

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

IN RE:  INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES	DOCKET NO. NOI-2019-0001
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**REPLY TO RESPONSES TO ORDER INITIATING INQUIRY**

Global Tel\*Link Corporation and Public Communications Services, Inc. (collectively, “GTL”) respectfully submit the following reply to the responses requested by the Order Initiating Inquiry (the “Order”) issued by the Iowa Utilities Board (“Board”) on August 20, 2019 in the above-referenced matter. The Order initiated an inquiry to evaluate the regulatory framework that applies to alternative operator services (“AOS”) companies in Iowa, including AOS provided by inmate calling service (“ICS”) providers.<sup>1</sup>

GTL supports the Board’s commitment to ensure the views of all interested stakeholders are taken into consideration “including the facilities or entities that have contracted for AOS, especially in the context of inmate calling services.”<sup>2</sup> The responses reinforce the Board’s prior recognition that Iowa correctional facilities “control the rates charged to inmates based on each facility’s unique circumstances.”<sup>3</sup> AOS companies, and especially ICS providers, must have the

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<sup>1</sup> The inquiry builds on the Board’s prior orders and proceedings regarding AOS companies and ICS providers, and the proposed tariffs filed by those companies. *See, e.g.*, 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”); Docket No. RMU-2017-0004, *Rule Making Regarding Inmate Calling Rate Caps [199 IAC Chapter 22]*, Order Requiring Tariff Filing (Mar. 14, 2019); Docket Nos. TF-2019-0039, TF-2019-0040, *Global Tel\*Link Corporation and Public Communications Services, Inc.*, Order Docketing Tariffs for Further Review (May 1, 2019); Docket Nos. TF-2019-0039, TF-2019-0040, *Global Tel\*Link Corporation and Public Communications Services, Inc.*, Order Granting Petitions to Intervene and Requiring Additional Information (May 24, 2019).

<sup>2</sup> Order at 2-3.

<sup>3</sup> January 2019 Order at 5.

flexibility to design service and rate options based on the specific needs of the facility.<sup>4</sup> The antiquated, one-size-fits-all, rate-of-return type regulation contemplated by some commenters for ICS<sup>5</sup> is unnecessary and costly in light of current Board rules,<sup>6</sup> is contrary to the de-regulatory trend towards telecommunications services in Iowa,<sup>7</sup> and would not serve the best interests of all ICS stakeholders.<sup>8</sup> The desire for rate and tariff consistency must be balanced against the benefits of allowing ICS providers to offer innovative solutions, develop new technologies, and accommodate diverse correctional facility requirements.<sup>9</sup>

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<sup>4</sup> See, e.g., Securus at 5 (“Because the needs of facilities vary, rather than offering a one-size-fits-all service, Securus customizes the ICS packages it provides for each facility it serves.”); Pay Tel at 1 (stating “each vendor has distinct calling options, terms and billing requirements” and that the “provision of calling services to correctional facilities is unique due to the inherent security issues”).

<sup>5</sup> HRDC at 2; Office of Consumer Advocate at 1-3; Ombudsman at 1; Prison Policy Initiative at 1.

<sup>6</sup> January 2019 Order at 5-6 (declining to adopt inmate calling rate caps in favor of the existing tariff review process); 199 IAC 22.12(1) (establishing 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). In the 1980s, the Federal Communications Commission (“FCC”) also 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. See *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 FCC 2d 1, ¶ 97 (1980). The FCC 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.” *Id.* ¶ 99. The FCC concluded that the cost justification requirement “serves no useful purpose commensurate with the costs of compliance” and “nullifies many consumer benefits that competition produces.” *Id.* ¶¶ 6, 99. Similar to the Board’s conclusion in the January 2019 Order, the FCC concluded “that marketplace forces will operate to ensure that the rates and other tariff provisions of non-dominant carriers comply with the objectives of Sections 201 and 202 of the Act.” *Id.* ¶ 48.

<sup>7</sup> January 2019 Order at 5 (“there is an increasing desire to move away from telecommunications regulations in an ever-more competitive marketplace” and that correctional facilities “have choices regarding both providers and products”); see also Order at 4 (noting that de-regulation has exempted some types of telecommunications service providers from many of the regulatory requirements in the statute).

<sup>8</sup> As GTL previously noted, there are three ICS stakeholder groups: (1) incarcerated individuals and their friends and family members; (2) correctional facilities, each of which have individual safety and security needs; and (3) ICS providers. Although each stakeholder group has its own unique goals, a common intersection exists in the analysis of the service offering - the need to connect consistently and reliably incarcerated individuals with their friends and family while providing a service that comports with the dynamic safety and security needs of each correctional facility. See GTL at 2.

<sup>9</sup> Securus at 7.

While the Board has the authority to regulate companies offering AOS,<sup>10</sup> Iowa law gives correctional facilities the right to define the scope and content of their AOS/ICS contracts.<sup>11</sup> The Board has recognized that its jurisdiction over correctional facilities is limited.<sup>12</sup> Correctional facilities must be permitted to obtain the services and products that will best serve their needs, which 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. Requests for the Board to define how correctional facilities contract with their vendors and what services or products are included in those contracts are outside the scope of this proceeding.<sup>13</sup>

The prerogatives granted to correctional facilities under the law also include a determination as to whether site commissions will be imposed in connection with the provision of AOS/ICS in the facility. The FCC previously recognized that, in some instances, site commissions are mandated by state statute.<sup>14</sup> This is the case in Iowa. Under Iowa law, correctional facilities are permitted to request site commissions and to dictate how those monies are used by the correctional facility.<sup>15</sup> Site commissions are a cost of doing business incurred by ICS providers, and “ICS providers who are required to pay the site commissions as a condition

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<sup>10</sup> Iowa Code § 476.91.

<sup>11</sup> See, e.g., Iowa Code §§ 904.508A; 904.102, 904.808; 201 IAC 20.17, 201 IAC 20.20; 201 IAC 50.19; 11 IAC 117.1 *et seq.*; see also *Walters v. Maynard*, 698 N.W.2d 335 (Iowa Ct. App. 2005) (acknowledging that “[p]rison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security”).

<sup>12</sup> Docket No. RMU-2018-0022, *Service Supplied by Telephone Utilities [199 IAC Chapter 22]*, Order Commencing Rule Making at 7 (Apr. 19, 2019).

<sup>13</sup> Cf. Legacy at 2; Prison Policy Initiative at 9, 10.

<sup>14</sup> *Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629, ¶ 38 (2012).

<sup>15</sup> See, e.g., Iowa Code § 904.508A; 201 IAC 20.20; 201 IAC 50.19.

of doing business have no control over the funds once they are paid.”<sup>16</sup> Thus, the calls by the Human Rights Defense Center (“HRDC”) and others for the Board to prohibit or otherwise regulate site commissions<sup>17</sup> are contrary to established law and beyond the scope of this proceeding.<sup>18</sup>

Requests for the Board to regulate the “single-call” payment options offered by ICS providers also are outside of the Board’s purview.<sup>19</sup> The Board’s authority is limited to “intrastate telecommunications services provided by alternative operator services companies to end-users using other than ordinary residence or business telephones.”<sup>20</sup> The charge for utilizing the single-call payment option relates to financial services or billing and collection arrangements by which ICS customers choose how to pay or be billed for ICS. Billing and collection is not subject to regulation by the Board and the Board has no authority over financial services.<sup>21</sup>

Finally, numerous commenters agree there is no need to file ICS contracts with the Board.<sup>22</sup> Under FCC rules, ICS providers are required to make information regarding ICS rates, terms, and conditions publicly available.<sup>23</sup> Commenters’ concerns regarding “transparency” in

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<sup>16</sup> *Global Tel\*Link v. FCC*, 859 F.3d 39, 55-56 (D.C. Cir. 2017).

<sup>17</sup> HRDC at 2; *see also* Prison Policy Initiative at 8-9.

<sup>18</sup> Order at 1 (stating scope of proceeding is to address provision of AOS in Iowa).

<sup>19</sup> Office of Consumer Advocate at 6; Prison Policy Initiative at 12.

<sup>20</sup> Iowa Code § 476.91(2); *see also* Order at 5 (providing overview of statutory authority).

<sup>21</sup> *See, e.g.*, 199 IAC 22.1(6)(8) (noting that billing collection services were deregulated by the Board); Docket Nos. RMU-86-16, INU-86-10, INU-86-2, *Intrastate Billing and Collection Service Tariffs*; Docket No. INU-88-9, *Deregulation of Recording Function of Billing and Collection Service*; *see also* 701 IAC 224.2 (stating “billing and collection services” are not “telecommunications services” for purposes of sales tax); 701 IAC 18.20 (stating “billing and collection services” are not “telecommunications services” for purposes of excise tax). Pursuant to its proposed tariff, and consistent with FCC rules applicable to interstate ICS, GTL passes-through the exact fee specified by the third-party for the financial transaction. *See* Docket No. TF-2019-0039, *Global Tel\*Link Corporation Telephone Tariff Iowa Tariff No. 3* at Original Page 28 (filed April 16, 2019); Docket No. TF-2019-0040, *Public Communications Services, Inc. Telephone Tariff Iowa Tariff No. 2* at Original Page 28 (filed April 16, 2019); *see also* 47 C.F.R. § 64.6020(b)(5).

<sup>22</sup> NCIC at 2; Pay Tel at 2; Securus at 9; *see also* Office of Consumer Advocate at 7.

<sup>23</sup> 47 C.F.R. § 64.6110.

ICS rates<sup>24</sup> have been addressed by the FCC disclosure requirement. As such, the burdens imposed by a requirement that ICS providers file contracts with the Board overwhelmingly outweighs any anticipated consumer benefit of such a requirement.<sup>25</sup> A filing requirement would not improve visibility of these agreements and would place an unnecessary additional administrative burden on the Board, ICS providers, and correctional facilities.<sup>26</sup>

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<sup>24</sup> HRDC at 3.

<sup>25</sup> See, e.g., Docket No. NOI-06-3, *Inquiry into Advanced Metering and Time-Based Rates*, Order Declining to Adopt Standard, Closing Docket, and Commencing Pilot Project Discussions (Mar. 6, 2007) (accepting argument from Office of Consumer Advocate that programs should not be implemented unless they are subject to a cost-benefit analysis and declining to adopt programs because there was insufficient information to determine the programs were cost effective); Docket No. SPU-92-7, *Iowa Electric Light and Power Inc.*, Order Terminating Docket, Approving Discontinuance of Service, Reassigning Service Areas, and Denying Motion to Delay Effective Day of Order and Stay (June 8, 1992) (looking at cost-benefit analyses as part of decision-making process); see also *S.E. Iowa Cooperative Electric Association v. Iowa Utilities Board*, 633 N.W.2d 814 (Iowa 2001) (“On the contrary, considering the broad standard of ‘public use’ prescribed by the legislature, we find it contemplated the Board would consider economic factors. In addition, it is not uncommon for economic principles such as those used in cost-benefit analyses to be incorporated into legal principles unless the legislature has directed otherwise.”).

<sup>26</sup> Pay Tel at 2.

**CONCLUSION**

WHEREFORE, for the reasons stated herein and those in GTL's initial response to the Order, GTL respectfully requests that the Board take into consideration the specialized nature of ICS when reviewing the regulatory framework for AOS in Iowa, and all stakeholders' interests. In addition, the Board should approve the tariffs filed by GTL, which provide GTL the flexibility to meet the needs of its correctional facility customers as required by law, and satisfy the Board's goal of just and reasonable AOS ICS rates.

Respectfully submitted,

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

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Dated: October 4, 2019

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 4th day of October 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* \_\_\_\_\_