

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

In the Matter of:)
) **WC Docket No. 12-375**
Rates For Interstate Inmate)
Calling Services)

**COMMENTS REGARDING
GLOBAL TEL*LINK PETITION FOR WAIVER**

The Wright Petitioners (the “Petitioners”) hereby submit these Comments regarding the Petition for Waiver filed by Global Tel*Link Corporation (“GTL”) on January 13, 2016 (the “Petition”).¹ The Petition requests that the FCC waive GTL’s compliance with Section 64.6100(a) prohibiting ICS providers from requiring that their customers maintain a minimum balance in their debit and prepaid calling accounts until June 20, 2016 with respect to their prison customers.

As GTL notes, the FCC instituted a deadline for coming into compliance with this rule for ICS providers serving customers receiving calls from prison facilities on March 17, 2016, while ICS providers’ serving customers receiving calls from jails are not required to come into compliance until June 20, 2016. The difference in the date of compliance was the result of the FCC’s willingness to provide more time for ICS provider and jails to reform their agreements to take into account the rules and caps on the ICS rates and fees adopted in the Second Report and Order in this proceeding.² GTL notes that “The Commission’s reasons for adopting a staggered implementation period for its new ICS rules have no relevance to the prohibition on minimum balances.”³

¹ On January 13, 2016, a Public Notice requesting comments regarding GTL’s Petition was released, establishing January 25, 2016, as the deadline for comments. *See Wireline Competition Bureau Seeks Comment On Global Tel*Link Corporation’s Petition For Waiver Of Deadline To Implement Rule 64.6100(A) For Prisons*, Public Notice, DA 16-43 (rel. Jan. 13, 2016). The FCC was closed on January 25, 2016, and January 26, 2016, due to adverse weather conditions, and these Comments are timely filed pursuant to *Waiver of Filing Deadlines Due to Adverse Weather Conditions*, Public Notice, DA 16-92 (rel. Jan. 27, 2016).

² *Second Report and Order*, 30 FCC Rcd 12,763 (2015).

³ *Petition*, pg. 4.

GTL seeks to delay its compliance with Section 64.6100(a) for customers receiving calls from prisons so that its compliance with the rule “take[s] effect for both prisons and jails at the same time.”⁴ According to GTL, it cannot implement the changes necessary to come into compliance with Section 64.6100(a) for prison customers in March and jail customers in June. Instead, GTL provides a statement from John Baker, Senior Vice President of Consumer Channels and Payment Services, wherein he asserts that:

Compliance with the FCC's new rule requires a complete overhaul of GTL's payment systems and software, modifications to its NR process, and adjustments to its payment processing website. GTL cannot implement the required changes to its systems on a facility-by-facility basis depending on whether the facility qualifies as a "prison" or "jail" under the FCC's rules. These changes must be implemented simultaneously across all of GTL's payment systems for all of its correctional facility customers, and these changes cannot be completed by the March 17, 2015[sic] implementation deadline for prisons.⁵

Other than this statement, GTL did not provide any additional information regarding the difficulties of GTL to come into compliance with Section 64.6100(a) by March 17, 2016 for all of its customers, nor did GTL indicate why it would take an additional 90 days to complete the changes.

Thus, GTL failed to satisfy the “high hurdle” warranting the grant of its request for a waiver of Section 64.6100(a).⁶ In particular, GTL failed to demonstrate how the grant of the Petition will not undermine the purpose of Section 64.6100(a),⁷ especially in light of GTL’s dominant role in the ICS industry.⁸ Moreover, because the FCC is required to take a “hard look” at GTL’s waiver

⁴ *Petition*, pg. 2.

⁵ *Petition*, pg. 3 (citing Baker Declaration, ¶3). Mr. Baker’s statement references March 17, 2015 as the deadline, but we assume that this was a typographical error, and he intended to state March 17, 2016.

⁶ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁷ *Id.*

⁸ GTL serves “approximately 2,400 facilities and 1.3 million inmates in 50 states, the District of Columbia and Puerto Rico. Our products and services are deployed in 31 state DOC contracts (including 8 of the largest 10) and over 800 counties, including 32 of the largest City/County Run Jail Facilities. We also provide service to the Federal Bureau of Prisons.” *See* GTL Company Profile (www.gtl.net/about-us/company-profile/). *See also Prisoners Pay Millions To Call Loved Ones Every Year. Now This Company Wants Even More*, Huffington Post (June 10, 2015)(stating that GTL has a 50% market share) (http://www.huffingtonpost.com/2015/06/10/prison-phone-profits_n_7552464.html).

request,⁹ it must review all relevant facts when determining if good cause exists to grant relief.¹⁰ Finally, in the event that the FCC is inclined to grant the Petition, it “must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operations.”¹¹

GTL has failed to provide sufficient justification to meet these exacting standards, and has certainly failed to provide enough information for the FCC to be able to articulate why the grant of a waiver was justified in this case, and how “future parties” will be put “on notice.” Instead, GTL merely offered the statement that it can’t separate prison and jail customers, and it cannot come into compliance by March 17, 2016. Importantly, GTL did not provide any specific explanation why it could not come into compliance any sooner than June 20, 2016, i.e., why it needed the full 90-day period.

This specific information is necessary to offset the significant harms arising from artificially high minimum balances identified by the FCC in the Second Report and Order in this proceeding. In particular, the FCC found that “high purchase minimum requirements can lead to unfair compensation” which was “antithetical to the Commission’s goals and to the requirements of sections 201 and 276...[and]...could also lead to gaming and loopholes.”¹²

Because GTL serves 8 of the 10 largest prison systems, and more than 30 state prison systems overall, a delay in implementing Section 64.6100(a) for an additional 90 days could have a particularly substantial negative impact on ICS consumers. Certainly, well-established FCC precedent has requires more from GTL to justify its request than “these changes cannot be completed by the March 17, 2015 [*sic*] implementation deadline for prisons.” Also, GTL did not

⁹ See *FPC v. Texaco, Inc.*, 377 U.S. 33, 39 (1964)).

¹⁰ *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

¹¹ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1165, 1166 (D.C. Cir. 1990).

¹² *Second Report and Order*, 30 FCC Rcd at 12,852.

provide any analysis of how granting its Petition would not undermine the purpose of Section 64.6100(a), especially in light of the substantial harms experienced by ICS providers justifying adoption of the rule, and GTL's unique domination of the prison ICS market.

Therefore, GTL has failed to provide sufficient justification for the grant of its Petition for Waiver, and the Petitioners respectfully request that the FCC adopt an order denying the request.

Respectfully submitted,

By: 

Lee G. Petro
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

January 28, 2016