

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

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

PAY TEL COMMUNICATIONS, INC.’S COMMENTS
REGARDING GLOBAL TEL*LINK’S PETITION FOR WAIVER TO IMPLEMENT
RULES 64.6080 AND 64.6090 FOR JAILS

Pay Tel Communications, Inc. (“Pay Tel”), through its attorneys, respectfully submits these comments in response to the Bureau’s notice¹ seeking comment on Global Tel*Link Corporation’s Petition for Waiver of Deadline to Implement Rules 64.6080 and 64.6090 for Jails.² Pay Tel generally supports the arguments made by GTL in support of its Petition and notes that several of the arguments raised by GTL are also applicable to Pay Tel. Should the Commission grant relief, Pay Tel would urge the Commission to extend the benefits thereof to all providers of inmate calling services (“ICS”).

Pay Tel focuses its comments on the portions of the GTL Petition that address (1) the challenge of applying Rules 64.6080 (prohibiting per-call and per-connection charges)³ and 64.6090 (prohibiting flat-rate calling)⁴ in the intrastate rate environment and the confusion that

¹ Wireline Competition Bureau, Public Notice, DA 16-631 (rel. June 7, 2016).

² Petition of Global Tel*Link Corporation for Waiver of Deadline to Implement Rules 64.6080 and 64.6090 for Jails, WC Docket No. 12-375 (filed June 1, 2016) (“GTL Petition”).

³ Rates for Interstate Inmate Calling Services, 30 FCC Rcd 12763, p. 162 (2015) (“*Second ICS Order*”).

⁴ *Id.*

results therefrom; and (2) the need to give providers more time to seek relief at the state level with respect to intrastate rate structures that result in confiscatory rates.⁵

Pay Tel has repeatedly voiced in this proceeding the very concern GTL raises regarding below-cost intrastate rate caps and regulations.⁶ Indeed, Pay Tel demonstrated that such caps and regulations, when working in conjunction with the *First ICS Order*'s⁷ interstate rate caps, would lead to a substantial intrastate revenue shortfall and prevent Pay Tel from recovering its costs on a holding company level.⁸ The Bureau granted a temporary waiver to Pay Tel in 2014 based on that evidence, concluding that Pay Tel had demonstrated that it could not recover its costs on a holding company level.⁹

As the GTL Petition explains, circumstances have not markedly changed.¹⁰ The *Second ICS Order*'s rules apply to intrastate ICS, but the Commission refrained from preempting inconsistent state regulations, including those intrastate requirements that result in providers being unable to receive the fair compensation to which they are entitled under Section 276.¹¹ The Commission apparently has mandated an approach to all rates, including intrastate, which is designed to permit recovery of costs over the average length of an expected call. Yet state rate

⁵ GTL Petition at 6.

⁶ See generally, e.g., Pay Tel, Ex Parte Presentation, "An Analysis of Existing State Regulations on ICS," WC Docket No. 12-375 (Sept. 23, 2015).

⁷ Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14017 (2013) ("*First ICS Order*").

⁸ See, e.g., Pay Tel, Petition for Waiver at 12-19, Exhibits A-H, WC Docket No. 12-375 (Jan. 8, 2014); Pay Tel, Notice of Ex Parte, WC Docket No. 12-375 (Dec. 9, 2013).

⁹ Order, *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 1302, ¶¶ 11& 15 (Feb. 11, 2014) (concluding that "*Pay Tel ha[d] shown that the combination of its existing below-average-cost state ICS rates and the Commission's interim rate caps, which accurately reflect its average total company costs,*" justified grant of waiver of the Commission's rate caps) (emphasis added).

¹⁰ GTL Petition at 6-8.

¹¹ 47 U.S.C. § 276(b)(1)(A); *Second ICS Order* ¶ 211.

caps have been designed with different purposes in mind, creating a misalignment between the Commission's mandated rate structure and state requirements.¹²

Pay Tel also agrees with GTL that ICS providers need more time to work with regulators at the state level to try to bring state requirements into alignment with the Commission's rules.¹³ Pay Tel notes that such work has been expressly encouraged by the Commission.¹⁴ Like GTL,¹⁵ Pay Tel has reached out to regulators in the states (particularly North Carolina and Georgia) where it is faced with state rate caps that are misaligned with the new federal rules to try and educate them on the impact that the *Second ICS Order's* rules have on their intrastate regulations and to advocate for regulatory changes in order to make state rules consistent with federal rules. Such advocacy, to this point, has not led to any action on the states' part that would alleviate the below-cost rate problem discussed above or eliminate the consumer confusion that is certain to result when the prohibitions on per-call charges and flat-rate calling take effect for jails.

Because of the consumer confusion and arbitrary results—including non-compensatory rates—that will arise from application of Rules 64.6080 and 64.6090 to many state regulations absent necessary regulatory fixes at the state level, Pay Tel supports grant of the GTL Petition as to all ICS providers to delay for at least 90 days the deadline to implement those rules for jails.

¹² North Carolina offers a good example of this tension. The *Second ICS Order* prohibits flat rate calling. In North Carolina, however, the Utilities Commission has created a flat rate cap on local calls of \$1.71. See, e.g., N.C. Utils. Comm'n Rule R 13-9; Pay Tel, Notice of Ex Parte, "Intrastate Rate Caps for Local Calls" at Attachment at 1, 8 (Dec. 9, 2013). Consequently, the state and federal rate caps are misaligned. Further, this state rate structure (and others) results in non-compensatory rates; the effective per-minute rate for a 15-minute local call in North Carolina is below the *Second ICS Order's* rate caps for every service tier in jails.

¹³ GTL Petition at 6-7.

¹⁴ *Second ICS Order* ¶ 211.

¹⁵ GTL Petition, at 6-7.

Dated: June 17, 2016.

Respectfully submitted,

PAY TEL COMMUNICATIONS, INC.



By:

Marcus W. Trathen
Timothy G. Nelson
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1700, Wells Fargo Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304
mtrathen@brookspierce.com
tnelson@brookspierce.com