that is user-friendly for consumers, and the information sought will be reported elsewhere as a result of the Commission’s new Rule 64.6110 established by *Second ICS Order*.³⁰

²⁶ *Third ICS FNPRM* ¶ 315 (asking “Do the benefits outweigh the costs?” with respect to the contract filing requirement); *Third ICS FNPRM* ¶ 327 (seeking “to determine whether each of the proposals [in the *Third ICS FNPRM*] will provide public benefits that outweigh their costs”); see also, e.g., *National Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012) (“when an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable”); *City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir. 2007) (noting that the court will not “tolerate rules based on arbitrary and capricious cost-benefit analyses”); *Radio-Television News Directors Ass’n v. FCC*, 184 F.3d 872, 887 (D.C. Cir. 1999) (stating “the court must weigh the rules’ benefits against their burdens”); *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1440 (D.C. Cir. 1983) (“Cost-benefit analyses epitomize the types of the decisions that are most appropriately entrusted to the expertise of an agency” and the reviewing court must ensure that the “agency has at least understood the relevant factors to be considered and has provided an adequate explanation of its reasoning process.”).

²⁷ *Third ICS FNPRM* ¶ 311.

²⁸ *Second ICS Order* at p.163 (listing new rule 47 C.F.R. § 64.6110(a)).

²⁹ *Second ICS Order* ¶ 278.

³⁰ *Second ICS Order* at p.163.

By contrast, the proposed contract filing requirement will place a significant administrative burden on ICS providers. The Commission long ago decided that it would serve the public interest to eliminate unnecessary regulatory burdens on non-dominant carriers subject to forbearance, including the filing of certain data and contracts with the Commission.³¹ The Commission determined that, “[b]ecause the cost of developing this information is relatively great for a non-dominant carrier, the rates paid by its ultimate users are likely to be higher than if all competitive carriers were free from this unnecessary regulatory burden.”³² Thus, the Commission concluded that the data and contract filing requirement “serves no useful purpose commensurate with the costs of compliance” and “nullifies many consumer benefits that competition produces.”³³ The same justifications apply here.³⁴

Further, GTL has approximately 2,400 correctional facility customers across the United States, and it would take a substantial number of employee hours to determine what information in each contract may be confidential to the company and redact it accordingly,³⁵ to file each contract with the Commission, and to continually update the filed contracts if they are revised or amended. GTL is a “small business” as that term is defined by the Small Business

³¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1 (1980) (reducing or eliminating unnecessary regulatory burdens on non-dominant carriers) (subsequent history omitted) (“*Competitive Carrier Order*”); *Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission’s Rules to Eliminate Certain Reporting Requirements*, 1 FCC Rcd 933 (1986) (eliminating filing requirements under 47 U.S.C. § 211 for non-dominant carriers subject to forbearance consistent with the Commission’s *Competitive Carrier* proceedings) (“*Section 211 Order*”); *see also Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629, ¶ 2 (2012) (stating that, prior to the *First ICS Order*, the Commission did not “regulate interstate ICS rates”).

³² *Competitive Carrier Order* ¶ 99.

³³ *Competitive Carrier Order* ¶¶ 6, 99; *see also Section 211 Order* ¶ 3 (“We tentatively concluded in the Notice that the same reasons supporting the policies adopted in *Competitive Carrier* justify elimination of the requirement that non-dominant carriers treated with forbearance file certain reports and contracts.”).

³⁴ Further, ICS providers do not fall within the enumerated “communications common carriers” that must comply with the Commission’s contract filing rules. *See* 47 C.F.R. § 43.51(b).

³⁵ As the Commission recognizes, there may be confidential and proprietary information contained in GTL’s contracts with its correctional facility customers. *See Third ICS FNPRM* ¶ 315.

Administration (“SBA”)³⁶ and the Commission.³⁷ Each one of GTL’s employees has specific responsibilities and obligations related to the provision of ICS, and GTL does not have spare personnel that can be devoted to filing contracts with the Commission. The Commission’s contract filing proposal presents a perfect example of the cost of compliance significantly outweighing the benefits from having such contracts filed.³⁸

III. THE CURRENT INTRASTATE/INTERSTATE ICS RATE CAPS SHOULD NOT APPLY TO INTERNATIONAL ICS CALLS

The Commission should not apply the intrastate and interstate ICS rate caps to international ICS calls.³⁹ International calling is often more costly for carriers to provide given international settlement rates or foreign termination rates.⁴⁰ Further, it would be extremely difficult to apply a single rate to all international calls given that foreign termination rates vary by country and by call type.⁴¹ For example, in the vast majority of countries, mobile termination

³⁶ 13 C.F.R. § 121.201. Under the SBA standard, a Wired Telecommunications Carrier, Interexchange Carrier, Telecommunications Reseller, or Payphone Service Provider is considered “small” if it has 1,500 or fewer employees. *See id.*; *see also Second ICS Order*, Appendix E ¶¶ 7, 12, 14, 16.

³⁷ *Second ICS Order*, Appendix E, ¶¶ 7, 12, 14, 16. The FCC recognizes that under the SBA’s “size standard, the majority of firms can be considered small,” and that the majority of wired telecommunications carriers, interexchange service providers, toll resellers, and payphone service providers are small entities. *See id.*

³⁸ *Third ICS FNPRM* ¶ 315 (asking “Do the benefits outweigh the costs?” with respect to the contract filing requirement); *Third ICS FNPRM* ¶ 327 (seeking “to determine whether each of the proposals [in the *Third ICS FNPRM*] will provide public benefits that outweigh their costs”); *see also, e.g., Updating Part 1 Competitive Bidding Rules*, 30 FCC Rcd 7493, ¶ 150 (2015) (rejecting a proposal after determining “that any potential benefit that might be gained from adopting such a requirement would be outweighed by the harms it would cause” because it would “impose unnecessary administrative and operational burdens with no demonstrated benefit”); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, ¶ 19 (2012) (declining to adopt “certain proposals in the FNPRM at this time, to further ensure that the costs of compliance with the new posting procedures are outweighed by the benefits of online disclosure”).

³⁹ *Third ICS FNPRM* ¶ 320.

⁴⁰ *See, e.g., IB Docket No. 96-261, FCC Proposes Revisions to International Settlement Rate Benchmarks* (rel. Dec. 19, 1996).

⁴¹ Federal Communications Commission, International Bureau, *Trends in the International Telecommunications Industry* (Sept. 2005).

rates are “substantially higher than termination rates on fixed-line networks.”⁴² This means that mobile settlement rates can vary greatly from country-to-country and region-to-region.⁴³ Rates also will differ depending on whether the country utilizes a “receiving-party-pays” or a “calling-party-pays” regime.⁴⁴ These differences are evident in the rates set by Immigration Customs and Enforcement (“ICE”), which applies one rate to international calls to landlines and another, higher rate to international calls to mobile phones.⁴⁵ Accordingly, rates need to track pricing for the foreign country the inmate is calling and whether the call is destined for a landline or a mobile telephone.⁴⁶ This approach is consistent with the way in which nearly every carrier providing international calling services currently prices their services.⁴⁷

IV. BANNING EXCLUSIVE ICS CONTRACTS RAISES SERIOUS SECURITY AND COST CONCERNS

It is well-established that the unique security needs of correctional facilities necessitate the use of exclusive contracts for ICS.⁴⁸ The *Third ICS FNPRM* marks the third time the

⁴² Federal Communications Commission, International Bureau, *The Effect of Foreign Mobile Termination Rates on U.S. Carriers and Consumers*, at 4 (Dec. 2013), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-332167A1.pdf (“FCC International Report”).

⁴³ FCC International Report at 5.

⁴⁴ FCC International Report at 8.

⁴⁵ *Third ICS FNPRM* ¶ 321.

⁴⁶ *Third ICS FNPRM* ¶ 321.

⁴⁷ See, e.g., Verizon Domestic and International Phone Plans, available at <http://www.verizon.com/home/phone/>; AT&T International Calling Plans Comparison, available at <https://www.shop.att.com/internationalplancomparison.jsp>; CenturyLink International Long Distance Phone Call Rates, available at <http://www.centurylink.com/help/tools/internationalrates/>; IDT PennyTalk International Calling Rates, available at <http://www.pennytalk.com/rates>.

⁴⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, ¶ 72 (2002) (“Correctional facilities must balance the laudable goal of making calling services available to inmates at reasonable rates, so that they may contact their families and attorneys, with necessary security measures and costs related to those measures. For this reason, most prisons and jails contract with a single carrier to provide payphone service and perform associated security functions. Thus, legitimate security considerations preclude reliance on competitive choices, and the resulting market forces, to constrain rates for inmate calling.”); see also *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, ¶¶ 56-57 (1998) (finding that inmate telephone systems are not required to provide the caller access to the carrier of its

Commission has asked whether it should ban exclusive contracts between ICS providers and correctional facilities.⁴⁹ The record developed in response to each of the Commission’s prior inquiries demonstrates that “intra-facility competition is unworkable” because a single provider for ICS is the most cost-efficient and effective way to maintain the safety and security measures unique to the correctional setting.⁵⁰

ICS providers and correction officials uniformly agree that the security needs of correctional facilities require the use of exclusive contracts for the provision of ICS.⁵¹ The Ohio Department of Rehabilitation and Corrections explains that “[m]ultiple vendors increase the risk of a breach in security,”⁵² because “[i]f multiple ICS providers were operating within a single correctional facility, with each running its own systems, software, and recording procedures, no one provider would be responsible for security procedures” in the facility.⁵³ Further, if facilities had more than one ICS provider, then facility staff also would need to be trained on all systems, management would need to learn to interpret multiple types and forms of reports, and investigators would have to conduct duplicative search procedures.⁵⁴ Inmates and their friends and families also would need to be familiar with each provider, which could cause customer

choice because inmates are limited to the carrier selected by the prison due to the special security requirements applicable to inmate calls).

⁴⁹ *Third ICS FNPRM* ¶ 294; *see also First ICS FNPRM* ¶ 177; *Second ICS FNPRM* ¶¶ 114-15.

⁵⁰ Pay Tel January 2015 Reply Comments at 50; *see also, e.g.*, GTL December 2013 Comments at 13-14; Securus December 2013 Comments at 12-13; Pay Tel December 2013 Comments at 41-42; GTL January 2015 Comments at 36-37; CenturyLink January 2015 Reply Comments at 32-35.

⁵¹ *See, e.g.*, Securus January 2015 Comments at 29-33; Oregon State Sheriffs’ Association January 2015 Comments at 6; Kansas Department of Correction December 2014 Comments at 2; Butler County (PA) Prison Board December 2014 Comments at 2; Emerald Correctional Management January 2015 Reply Comments at 9-10.

⁵² Ohio Department of Rehabilitation and Corrections December 2013 Comments at 4.

⁵³ Ohio Department of Rehabilitation and Corrections January 2015 Comments at 4.

⁵⁴ CenturyLink December 2013 Comments at 21 (“Multiple providers within a correctional institution will also make it virtually impossible for correctional institutions to track calls and provide the necessary level of security.”).

confusion and unnecessarily complicate communications between inmates and their friends and families.

In addition, intra-facility competition would result in the need to increase ICS rates.⁵⁵ Allowing multiple carriers in a correctional facility could decrease call volume, and increase uncertainty for each carrier, and “carriers will be unwilling to invest sufficient capital in purchasing equipment to ensure safety and security.”⁵⁶ Ultimately, the “administrative and technical complexity of such an undertaking would be prohibitive and the operational and capital costs would be enormous.”⁵⁷ Or in the alternative, correctional facilities could “eliminate inmate calling services” in light of “the complexities and inefficiencies inherent with awarding multiple ICS contracts.”⁵⁸

The FCC relies on GTL’s comments for support that there “may be multiple providers in some facilities.”⁵⁹ This reference by the FCC appears to have been taken out of context. While there may be “multiple vendors” in some facilities, GTL was pointing out that these vendors provide different products – ICS, video visitation, kiosk services, or commissary services.⁶⁰ GTL is not aware of any instance in which there are multiple entities providing ICS or other types of the same services within a single correctional facility. The Commission previously has

⁵⁵ Georgia Department of Corrections January 2015 Comments at 15.

⁵⁶ Ohio Department of Rehabilitation and Corrections December 2013 Comments at 5; *see also* Pay Tel January 2015 Reply Comments at 51.

⁵⁷ Emerald Correctional Management January 2015 Reply Comments at 9.

⁵⁸ Kansas Department of Corrections December 2014 Comments at 2.

⁵⁹ *Third ICS FNPRM* ¶ 294, n.1016 (citing GTL January 2015 Comments at 38, n.165).

⁶⁰ GTL January 2015 Comments at n.165.

considered and rejected the idea that multiple providers must be allowed to provide ICS in the same correctional facility, and should do so again here.⁶¹

V. THE COMMISSION SHOULD NOT ADOPT A RECURRING MANDATORY DATA COLLECTION REQUIREMENT

In the *First ICS Order*, the Commission required ICS providers to respond to a mandatory, one-time data collection regarding ICS costs and ancillary fees.⁶² In the *Second ICS Order*, the Commission adopted a second, one-time mandatory data collection requirement to occur approximately two years from now.⁶³ The Commission now asks whether it should extend the second, one-time data collection into a recurring data collection requirement.⁶⁴

There is no reason for the Commission to adopt a recurring data collection requirement. The Commission already rejected requests for ongoing data reviews, finding that “a periodic review of ICS data is not necessary at this time, nor is it the best tool for monitoring compliance with the [*Second ICS Order*].”⁶⁵ Further, the Commission must give the ICS market “sufficient time to adjust to [the Commission’s] new framework”⁶⁶ before imposing any additional reporting requirements. The Commission’s “further assessment of the market would best be guided by information that measures the current state of the market and the market after a reasonable period

⁶¹ *Billed Party Preference for IntraLATA 0+ Calls*, 13 FCC Rcd 6122, ¶ 57 (1998) (“We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable to inmate calls.”).

⁶² *First ICS Order* ¶¶ 124-25.

⁶³ *Second ICS Order* ¶ 198.

⁶⁴ *Third ICS FNPRM* ¶ 309.

⁶⁵ *Second ICS Order* ¶ 200.

⁶⁶ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, ¶ 98 (2005) (subsequent history omitted).

of time has passed after the implementation of the [*Second ICS Order*].”⁶⁷ Imposing a recurring data collection requirement would not give “the Commission a clearer picture of the industry” and would impose significant and unnecessary burdens on ICS providers.⁶⁸

CONCLUSION

Accordingly, and for the foregoing reasons, the Commission should adopt GTL’s recommendations and proposals as described herein.

Respectfully submitted,

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Its Attorneys

⁶⁷ *Promotion of Competitive Networks in Local Telecommunications Markets, et al.*, 15 FCC Rcd 22983, ¶ 130 (2000) (subsequent history omitted).

⁶⁸ *Third ICS FNPRM* ¶ 309; *see also, e.g., Updating Part 1 Competitive Bidding Rules*, 30 FCC Rcd 7493, ¶ 150 (2015) (rejecting a proposal after determining “that any potential benefit that might be gained from adopting such a requirement would be outweighed by the harms it would cause” because it would “impose unnecessary administrative and operational burdens with no demonstrated benefit”); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 27 FCC Rcd 4535, ¶ 19 (2012) (declining to adopt “certain proposals in the FNPRM at this time, to further ensure that the costs of compliance with the new posting procedures are outweighed by the benefits of online disclosure”).