

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

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

***EX PARTE RESPONSE TO  
REPLY COMMENTS OF GLOBAL TEL\*LINK***

The Wright Petitioners hereby submit this Response to the Reply Comments filed by Global Tel\*Link Corporation (“GTL”) on February 1, 2016 regarding GTL’s Petition for Waiver filed by (the “Petition”).<sup>1</sup> GTL 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.

In the Comments filed on January 28, 2016, we noted that the Petition did not “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.”<sup>2</sup> The Comments expressed our serious concern that the requested delay in implementing Section 64.6100(a) for prisons was not in the public interest because the impact of such delay, i.e., the continuation of “high purchase

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<sup>1</sup> On January 13, 2016, a Public Notice requesting comments regarding GTL’s Petition was released, establishing February 1, 2016, as the deadline for reply 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 public notice also permitted *ex parte* presentations to be submitted (“The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.”).

<sup>2</sup> *See Wright Petitioners’ Comments*, WC Dkt. 12-375, filed Jan. 28, 2016, pg. 4.

minimum requirements [which] can lead to unfair compensation,”<sup>3</sup> would be magnified because “GTL serves 8 of the 10 largest prison systems, and more than 30 state prison systems overall.”<sup>4</sup>

GTL’s Reply Comments argue that its “‘market share’ is not determinative of whether the limited waiver requested here has met the standard required for granting this waiver.”<sup>5</sup> But GTL is incorrect. It’s role as one of the largest *prison* ICS providers is particularly relevant because the FCC is required to consider whether the grant of the waiver will serve the public interest.<sup>6</sup>

If GTL served only one or two state prison systems, then the FCC’s determination that GTL’s expense and effort necessary to come into compliance with Section 64.6100(a) for its limited prison ICS customers *may* be greater than the acknowledged negative impact of the high purchase minimum balances on the public. However, GTL does not serve one or two prison systems, it serves more than 30 prison systems, and 8 of the 10 largest.

Thus, in this case, GTL’s “market share” must be seriously considered by the FCC when it balances GTL’s requested deviation from the FCC’s rules against the significant negative impact on the public interest. The FCC has determined that “high purchase minimum balances can lead to unfair compensation” which undermines the FCC’s “goals and...requirements of sections 201 and

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<sup>3</sup> See *Rates for Interstate Inmate Calling Services*, Second Report and Order, 30 FCC Rcd 12,763, 12,852 (2015).

<sup>4</sup> See *Wright Petition Comments*, pg. 3. See also *Id.*, nt. 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/](http://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](http://www.huffingtonpost.com/2015/06/10/prison-phone-profits_n_7552464.html))).

<sup>5</sup> *GTL Reply Comments*, pg. 3.

<sup>6</sup> See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (DC Cir 1990)(“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest,” citing *WAIT Radio v. F.C.C.*, 418 F2d 1153, 1157-59 (DC Cir 1969)).

276.”<sup>7</sup> Given’s GTL’s position as one of the largest prison ICS providers, the threat of unfair compensation, and the associated undermining of the FCC’s statutory goals and requirements, will be significantly magnified by any delay in implementing Section 64.6100(a) for prison ICS customers.

Therefore, despite GTL’s protestations to the contrary, the relevant question for the FCC in reviewing GTL’s request is not whether the waiver will undermine the FCC’s goals in establishing different deadlines for ICS providers serving prisons and jails. Instead, the correct question is whether the delay in implementing Section 64.6100(a) for one of the largest prison ICS providers will undermine the purpose for which the FCC prohibited high purchase minimum balances.

Another relevant consideration is the likely domino effect that the grant of the instant waiver request will have with respect to subsequent requests for waiver of Section 64.6100(a) by other ICS providers. Since GTL did not provide a specific explanation why a waiver of 90 days is required, it is more than likely that every other ICS provider that has similar payment platform will file a “me too” waiver request if GTL’s request is granted. Based on the facts presented in the GTL’s request, the FCC will not be able to provide any guidance to ICS providers as to why a waiver was granted to GTL, but perhaps not some other ICS provider.<sup>8</sup> Simply put, the only information provided to the FCC is that GTL’s necessary “changes cannot be completed by the March 17, 2015[sic] implementation deadline for prisons.”<sup>9</sup> The FCC will be hard put to require any additional information from other ICS providers if it grants GTL’s petition for waiver based solely on this statement.

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<sup>7</sup> See *Wright Petitioners’ Comments*, pg. 3 (citing *Second Report and Order*, 30 FCC Rcd at 12,852).

<sup>8</sup> See *Wright Petitioners’ Comments*, pg. 3 (citing *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1165, 1166 (D.C. Cir. 1990)).

<sup>9</sup> *Petition*, pg. 3 (citing Baker Declaration, ¶ 3).

This is particularly relevant because the Wright Petitioners specifically questioned why GTL did not provide any explanation for its inability to come into compliance – simultaneously or otherwise – at some point between the March 2016 deadline for prisons and the June 2016 deadline for jails, i.e., why it needed the full 90-day period.<sup>10</sup> Since GTL asserts that it is impossible to implement the changes to its system in two separate phases (first for prisons, then later for jails), the Wright Petitioners correctly questioned why the implementation could not be done simultaneously at some date between March 17, 2016 and June 20, 2016, which could have perhaps reduced the negative impact on ICS consumers.

Surprisingly, GTL did not address this question, instead summarily dismissing the Wright Petitioners' inquiry by stating that "GTL is in the best position to assess the 'difficulties' associated with its implementation of Rule 64.6100(a)."<sup>11</sup> Because GTL chose not to substantively address whether it could come into compliance at any other date before June 20, 2016, the FCC cannot now find that (i) GTL provided "[a] reasonable, specific schedule," (ii) GTL's request is "narrow in scope,"<sup>12</sup> or (iii) future parties will be put on notice as to the FCC's standards in granting a waiver request of Section 64.6100(a).<sup>13</sup>

Therefore, GTL has failed to provide sufficient justification for the grant of its Petition for Waiver. Because of its unique role as one of the largest ICS providers serving prisons, the negative effects arising from the delay in implementing Section 64.6100(a) will be magnified and the FCC's underlying goal in implementing Section 64.6100(a) will be undermined by the significant negative

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<sup>10</sup> See *Wright Petitioners' Comments*, pg. 3.

<sup>11</sup> *GTL Reply Comments*, pg. 3.

<sup>12</sup> *Id.*, nts. 11, 12 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 20 FCC Rcd 7709 (2005) and *Misuse of Internet Protocol (IP) Captioned Telephone Service*, 28 FCC Rcd 6454 (2013)).

<sup>13</sup> See *Wright Petitioners' Comments*, pg. 3.

public interest considerations. Finally, the FCC and other ICS providers will be hard-pressed to determine whether the waiver requests filed the other ICS providers will justify similar relief.

As such, the Wright Petitioners respectfully request that the FCC adopt an order denying the request.

Respectfully submitted,

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February 2, 2016