

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

In the Matter of)	
)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services)	
)	OMB Control Number: 3060-XXXX (Rates for Inmate Calling Services Data Collection)
)	
)	OMB Control Number: 3060-XXXX (Inmate Calling Service Provider Annual Report and Certification)

**PAPERWORK REDUCTION ACT COMMENTS
OF GLOBAL TEL*LINK CORPORATION**

Global Tel*Link Corporation (“GTL”),¹ hereby submits these Paperwork Reduction Act (“PRA”)² comments in response to the Federal Communications Commission (“Commission” or “FCC”) notice³ seeking comment on the new information collection requirements adopted by the Commission in its *Order and FNPRM* issued on September 26, 2013 in WC Docket No. 12-375.⁴ The *Order and FNPRM* imposed new information collection requirements on inmate calling service (“ICS”) providers.⁵ The PRA requires the Commission to seek comment on the new collection requirements before seeking Office of Management and Budget approval of the requirements.⁶ The purpose of the PRA is to minimize federal paperwork burdens on businesses and to ensure the greatest public benefit from information collected by the federal government,

¹ 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.

² 44 U.S.C. §§ 3501-3520.

³ 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”).

⁴ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*Order and FNPRM*”).

⁵ *Order and FNPRM* ¶¶ 116-17, 124-26.

⁶ *Order and FNPRM* ¶ 182; *see also supra* n.2

among other things.⁷ The statute defines the term “burden” broadly, including “time, effort, and financial resources expended by persons to generate, maintain, or provide information.”⁸ A central purpose of the PRA is to minimize the “paperwork burden” for reporting entities, and the Commission has an obligation to ensure this objective is achieved.⁹

The *Order and FNPRM* imposed two new data collection and reporting obligations on ICS providers. First, the Commission required all ICS providers to submit information regarding their costs to provide interstate, intrastate toll, and local ICS.¹⁰ The information required to be submitted includes data on the costs of telecommunications service, interconnection fees, equipment investment, installation and maintenance, security, ancillary services, and other costs, as well as certain related rate, demand, and forecast data.¹¹ The Commission indicated that this mandatory, one-time data collection is necessary to “ensure that rates, charges and ancillary charges are cost-based.”¹² The Commission estimates it will take an ICS provider 70 hours to provide the requested data, and will result in no costs to the ICS provider.¹³

Second, the Commission adopted Rule 64.6060, which requires ICS providers to file an annual compliance report and certification.¹⁴ The annual filing must include data regarding ICS

⁷ 44 U.S.C. §§ 3501(1).

⁸ 44 U.S.C. §§ 3502(2).

⁹ See, e.g., *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 416 (D.C. Cir. 1983) (finding the PRA “was enacted ‘to minimize the federal paperwork burden’” and that “Congress specifically applied this policy to the FCC’s domain”).

¹⁰ FR Notice at 2835; see also *Order and FNPRM* ¶¶ 124-25.

¹¹ FR Notice at 2835; see also *Order and FNPRM* ¶ 125.

¹² *Order and FNPRM* ¶ 124; see also FR Notice at 2835 (“The data will be used to inform the Commission’s evaluation of rate reform options in the FNPRM, to enable the Commission to transition from interim rate safe harbors and rate caps to permanent rate reform, and to enable the Commission to discharge its core responsibility of ensuring just, reasonable and fair rates as required by sections 201 and 276 by ensuring interstate ICS rates are cost-based.”).

¹³ FR Notice at 2835.

¹⁴ FR Notice at 2835; see also 47 C.F.R. § 64.6060; *Order and FNPRM* ¶¶ 116-17.

rates, minutes of use, disconnections, and ancillary charges for each correctional facility served by the ICS provider or by state depending on the specific data request.¹⁵ An officer or director of the ICS provider must certify to the accuracy of the data provided, and certify that the ICS provider is in compliance “with all portions” of the FCC’s decision.¹⁶ The Commission found this annual reporting requirement is necessary to monitor ICS providers’ compliance with the requirements of the *Order and FNPRM* to ensure “ICS providers’ rates and practices are just, reasonable, and fair and remain in compliance with” the *Order and FNPRM*.¹⁷ The Commission estimates it will take an ICS provider 101 hours per year to comply with the annual reporting requirement at an estimated cost of \$4,350 per year, per ICS provider.¹⁸

The Commission’s stated need for both of the new information collection requirements is based on the related obligation that ICS rates be cost-based. The D.C. Circuit, however, has stayed implementation of the Commission’s requirement that interstate ICS rates and ancillary charges be cost-based pending further judicial review of the *Order and FNPRM*.¹⁹ The court also stayed implementation of the annual reporting and certification requirement in 47 C.F.R. § 64.6060, on which the FCC’s FR Notice requests comment. 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 FCC’s decision.²⁰ In light of the D.C. Circuit’s stay order, the Commission has no authority to impose either of the data collection requirements on ICS providers given that the data collections

¹⁵ *Order and FNPRM* ¶ 116.

¹⁶ *Order and FNPRM* ¶ 117.

¹⁷ *Order and FNPRM* ¶ 116; *see also* FR at 2835.

¹⁸ FR Notice at 2835 (estimating 25 respondents for a total annual cost of \$108,750).

¹⁹ *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281, 13-1291, 13-1300, Order (D.C. Cir. Jan. 13, 2014). In addition, the court stayed implementation of the interim safe harbor rates adopted by the FCC.

²⁰ *Id.*

are premised on ensuring compliance with a cost-based rate requirement that has been stayed and on an annual reporting requirement that has been stayed outright.

Further, the Commission has grossly underestimated the amount of time it will take ICS providers to comply with the data collections. As competitive, non-dominant carriers, ICS providers have not been required to establish cost-based rates or develop cost justification data to support their rates. The Commission eliminated requirements for non-dominant carriers to support rates “with extensive cost and other economic data” given that “the cost of developing this information is relatively great” and the requirement “serves no useful purpose commensurate with the costs of compliance.”²¹ The Commission similarly abandoned rate-of-return regulation (*i.e.*, cost-based regulation)²² because it produces “high administrative costs” and “is a difficult and complex process, even when done correctly and well.”²³

The *Order and FNPRM* provides no information to support the time estimates for ICS providers’ compliance with the new data collection requirements. There is no question that the burden of compliance will be significantly higher than estimated by the Commission. GTL serves 1900 correctional facilities across the United States. ICS providers will be required to report data “by correctional facility” under the Commission’s new annual reporting obligations.²⁴ Even if GTL spent only one (1) hour per correctional facility to collect, compile, and formulate the many data categories required by the Commission (which is an unrealistically low estimate),

²¹ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶¶ 6, 97, 99 (1980) (“*Competitive Carrier Order*”).

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

²³ *Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, ¶¶ 31, 100 (1989) (“*1989 Order*”); *see also 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.”).

²⁴ *Order and FNPRM* ¶ 116.

GTL would spend 1900 hours per year to comply with the annual reporting requirement. This is a far cry from the 101 hours per year, per ICS provider, estimated by the Commission.²⁵ GTL likely would need to hire additional staff just for this data collection requirement.²⁶ The PRA is intended to “minimize the federal paperwork burden . . . by eliminating regulatory burdens ‘which are found to be unnecessary and thus wasteful.’”²⁷ The proposed data collection requirements do not achieve this goal. The Commission should reevaluate the burdens and benefits associated with the new information collection requirements adopted in the *Order and FNPRM* and take guidance from the conclusions reached by the Commission for eliminating such cost justification requirements in the 80s and 90s.

Finally, both of the new data collection requirements adopted by the Commission ask for information regarding intrastate ICS rates.²⁸ While the FCC posits that the collection of intrastate data is necessary “to assess what costs are reasonably treated as jurisdictionally interstate,”²⁹ the *Order and FNPRM* also asks for comment on whether the FCC has the authority

²⁵ FN Notice at 2835.

²⁶ Securus similarly estimates that it will need to hire additional 5-10 full-time employees to comply with the new data collection requirements. See Securus Technologies, Inc. Emergency Motion for Stay of FCC Order Pending Review, *Securus Techs., Inc. v. FCC*, Nos. 13-1280, 13-1281 & 13-1291 (D.C. Cir. Nov. 25, 2013).

²⁷ *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 416 (D.C. Cir. 1983) (citing S. Rep. No. 930, 96th Cong., 2d Sess. 3, reprinted in 1980 U.S.C.C.A.N. 6241, 6243).

²⁸ *Order and FNPRM* ¶ 116 (requiring data regarding “interstate and intrastate ICS rates”), ¶ 125 (requiring data “to document costs for interstate, intrastate long distance and intrastate local ICS”).

²⁹ *Order and FNPRM* ¶ 125. The FCC’s stated purpose for the collection of intrastate cost data does not comport with Commission rules or precedent. The jurisdictional nature of a call is not determined by its costs. Carriers determine the jurisdictional nature of their services based on the type of services they hold themselves out to offer in the first instance. See, e.g., *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976) (finding that how a provider is “holding” itself out is an “essential element” of how the provider is classified); see also *GTE Telephone Operating Cos. GTOC Tariff No. 1 GTOC Transmittal, No. 1148*, 13 FCC Rcd 22466, ¶ 17 (1998) (“the Commission traditionally has determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers”), *recon. denied*, 17 F.C.C.R. 27409 (1999); *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, 11 FCC Rcd 15227, ¶ 272 (1996) (“The key to determining the jurisdiction to which a call is assigned is the nature of the communication itself.”). Whether a cost is intrastate or interstate is driven by the jurisdictional nature of the service, not the costs themselves. See, e.g., *Thrifty Call, Inc.*, 19 FCC Rcd 22240, ¶ 8 (2004) (“Therefore, it is necessary to identify the

to exercise jurisdiction over intrastate ICS rates in the first instance.³⁰ The Commission's scope of any data collection should be limited to that which the Commission has established and asserted jurisdiction over, and for which there is a demonstrated need for the information that justifies the administrative burden to provide it.³¹

jurisdictional nature of traffic to determine under which tariff the services are being provided. It also is necessary to identify the jurisdiction of the traffic to ensure that the costs of the facilities used to carry this traffic are properly allocated between the interstate and intrastate jurisdictions.”). It is unclear on what basis the FCC would determine “what costs are reasonably jurisdictionally interstate” based on its review of intrastate costs. *Order and FNPRM* ¶ 125.

³⁰ *Order and FNPRM* ¶¶ 135-41.

³¹ *See, e.g., U.S. v. Dawes*, 951 F.2d 1189, 1191 (10th Cir. 1991) (“The Paperwork Reduction Act (PRA or the Act) was enacted by Congress in response to growing criticism from citizens regarding what they perceived to be an ever-increasing and onerous burden of federal paperwork. In adopting the PRA, Congress crafted a comprehensive scheme designed to reduce the federal paperwork burden.”) (citing *Dole v. United Steelworkers*, 494 U.S. 26 (1990)).

CONCLUSION

Accordingly, the Commission should refrain from seeking further approval of the data collection requirements from the Office of Management and Budget until the D.C. Circuit has the opportunity to issue a ruling on the merits that addresses whether the Commission may impose cost-based regulation on ICS providers, including the associated reporting and data collection requirements. In the event the D.C. Circuit's review results in ICS cost-based rates, the scope of the data collection requirements should be limited to interstate ICS and the compliance burdens should be substantially reduced to comport with the PRA.

Respectfully submitted,

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Dated: March 18, 2014³²

Its Attorneys

³² Pursuant to the FR Notice, comments were to be submitted on or before March 17, 2014. The federal government was closed on March 17, 2014 due to adverse weather conditions, which moves the comment deadline to March 18, 2014. See 47 C.F.R. § 1.4(e)(1) (stating that “a regularly scheduled Commission business day may become a holiday if its offices are closed prior to 5:30 p.m. due to adverse weather, emergency or other closing”), (j) (stating that, if the filing date falls on a holiday, the document shall be filed on the next business day).