

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

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

**GLOBAL TEL*LINK CORPORATION PETITION FOR WAIVER
OF DEADLINE TO IMPLEMENT RULES 64.6080 AND 64.6090 FOR JAILS**

Pursuant to 47 C.F.R. § 1.3, Global Tel*Link Corporation (“GTL”),¹ by its undersigned counsel, respectfully submits this Petition seeking a temporary waiver of the June 20, 2016 deadline by which inmate calling service (“ICS”) providers must comply with Rules 64.6080 and 64.6090 for jails. Specifically, GTL requests a temporary waiver for ninety (90) days to implement the requirements of Rules 64.6080 and 64.6090 for jails. In support of this Petition, GTL states:

1. In the *Second ICS Order*,² the Federal Communications Commission (“Commission”) disallowed the use of per-call and per-connection charges. Specifically, new Rule 64.6080 states: “No Provider shall impose a Per-Call or Per-Connection Charge on a Consumer.”³ A “Per-Call or Per-Connection Charge” is defined as “a one-time fee charged to a Consumer at call initiation.”⁴

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 *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (“*Second ICS Order*”).

³ *Second ICS Order* at p.162 (setting forth new rule 47 C.F.R. § 64.6080).

⁴ *Second ICS Order* at p.159 (setting forth revised rule 47 C.F.R. § 64.6000(o)); *see also Second ICS Order* ¶¶ 98, 101.

2. In addition, the Commission prohibited the use of flat-rate calling, which the Commission characterized as a “per-call charge[]” based on a set amount of calling time.⁵ Specifically, new Rule 64.6090 states: “No Provider shall offer Flat-Rate Calling for Inmate Calling Services.”⁶ “Flat-Rate Calling” is defined as “a calling plan under which a Provider charges a single fee for an Inmate Calling Services call, regardless of the duration of the call.”⁷

3. Rules 64.6080 and 64.6090 took effect for prisons on March 17, 2016, and will take effect for jails on June 20, 2016.⁸ GTL requests a temporary waiver of the effective date to implement these new rules for jails.

4. The Commission has authority to waive its rules for “good cause shown.”⁹ A waiver is appropriate when special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁰ Further, the Commission may waive a rule where particular facts make strict compliance inconsistent with the public interest, such as considerations of hardship, equity, or more effective implementation of overall policy can be achieved on an individual basis.¹¹ The Commission routinely has granted waivers when providers “have presented reasonable, specific schedules” for implementing required changes¹²

⁵ *Second ICS Order* ¶ 102.

⁶ *Second ICS Order* at p.162 (setting forth new rule 47 C.F.R. § 64.6090).

⁷ *Second ICS Order* at p.159 (setting forth revised rule 47 C.F.R. § 64.6000(h)).

⁸ 80 Fed. Reg. 79136 (Dec. 18, 2015).

⁹ 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

¹² *See, e.g., Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 20 FCC Rcd 7709 (2005).

and when the “waiver request is appropriately narrow in scope”¹³ such as the request here. Special circumstances support grant of this limited waiver request.¹⁴

5. GTL requests this temporary waiver for two reasons. First, GTL will not complete contract negotiations and, in some cases, renegotiations with its correctional facility customers falling within the “jail” category by the June 20, 2016 deadline.¹⁵ GTL serves approximately 700 jails across the United States.¹⁶ A significant number of GTL’s contracts include per-call, per connection or some type of flat-rate calling charge that could be interpreted to fall within the Commission’s prohibition.¹⁷ This is true notwithstanding the Commission’s statement that per-call charges are “less prevalent than they once were” and that many factors indicate “a trend away from the inclusion of such fees.”¹⁸

6. GTL has been actively negotiating with its jail correctional facility customers over the past months to revise its existing contracts consistent with the requirements of the *Second ICS Order*.¹⁹ However, the initial stay issued by the United States Court of Appeals for

¹³ See, e.g., *Misuse of Internet Protocol (IP) Captioned Telephone Service*, 28 FCC Rcd 6454 (2013).

¹⁴ See, e.g., *Expansion of the Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, 29 FCC Rcd 15943, ¶ 48 (2014) (proposing to allow certain cable operators additional time to begin posting their political files online); *Telephone Number Portability*, 19 FCC Rcd 875, ¶ 8 (2004) (finding special circumstances exist because of “technology and operational limitations” requiring the acquisition of hardware and software, network upgrades, and reliability and accuracy testing to meet Commission number portability requirements); *Rules and Policies Regarding Calling Number Identification Service*, 11 FCC Rcd 11437, ¶ 7 (1996) (recognizing “that unique technical problems constitute a special circumstance”).

¹⁵ Declaration of Brian D. Oliver in Support of Global Tel*Link Corporation Petition for Waiver, ¶ 4 (attached hereto) (hereinafter “Oliver Declaration”).

¹⁶ Oliver Declaration ¶ 2; see also *Second ICS Order* at p.159 (setting forth revised rule 47 C.F.R. § 64.6000(m) defining “jails”).

¹⁷ Oliver Declaration ¶ 2.

¹⁸ *Second ICS Order* ¶ 101.

¹⁹ Oliver Declaration ¶ 3.

the District of Columbia Circuit (“D.C. Circuit”),²⁰ the Commission’s subsequent statements on how the rate caps should be applied,²¹ and the D.C. Circuit’s second stay decision²² created much confusion as to the rules of the road, which drive these negotiations. Although the D.C. Circuit’s decisions did not address Rules 64.6080 and 64.6090, the applicable rate regime for interstate and intrastate ICS was not settled from a legal perspective until the issuance of the D.C. Circuit’s March 23 stay order. Even after the court’s decisions and the Commission’s March 29, 2016 Public Notice clarifying how its rules were affected by the stay orders,²³ correctional facilities continued to express confusion regarding the applicable rate regime for interstate and intrastate ICS calls, which created obstacles and delays in the renegotiation of correctional facility contracts.²⁴

7. The Commission specifically determined that “a six-month transition period” was “needed to transition all of the country’s jails to the new rate regime” and “to give providers and jails enough time to negotiate (or renegotiate) contracts to the extent necessary to comply with all of the rules” adopted in the *Second ICS Order*.²⁵ The confusion and regulatory uncertainty created by the D.C. Circuit’s stay decisions have deprived GTL of the full time period determined to be necessary under the *Second ICS Order* for negotiations (or renegotiations) with

²⁰ No. 15-1461, *Global Tel*Link Corporation v. FCC*, Order (D.C. Cir. Mar. 7, 2016) (and consolidated cases).

²¹ *Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, 31 FCC Rcd 2026 (2016).

²² No. 15-1461, *Global Tel*Link Corporation v. FCC*, Order (D.C. Cir. Mar. 23, 2016) (and consolidated cases).

²³ *Wireline Competition Bureau Updates Applicable Rates for Inmate Calling Services*, 31 FCC Rcd 2247 (2016).

²⁴ Oliver Declaration ¶ 3.

²⁵ *Second ICS Order* ¶ 256.

its jail correctional facility customers. The change in circumstances arising from the D.C. Circuit stay orders support the grant of GTL’s request.²⁶

8. Many negotiations that were near completion before the D.C. Circuit stay orders were issued are being re-visited, and in some cases re-started, to reflect the continuation of existing intrastate ICS rates and the interim interstate rate caps, as well as the new ICS rules that were not stayed. GTL’s internal personnel and outside consultants have been working tirelessly to renegotiate the jail contracts at issue, but GTL cannot eliminate every instance of per-call surcharges or flat-rate pricing by June 20, 2016 given the sheer number of contracts to be renegotiated.²⁷

9. The requested relief is reasonable because GTL has lost a substantial portion of the Commission-prescribed six-month negotiation period due to the changes arising from the D.C. Circuit stay orders. The second stay order was issued March 23, 2016, leaving approximately 90 days for GTL to complete negotiations (or renegotiations) with its jail customers. Ninety days is “not enough time to allow providers to renegotiate all of [the jail] contracts and for those contracts to be approved by the relevant authorities.”²⁸ The Commission specifically rejected calls for a transition period shorter than six months, agreeing with commenters that “the sheer number of contracts to be renegotiated would require additional time

²⁶ See, e.g., *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865, ¶ 130 (2014) (recognizing that “flexibility is important when compelling cases arise” and allowing for a temporary extension “due to changed circumstances or information that emerged” afterward); Letter to Mr. Ron Wong, 26 FCC Rcd 14286 (2011) (granting extension request “[i]n light of changed circumstances”); *Maritel, Inc. Request to Extend Construction Deadline for Certain VHF Public Coast Station Geographic Area Licenses*, 22 FCC Rcd 14074, ¶ 9 (2007) (acknowledging that “changed circumstances” beyond the licensee’s control justify grant of a waiver request); *Communications Assistance for Law Enforcement Act*, 16 FCC Rcd 17397 (2001) (granting extension of compliance deadline in response to claims that extension was warranted because of uncertainty created by court decisions); *Kingdon R. Hughes*, 9 FCC Rcd 3395 (1994) (noting that an extension of construction deadlines had been granted “due to the uncertainty created by the U.S. Court of Appeals action”).

²⁷ Oliver Declaration ¶ 4.

²⁸ *Second ICS Order* ¶ 256 (citing to NSA comments).

to complete.”²⁹ Grant of the temporary waiver requested herein will allow GTL to receive the benefit of the full six-month period the Commission determined was necessary “to transition all of the country’s jails to the new rate regime.”³⁰

10. Second, the temporary waiver also will allow GTL to seek relief at the state level with respect to intrastate ICS rate cap regimes that will result in confiscatory rates once the per-call surcharge or flat-rate calling component is removed from the intrastate rate structure. Some states have adopted intrastate ICS rate cap regimes that are based on flat-rate charges, utilize a mix of per-call surcharges and per-minute rates, or tied to tariffed rates of other carriers that use a mix of surcharges and per-minute rates.³¹ In some instances, the remaining per-minute rate caps do not provide fair compensation to ICS providers once per-call or per-connection charges and flat-rate calling are removed from the rate structure.

11. For example, the Massachusetts Department of Telecommunications and Cable (“DTC”) established a comprehensive intrastate ICS rate cap regime that includes a \$0.10 per minute of use charge and a \$3.00 per-call surcharge.³² The Massachusetts DTC’s per-call surcharge was adopted because ICS providers have “legitimate additional costs” due to “the

²⁹ *Second ICS Order* ¶ 256 (citing to NSA comments).

³⁰ *Second ICS Order* ¶ 256.

³¹ *See, e.g.*, Case No. 1072, *Implementing the Fair Phone Charges for Prisoners Act*, Order (D.C.P.S.C. May 18, 2009); Docket No. 18870-U, *Institutional Telecommunication Services*, Commission Order (Ga. P.S.C. Nov. 18, 2004); Docket No. N2015.8.61, *Setting Maximum Allowable Rates for Intrastate Operator Service Providers*, Notice of Commission Act (Mont. P.S.C. Sept. 22, 2015); New Jersey Administrative Code § 14:10-6; New Mexico Administrative Code § 17.11.28.17; North Carolina Utilities Commission Rule R13-9; Ohio Administrative Code § 4901:1-6-22; Docket No. 04-00166, *Inmate Payphone Usage*, Order Setting Interim Rate for Inmate Payphone Usage (Tenn. Reg. Auth. Nov. 8, 2005); Texas Administrative Code Substantive Rules Applicable to Telecommunications Service Providers Rule 26.346.

³² D.P.U./D.T.E. 97-88/97-18 (Phase II), *Investigation by the Department of Telecommunications and Energy on Its Own Motion regarding (1) Implementation of Section 276 of the Telecommunications Act of 1996 relative to Public Interest Payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New England Telephone and Telegraph Company d/b/a NYNEX’s Public Access Smart-Pay Line Service, and (4) the Rate Policy for Operator Services Providers*, Order on Payphone Barriers to Entry and Exit, and OSP Rate Cap, at 9-10 (Mass. D.T.C. April 17, 1998) (“*DTC 1998 Rate Cap Order*”); *see also* Industry Notice, *Collect Inmate Calls - Rate Cap* (Mass. D.T.C. Sept. 3, 2004).

unique characteristics of inmate calling services.”³³ The DTC determined these unique characteristics of inmate calling services produce per call costs that are higher than costs for traditional operator services.³⁴ In light of these “additional costs,” the Massachusetts DTC ruled it was necessary to modify the rate cap mechanism for inmate calling services to provide for rate recovery of the legitimate additional costs incurred in providing inmate calling services³⁵ and adopted a maximum surcharge of \$3.00 per call in addition to the per-minute usage rates.³⁶

12. In the *Second ICS Order*, the Commission acknowledged its “statutory obligation to ensure that payphone service providers, including ICS providers, are ‘fairly compensated,’” and that a state may adopt “intrastate requirements that result in providers being unable to receive fair compensation.”³⁷ The Commission indicated ICS providers could “either seek appropriate relief in that state or from the Commission,” but “strongly encourage[d] providers to seek relief from the relevant state entity before approaching the Commission.”³⁸ To that end, GTL has requested interim relief from the Massachusetts DTC to restructure the combined per call, per minute rate elements that make-up the Massachusetts DTC ICS rate cap regulatory regime, into a single per minute-of-use rate cap consistent with the *Second ICS Order*.³⁹

³³ *DTC 1998 Rate Cap Order* at 9. The DTC determined that inmate service providers’ “additional costs” include “(1) costs associated with call processing systems, automated operators, call recording and monitoring equipment, and fraud control programs that are required to ensure security and to deter abuses; (2) higher levels of uncollectibles; and (3) higher personnel costs.” *See id.* at 9-10.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 10. The Massachusetts DTC recently reiterated its justification for the per call surcharge explaining that the per-minute usage rates were intended only to reflect “traditional cost recovery, not the unique additional costs associated with ICS.” D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Interlocutory Ruling, at 19 (Mass. D.T.C. Sept. 23, 2013).

³⁷ *Second ICS Order* ¶ 211.

³⁸ *Second ICS Order* ¶ 211.

³⁹ Oliver Declaration ¶ 5.

13. Grant of this waiver request will provide the necessary time for Massachusetts (and possibly other states that may require administrative proceedings or filings) to address the effect of the *Second ICS Order* on the existing intrastate ICS rate cap regime. The Commission's *Second ICS Order* effective dates did not contemplate these judicial changes or the state administrative procedural requirements that would be necessary to address implementation issues. States must now be given the opportunity to restructure their intrastate ICS rate regimes in light of the Commission's new rules applicable to intrastate ICS.

14. Accordingly, there are many instances in which existing intrastate ICS rates must be revised or restructured to comply with the Commission's prohibitions on per-call, per-connection, and flat-rate calling charges. The combination of marketplace confusion brought about by the D.C. Circuit stay orders, the subsequent Commission statements,⁴⁰ and the required state administrative processes necessary to implement changes to intrastate ICS regimes, require GTL to seek this temporary waiver.

15. Grant of GTL's waiver request will not harm the public interest because, in most instances, permitting existing applicable per-call charges or flat-rate pricing to continue for this short period of time will result in consumers paying less than the Commission's interim rate caps of \$0.21/\$0.25 and/or paying less than or no more than the currently effective intrastate rates.

16. For example, in Spartanburg County, South Carolina, a local call is \$1.20, including all taxes and fees.⁴¹ By contrast, a 15-minute call under the Commission's interim rate caps would be \$3.75 (collect) and \$3.15 (prepaid).

⁴⁰ See, e.g., *Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, 31 FCC Rcd 2026 (2016).

⁴¹ <http://www.spartanburgsheriff.org/inmate-contact-telephone-services.php> (last visited June 1, 2016).

17. In Allegheny County, Pennsylvania, using a combination of per-call surcharges and per-minute usage, a 15-minute local call during the day is \$3.05 (collect or prepaid collect) or \$2.40 (debit or inmate prepaid), and the collect/prepaid collect call rate falls to \$2.42 during the evening/night.⁴² These rates are significantly lower than a 15-minute call under the Commission's interim rate caps.

CONCLUSION

Accordingly and for the foregoing reasons, GTL respectfully requests that the Commission grant this Petition and provide GTL with a temporary waiver for ninety (90) days to comply with the requirements of Rules 64.6080 and 64.6090 for jails.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

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Dated: June 1, 2016

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⁴² <http://www.alleghenycounty.us/jail/inmate-phone-system.aspx> (last visited June 1, 2016).

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**DECLARATION OF BRIAN D. OLIVER
IN SUPPORT OF GLOBAL TEL*LINK CORPORATION PETITION FOR WAIVER**

I, Brian D. Oliver, state as follows:

1. I am the Chief Executive Officer for Global Tel*Link Corporation (“GTL”) and its affiliates. GTL and its affiliates provide inmate calling service (“ICS”) to correctional facilities throughout the United States, including both “prisons” and “jails” as those terms have been defined by the Federal Communications Commission (“FCC”).

2. I provide this Declaration in support of GTL’s request for a temporary waiver for ninety (90) days for GTL to implement requirements of Rules 64.6080 and 64.6090 for jails. GTL serves approximately 700 correctional facilities that fall under the FCC’s definition of “jail.” Many of GTL’s jail contracts include per-call charges that could be interpreted as a per-call or per-connection charge, or some type of flat-rate calling charge.

3. GTL has been actively negotiating with its jail correctional facility customers over the past months to revise its existing contracts consistent with the requirements of the FCC’s new ICS rules. However, the decisions by the federal court to stay implementation of the FCC’s new ICS rate caps have derailed negotiations, created regulatory uncertainty, and required renegotiations of contract amendments completed before the court’s stay orders were issued. Despite the court’s rulings and the subsequent public notices by the FCC to clarify the status of its ICS rules, many correctional facilities continue to express confusion over the currently

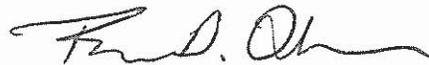
applicable rates for intrastate ICS, which causes further delays in the execution of contract amendments.

4. GTL therefore requires additional time to complete contract negotiations (and in some cases renegotiations) with its correctional facility jail customers. GTL's internal personnel and outside consultants have been working tirelessly to renegotiate the jail contracts at issue, but GTL cannot eliminate every instance of per-call surcharges or flat-rate pricing by June 20, 2016 given the sheer number of contracts to be renegotiated.

5. In addition, some states have adopted intrastate ICS rate cap regimes that are based on flat-rate charges, a mix of per-call surcharges and per-minute rates, or are tied to tariffed rates of other carriers that rely on per-call surcharges and per-minute rates. GTL requires additional time to comply with the Commission's new rules in order to pursue state administrative remedies of intrastate ICS rate cap regimes that result in confiscatory rates once per-call and per-connection surcharges or flat-rate calling are removed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on June 1, 2016



Brian D. Oliver
Chief Executive Officer
Global Tel*Link Corporation