

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

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	
Commission Announces Inmate Calling Services)	DA 14-829
Data Due Date)	
_____)	

**MOTION FOR EXTENSION OF TIME TO RESPOND TO
ONE-TIME MANDATORY DATA COLLECTION FOR ICS PROVIDERS**

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Pursuant to 47 C.F.R. § 1.46,¹ Global Tel*Link Corporation (“GTL”)² respectfully requests an extension of time to respond to the one-time mandatory data collection requirement adopted by the Federal Communications Commission (“Commission” or “FCC”) in the *ICS Order and FNPRM*,³ which currently is due July 17, 2014. Specifically, GTL requests a sixty-day (60) extension or until September 15, 2014 to respond to the data collection. In support of this Motion, GTL states:

BACKGROUND

1. The Commission adopted a one-time mandatory data collection to “enable the Commission to take further action to reform rates” and to “ensure that rates, charges and ancillary charges are cost-based.”⁴ The data collection requires all inmate calling service

¹ 47 C.F.R. § 1.46. This extension request is being filed seven (7) days before the current filing deadline as contemplated by 47 C.F.R. § 1.46(c), and GTL also has notified Commission staff that this extension request is being filed.

² This Motion is being 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.

³ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order and FNPRM*”), on appeal in *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300 (D.C. Cir.).

⁴ *ICS Order and FNPRM* ¶ 124.

(“ICS”) providers to provide certain data at the holding company level.⁵ The *ICS Order and FNPRM* indicated that the data collection would become effective after approval by the Office of Management and Budget (“OMB”).

2. On January 13, 2014, the United States Court of Appeals for the District of Columbia Circuit stayed implementation of the majority of the rules adopted in the *ICS Order and FNPRM* pending the Court’s resolution of the case on the merits. Specifically, the Court stayed the requirements that: (1) interstate ICS rates and ancillary charges be cost-based; (2) interstate ICS rates comply with the \$0.14 and \$0.12 per minute safe harbors; and (3) ICS providers file annual reports and certifications with the FCC.⁶ The Court found that the petitioners “satisfied the stringent requirements for a stay pending court review,” which are based on whether the petitioners are likely to succeed on the merits, whether the petitioners will suffer irreparable harm absent a stay, and whether the equities favor a stay. The Commission’s rule implementing the \$0.21 and \$0.25 rate caps for interstate ICS calls was not stayed, and went into effect on February 11, 2014.

3. The Commission issued its initial notice seeking comment on the new information collection requirements on January 16, 2014.⁷ Originally, the Commission stated that the data collection would enable the Commission to ensure “interstate ICS rates are cost-based.”⁸

4. In March 2014, GTL and other ICS providers responded to the Commission’s request for comment on the mandatory data collection for Paperwork Reduction Act (“PRA”)

⁵ In light of this requirement, the data collection information report to be submitted by GTL will be a single report covering GTL, DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

⁶ *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300, Order (D.C. Cir. Jan. 13, 2014).

⁷ Federal Register Notice, Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, Vol. 79, No. 11, at 2834-35 (Jan. 16, 2014) (“FR Notice”).

⁸ FR Notice 2834-35.

purposes.⁹ The ICS providers questioned the reasonableness of the one-time data collection in light of the D.C. Circuit's decision to stay the requirement that interstate ICS rates and ancillary charges be cost-based, and challenged the Commission's estimated time for completion of the data collection.

5. The Commission later revised its PRA analysis to state that it would take ICS providers 90 hours to respond to the data request, instead of the original estimate of 70 hours, and removed the need to establish "cost-based" rates as justification for the data collection.¹⁰ On June 17, 2014, the Commission issued a Public Notice announcing that OMB had approved the data collection, and announced July 17, 2014 as the due date for the data collection.¹¹ For the first time, the Commission also provided the Internet links for the Commission-developed spreadsheet to be used to file the required data and the detailed Instructions for the Inmate Calling Services Mandatory Data Collection.¹²

6. The data collection requires ICS providers to characterize their correctional facility customers by type (prison or jail) and by contract size (based on average daily population). Based on that breakdown, the data collection further requires ICS providers to identify and explain their direct and common costs by five (5) separate categories: (1) telecommunications and interconnection fees; (2) equipment investment; (3) security costs for

⁹ See, e.g., WC Docket No. 12-375, Paperwork Reduction Act Comments of Global Tel*Link Corporation (filed Mar. 20, 2014); WC Docket No. 12-375, Comments of Telmate, LLC (filed Mar. 20, 2014); WC Docket No. 12-375, Comments of Securus Technologies, Inc. Regarding Data Collection (filed Mar. 20, 2014).

¹⁰ Federal Register Notice, Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Vol. 79, No. 74, at 21757-58 (Apr. 17, 2014). Neither the Commission's revised analysis nor its response to the comments filed by ICS providers were posted in the Commission's electronic databases under Docket No. 12-375.

¹¹ WC Docket No. 12-375, *Commission Announces Inmate Calling Services Data Due Date*, Public Notice, DA 14-829 (rel. June 17, 2014).

¹² *Id.* The Commission did provide a draft of the Instructions for Inmate Calling Services Mandatory Data Collection to OMB in mid-April 2014, but it was only a draft and it was never posted in the Commission's electronic databases under Docket No. 12-375.

monitoring and call blocking; (4) costs of providing ICS that are ancillary to the provision of ICS; and (5) other relevant cost data.¹³ Where indicated, this data must be segregated by jurisdiction and the information must be provided separately for debit calls, prepaid calls, collect calls, and “other” inmate calling services.

7. ICS providers also must include commissions paid, revenue-producing minutes of use, non-revenue producing minutes of use, number of revenue-producing calls, number of non-revenue producing calls, and average duration of calls. Each of these categories must be provided for each type of correctional facility (prison or jail) and by contract size (based on average daily population), and further broken down by jurisdiction: local, intrastate intraLATA, intrastate interLATA, interstate, and international. This information also must be provided separately for debit calls, prepaid calls, collect calls, and “other” inmate calling services.

8. In addition, ICS providers must provide information on the fees they charge to ICS end users, including a description of the fee, the locations where it is applied (by state), the types of facilities in which it applies (prisons, jails, or both), the types of calls to which it applies (by jurisdiction), the numbers of use of each of the fees, and the direct and common costs associated with the ancillary service to which the fee applies.

9. Finally, all of the above reported data must be accompanied by a narrative referred to as the Description and Justification (“D&J”) that “fully” explains the: formulas, allocation of common costs, differences, and identity of costs. All of the requested information must be supplied for calendar year 2012 and calendar year 2013, along with projections or forecasts, supported by evidence, for calendar year 2014.

¹³ WC Docket No. 12-375, *Instructions for Inmate Calling Services Mandatory Data Collection*, Approved by OMB – 3060-1196.

EXTENSION REQUEST

10. The Commission may grant an extension of time for good cause shown.¹⁴ Generally, the Commission’s “criteria for granting such requests are that the extension be in the public interest, cause no harm to any party in the proceeding, and cause no significant delay. An extension of time may also be appropriate where it is shown that the matter is unusually complex and that additional time is necessary to provide the Commission with an adequate pleading.”¹⁵

11. In addition, the Commission may waive any provision of its rules for good cause shown.¹⁶ The Commission may waive a rule where particular facts make strict compliance inconsistent with the public interest, or based on considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁷

12. GTL recognizes that requests for extensions of time are not routinely granted.¹⁸ GTL submits that good cause exists for grant of the requested extension of time and waiver of the July 17, 2014, deadline for submission of the one-time mandatory data collection.

13. GTL will not be able to create, extrapolate, compile, and analyze the detailed data required, in the format required, including the D&J that meets the Commission’s specifications with respect to all of the requested information by July 17, 2014. The Commission consistently has granted extensions of time when the extension would result in “the most complete and well-

¹⁴ See, e.g., *Application of Media General Broadcasting of South Carolina Holdings, Inc. for Renewal of License for Station WBTW(TV), Florence, SC*, 19 FCC Rcd 24744, ¶ 3 (2004) (“For good cause shown, we will grant the requested extension of time.”); see also 47 C.F.R. § 1.46.

¹⁵ See, e.g., *Audio Enterprises, Inc.*, 3 FCC Rcd 5402, ¶ 2 (1988).

¹⁶ 47 C.F.R. § 1.3.

¹⁷ *Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d* by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

¹⁸ 47 C.F.R. § 1.46(a).

developed record possible” or will allow for more accurate responses.¹⁹ Grant of the requested extension would fulfill both of these important public interests.

14. The Commission-required spreadsheet and detailed instructions for the data collection were announced via public notice on June 17, 2014.²⁰ GTL had no reason to begin to create, extrapolate, compile, or to incur the cost to engage outside resources to assist in such a task, until the scope of the collection was required and officially defined. Thus, once the data collection was approved and its detailed scope officially defined, GTL was able to devote resources to defining the scope of work and engaging the third-party resources necessary to create, extrapolate, and compile the requested data. This, plus the time needed to analyze the assembled information and prepare the required accompanying D&J, requires the additional time requested herein.

15. Requiring GTL to submit the requested data within a 30-day period will not result in accurate or complete responses. GTL does not routinely maintain the data requested by the Commission, and does not keep its books and records in the format of the Commission’s template spreadsheet or detailed instructions for categorizing and classifying the data.²¹ GTL therefore requires additional time to provide the requested information.

16. For example, the Commission’s data collection requires ICS providers to submit specific categories of cost data for each type of ICS product they offer based on contract size, and for each of their ancillary fees. GTL does not maintain this type of cost data in the ordinary

¹⁹ See, e.g., *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems in the Ku-Band Frequency Range*, 16 FCC Rcd 7070, ¶ 3 (2001); *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 20 FCC Rcd 1555, ¶ 3 (2005).

²⁰ WC Docket No. 12-375, *Commission Announces Inmate Calling Services Data Due Date*, Public Notice, DA 14-829 (rel. June 17, 2014).

²¹ Cf. WC Docket No. 12-375, *Pay Tel Communications, Inc.’s Comments Regarding Proposed Data Collection Relating to the Commission’s Inmate Calling Services Order*, at 13 (filed May 19, 2014).

course of business,²² and certainly not on a “contract size” basis as requested by the Commission. As a non-dominant carrier, GTL never has been required to provide cost justification to support its proposed rates or its ancillary fees, and the Commission has long disfavored that approach to rate regulation as discussed further below. While other ICS providers with a smaller customer base may maintain cost information in a manner readily-adaptable to the mandatory data collection,²³ GTL has had no reason to maintain cost data that is readily-responsive to the data collection.

17. The data collection imposes new substantial, complex, and time-consuming recordkeeping and reporting requirements on ICS providers, which GTL has not been required to track, maintain, or report. GTL has “no reasonable alternative” to providing the data requested by the Commission.²⁴ Additional time is necessary to permit GTL to create, extrapolate, compile, analyze, describe, and justify the requested data in the Commission-required, detailed format.

18. In addition, the data collection requires information to be reported based on certain categories. GTL’s internal books and records do not categorize its correctional facility customers by inmate population or by the type of facility (prison or jail); these are classifications adopted by the Commission. Even the Commission determined it cannot “distinguish . . . between prisons and jails, in part because [the] record does not permit [it] to draw any clear

²² *Revision of ARMIS Annual Summary Report (FCC Report 43-01), et al.*, 29 FCC Rcd 3079 (2014) (allowing for an extension of time when the carrier was involved in “a proceeding not within the ordinary course of business”).

²³ WC Docket No. 12-375, Pay Tel Communications, Inc.’s Comments Regarding Proposed Data Collection Relating to the Commission’s *Inmate Calling Services Order*, at 13 (filed May 19, 2014).

²⁴ *Rural Call Completion*, 29 FCC Rcd 2032, ¶ 5 (2014) (finding Vonage had good cause for requesting extension of time when “it had ‘no reasonable alternative’”).

distinctions. . . . [and] there is no need at this time to draw any distinction.”²⁵ Thus, as a threshold matter, GTL must review each of its correctional facility customers based on this newly created categorization criteria and classify them before it determines the associated detailed costs using the Commission-required framework.

19. GTL serves approximately 1,900 correctional facilities across the United States. While the data collection does not specifically ask for data by correctional facility, that is the end result. GTL will be required to create, extrapolate, compile, analyze, describe, and justify data on a correctional facility-by-correctional facility basis in order to fully respond to the Commission’s data request. Numerous commenters have demonstrated that the costs associated with the provision of ICS vary by correctional facility.²⁶ In light of this, GTL must review each correctional facility to determine the appropriate category (jail or prison) and the average daily population (contract size), and then create, extrapolate, and compile the cost data for that correctional facility, populate the spreadsheet, and analyze the spreadsheet information in a detailed D&J. In addition, GTL will be required to look at its ancillary fees (and the costs associated with those fees) applying the same level of detail - by facility type, by service, by service jurisdiction, and on a state-by-state basis, which in GTL’s case, is nearly all 50 states.

20. GTL has approximately 540 employees spread across the United States. GTL is a “small business” by definition of the Small Business Administration (“SBA”)²⁷ and the

²⁵ *ICS Order and FNPRM* ¶ 17.

²⁶ *See, e.g.*, WC Docket No. 12-375, Letter from Capt. Michael D. Harrison, Alexander County Detention Center (filed Nov. 27, 2013); WC Docket No. 12-375, Comments of the Alabama Public Service Commission (filed Dec. 13, 2013); WC Docket No. 12-375, Comments of the National Sheriffs’ Association (filed Dec. 18, 2013); WC Docket No. 12-375, Comments of Pay Tel Communications, Inc. in Response to Further Notice of Proposed Rulemaking (filed Dec. 20, 2013).

²⁷ 13 C.F.R. § 121.201. Under the SBA standard, a Wired Telecommunications Carrier, Interexchange Carrier, or Telecommunications Reseller is considered “small” if it has 1,500 or fewer employees. *See id.*

Commission.²⁸ Each one of GTL's employees has specific responsibilities and obligations related to the provision of ICS. GTL does not have spare personnel that can be devoted to responding to the data collection, and GTL cannot create, extrapolate, compile, analyze, and prepare D&Js for the detailed, requested information without significantly disrupting its day-to-day business operations through the redirection of its limited business resources. Staffing issues are further compounded by absences due to preplanned summer vacations, the Fourth of July holiday, and by other competing state and federal proceedings.²⁹

21. As a result, GTL must hire temporary staff to create, extrapolate, and compile the requested data.³⁰ This temporary staff also will assist GTL's administrative, technical, and financial personnel to analyze the data, populate the spreadsheet, and draft the accompanying D&J for the data. The requested extension will allow GTL's existing personnel to balance the demands of the data collection with their daily responsibilities of running the business.

22. The public interest will not be harmed by the requested extension. Consumers have had the benefit of the Commission's interim interstate rate caps since February 11, 2014, when all ICS providers implemented the rate caps, except Pay Tel Communications, Inc.

²⁸ *ICS Order and FNPRM*, Appendix C, ¶¶ 8, 11, 13. The FCC recognizes that under the SBA's "size standard, the majority of firms can be considered small," that "the majority of interexchange service providers are small entities," and that "the majority of toll resellers are small entities." *See id.*

²⁹ CG Docket No. 10-213, *FCC Extends Deadline for Comment on the Accessibility of Communications Technologies for the 2014 Biennial Report Required by the Twenty-First Century Communications and Video Accessibility Act*, Public Notice, DA 14-847 (rel. June 19, 2014) (allowing for extension of time after "learn[ing] that several potential commenters may be unable to provide comments by the original deadline as a result of competing proceedings, summer conferences and other scheduling conflicts").

³⁰ Other ICS providers have reached similar conclusions regarding the level of personnel needed to respond to the data collection. *See, e.g.*, WC Docket No. 12-375, Comments of Telmate, LLC, at 15 (filed Mar. 20, 2014). For example, Securus estimated that the cost data required by the Commission's one-time data collection would require 41,050 hours and 31 new employees (not including external accounting and economics firms) for Securus to create and collect the cost data for the approximately 1,800 correctional facilities it serves and the numerous inmate calling products it sells. *See* WC Docket No. 12-375, Comments of Securus Technologies, Inc. Regarding Data Collection, at 9-10 (filed Mar. 20, 2014). Securus also included additional hour and employee estimates for the other portions of the Commission's data collection. *See id.*

Moreover, the Commission has indicated its intention to seek additional comment in this proceeding before taking further action.³¹

23. In addition, the Commission’s stated purpose for the data collection no longer exists in light of the D.C. Circuit’s stay of the requirement that interstate ICS rates be cost-based. The cost data being collected by the Commission is unlikely to have any utilitarian value to the Commission if it intends to pursue a permanent rate cap regime for ICS calling.³² The Commission’s own precedent demonstrates that no individual company cost data is necessary to establish a rate cap regime for interstate ICS rates.

24. 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.³³ The Commission found that, “[b]ecause the cost of developing 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.”³⁴ The cost justification requirement “serves no useful purpose commensurate with the costs of compliance” and “nullifies many consumer benefits that competition produces.”³⁵

³¹ WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus (filed June 30, 2014) (“Staff stated its intent to seek additional comment on several ICS issues.”).

³² Securus and Telmate have made similar arguments regarding the need and utility of the data collection in light of the Court’s stay. *See, e.g.*, WC Docket No. 12-375, Comments of Telmate, LLC, at 8 (filed Mar. 20, 2014); WC Docket No. 12-375, Comments of Securus Technologies, Inc. Regarding Data Collection, at 7 (filed Mar. 20, 2014).

³³ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶ 97 (1980) (“*Competitive Carrier Order*”).

³⁴ *Competitive Carrier Order* ¶ 99.

³⁵ *Competitive Carrier Order* ¶¶ 6, 99.

25. The Commission also abandoned the use of rate-of-return regulation to set carrier rates in the early 1990s³⁶ because it produces “high administrative costs,” fosters “cross-subsidization,” creates incentives for misallocation of costs, and supplies “insufficient incentives to encourage innovation.”³⁷ Administering rate-of-return regulation “is a difficult and complex process, even when done correctly and well.”³⁸ As the D.C. Circuit has explained:

Under a price cap scheme, the regulator sets a maximum price, and the firm selects rates at or below the cap. Because cost savings do not trigger reductions in the cap, the firm has a powerful profit incentive to reduce costs. Nor is there any reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices. Finally, the regulator has less need to collect detailed cost data from the regulated firms or to devise formulae for allocating the costs among the firm’s services.³⁹

Well-established Commission precedent disfavors the collection of individual company data in the rate-setting process. Thus, the public interest will not be harmed by grant of GTL’s extension request.

26. Finally, the extension requested herein will not “caus[e] undue delay to the Commission’s consideration” of permanent interstate ICS rate reform.⁴⁰ Grant of the extension will permit a leader in the ICS marketplace to provide the information desired in the format required, which will facilitate a more complete record for use in a proceeding that is ongoing and for which a further request for comment is expected. The requested extension therefore will

³⁶ Under rate-of-return regulation, “carriers are allowed to set their rates based on the costs - investment and expense - of providing a service.” *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, ¶ 22 (1990).

³⁷ *Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, ¶ 100 (1989) (“1989 Order”).

³⁸ *1989 Order* ¶ 31.

³⁹ *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174, 178 (D.C. Cir. 1993).

⁴⁰ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16638 (2013).

“cause no harm to any party in the proceeding” and will not be the “cause of significant delay”⁴¹ to any further action the Commission may take with respect to interstate ICS rates.

CONCLUSION

Accordingly, and for the foregoing reasons, GTL respectfully requests that the Commission extend the deadline for responding to the one-time mandatory data collection by sixty (60) days, or until September 15, 2014. As demonstrated herein, good cause exists for grant of this extension and the public interest would be served by providing GTL with the time necessary to create, extrapolate, compile, analyze, describe, and justify the data requested by the Commission.

Respectfully submitted,

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⁴¹ See, e.g., *Audio Enterprises, Inc.*, 3 FCC Rcd 4644, ¶ 2 (1988).