

**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: 3060-1222 (FCC
	)	Form 2301(a) and FCC Form 2301(b))

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

Global Tel*Link Corporation (“GTL”),¹ by its attorneys, hereby submits these Paperwork Reduction Act (“PRA”)² comments in response to the Federal Communications Commission (“Commission” or “FCC”) notice³ seeking comment on proposed revisions to FCC Form 2301(a), the Inmate Calling Services Annual Reporting Form (“Annual Report”), and FCC Form 2301(b), the Inmate Calling Services Annual Certification Form (“Annual Certification”).

BACKGROUND

All providers of inmate calling services (“ICS”) are required to submit the Annual Report and Annual Certification by April 1 of each year.⁴ The Commission adopted those requirements in its *2015 ICS Order*,⁵ and the Office of Management and Budget (“OMB”) approved the original

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

² 44 U.S.C. §§ 3501-3520.

³ Federal Register Notice, Information Collection Being Reviewed by the Federal Communications Commission, Vol. 84, No. 185, at 50034-35 (Sept. 24, 2019) (“FR Notice”).

⁴ 47 C.F.R. § 64.6060.

⁵ *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 (2015) (“*2015 ICS Order*”), *pets. for stay granted in part sub nom. Global Tel*Link Corporation v. FCC*, No. 15-1461, Order (D.C. Cir. Mar. 7, 2016), Order (D.C. Cir. Mar. 23, 2016), *vacated in part, rev’d and remanded in part by Global Tel*Link Corporation v. FCC*, 866 F.3d 397 (D.C. Cir. 2017).

versions of the Annual Report and Annual Certification on January 9, 2017 with an expiration date of January 31, 2020.

The PRA requires the Commission to seek comment and receive OMB approval on revisions to the Annual Report and Annual Certification, and on the extension of the information collection beyond the current expiration date. In addition to comments on the proposed revisions, the Commission seeks comment on “[w]hether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.”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, 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,⁹ and the Commission has

⁶ FR Notice at 50034.

⁷ 44 U.S.C. § 3501(1).

⁸ 44 U.S.C. § 3502(2).

⁹ 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)).

an obligation to ensure this objective is achieved.¹⁰

Since OMB's initial approval of the annual reporting and certification requirements in 2017, GTL has complied with its annual obligations, and GTL will continue to do so as long as those obligations remain in effect.

COMMENTS

Pursuant to the PRA, the Commission must make certain showings to support extension of the Annual Report beyond its scheduled January 2020 expiration. Specifically, the Commission must demonstrate “it has taken every reasonable step to ensure that the proposed collection of information” is the “least burdensome necessary,” is “not duplicative of information otherwise accessible to the agency,” and is useful.¹¹ The Annual Report does not meet that standard. The Commission's rules imposing ICS rate and Ancillary Service Charge caps¹² and ICS consumer disclosures,¹³ coupled with the Commission's complaint process,¹⁴ provide a reliable and less burdensome way to “to facilitate transparency in ICS rates, terms, and fees and to help ensure that

¹⁰ 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”).

¹¹ 5 C.F.R. § 1320.5(d)(1).

¹² 47 C.F.R. §§ 64.6020, 64.6030.

¹³ 47 C.F.R. § 64.6110.

¹⁴ 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any provisions of this Act.”); see also, e.g., *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 20730, ¶¶ 21, 128 (1996) (subsequent history omitted) (recognizing that the Commission “may be called upon to examine the reasonableness of a non-dominant interexchange carrier’s rates, terms, and conditions for interstate, domestic, interexchange services, for example, in the context of a Section 208 complaint proceeding” and that “the exercise of [its] authority to investigate and adjudicate complaints under Section 208” was a “more effective means of remedying” service offerings that violate Section 201); *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923, ¶¶ 21, 25 (2001) (finding that, prior to the issuance of the order, competitors had “been largely unregulated in the manner that they set their access rates” and the FCC had relied on the Section 208 complaint process to address any unreasonable rates).

providers of ICS comply with the Commission's rules."¹⁵ GTL therefore recommends the Commission not extend the Annual Report beyond its expiration and instead rely on its new and existing rules, which provide a less onerous and more efficient process for monitoring compliance with the Commission's ICS rules.

In the alternative, to the extent the Commission extends the requirement to file an Annual Report, GTL provides the following comments on the proposed changes to the Annual Report:¹⁶

First, the Annual Report should not request data regarding intrastate ICS matters in light of the D.C. Circuit's finding that the Commission does not have statutory authority over intrastate ICS rates or ancillary fees.¹⁷

Second, ICS providers should not be required to list the name and physical location of each individual correctional facility falling under a particular contract.¹⁸ Most ICS providers, including GTL, track information by contract, not by individual facility, and a requirement to provide each facility falling under a contract is overly burdensome. Further, the requirement that "physical location" be provided (even if just city/state)¹⁹ also is burdensome given GTL maintains information based on the address to which correspondence or site commission payments are sent, which may not be the physical location of a correctional facility. Such information is not necessary to facilitate transparency in ICS rates, terms, and fees or to ensure providers of ICS comply with the Commission rules.

¹⁵ Draft FCC Form 2301(a) Instructions at 1.

¹⁶ The Commission has not proposed any substantive changes to the Annual Certification. GTL, however, renews its prior comments that the affirmative acknowledgement that an ICS provider may be subject to "criminal prosecution" should be deleted from the Annual Certification. See WC Docket No. 12-375, Paperwork Reduction Act Comments of Global Tel*Link Corporation (filed Dec. 5, 2016). It is unclear what criminal law is being referenced that would purportedly apply to an ICS provider's "failure to comply with the rules governing ICS."

¹⁷ *Global Tel*Link Corporation*, 866 F.3d at 409-11.

¹⁸ Draft FCC Form 2301(a) Instructions at 4.

¹⁹ Draft FCC Form 2301(a) Instructions at 4.

Third, for similar reasons, ICS providers should not be required to provide variable or fixed site commission data for each individual correctional facility falling under a particular contract.²⁰ Most ICS providers, including GTL, track information by contract, not by individual facility. A requirement to provide information for each separate facility falling under a contract is overly burdensome and inconsistent with existing business practices.

Fourth, GTL recommends that providers be required to provide only a single site commission amount for each contract rather than distinguish between amounts for “variable” versus “fixed” site commissions.²¹ GTL tracks the total amount of site commissions paid by contract on a yearly basis. It does not record whether those payments were “fixed” or “variable” based on the definitions established in the Annual Report. Providing the total amount of site commissions paid per contract provides the Commission with the same information, and reduces the burden on providers.

Fifth, providers should be permitted to provide the account name the provider maintains for a contract rather than the “contracting party” for each contract. As long as the account name adequately describes the contracting entity, providers should not be required to list “the specific party with which the provider negotiated the contract.”²²

Sixth, there is no basis for ICS providers to reveal information on their “partnerships” with other companies for the provision of ICS.²³ The Commission defines “partnership” to mean “a contract or other arrangement under which two or more entities jointly provide ICS to inmates at

²⁰ Draft FCC Form 2301(a) Instructions at 7, 8.

²¹ Draft FCC Form 2301(a) Instructions at 7, 8.

²² Draft FCC Form 2301(a) Instructions at 4.

²³ Draft FCC Form 2301(a) Instructions at 3. Further, there is no corresponding question on the Draft FCC Form 2301(a) for placement of this information. See Draft FCC Form 2301(a) at Tab 1(a) Narrative Description of Facilities.

a correctional facility” and asks for identification of the “primary partner” or the entity “that has the contract or other arrangement with the correctional facility’s contracting authority for the provision of ICS at that facility.”²⁴ By its terms, the Annual Report applies to “any entity that provides ICS.”²⁵ As a result, the Commission will receive information from the “primary partner” regarding those facilities in which it is the provider of the ICS without the need to delve into private agreements between ICS providers and other parties. The Commission consistently has stated that it has no jurisdiction over private agreements.²⁶ Nor does the Commission require other telecommunications carriers to divulge information regarding their underlying arrangements when those arrangements do not implicate a violation of the Communications Act, Commission rules, or Commission orders.²⁷

Seventh, GTL agrees with the Commission’s proposal to remove requests regarding video visitation and video calling from the Annual Report.²⁸ As the FCC recognized, its revision is consistent with the D.C. Circuit’s decision to “vacate the reporting requirement for video visitation services” because it was “too attenuated to the Commission’s statutory authority to justify this requirement.”²⁹

²⁴ Draft FCC Form 2301(a) Instructions at 3.

²⁵ Draft FCC Form 2301(a) Instructions at 1.

²⁶ See, e.g., *Telecinco, Inc.*, 22 FCC Rcd 21526 (2007) (“The Commission has neither the authority nor the machinery to adjudicate claims arising out of private agreements”); *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, 15 FCC Rcd 20845, ¶ 58 (2000) (“We will not be reviewing the wisdom of the underlying private agreements, or, in the normal course, the negotiation processes leading to them.”); *Interconnection Arrangements Between and Among the Domestic and International Record Carriers*, 99 F.C.C.2d 146 (1984) (“the Commission ordinarily does not ‘approve’ private agreements entered into among parties subject to its jurisdiction”).

²⁷ See, e.g., *Hi-Rim Communications, Inc., Complainant v. MCI Telecommunications Corporation, Defendant*, 13 FCC Rcd 6551, ¶ 22 (1998) (“The Commission has held that carriers’ private disputes which do not implicate a violation of the Act, Commission rules, or orders are beyond our regulatory jurisdiction and must be resolved in a court of competent jurisdiction.”).

²⁸ FR Notice at 50035.

²⁹ *Global Tel*Link Corporation*, 866 F.3d at 415.

CONCLUSION

For the foregoing reasons, GTL recommends the Commission eliminate the Annual Report in favor of other, less burdensome methods to monitor compliance with the Commission's ICS rules. To the extent the Commission continues to require the Annual Report, GTL recommends the Commission adopt the changes set forth herein.

Respectfully submitted,

GLOBAL TEL*LINK CORPORATION

/s/ Chérie R. Kiser

Chérie R. Kiser
Angela F. Collins
CAHILL GORDON & REINDEL LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
202-862-8900
ckiser@cahill.com
acollins@cahill.com

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Its Attorneys