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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider
Regulating Telecommunications Services
Used by Incarcerated People.

Rulemaking 20-10-002
(Filed October 6, 2020)

**REPLY OF GLOBAL TEL*LINK CORPORATION (U 5680 C) TO COMMENTS
ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE
ADOPTING INTERIM RATE RELIEF
FOR INCARCERATED PERSON'S CALLING SERVICES**

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Dated: August 9, 2021

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Pursuant to Rule 14.3(d) of the California Public Utilities Commission (the “Commission”) Rules of Practice and Procedure, Global Tel*Link Corporation (U 5680 C) (“GTL”)¹ submits the following reply to certain of the comments on the Administrative Law Judge’s Proposed Decision Adopting Interim Rate Relief for Incarcerated Person’s Calling Services (“*PD*”). GTL holds a certificate of public convenience and necessity,² and is a named respondent to this proceeding.

INTRODUCTION

As one of the largest and longest-tenured providers of customized packages of incarcerated persons calling services (“IPCS”), software, and equipment to correctional facilities, GTL appreciates the varied perspectives of the parties who submitted comments on the *PD*. All the parties, GTL included, share in the goal of ensuring affordable rates, and GTL encourages the Commission to continue to collect and analyze data from them and others to better understand the complex IPCS market before taking any action. No matter how good the intentions are behind the *PD*, its prescriptive and inflexible approach is not grounded, as it must be, in the record evidence and realities of the IPCS market. The arbitrarily low single-rate cap and limits on ancillary service fees are unworkable and unlawful. They would undermine the substantial progress made under the current market-based approach to bring down rates and to innovate the services and technologies that are continually strengthening the connections among incarcerated individuals and their families and friends.

¹ GTL submits this reply on behalf of itself and its wholly owned subsidiaries that also provide incarcerated person’s calling services in California: Telmate, LLC (U-1127), Public Communications Services, Inc. (U-6075), and Value-Added Communications, Inc. (U-5220).

² Application 96-05-017, Decision 96-09-078 (Sept. 20, 1996).

I. IF THE COMMISSION IMPOSES AN INTERIM RATE REGIME, IT SHOULD USE THE FCC RATE AND FEE CAPS AND IMPLEMENTATION SCHEME

To the extent the Commission is inclined to take interim action, adopting the Federal Communications Commission (“FCC”) interim interstate rate and fee caps, and associated implementation schedule and waiver process, strike the most appropriate balance.³ The FCC Third Order recently was published in the Federal Register,⁴ meaning the 90-day clock has started for IPCS providers to renegotiate contracts that do not currently reflect the FCC’s interim rates (or to prepare submissions to demonstrate why the reasonably incurred costs for a particular contract or facility exceed the applicable rate or fee cap). Further, as explained in comments and as implied by Staff in its Revised Proposal,⁵ it makes sense for the Commission to harmonize any interim regulations with those of the FCC to ensure a smooth transition that fairly accounts for all the important interests at stake.⁶ The current alternative - a decision to approve the *PD* - will wreak havoc on the California IPCS market by forcing IPCS providers, correctional facilities, and their governing bodies to try to negotiate and approve two competing frameworks at the same time but with different deadlines, and without reciprocal waiver processes.⁷

³ FCC WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (rel. May 24, 2021) (“Third Order”); see also Securus Comments on *PD* at 2; NCIC Comments on *PD* at 3; Pay Tel Comments at 1 (filed Apr. 30, 2021).

⁴ 86 Fed. Reg. 40682 (July 28, 2021).

⁵ See, e.g., Securus Comments on *PD* at 13-14; see also Revised Staff Proposal at 4.

⁶ The California State Sheriffs’ Association (“CSSA”), for example, strongly urges the Commission “to consider a reasonable and appropriate phase-in period for any changes it adopts” and notes its concern with the *PD*’s proposed “one-size-fits-all approach,” which “is unlikely to allow the appropriate consideration” of the “many variables” associated with “the cost of providing ICS services, including the size of the jail, number of incarcerated persons housed therein, and geography.” See CSSA Letter to Martha Guzman Aceves, Commissioner, and Cathleen A. Fogel, Administrative Law Judge (dated July 30, 2021).

⁷ Adoption on an interim basis of the FCC’s per-minute rates and framework for ancillary service charges also would resolve the conflict noted by Securus regarding the *PD*’s treatment of jurisdictionally mixed calls. See Securus Comments on *PD* at 13. Not only does the *PD*’s “assertion of jurisdiction over jurisdictionally mixed services place[] providers in an impossible bind” between the “conflicting regulatory regimes” of the FCC and the Commission (Securus Comments on *PD* at 13), it also creates a conflict between states that may apply differing rate regimes to jurisdictionally mixed calls. See, e.g., *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985) (“state law is nullified to the extent that it actually conflicts with federal law” and “a conflict arises when compliance with both federal and state regulations is a physical impossibility”).

To be sure, the Commission is not required as a general matter to defer to the FCC. But the Commission is not deciding on permanent rate regulation, only *interim* rate regulation, and even the *PD* acknowledges that the “‘correctness’ of rates set by a regulatory commission can only be known ‘with experience.’”⁸ The *PD* presents no reasoned basis for the Commission, in the absence of “good cost data.”⁹ to start developing that experience by departing so substantially from the FCC. Rather than the *PD*’s arbitrary lurch into highly restrictive regulation, a more measured approach would be to move in tandem with the FCC. And, if after continuing its work, the Commission develops the experience and data to support permanent rates for the California intrastate IPCS market that diverge from the FCC’s, those rates will be more likely to withstand further scrutiny. But now is not the time, particularly when so much progress already is being made through the regular operation of the market,¹⁰ and the California Legislature and the Governor are poised to act on IPCS in the next legislative session.¹¹

II. NON-COMMUNICATIONS SERVICES ARE OUTSIDE THE COMMISSION’S JURISDICTION

It also is not appropriate, as some parties advocate in their comments, to expand the *PD*’s reach or the scope of Phase II of the proceedings to non-telephone communications services.¹²

⁸ *PD* at 55. As GTL explained in its initial comments, however, “experience” cannot be used to support a rate regime that is contrary to the record. *See* GTL Comments on *PD* at n.25.

⁹ *PD* at 55. For example, the *PD*’s prohibition on ancillary service charges for single-call and related services deprives IPCS providers of the opportunity to recover the transaction costs associated with offering consumers this service option. *See, e.g., Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763, ¶ 161 (2015) (subsequent history omitted) (concluding “that the allowable [ancillary service] charges will facilitate communications between inmates and their loved ones and will allow ICS providers to recover the costs incurred for providing the ancillary service associated with the relevant fee”).

¹⁰ CforAT is incorrect that several “states have caps on intrastate prison rates *below* five cents per minute.” *See* CforAT Comments on *PD* at 3. Not all of the rates cited by CforAT reflect intrastate rate “caps.” Rather, they are rates established through the competitive bidding process based on the specific needs of the requesting correctional facility. Moreover, the rates cited by CforAT are for prisons and thus do not reflect the higher costs of serving jails. Further, not all of the contracts cited by CforAT include site commissions, which must be taken into consideration as a cost of doing business. *See Global Tel*Link Corporation v. FCC*, 866 F. 3d 397, 413 (D.C. Cir. 2017); *see also* GTL Comments on *PD* at 9. The presence of current rates at or below the *PD*’s proposed rate caps cannot be used as evidence that the *PD*’s proposed caps will allow for cost recovery. Those lower rates simply reflect the positive effects of a market-based approach to ratemaking for a market that has widely disparate customers, with varied needs, and is required to employ competitive bidding to select their service providers. *See* GTL Comments on *PD* at 4.

¹¹ GTL Comments on *PD* at 14.

¹² *See, e.g.,* PAO Comments on *PD* at 2; CforAT Comments on *PD* at 2, TURN Comments on *PD* at 3. Further, TURN’s suggestion that video visitation calls should be capped at \$0.25 per minute is a solution

The *PD* and the Staff Revised Proposal appropriately limit the definition of IPCS to “voice and interconnected VoIP calling, including voice and VoIP voice communications services serving people with disabilities.”¹³ This is fully aligned with the California Constitution and Public Utilities Code, which limit the Commission’s jurisdiction to “communication by telephone” and the “transmission of telephone and telegraph messages.”¹⁴ By these plain terms, the Commission’s regulatory oversight does not extend to technologies such as video visitation services or services available through broadband-enabled tablets, as they exist exclusive of and do not facilitate telephone communication, as such term is commonly understood. More critically, technologies such as video visitation and broadband-enabled tablets are jurisdictionally interstate “information services” and thus outside the scope of the Commission’s regulatory powers, as the Commission has acknowledged in the past.¹⁵

III. A SEPARATE STAFF COMPLAINT REPORTING SYSTEM IS UNNECESSARY

Finally, GTL takes service quality seriously. There is no record evidence to support PPI’s call for Staff to establish an entirely new “complaint reporting system” and to require IPCS providers to direct customers to that system in the Plan for Notification.¹⁶ The Commission already has a process through which customers can submit complaints about public utilities, whether by

in search of a problem. *See* TURN Comments on *PD* at 4. GTL’s current rate for video visitation under the current California Department of Corrections Rehabilitation (“CDCR”) contract is less than \$0.25. *See* CDCR Contract ID C5610009; *see also PD* at 7 (noting SB 555 would have capped rates for video communications services at \$0.25 per minute if the bill had passed the California legislature).

¹³ *PD* at 21; Staff Revised Proposal at 5 (“Staff does not recommend that interim relief include rates for other communications services, such as text or video communication.”).

¹⁴ Cal. Pub. Util. Code § 233; Cal. Const. art. XII, §§ 1, 3; *see also* Cal. Pub. Util. Code §§ 216 (defining “public utility” to include “telephone corporation”), 234 (defining “telephone corporation” to include “every corporation or person owning, controlling, operating, or managing any telephone line for compensation in this state”); *see also Global Tel*Link Corporation v. FCC*, 866 F. 3d 397, 415 (D.C. Cir. 2017) (stating the FCC has authority over ancillary service fees only “as they are ‘in connection with’ interstate calls”).

¹⁵ *See, e.g.,* Rulemaking 17-06-023, Decision 19-01-029 (Feb. 9, 2019) (refusing “to exercise authority under state law to assess surcharges or user fees on text messaging services which are classified as ‘information services’ under the [federal Communications] Act”); *see also California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (“preempting nearly all state regulation of information services”).

¹⁶ PPI Comments on *PD* at 2.

email, telephone, or mail.¹⁷ So, too, does the FCC.¹⁸ Contrary to PPI's characterization, the record is not clear that a "substantial number" of commenters "raised credible allegations regarding quality of service."¹⁹ Whatever the number, IPCS providers have not had the opportunity to investigate the specific claims or respond, and there are many legitimate reasons unrelated to service quality that could explain customer dissatisfaction. For example, under many correctional facility contracts, the IPCS provider is required to automatically disconnect a call if the system detects a three-way call attempt, call forwarding, conference calling, or other prohibited activities.²⁰ In addition, correctional facility personnel are permitted to disconnect service to an individual telephone at any time, or disconnect an in-progress call at their discretion.²¹ A more specific and fact-based inquiry is necessary before the Commission fashions a new complaint reporting system.

CONCLUSION

Interim rate regulation is not necessary for just and reasonable intrastate IPCS rates. But if the Commission is going to move forward, it should adopt the FCC's approach while at the same time acknowledging that non-communications services are outside its jurisdiction and the imposition of a new complaint reporting system is premature.

Dated: August 9, 2021

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

¹⁷ <https://www.cpuc.ca.gov/consumer-support/file-a-complaint/filing-a-formal-complaint>.

¹⁸ <https://consumercomplaints.fcc.gov/hc/en-us>; *see also* 47 U.S.C. § 208.

¹⁹ PPI claims 27 people made allegations, presumably adding up what the *PD* describes as 12 comments received through the public portal and 15 made during the public participation hearings ("PPHs"). *See* PPI Comments on *PD* at 2; *PD* at 12-15. But it is not clear from the *PD* or the record whether some people may have submitted multiple comments through the portal and/or through the portal and at a PPH. The *PD* also does not make any findings about the credibility of these comments.

²⁰ *See, e.g.*, Fresno County Sheriff's Office, <https://www.fresnosheriff.org/jail/inmate-telephones.html>.

²¹ *See, e.g.*, Santa Cruz Sheriff's Office Public Information Plan, https://www.scsheriff.com/Portals/1/County/sheriff/Public_Information_Plan_including_Title_15.pdf.

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