

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

In the Matter of )  
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Rates for Interstate Inmate Calling Services ) WC Docket No. 12-375  
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**REPLY COMMENTS OF GLOBAL TEL\*LINK CORPORATION**

Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its undersigned counsel, hereby submits these Reply Comments in response to the comments filed on the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced docket regarding rates for inmate calling services (“ICS”).<sup>2</sup>

In the *Order and FNPRM*, the Commission adopted an interim regime for interstate ICS rates, finding that “interstate ICS rates, which include per-minute charges, per-call charges, and ancillary charges and other fees charged in connection with such service, must be cost-based.”<sup>3</sup> Under this regime, interstate ICS rates must be based on “historical costs that are reasonably and directly related to the provision of ICS” plus a reasonable return on investment.<sup>4</sup>

The majority of commenters support revisiting the Commission’s interim rate regime.<sup>5</sup> As the Correctional Institutions explain, the cost-based, interim rate regime undermines the

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<sup>1</sup> These comments are filed by GTL on behalf of itself and its wholly owned subsidiaries that also provide interstate inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

<sup>2</sup> *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*Order and FNPRM*”).

<sup>3</sup> *Order and FNPRM* ¶ 50.

<sup>4</sup> *Order and FNPRM* ¶¶ 52-53.

<sup>5</sup> *See, e.g.*, Alexander County Sheriff at 1; Arizona Detention Association at 1; California State Sheriffs’ Association at 1; Correctional Institutions at 4; Forsyth County Sheriff at 1; GEO Group at 3; Guilford County Sheriff at 1; Houston County Sheriff’s Office at 1; Los Angeles County Sheriff’s Department at 1; Meherrin River Regional Jail at 1; Michigan Sheriffs Association at 1; National Sheriffs’ Association at 3-4; New York State Senator Elizabeth O’C Little at 1; Ohio Department of Rehabilitation and Correction at 12; Pamunkey Regional Jail

availability of security features needed to maintain the safety of inmate communications at the facilities managed by the Correctional Institutions.<sup>6</sup> The FCC’s interim rate regime, however, does not fully embrace the recovery of costs associated with these critical security features.<sup>7</sup> Numerous law enforcement entities echo those sentiments and urge that any interstate ICS rate regime adopted by the Commission take into account the security costs incurred by correctional facilities in providing ICS.<sup>8</sup> Commenters also support the need for the FCC’s ICS rate regime to cover costs associated with commissions paid to correctional facilities.<sup>9</sup> As the Alabama Public Service Commission explained, “[t]o the extent site commissions are directly or tacitly authorized by state and local policy makers, they constitute costs that ICS providers must bear”<sup>10</sup> and those costs should be recognized for purposes of setting ICS rates.

The interim rate regime disregards the Commission’s long standing treatment of non-dominant services. In the 1980s, the Commission determined that its existing policy requiring non-dominant carriers to support their proposed rates “with extensive cost and other economic data” was no longer necessary.<sup>11</sup> The Commission found that, “[b]ecause the cost of developing

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at 1; Pitt County Office of the Sheriff at 1; Prince William-Manassas Regional Adult Detention Center at 1; Robeson County Detention Center at 1; Washington Department of Corrections at 1; Wyandotte County Sheriff’s Office at 1; CenturyLink at 16; Pay Tel at 14-16; Securus at 19; Telmate at 2-3.

<sup>6</sup> Correctional Institutions at 6.

<sup>7</sup> *Order and FNPRM* ¶ 53 (“compensable costs would likely include . . . costs associated with security features relating to the provision of ICS”); *id.* at n. 196 (“Security features inherent in the ICS providers’ network would also likely constitute recoverable costs.”).

<sup>8</sup> *See, e.g.*, Forsyth County at 1; GEO Group at 3; Los Angeles County Sheriff’s Department at 1; Meherrin River Regional Jail at 1; National Sheriffs’ Association at 2-3; Ohio Department of Rehabilitation and Correction at 1-2; Guilford County Sheriff at 1; Pamunkey Regional Jail at 1; Wyandotte County Sheriff’s Office at 1; *see also* Alabama PSC at 3 (“The APSC believes that confinement facilities incur additional costs to provide and monitor ICS. The APSC encourages the Commission to identify those confinement facility costs associated with providing ICS and, as minimum, provide for their recovery via both interstate and intrastate ICS rates.”).

<sup>9</sup> Pay Tel at 16; Arizona Detention Association at 1; California State Sheriffs’ Association at 1; Idaho Department of Correction at 1; Michigan Sheriffs Association at 1; Washington Department of Corrections at 1-2.

<sup>10</sup> Alabama PSC at 3.

<sup>11</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶ 97 (1980) (“*Competitive Carrier Order*”).

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.”<sup>12</sup> Thus, the cost justification requirement “serves no useful purpose commensurate with the costs of compliance” and “nullifies many consumer benefits that competition produces.”<sup>13</sup>

The interim rate regime also contravenes the Commission’s decision to abandon the use of rate-of-return regulation to set carrier rates. Under rate-of-return regulation, “carriers are allowed to set their rates based on the costs - investment and expense - of providing a service.”<sup>14</sup> Regardless of how the Commission attempts to label its interim rate regime,<sup>15</sup> it is rate-of-return regulation.<sup>16</sup> In the 1990s, the Commission moved away from rate-of-return regulation in favor of “incentive regulation,” which rewards “companies that become more productive and efficient, while ensuring that productivity and efficiency gains are shared with ratepayers.”<sup>17</sup> Rate-of-return regulation lacks such incentives, and instead promotes “inefficiencies” because carriers “attribute unnecessary costs to their operations in an effort to generate more revenue.”<sup>18</sup> The Commission abandoned rate-of-return regulation because it produces “high administrative costs,” fosters “cross-subsidization,” creates incentives for misallocation of costs, and supplies

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<sup>12</sup> *Competitive Carrier Order* ¶ 99.

<sup>13</sup> *Competitive Carrier Order* ¶¶ 6, 99.

<sup>14</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, ¶ 22 (1990) (“1990 Order”).

<sup>15</sup> See, e.g., *Order and FNPRM* at n.280 (claiming the Commission is not “engaging in rate-of-return regulation”).

<sup>16</sup> *Order and FNPRM*, Pai Dissent at 124 (“Together these requirements amount to the imposition on ICS providers of all-out rate-of-return regulation, with its requisite cost studies, separations, cross-subsidizations, tariffing, and other accoutrements.”); *id.*, Pai Dissent at 111, 112 (arguing the *Order and FNPRM* “imposes full-scale rate-of-return regulation on ICS providers”); *id.*, Pai Dissent at 128 (“At its core, rate-of-return regulation is about limiting the profits providers make by tying rates to historical costs plus a rate of return; it’s the regulatory equivalent of a cost-plus contract.”).

<sup>17</sup> *1990 Order* ¶ 1.

<sup>18</sup> *1990 Order* ¶ 29.

“insufficient incentives to encourage innovation.”<sup>19</sup> Similar to Commissioner Pai’s analysis of the Commission’s interim rate regime for ICS,<sup>20</sup> administering rate-of-return regulation “is a difficult and complex process, even when done correctly and well.”<sup>21</sup> Rate-of-return regulation “does not serve to sharpen the competitiveness” of the industry and makes “the process of championing consumer interests” much harder.<sup>22</sup> Based on these considerations, the Commission concluded that rate-of-return “is not the best” form of regulation to drive carriers to become more efficient and productive.<sup>23</sup>

Rate-of-return regulation as embodied in the Commission’s interim rate regime conflicts with the Commission’s stated goals in this proceeding to encourage competition and promote the public interest.<sup>24</sup> Instead, the interim rate regime is an unlawful, radical departure from existing Commission policy and precedent, which disfavors rate-of-return regulation or cost justification requirements.<sup>25</sup> The Commission has not justified this about-face.<sup>26</sup> When an agency changes its position, it must “provide reasoned explanation for its action,” “display awareness that it is

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<sup>19</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, ¶ 100 (1989) (“1989 Order”).

<sup>20</sup> *Order and FNPRM*, Pai Dissent at 123 (“I cannot support an *Order* that we cannot administer with consequences we cannot control. . . . To understand the challenges of administering the *Order*, consider what it requires.”).

<sup>21</sup> *1989 Order* ¶ 31.

<sup>22</sup> *1990 Order* ¶¶ 23, 28.

<sup>23</sup> *1990 Order* ¶¶ 29, 30.

<sup>24</sup> *1989 Order* ¶ 29 (finding that, under rate-of return regulation, the “dynamic process that produces socially beneficial results in a competitive environment is strongly suppressed”); *id.* ¶ 33 (determining that rate-of-return regulation “presents carriers with certain incentives - to pad their rates and forgo efficient innovation, for example - that are perverse when viewed from a public interest perspective”); *cf. Order and FNPRM* ¶ 2 (claiming the FCC’s actions in this proceeding “will promote the general welfare of our nation”); *id.* ¶ 177 (seeking comment on “ways to foster competition” in the ICS market).

<sup>25</sup> *See, e.g.*, WC Docket No. 12-375, Petition of Global Tel\*Link for Stay Pending Judicial Review (filed Oct. 30, 2013); Motion of Global Tel\*Link for Partial Stay Pending Judicial Review, *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281 & 13-1291 (D.C. Cir. Nov. 25, 2013).

<sup>26</sup> *Order and FNPRM*, Pai Dissent at 129 (“whatever label the *Order* slaps on this package of new rules, it cannot deny that the contents constitute *de facto* rate-of-return regulation”).

changing position,” and “show that there are good reasons for the new policy.”<sup>27</sup> The Commission has failed to explain why ICS providers should be subject to rate-of-return regulation or required to provide cost justification for their rates (on either an interim or permanent basis) when those forms of regulation have long been disfavored by the Commission and specifically rejected for setting rates. Indeed, even the Wright Petitioners recognize the problems inherent in rate-of-return regulation.<sup>28</sup>

The Commission’s interim ICS rate regime should not serve as the basis for permanent ICS rate reform. On January 13, 2014, the D.C. Circuit stayed implementation of portions of the interim rate regime that requires interstate ICS rates and ancillary charges to be cost-based and implements safe harbors for interstate ICS rates.<sup>29</sup> The court found that the petitioners seeking legal review of the *Order and FNPRM* demonstrated a likelihood of success on the merits, as well as immediate irreparable harm from implementation of those portions of the interim rate regime.<sup>30</sup> Numerous commenters made similar observations in opposing the adoption of the Commission’s interim regime as a permanent methodology for regulating interstate ICS rates.<sup>31</sup> It would be imprudent for the Commission to build new rules upon the shaky foundation of the

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<sup>27</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>28</sup> Martha Wright *et al.* March 2013 Comments at 32 (“[T]he FCC has previously found that the adoption of price caps provides a powerful incentive for service providers to become more efficient. . . . The price cap regime was imposed because of a concern that traditional rate-of-return regulation did not result in sufficient incentives to improve efficiency. Indeed, the FCC’s previous reviews of rate-of-return regulation over many years led it to conclude that, under certain circumstances, rate-of return regulated firms have an incentive to raise rather than lower their costs by increasing investment in the asset base on which the regulated return is calculated well beyond the efficient level.”).

<sup>29</sup> *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300, Order (D.C. Cir. Jan. 13, 2014). The court also stayed implementation of the data collection and reporting requirements set forth in 47 C.F.R. § 64.6060.

<sup>30</sup> *Id.*

<sup>31</sup> *See, e.g.*, National Sheriffs’ Association at 3; Securus at 19; CenturyLink at 13-17; Pay Tel at 15-16; NCIC at 3-4.

interim rate regime.<sup>32</sup> Adopting the interim rate regime as permanent will only perpetuate and magnify the problems embedded in the interim rate regime.<sup>33</sup>

For these same reasons, the Commission should not extend its interim rate regime to intrastate ICS rates.<sup>34</sup> GTL agrees that the type of “rate intervention” proposed by the Commission requires “evidence of systematically collusive or other anticompetitive practices concerning the provision of the service.”<sup>35</sup> There is no such evidence here, and extending the interim regime to intrastate ICS rates would only perpetuate and expand the legal infirmities of that rate regime, as recognized by the D.C. Circuit.<sup>36</sup> Moreover, states have the jurisdiction and expertise to evaluate whether intrastate ICS rates and practices meet the mandates of individual state laws and policies.<sup>37</sup> Numerous commenters agree that the FCC has established no legal or factual basis for intruding upon state jurisdiction and regulating intrastate ICS rates.<sup>38</sup>

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<sup>32</sup> Securus at i, 19; *see also* CenturyLink at 13 (“The rate caps, safe harbors and cost-based rules that the Commission has already adopted are presently subject to at least four appeals.”).

<sup>33</sup> Correctional Institutions at 6.

<sup>34</sup> *See, e.g.*, CenturyLink at 8-11; Securus at 7-10; Telmate at 5; NARUC at 3; Correctional Institutions at 4-10; National Sheriffs’ Association at 3-4.

<sup>35</sup> Securus at n.27 (citing *Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, 10 FCC Rcd 7842, ¶ 39 (1995)).

<sup>36</sup> CenturyLink at 11; *see also* *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300, Order (D.C. Cir. Jan. 13, 2014) (staying implementation of the Commission’s rules (1) requiring interstate ICS rates and ancillary charges to be cost-based; (2) imposing safe harbor for interstate ICS rates; and (3) adopting annual reporting and certification requirements).

<sup>37</sup> *See, e.g.*, Alabama PSC at 4-5; DC PSC at 4; Massachusetts DTC at 5; Minnesota Department of Commerce at 5.

<sup>38</sup> *See, e.g.*, NARUC at 3-11; Correctional Institutions at 9-10; Ohio Department of Rehabilitation and Correction at 15; *see also* *Order and FNPRM*, Pai Dissent at 128 (“This novel interpretation of section 276 would empower the Commission to preempt the role of state regulatory commissions in overseeing local and intrastate long-distance rates.”); *id.*, Pai Dissent at n. 124 (“We have never before suggested that section 276 allows us to evaluate whether intrastate rates and practices are just and reasonable (a la section 201) for local exchange carriers and interexchange carriers just because they connect to a payphone.”).

## CONCLUSION

For the foregoing reasons and those stated in GTL's previous comments, the Commission should not take any further action with respect to interstate ICS rates or assert jurisdiction over intrastate ICS rates.

Respectfully submitted,

**GLOBAL TEL\*LINK CORPORATION**



Chérie R. Kiser

Angela F. Collins

CAHILL GORDON & REINDEL LLP

1990 K Street, NW, Suite 950

Washington, DC 20006

(202) 869-8900

ckiser@cahill.com

acollins@cahill.com

David Silverman  
Senior Vice President and General Counsel  
GLOBAL TEL\*LINK CORPORATION  
12021 Sunset Hills Road  
Suite 100  
Reston, VA 20190  
(703) 955-3886  
dsilverman@gtl.net

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Its Attorneys