

**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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REQUEST FOR LEAVE TO FILE SUR-REPLY

Global Tel*Link Corporation and Public Communications Services, Inc. (collectively, “GTL”) respectfully request leave to file this Sur-Reply to the “Reply to New Argument” filed by the Office of Consumer Advocate (“OCA”) on October 9, 2019 in the above-referenced matter.

GTL did not make “a new argument” in its reply comments filed October 4, 2019 as asserted by OCA.¹ The Order Initiating Inquiry (the “Order”) issued by the Iowa Utilities Board (“Board”) stated replies to the initial responses were due on or before 15 days after the initial responses.² Consistent with the Order, GTL responded to the initial responses that asked the Board to regulate or address site commissions as part of this proceeding.³ GTL noted that any Board action to address the payment of site commissions would be contrary to Iowa Code § 904.508A (which authorizes the Iowa Department of Corrections to request such payments) and beyond the scope of this proceeding.⁴ In addition, GTL’s October 4, 2019 reply was not the first

¹ OCA at 1.

² Order at 8.

³ *See, e.g.*, HRDC at 2 (“Possible ways to regulate prison and jail telephone calls include: barring a jail or prison from accepting kickbacks. . . .”); Prison Policy Initiative at 10 (“the Board must obtain and examine any type of transfers from carriers (and their affiliates) to correctional facilities (or related entities)”).

⁴ GTL at 3 (“Under Iowa law, correctional facilities are permitted to request site commissions and to dictate how those monies are used by the correctional facility.”) (emphasis added); *see also* Iowa Code § 904.508A.

time GTL has cited to Iowa Code § 904.508A in this proceeding or other associated Board proceedings.⁵

Further, OCA's characterization of *Global Tel*Link v. FCC* is not supported by the plain language of the D.C. Circuit's decision.⁶ The court determined:

The Commission's categorical exclusion of site commissions from the calculus used to set ICS rate caps defies reasoned decisionmaking **because** site commissions obviously are costs of doing business incurred by ICS providers.⁷

While the court left it to the FCC "to assess on remand which portions of site commissions might be directly related to the provision of ICS,"⁸ it did not change the court's conclusion that site commissions are "a condition of doing business" for ICS providers.⁹

Finally, the OCA improperly relies on the FCC's 2016 Order on Reconsideration for its conclusions about site commissions, and notes the order was "not under review."¹⁰ The D.C. Circuit vacated and remanded the 2016 Order on Reconsideration finding it was "premised on the same legal framework and mathematical methodology that [the] court rejected" in the *Global*

⁵ GTL Initial Comments at 9; *see also id.* at 7 (citing the statute when discussing the competitive process established for the ICS marketplace and other circumstances unique to the provision of service in the correctional facility environment); *see also* Docket Nos. TF-2019-0039, TF-2019-0040, *Global Tel*Link Corporation and Public Communications Services, Inc.*, Response to Request for Additional Information on Tariffs (filed June 24, 2019); Docket Nos. TF-2019-0039, TF-2019-0040, *Global Tel*Link Corporation and Public Communications Services, Inc.*, Comments in Support of Tariffs (filed May 13, 2019).

⁶ OCA at 2 (citing *Global Tel*Link*, 866 F.3d at 412-14).

⁷ *Global Tel*Link v. FCC*, 866 F.3d 397, 413 (D.C. Cir. 2017) (emphasis added)

⁸ OCA at 2 (citing *Global Tel*Link*, 866 F.3d at 414).

⁹ *Global Tel*Link*, 866 F.3d at 413 ("In some instances, commissions are mandated by state statute, and in others instances commissions are required by state correctional institutions as a condition of doing business with ICS providers. If agreeing to pay site commissions is a condition precedent to ICS providers offering their services, those commissions are related to the provision of ICS.") (internal citations and quotations omitted).

¹⁰ OCA at 2.

*Tel*Link* decision.¹¹ In light of the D.C. Circuit ruling, OCA's reliance on the FCC's 2016 Order on Reconsideration is legally unsound.

Respectfully submitted,

**GLOBAL TEL*LINK CORPORATION
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¹¹ Case No. 16-1321, *Securus Technologies, Inc. v. FCC*, Order (D.C. Cir. Dec. 21, 2017).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th 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 _____