

**STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD**

IN RE:	
GLOBAL TEL*LINK CORPORATION	DOCKET NO. TF-2019-0039
PUBLIC COMMUNICATIONS SERVICES, INC.	DOCKET NO. TF-2019-0040

COMMENTS IN SUPPORT OF TARIFFS

Global Tel*Link Corporation and Public Communications Services, Inc. (collectively, “GTL”) respectfully submit these Comments in response to the Order Docketing Tariffs for Further Review, issued by the Iowa Utilities Board (“Board”) on May 1, 2019 in the above-referenced matters. GTL provides the following comments in support of the tariffs filed by GTL on April 16, 2019 (the “Tariffs”):

BACKGROUND OF PROCEEDING

1. By order dated January 2, 2019, the Board declined to adopt rate caps for intrastate inmate calling services (“ICS”).¹ The Board recognized that ICS providers operating in Iowa qualify as alternative operator services (“AOS”) companies, and Iowa Code § 476.91 requires AOS companies to file tariffs with the Board, which are subject to Board approval. The Board found the tariff filing mechanism provides a process by which the Board may review the terms of service provided by AOS companies in the state. Accordingly, the Board ordered all companies providing ICS in Iowa to file tariffs with the Board for review finding that “[a] comprehensive review of the tariffs, subject to complaint and investigation, will help ensure compliance with the

¹ Docket No. RMU-2017-0004, *Rule Making Regarding Inmate Calling Rate Caps [199 IAC Chapter 22]*, Order Terminating Rule Making (Jan. 2, 2019) (“January 2019 Order”).

applicable statutes and rules while allowing the Board to consider whether the rates are reasonable.”

2. By order dated March 14, 2019, the Board reaffirmed its order for all companies providing ICS to file a complete set of tariffs for Board review “so the Board can determine if the inmate calling rates and service requirements are just and reasonable.”²

3. On April 16, 2019, GTL filed its Tariffs for Board review. The Tariffs set forth the rates, terms, and conditions for GTL’s provision of ICS to correctional facilities in Iowa. The Tariffs establish: (1) a maximum rate of \$0.30 per-minute for ICS collect, prepaid, and debit calls; and (2) the ancillary service charges adopted by the Federal Communications Commission (“FCC”) as the maximum amount to be applied for ancillary service charges related to the provision of ICS. As demonstrated below, GTL’s proposed rates are just and reasonable, comply with Board requirements, and should be adopted by the Board.

ICS RATES CANNOT BE ONE-SIZE-FITS ALL

4. In reviewing the Tariffs, it is important to recognize the unique environment in which ICS is provided. GTL provides secure, customized, and highly specialized services to correctional facilities based upon the individual and unique requirements set forth by each facility during the competitive bidding process. These requirements are included in Requests for Proposals (“RFPs”) issued by the correctional facility, which outline the technology, service, rates, and commissions (as applicable) specific to the issuing facility. The correctional facility determines the relative importance of the criteria when evaluating which provider to select as its

² Docket No. RMU-2017-0004, *Rule Making Regarding Inmate Calling Rate Caps [199 IAC Chapter 22]*, Order Requiring Tariff Filing (Mar. 14, 2019).

ICS provider. The particular needs of each correctional facility also influence the per-minute rates and ancillary service charges proposed during the RFP process.

5. Iowa law reflects AOS are provided pursuant to contracts between the AOS company and the correctional facility making telephones available for use by inmate end users.³ The Board also has acknowledged correctional facilities “have choices regarding both providers and products” and “have significant ability to control the rates charged to inmates based on each facility’s unique circumstances.”⁴

6. Because of the competitive bidding and RFP process, each contract GTL has with its correctional facility customers is unique, and contains the requirements specified by that correctional facility. These individual case basis (“ICB”) contracts vary based on the size, location, security requirements, and the types of services the correctional facility requests GTL provide. The Board recognizes ICB arrangements “are useful for addressing specific situations that are not properly addressed by general tariff provisions, such as customer costs that vary significantly from one customer to another.”⁵ The FCC similarly has found the availability of ICB arrangements “serves the public interest by enabling users to purchase services that match their needs in particular ways”⁶ and increases “the ability of customers to negotiate service arrangements that best address their particular needs.”⁷

³ Iowa Code § 476.91; 199 IAC 22.19.

⁴ January 2019 Order at 5.

⁵ Docket No. FCU-07-2, *Qwest Communications Corporation, Complainant, v. Superior Telephone Cooperative, et al.*, Order Denying Requests for Reconsideration (Feb. 4, 2011).

⁶ *Competition in the Interstate Interexchange Marketplace*, 10 FCC Rcd 4562, ¶ 24 (1995).

⁷ *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶ 103 (1991).

7. The Board's Tariff review must recognize the competitive bidding process dictated by Iowa law for correctional facilities to obtain goods and services.⁸ That legal mandate requires ICS providers to have the flexibility to respond to the competitive process established for the ICS marketplace and other circumstances unique to the provision of service in the correctional facility environment.⁹ The Board's AOS rate policy should not be administered in a way that would disadvantage certain AOS providers over others.

8. GTL's proposed Tariffs are consistent with its current correctional facility contracts in Iowa, the competitive bidding process mandated for ICS, and the need for GTL to provide competitive responses to future RFP requirements. GTL's use of Tariffs relying on maximum rate caps satisfies the Board's goals of just and reasonable rates.¹⁰ They establish a cap on what can be charged while giving GTL the future flexibility required to meet the differing security and communication service needs of correctional facility customers.

**GTL'S PROPOSED RATES ARE JUST AND REASONABLE,
AND COMPLY WITH APPLICABLE BOARD REQUIREMENTS**

9. The intent of the Board's AOS rules is to: (1) allow fair competition in the public interest while ensuring the availability of safe and adequate communications service to the public; and (2) ensure that the charges of AOS companies for communications service and regulated services rendered in connection therewith will be just and reasonable.¹¹ In this vein, the Board has

⁸ See, e.g., 11 IAC 117.1 *et seq.*; see also Docket No. RMU-2018-0022, *Service Supplied by Telephone Utilities [199 IAC Chapter 22]*, Order Commencing Rule Making (Apr. 19, 2019) (seeking comment on the Board's jurisdiction to establish proposed rules and tariff requirements that apply to Iowa correctional facilities).

⁹ See, e.g., Iowa Code § 904.508A; 201 IAC 20.20(904); 201 IAC 50.19(356, 356A).

¹⁰ See, e.g., Docket No. RPU-94-3, *Midwest Gas*, Final Decision and Order (May 19, 1995) (allowing a maximum rate to be stated in the tariff and acknowledging the actual rate is subject to negotiation pursuant to an agreement). The FCC also has found using maximum rates meet the dual goals of "allow[ing] market forces to ensure that rates are just and reasonable" and ensuring ICS providers have "flexibility in how they offer ICS." See *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170, ¶ 48 (2014); *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107, n.416 (2013).

¹¹ 199 IAC 22.1(1).

adopted Rule 199 IAC 22.12(1), which “establishes a safe harbor for AOS rates; the rates of AOS companies may not exceed the rates for similar services provided by utilities whose rates have been approved by the Board in a rate case or set in a market that the Board has determined to be competitive.”¹²

10. GTL’s proposed Tariffs meet these requirements. GTL’s proposed maximum rate of \$0.30 per-minute is significantly lower than the rates for similar services.¹³ GTL’s proposed rate also is lower than the rates filed in earlier GTL tariffs that were approved by the Board.

11. The FCC’s cost analysis in its *2015 ICS Order* is not appropriate for evaluating GTL’s proposed rates as suggested by Prison Policy Initiative (“PPI”).¹⁴ The United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) rejected the FCC’s cost analysis underlying its proposed per-minute rate caps, finding that the FCC’s determination was “arbitrary and capricious” and “lacks justification in the record and is not supported by reasoned decisionmaking.”¹⁵ The Board also recognized that the D.C. Circuit “rejected the methodology utilized by the FCC to determine the applicable rate caps.”¹⁶ Accordingly, the FCC’s findings on cost and the associated per-minute rate caps have no applicability to the Board’s review of the Tariffs, and provide no support for PPI’s assertion that rates between \$0.11 and \$0.22 are the only appropriate rates to be charged for ICS in Iowa.

¹² 199 IAC 22.12(1); Docket No. TF-2011-0031, *Global Tel*Link Corporation*, Order Suspending Tariff, Docketing for Further Investigation, and Requesting Comments (April 1, 2011).

¹³ See, e.g., Level 3 Telecom of Iowa, LLC, Iowa Products and Services Price List No. 3, p. 149 (May 27, 2016) (per call charges from \$1.45 to \$4.88 for operator service calls); Broadview Networks, Inc., Iowa Price Guide No. 1, Section 5, p.10 (Sept. 24, 2010) (per call charges from \$1.25 to \$3.35 for operator service calls).

¹⁴ PPI ¶ 7 (citing *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)).

¹⁵ *Global Tel*Link Corporation v. FCC*, 866 F.3d 397, 402, 414-15 (D.C. Cir. 2017).

¹⁶ January 2019 Order at 6.

12. It is important to note that GTL's proposed per-minute rate is a maximum rate to be charged. Based on the correctional facility contract, the per-minute rate for ICS would be at or below \$0.30 per-minute.¹⁷ As discussed above, the use of a maximum rate gives GTL the flexibility to respond to specific correctional facility needs while, at the same time, ensuring Iowa consumers and inmates receive a just and reasonable rate for ICS. The maximum rate will not apply to all of GTL's correctional facility contracts in Iowa; many Iowa correctional facilities will have rates lower than the maximum. In fact, GTL's ICS rates in existing Iowa correctional facility contracts range between \$0.11 and \$0.22 per-minute. Iowa consumers and inmates can determine the per-minute rate applicable to a specific correctional facility through information provided at the correctional facility, via GTL's website, or from the oral disclosures provided prior to a call being connected, consistent with GTL's disclosure obligations under Iowa and federal law.¹⁸

13. PPI appears to misconstrue GTL's proposed ancillary service charges set forth in the Tariffs.¹⁹ The ancillary service charges mirror those adopted by the FCC, which were upheld by the D.C. Circuit for application to interstate ICS. Further, the ancillary service charges set forth in the Tariffs reflect the maximum amount that may be imposed; the amount actually charged may vary or not apply based on specific correctional facility requirements.

14. PPI also mischaracterizes the application of GTL's proposed ancillary service charges set forth in the Tariffs.²⁰ Ancillary service charges are triggered based on specific service options selected by the consumer, such as choosing to deposit money in an account using a credit card or live operator. The ancillary service charges do not apply to every call and are not added

¹⁷ PPI ¶ 6. It is not clear that PPI understands the application of GTL's proposed Tariffs.

¹⁸ 199 IAC 22.19; 47 C.F.R. §§ 64.710, 64.6110.

¹⁹ PPI ¶ 6.

²⁰ PPI ¶ 6.

together as PPI suggests. For example, if a consumer elects to make a deposit using a credit card via an automated payment system, the consumer could incur a \$3.00 ancillary service charge. The consumer would not be subject to the additional charge of \$5.95 (use of live operator) for this transaction. If a consumer elects to utilize a live operator to make a deposit, the consumer could be charged \$5.95, but would not incur an additional charge of \$3.00 (use of credit card via an automated payment system). Further, the consumer always has the ability to pay for ICS via a check or money order without incurring any type of ancillary service charge.²¹ Accordingly, there is no basis for PPI's conclusion that GTL's proposed rates "are economically burdensome for incarcerated Iowans."²²

²¹ These examples reflect the way in which ancillary service charges are applied today in Iowa and nationwide.

²² PPI ¶ 2.

CONCLUSION

WHEREFORE, GTL respectfully requests that the Board approve the Tariffs filed by GTL, which provide GTL the flexibility to meet the needs of its correctional facility customers as required by law while achieving the Board's goals of just and reasonable rates.

Respectfully submitted,

**GLOBAL TEL*LINK CORPORATION
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/s/ Steve Montanaro

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of May 2019, he had the foregoing document electronically filed with the Iowa Utilities Board using the Electronic Filing System, which will send notification of such filing (electronically) to the appropriate persons.

/s/ Steve Montanaro _____