

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
) **WC Docket No. 12-375**
Rates For Interstate Inmate)
Calling Services)

OPPOSITION TO PETITION FOR STAY

The Wright Petitioners hereby submit this Opposition to the Petition For Stay Pending Judicial Review, filed by Global Tel*Link (the "Petition").¹ Global Tel*Link ("GTL") requests that the Commission stay the effectiveness of changes made to the Inmate Calling Service ("ICS") rates contained in the Order on Reconsideration adopted on August 2, 2016, and released on August 9, 2016, in the above-captioned proceeding.²

GTL's Petition must be denied. GTL is simply wrong that (i) it will likely prevail in a future judicial review of the new ICS rate caps; (ii) it will suffer irreparable harm from the implementation of new ICS rate caps; (iii) other interested parties will not be substantially harmed if the stay of the new ICS rate caps is granted; and (iv) the public interest favors granting a stay of the new ICS rate caps.

Instead, as discussed below, the new ICS rate caps will fully compensate GTL for its costs associated with providing ICS to the public. Moreover, the new ICS rate caps are necessary to force GTL and other ICS providers to cease their new practice of raising intrastate rates to "make them whole" in light of the cap on ancillary ICS fees that went into effect on June 20, 2016. In light of the Commission's goal to protect consumers from unjust, unreasonable and unfair ICS rates and fees, GTL's Petition must be denied.

¹ The Petition was filed on September 1, 2016. Pursuant to Section 1.45(d) of the FCC's rules, this Opposition is filed within 7 days of the submission. *See* 47 C.F.R. § 1.45(d) (2015).

² *Rates for Interstate Inmate Calling Services*, Order on Reconsideration, FCC 16-102, rel. Aug. 9, 2016 (the "Recon Order"). The Recon Order has yet to be published in the Federal Register.

I. GTL Will Not Be Successful On The Merits

1. Assertions Regarding the Court's Likely Ruling Are Misplaced

First, it must be noted that GTL makes several unfounded assumptions regarding the treatment of its future request for stay to be filed with the United States Court of Appeals for the District of Columbia (the "Court of Appeals"). According to GTL, the grant of its future request to stay the Recon Order is a foregone conclusion.

For example, GTL asserts that the Court of Appeals "evidently determined that the challengers' argument that the Commission lacks the authority to cap intrastate ICS rates was likely to succeed" when it granted a stay on March 23, 2016.³ GTL also asserts that it obtained a stay of the intrastate ICS rate caps because (i) the rates fail to account for site commissions and (ii) the rates are below the providers' self-reported costs.⁴ GTL continues with its unsupported assertions when it concludes that a stay application will be successful because some providers will operate at a loss,⁵ alleging that this finding "is the end of the matter."⁶

However, the Court of Appeals did not explain the basis for why it granted the stay requests with respect to the caps on intrastate ICS rates and single-call ancillary fees. Because the standard applied by the Court of Appeals is a balancing of the four *Virginia Petroleum Jobbers* factors, it is impossible to accurately determine why the Court of Appeals granted a stay in its review of the Second Report and Order without being provided further information from the Court of Appeals. It could have found a high likelihood of success on the merits but a lesser likelihood of substantial irreparable harm, or vice versa. Or, it could have found both factors strongly favored a stay.

³ *Petition*, pg. 12.

⁴ *Id.*, pg. 15.

⁵ *Id.*, pg. 18 (citing *Motion of CenturyLink Public Communications, Inc. for Partial Stay Pending Judicial Review*, filed Feb 5, 2016).

⁶ *Petition*, pg. 19.

Certainly, none of the three stay orders referenced by GTL provide any sound basis for concluding which aspect of the Commission's rules were troublesome. On the other hand, when a court denies a stay, we can confidently conclude that it found neither a strong likelihood of success on the merits nor a strong likelihood of irreparable harm.

Thus, the fact that the Court of Appeals permitted the Commission's caps on ancillary fees to go into effect for both inter- and intra- ICS calls *does* allow the conclusion that the court did not see a substantial likelihood of success as to whether such caps can be justified on the basis of Section 276 authority. Moreover, almost all of the other rules adopted in the *Second Report and Order* were permitted to go into effect.⁷ Many of these rules apply equally to intrastate and interstate ICS calls, which certainly suggests that the Court of Appeals does not have a uniform objection to the Commission's regulation of intrastate ICS rates and fees.

2. FCC Has Requisite Authority To Regulate Intrastate ICS Rates.

With GTL's divination skills (or lack thereof) addressed, it is also necessary to address whether GTL's arguments regarding the Commission's statutory authority will be successful in challenging the Commission's authority to adopt the new ICS rate caps. In particular, GTL argues that Section 276 does not provide "the Commission the authority to regulate existing intrastate rates on the grounds that they are unreasonably high."⁸ However, GTL's support for these conclusions utterly fail to address clear precedent to the contrary.

First, GTL completely ignores the holding of *AT&T Corp. v. Iowa Utilities Board*, in which the Supreme Court determined the Commission had requisite authority to implement regulations

⁷ The Court of Appeals did not impose a stay of the following rules adopted in the Second Report and Order: (i) the caps on TTY rates (47 C.F.R. § 64.6040), (ii) the Annual Reporting and Certification Requirement (47 C.F.R. §64.6060); (iii) the caps on Taxes and Fees (47 C.F.R. § 64.6070); (iv) the prohibition of Per-Call or Per-Connection charges (47 C.F.R. § 6080); (v) the prohibition on Flat-Rate Calling (47 C.F.R. § 64.6090); (vi) the Minimum and Maximum Prepaid Calling Account balances (47 C.F.R. § 64.6100) and (v) the Consumer Disclosure of Inmate Calling Service Rates (47 C.F.R. § 64.6110).

⁸ *Petition*, pg. 13.

relating to intrastate communications services as the result of the enactment of the Telecommunications Act of 1996.⁹ In *AT&T*, the Supreme Court rejected efforts by parties to limit the Commission's authority to "purely interstate and foreign matters" and instead found that Section 201(b) of the Communications Act provided the Commission with the authority to "carry out the provisions of this Act," which necessarily includes Section 276.¹⁰

Moreover, GTL inexplicably cites *Illinois Public Telecommunications Association v. FCC* ("*IPTA*") for the proposition that the Commission may not interpret Section 276(b) to establish a cap on intrastate ICS rates.¹¹ As GTL should be aware, the Court of Appeals in *IPTA* specifically held that Section 276 gave authority to the Commission "to set local coin call rates in order to ensure that "payphone operators [are] 'fairly compensated.'"¹² Moreover, the Court of Appeals in *IPTA* specifically addressed "problematic locational monopolies" such as ICS in correctional facilities by (i) affirming the Commission's reservation of authority for further action in the future to "modify its deregulation scheme, for example, by limiting the number of compensable calls from each payphone" and (ii) clearly stating that "the Commission has been given an express mandate to preempt State regulation of local coin calls."¹³

Therefore, the Commission is best suited to make "difficult policy choices,"¹⁴ including the determination whether it is necessary to impose caps on intrastate ICS rates to ensure that ICS

⁹ See 525 U.S. 366, 377-378 (1999) ("Since Congress expressly directed that the 1996 Act...be inserted into the Communications Act of 1934...the Commission's rulemaking authority would seem to extend to implementation" of the 1996 Act provisions).

¹⁰ *Id.*, 525 U.S. at 378. Also significant is that Section 276(c) of the Communications Act gives the Commission the explicit power to preempt State requirements. 47 U.S.C. § 276(c).

¹¹ *Petition*, pg. 13 (citing *Illinois Pub. Telecomms. Ass'n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997)).

¹² *IPTA*, 117 F.3d at 563.

¹³ *Id.*

¹⁴ *Metrophones Telecomms., Inc. v. Global Crossing Telecomms., Inc.*, 423 F.3d 1056, 1070 (9th Cir. 2005) *aff'd* *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 555 (2007) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005)).

providers receive only "fair compensation" rather than the current regulatory regime that permits unjust, unreasonable and unfair ICS rates and fees to be charged in the absence of competitive marketplace.

3. The Recon Order Correctly Addresses Site Commissions and Fully Compensates GTL.

Much like Securus and Telmate, GTL also argues that it will be successful in its appeal because the Commission did not ban site commissions, or otherwise permit ICS providers to shift their entire obligation to pay site commissions onto the backs of ICS customers.¹⁵

First, GTL ignores the fact that Commission determined thirteen years ago that site commissions were not recoverable "costs."¹⁶ While ICS providers like GTL would have preferred that the Commission rescue ICS providers from the folly of their own making, the Commission's adoption of new ICS rate caps, and the decision to not ban or otherwise regulate site commissions, fits squarely within the Commission's statutory authority and its past long-standing precedent. The only support GTL provides for its argument that the Commission should have opened an escape hatch for ICS providers from their entirely voluntary contractual obligations is an order implementing rules to establish price caps for cable service.¹⁷

Initially, it is rather surprising that GTL, an opponent of the Commission's so-called "rate of return" regulations adopted in this proceeding in 2013,¹⁸ would now point to an invasive regulatory structure to support its call for the pass-through of site commissions to ICS providers. However,

¹⁵ *Petition*, pg. 15.

¹⁶ *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand, 17 FCC Rcd 3248, 3262 (2002)(finding that site commissions are "negotiable by contract with the facility owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service.").

¹⁷ *Petition*, pg. 17, nt. 72 (citing First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 1164, ¶ 89 (1993) (the "Cable Order").

¹⁸ *Petition*, pgs. 4-5.

even in that order, the Commission noted that "[i]ncreases in external costs more than inflation will be reflected in rate increases, and decreases in such costs and increases less than inflation will be reflected in rate reductions."¹⁹ If GTL now wishes to avail itself of the regulatory structure adopted in the Cable Order to justify its shifting of site commissions onto the backs of its ICS customers, it must also avail itself of the entire price-cap structure for cable companies that do not face effective competition. Otherwise, GTL's reference to the Cable Order is meaningless.

Furthermore, there is sufficient evidence in the record that GTL will be fairly compensated under the new ICS rate caps and permissible ancillary fees, especially when one acknowledges that call volume will substantially increase after the new ICS rate caps go into effect.²⁰ GTL failed to provide any analysis of its costs to support its argument that it will not be fairly compensated. On the other hand, the Wright Petitioners have provided evidence that GTL will be fairly compensated for providing ICS to its customers.

Specifically, on July 29, 2016, the Wright Petitioners provided an updated cost analysis for each ICS provider – including GTL – that submitted a cost study in 2014.²¹ The analysis applied the new ICS rate caps adopted in the Recon Order to the providers' costs specified in their bloated 2014 cost studies²² and showed that the seven largest ICS providers would have all of their costs covered by a significant margin.²³ Therefore, GTL will not be successful on this argument either.

¹⁹ *Cable Order*, ¶ 90.

²⁰ *See 2016 Stay Order*, 31 FCC Rcd at 291. *See Praeses Ex Parte Submission*, Oct. 13, 2015, pg. 2 ("Interstate ICS call volume is now approximately 76 percent higher than before the effective date of the 2013 ICS Order and overall interstate ICS revenue has increased approximately 12 percent."). *See also Petitioners' Ex Parte Submission*, dated July 18, 2013.

²¹ *See Wright Petitioners Ex Parte Submission*, dated July 29, 2016.

²² *See Second Report and Order*, 30 FCC Rcd at 12,790 ("We take the data at face value, even though the analysis shows that there is significant evidence—both from our own analysis and commenters' critiques—suggesting that the reported costs are overstated.").

²³ *See Wright Petitioners Ex Parte Submission*, dated July 29, 2016, at Exhibit A.

II. GTL Failed to Make Any Showing That Its Losses Are Irreparable

GTL's Petition also failed to include any analysis to support its claim that it will suffer irreparable injury as the result of the new ICS rates caps.²⁴ Unlike Securus and Telmate, GTL apparently could not be bothered to even submit a self-serving affidavit from one of its executives to make the argument that GTL had lost \$X million in renegotiating its monopoly contracts. Instead, GTL, through its counsel, merely asserts that "[t]he process of reviewing and revising hundreds of contracts with hundreds of customers...will consume tremendous resources."²⁵

Such bald assertions, without any supporting evidence, simply do not establish a cognizable "irreparable harm." To establish an irreparable harm, the Commission has stated that the "injury must be 'both certain and great; it must be actual and not theoretical. Petitioners must provide 'proof indicating that the harm [they allege] is certain to occur in the near future.'"²⁶ Nowhere in the Petition did GTL even attempt to make this showing.

Moreover, GTL's financial reports submitted to Alabama's Public Service Commission show that GTL's "Income From Operations" in FY 2015 was \$35.5 million, and \$41.2 million in FY 2014.²⁷ Thus, even if the Commission was to take GTL's unsupported assertion that "tremendous resources" will be consumed to review and revise its agreements with correctional authorities when the new ICS rate caps go into effect, it is abundantly clear that these costs do not threaten "the very existence" of GTL's business.

²⁴ *Petition*, pg. 21.

²⁵ *Id.*, pg. 22. *See also Connect America Fund*, Order, 27 FCC Rcd 7158, 7160 (2012).

²⁶ *See Connect America Fund*, Order, 27 FCC Rcd 7158, 7160 (2012). *See also Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Opinion, DA 15-1454 (Dec. 18, 2015) ("Further, it is 'well settled that economic loss does not, in and of itself, constitute irreparable harm.' The only exceptions to this rule are when (1) the economic loss threatens the 'very existence of the movant's business,' and (2) such loss is great, certain, and imminent.") (internal references omitted).

²⁷ *See Appendix A*.

Finally, the Wright Petitioners previously submitted copies of recently-adopted amendments to existing ICS contracts purported designed to ensure that both the ICS provider and the correctional facility "remain whole."²⁸ GTL actively engaged in the process, forcing through changes in Los Angeles County, California, and Jefferson County, Texas.²⁹ Included with the materials that were provided by GTL to Jefferson County, Texas, was an analysis of the *Second Report and Order* in this proceeding.³⁰ A copy of this analysis is provided herewith as Appendix B for ease of reference. As noted in the analysis, GTL presented five distinct menu options to Jefferson County, Texas, to ensure that the "County still has the ability to make commission if desired" by converting the current 81.5% site commission "to a per minute 'cost recovery' fee." *Id.*

Thus, to the extent that GTL is now arguing that it will suffer irreparable harm by going through similar renegotiations again, the Wright Petitioners respectfully suggest that perhaps GTL could better utilize its "limited" resources by shifting its efforts away from devising new fees to pass onto its customers. Moreover, it should also be noted that GTL continues to fight to pay site commissions and a lump-sum "financial incentive" of \$6.0 million to serve ICS customers held in correctional facilities maintained by the Georgia Department of Corrections. As set forth in Appendix C, GTL has appealed a decision to assign a new contract to Securus Technologies. GTL's Best and Final Offer is attached hereto as Appendix D.

However, regardless of how GTL wishes to spin these facts, in the absence of **any** attempt to quantify its expenses associated with implementing the new ICS rate caps, GTL has utterly failed to show that it will "suffer serious and irreparable harm."³¹

²⁸ See *Opposition to GTL's Petition for Waiver*, dated June 17, 2016, at Appendix B, Appendix C. See also *Wright Petitioners Ex Parte Presentation*, dated July 29, 2016, at Exhibit B.

²⁹ See *Wright Petitioners Ex Parte Presentation*, dated July 29, 2016, at Exhibit B.

³⁰ *Id.*

³¹ *Petition*, pg. 21.

III. A Stay Will Harm Consumers

GTL is simply wrong in stating that "interested parties...will not suffer material irreparable injury in the event of a stay."³² Any delay in the effectiveness of the Recon Order would delay immediate relief to millions of ICS customers currently being charged excessive ICS intrastate rates, who have seen their ICS expenses *increase* due to the actions of GTL and other ICS providers. It is obvious that GTL's Petition seeks additional time simply to perpetuate its drive to collect as much revenue as possible from its unjust, unreasonable and unfair intrastate ICS rates charged to its customers to replace the revenue it lost when the Commission's cap on ancillary ICS fees went into effect. Coupled with the increase in intrastate rates discussed above, there will be substantial harm to third-parties if the new ICS rate caps are not imposed as soon as possible.

IV. There Are Strong Public Interest Benefits Arising From Denial of Stay.

Finally, the Wright Petitioners have provided irrefutable evidence that reform of all ICS rates is required, and that there will be overwhelmingly positive public interest benefits arising from the Commission's implementation of a uniform ICS rate cap on intrastate and interstate calls. Any delay in the effectiveness of the Recon Order would be, in fact, counter to the public interest.

In particular, the Wright Petitioners have introduced overwhelming evidence that increased contact between inmates and their families and loved ones will reduce recidivism rates, which will decrease the cost of incarceration. In fact, it was shown that just a 1% decrease in the recidivism rate would result in savings of more than 250 million dollars for state, county and local jurisdictions. Also, the Wright Petitioners have provided previous statements from Securus, GTL, Telmate and CenturyLink in response to Requests for Proposals asserting that the reduction in rates and fees would lead to increased call volume, increased revenues for ICS providers, and, in turn, increased commissions paid to the correctional facilities that receive site commissions.

³² *Id.*, pg. 23.


GTL attempts to equate "the public interest" to "GTL's pecuniary interest" but the Commission must reject this effort.³³ While GTL and the other ICS providers may have an interest in (i) escaping from their entirely voluntary obligations to pay site commissions, and (ii) avoiding the "burdens of litigation," the **public** interest substantially supports the elimination unjust, unreasonable and unfair ICS rates and fees.

CONCLUSION

Thus, GTL has (i) failed to establish that an appeal of the Order on Reconsideration would be successful on the merits; (ii) failed to provide **any** evidence that it will suffer irreparable harm; (iii) failed to show the lack of harm to third parties (in fact, great harm will be caused from a delay in the effectiveness of the lower rates for all ICS calls); and (iv) failed to show any public interest benefit from granting a stay.

Therefore, the Wright Petitioners oppose Global Tel*Link's Petition for Stay, and respectfully request that the Commission adopt an order denying the request as legally unsustainable.

Respectfully submitted,

By: 

Lee G. Petro
DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

Counsel for The Wright Petitioners

September 8, 2016

³³ *Petition*, pg. 23.

APPENDIX A

Law Offices

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Suite 1100
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March 22, 2016

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ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

By PDF to Darrell.Baker@psc.alabama.gov

Darrell Baker, Director
Utility Service Division Alabama
Public Service Commission
PO Box 304260
Montgomery, AL 36130-4260

Re: Public Records Request

Dear Mr. Baker:

This letter is a formal request for records under the Code of Alabama, §§ 36-12-40 and 36-12-41. I am sending this request to you in your capacity as the records custodian in the Telecommunications Division of the Alabama Public Service Commission (“APSC”). If, however, you are not a records custodian, please forward this letter to the appropriate person and advise me accordingly by phone or e-mail.

I request copies of the annual financial reports (that is, Annual Reports to Shareholders and Form 10-Ks filed with the Securities and Exchange Commission, or financial statements— including balance sheets and income statements—as the case may be) for the year 2015 by or on behalf of the companies listed below;

The request applies to the following companies, along with their wholly-owned subsidiaries and parent entities, along with any submissions supplied by third-parties on the behalf of the company:

1. ATN, Inc., d/b/a AmTel
2. City Tele Coin, Inc.
3. Combined Public Communications
4. Consolidated Telecom, Inc.
5. DSI-ITI, LLC
6. Embarq Payphone Services, Inc.
7. Global Tel*Link
8. Infinity Networks, Inc.
9. Inmate Calling Solutions d/b/a ICSolutions
10. Legacy Long Distance International, Inc.
11. Network Communications International Corp. d/b/a 1800Call4Less

Mr. Darrell Baker

March 22, 2016

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12. Pay Tel Communications, Inc.
13. Securus Technologies, Inc. (f/k/a Evercom Systems, Inc.)
14. Talton Communications, Inc.
15. Telmate, LLC
16. Value-Added Communications, Inc.

PDF or other electronic or scanned copies of the subject records delivered to me by email or on disk are preferable, but printed copies are acceptable if electronic copies do not exist. Please note that I do *not* need certified copies of the records.

I recognize that you may charge reasonable fees for the copies. Please provide me, by phone or e-mail, with the cost for the requested copies, and instructions for payment. If you are producing printed copies of the records, I will be happy to provide my FedEx billing information to facilitate shipping the records to me at the above address.

I would appreciate your expediting this request and complying with it at your earliest opportunity. If you have any questions or require any additional information, please do not hesitate to contact me by phone or e-mail.

Respectfully submitted,



Lee G. Petro

DRINKER BIDDLE & REATH LLP

1500 K Street N.W., Suite 1100

Washington, DC 20005-1209

202-230-5857 – Telephone

202-842-8465 - Telecopier

Petro, Lee G.

From: Baker, Darrell <Darrell.Baker@psc.alabama.gov>
Sent: Friday, June 03, 2016 11:11 AM
To: Petro, Lee G.
Cc: Jones, Tom
Subject: Response to FOIA
Attachments: Combined Public Communications, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Crown Correctional Telephone, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; GTL Holdings.pdf; Infinity Networks, Inc._ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Inmate Calling Solutions 2015.pdf; Lattice Incorporated - AL Annual Financial Statements - INMATE - for the year ending December 31, 2015.pdf; Network Comm. & International Calling Serv..PDF; Network Communications International Corp_ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; Pay Tel Communications_AL Annual Financial Statements -INMATE - YE- 12-31-15.pdf; Securus 2015 Annual Report.pdf; Telmate Financial Statement 2015.pdf; AL FOIA Request - 2016.pdf; Ally Telecom Group, L.L.C. - AL Inmate Record Retention Annual Report (No Service).pdf; American Phone Systems LLC_ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; American Phone Systems.pdf; City Tele Coin, Inc.PDF; Combined Public Communications Inc _ AL Annual Financial Statements - INMATE - year ending 2015-12.pdf; CenturyLink Inc-2015 - 10-K (Full Version).pdf

This should complete the FOIA dated March 22, 2016.

CenturyLink submitted their FCC 10K Report which our legal department said met the criteria. Everything is consolidated with their local exchange company operations.

See attached.

Respectfully,

Darrell A. Baker
Director, Utility Services Division
Phone: (334) 242-2947
Toll Free 1-800-882-3919

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June 17, 2015

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By PDF to Darrell.Baker@psc.alabama.gov

Darrell Baker, Director
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Re: Public Records Request

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I request:

1. copies of the annual financial reports (that is, Annual Reports to Shareholders and Form 10-Ks filed with the Securities and Exchange Commission, or financial statements—including balance sheets and income statements—as the case may be) for the years 2013 and 2014 filed by or on behalf of the companies listed below;
2. copies of provider notifications to the APSC with respect to the provider’s progress in complying with the maximum \$5.95 payment transfer fee requirement in accordance with paragraph 8.25 of the APSC ICS Order under Docket 15957, dated December 9, 2014 (the “Order”); and
3. copies of the required abbreviated tariff for each provider in accordance with paragraph 10.04, Appendix F, and Appendix G to the Order, page 10.

The request applies to the following companies, along with their wholly-owned subsidiaries and parent entities, along with any submissions supplied by third-parties on the behalf of the company:

1. ATN, Inc., d/b/a AmTel
2. City Tele Coin, Inc.
3. Combined Public Communications
4. Consolidated Telecom, Inc.
5. DSI-ITI, LLC
6. Embarq Payphone Services, Inc.
7. Global Tel*Link
8. Infinity Networks, Inc.
9. Inmate Calling Solutions d/b/a ICSolutions
10. Legacy Long Distance International, Inc.
11. Network Communications International Corp. d/b/a 1800Call4Less
12. Pay Tel Communications, Inc.
13. Securus Technologies, Inc. (f/k/a Evercom Systems, Inc.)
14. Talton Communications, Inc.
15. Telmate, LLC
16. Value-Added Communications, Inc.

PDF or other electronic or scanned copies of the subject records delivered to me by email or on disk are preferable, but printed copies are acceptable if electronic copies do not exist. Please note that I do *not* need certified copies of the records.

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I would appreciate your expediting this request and complying with it at your earliest opportunity. If you have any questions or require any additional information, please do not hesitate to contact me by phone or e-mail.

DrinkerBiddle&Reath

Mr. Darrell Baker

July 15, 2015

Page 3

Respectfully submitted,



Lee G. Petro

DRINKER BIDDLE & REATH LLP

1500 K Street N.W., Suite 1100

Washington, DC 20005-1209

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GTEL Holdings, Inc. and Subsidiaries

Consolidated Financial Statements as of and for the
Year Ended December 31, 2015

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET AS OF DECEMBER 31, 2015

	2015
ASSETS	
CURRENT ASSETS:	
Cash and cash equivalents	\$ 14,719,592
Accounts receivable—less allowance for doubtful accounts	36,380,812
Prepaid expenses and other current assets	17,556,507
Prepaid license fees	1,132,642
Income tax receivable	32,231,016
Deferred tax asset	<u>12,374,917</u>
Total current assets	114,395,486
PROPERTY AND EQUIPMENT—Net	65,424,833
PREPAID LICENSE FEES	3,287,107
OTHER INTANGIBLE ASSETS—Net	548,649,354
GOODWILL	384,744,868
OTHER ASSETS	<u>7,152,693</u>
TOTAL	<u>\$1,123,654,341</u>

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET AS OF DECEMBER 31, 2015

	2015
LIABILITIES AND STOCKHOLDER'S EQUITY	
CURRENT LIABILITIES:	
Current portion of long-term debt	\$ 6,150,000
Accounts payable	18,306,264
Accrued liabilities	25,802,604
Commissions payable	23,539,200
Deferred revenue	<u>15,612,250</u>
Total current liabilities	89,410,318
DEFERRED TAX LIABILITY	196,197,000
OTHER LONG TERM LIABILITY	3,908,732
LONG-TERM DEBT	<u>772,583,170</u>
Total liabilities	<u>1,062,099,220</u>
COMMITMENTS AND CONTINGENCIES (Note 11)	
STOCKHOLDER'S EQUITY:	
Common stock, \$0.01 par value—1,000 shares authorized, issued, and outstanding	100
Additional paid-in capital	95,781,862
(Accumulated deficit) retained earnings	<u>(34,226,841)</u>
Total stockholder's equity	<u>61,555,121</u>
TOTAL	<u>\$1,123,654,341</u>

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2015

	2015
NET REVENUE	<u>\$ 558,766,089</u>
OPERATING EXPENSES:	
Cost of revenues—exclusive of depreciation and amortization expenses	290,486,841
General and administrative—exclusive of bad debt and billing arrangement and depreciation and amortization expenses	111,697,083
Bad debt and billing arrangement expenses	(6,100,302)
Depreciation and amortization expense	126,868,789
Loss on disposal of property and equipment	<u>354,509</u>
Total operating expenses	<u>523,306,920</u>
INCOME FROM OPERATIONS	<u>35,459,169</u>
INTEREST EXPENSE	<u>53,334,874</u>
OTHER INCOME (EXPENSES):	
Interest income	15,969
Transaction-related expenses	(1,847,124)
Sponsor fees	(2,056,953)
Other expense	<u>(21,177)</u>
Total other expenses	<u>(3,909,285)</u>
LOSS BEFORE TAXES	(21,784,990)
INCOME TAX BENEFIT	<u>(8,095,865)</u>
NET LOSS	<u>\$ (13,689,125)</u>

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS AS OF DECEMBER 31, 2014 AND 2013

ASSETS	2014	2013
CURRENT ASSETS:		
Cash and cash equivalents	\$ 11,063,132	\$ 33,371,899
Accounts receivable—less allowance for doubtful accounts of \$7,572,309 and \$4,340,265 for 2014 and 2013, respectively	33,137,821	31,135,454
Prepaid expenses and other current assets	14,316,047	12,244,911
Prepaid license fees	1,132,642	1,140,975
Income tax receivable	4,723,959	-
Deferred tax asset	<u>12,374,917</u>	<u>7,688,946</u>
Total current assets	76,748,518	85,582,185
PROPERTY AND EQUIPMENT—Net	50,629,593	42,229,496
PREPAID LICENSE FEES	3,982,352	3,670,417
OTHER INTANGIBLE ASSETS—Net	579,342,401	609,457,262
GOODWILL	427,266,629	449,868,446
OTHER ASSETS	<u>10,193,207</u>	<u>13,692,854</u>
TOTAL	<u>\$1,148,162,700</u>	<u>\$1,204,500,660</u>

(Continued)

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS AS OF DECEMBER 31, 2014 AND 2013

	2014	2013
LIABILITIES AND STOCKHOLDER'S EQUITY		
CURRENT LIABILITIES:		
Current portion of long-term debt	\$ 6,150,000	\$ 6,150,000
Accounts payable	15,295,193	11,758,684
Accrued liabilities	27,361,336	15,828,357
Commissions payable	30,086,582	30,628,738
Income tax payable		75,695
Deferred revenue	<u>16,276,141</u>	<u>14,107,649</u>
Total current liabilities	95,169,252	78,549,123
DEFERRED TAX LIABILITY	196,197,000	205,450,909
OTHER LONG TERM LIABILITY	5,125,208	-
LONG-TERM DEBT	<u>777,334,774</u>	<u>826,653,115</u>
Total liabilities	<u>1,073,826,234</u>	<u>1,110,653,147</u>
COMMITMENTS AND CONTINGENCIES (Note 11)		
STOCKHOLDER'S EQUITY:		
Common stock, \$0.01 par value—1,000 shares authorized, issued, and outstanding	100	100
Additional paid-in capital	94,873,862	93,773,849
(Accumulated deficit) retained earnings	<u>(20,537,496)</u>	<u>73,564</u>
Total stockholder's equity	<u>74,336,466</u>	<u>93,847,513</u>
TOTAL	<u>\$1,148,162,700</u>	<u>\$1,204,500,660</u>

See notes to consolidated financial statements.

(Concluded)

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 2014 AND 2013

	2014	2013
NET REVENUE	<u>\$ 570,778,464</u>	<u>\$ 564,662,032</u>
OPERATING EXPENSES:		
Cost of revenues—exclusive of depreciation and amortization expenses	317,976,418	331,303,057
General and administrative—exclusive of bad debt and billing arrangement and depreciation and amortization expenses	92,079,498	82,692,512
Bad debt and billing arrangement expenses	2,397,611	6,148,803
Depreciation and amortization expense	115,809,753	65,235,421
Loss on disposal of property and equipment	<u>1,308,463</u>	<u>880,302</u>
Total operating expenses	<u>529,571,743</u>	<u>486,260,095</u>
INCOME FROM OPERATIONS	<u>41,206,721</u>	<u>78,401,937</u>
INTEREST EXPENSE	<u>54,464,815</u>	<u>50,495,824</u>
OTHER INCOME (EXPENSES):		
Interest income	32,598	27,281
Transaction-related expenses	(2,403,273)	(418,243)
Loss on early extinguishment of debt		(18,162,472)
Sponsor fees	(2,076,319)	(2,083,256)
Other expense	<u>(297,962)</u>	<u>(37,900)</u>
Total other expenses	<u>(4,744,956)</u>	<u>(20,674,590)</u>
(LOSS) INCOME BEFORE TAXES	(18,003,050)	7,231,523
INCOME TAX EXPENSE	<u>2,608,010</u>	<u>6,227,006</u>
NET (LOSS) INCOME	<u>\$ (20,611,060)</u>	<u>\$ 1,004,517</u>

See notes to consolidated financial statements.

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDER'S EQUITY FOR THE YEARS ENDED DECEMBER 31, 2014 AND 2013

	Common Stock	Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Total
BALANCE—December 31, 2012	\$ 100	\$ 382,873,849	\$ (930,953)	\$ 381,942,996
Stock-based compensation	-	900,000	-	900,000
Dividends paid	-	(290,000,000)	-	(290,000,000)
Net income	-	-	1,004,517	1,004,517
BALANCE—December 31, 2013	100	93,773,849	73,564	93,847,513
Stock-based compensation	-	1,100,013	-	1,100,013
Net loss	-	-	(20,611,060)	(20,611,060)
BALANCE—December 31, 2014	<u>\$ 100</u>	<u>\$ 94,873,862</u>	<u>\$ (20,537,496)</u>	<u>\$ 74,336,466</u>

See notes to consolidated financial statements.

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED DECEMBER 31, 2014 AND 2013

	2014	2013
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net (loss) income	\$ (20,611,060)	\$ 1,004,517
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	115,809,753	65,235,421
Amortization of deferred financing costs	1,791,740	2,456,530
Amortization of discount on long term debt	1,419,159	1,486,564
Loss on debt extinguishment		18,162,472
Loss on disposal of property and equipment	1,308,463	880,302
Stock based compensation	1,100,013	900,000
Deferred income taxes	(13,492,211)	5,148,556
Changes in assets and liabilities, which provided cash:		
Accounts receivable	(93,812)	2,248,711
Prepaid expenses and other current assets	(1,887,433)	(196,116)
Prepaid license fees	(2,000,000)	(3,627,036)
Income tax receivable (payable)	(4,799,654)	622,708
Other assets	1,771,298	(663,182)
Accounts payable	2,637,114	(1,989,721)
Accrued liabilities	7,254,973	(1,998,762)
Commissions payable	(695,678)	1,262,557
Deferred revenue	1,306,734	1,826,853
Net cash provided by operating activities	<u>90,819,399</u>	<u>92,760,374</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(23,601,819)	(29,500,758)
Internal software development costs	(3,072,626)	(3,731,874)
Cash paid for acquisitions - net of cash acquired	(32,408,478)	-
Purchases of other intangible assets	(3,307,743)	(111,571)
Net cash used in investing activities	<u>(62,390,666)</u>	<u>(33,344,203)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Deferred financing costs	-	(19,070,993)
Proceeds from issuance of long-term debt	-	845,000,000
Repayment of long-term debt	(50,737,500)	(573,075,000)
Payment of dividends	-	(290,000,000)
Net cash used in financing activities	<u>(50,737,500)</u>	<u>(37,145,993)</u>

(Continued)

GTEL HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS FOR THE YEARS ENDED DECEMBER 31, 2014 AND 2013

	2014	2013
NET (DECREASE) INCREASE IN CASH	\$ (22,308,767)	\$ 22,270,178
CASH:		
Beginning of year	<u>33,371,899</u>	<u>11,101,721</u>
End of year	<u>\$ 11,063,132</u>	<u>\$ 33,371,899</u>
SUPPLEMENTAL CASH FLOW INFORMATION:		
Cash paid for interest	<u>\$ 51,328,213</u>	<u>\$ 45,011,188</u>
Cash paid for taxes	<u>\$ 27,209,106</u>	<u>\$ 56,958</u>

See notes to consolidated financial statements.

(Concluded)

GLOBAL TEL*LINK CORP
UNAUDITED FINANCIAL STATEMENTS
AS OF AND FOR THE YEAR ENDED 12/31/2013

STATEMENT OF FINANCIAL POSITION

<i>Assets</i>	
Cash	24,862,675
AR	14,384,194
Prepaid and other current assets	8,906,026
Prepaid patent license, current	1,140,975
Income tax receivable	10,651,479
Intercompany balances	6,439,690
Deferred tax asset, current	7,819,049
Total current assets	<u>74,204,088</u>
Property & equipment, net	36,457,832
Prepaid patent license, long term	3,218,978
Other intangible assets	513,104,321
Goodwill	60,570,254
Deferred tax asset, long term	7,870,895
Other assets, long term	11,931,373
Total assets	<u>707,357,741</u>
<i>Liabilities & Equity</i>	
Current portion of long term debt	6,150,000
Accounts payable	8,176,369
Accrued liabilities	12,394,068
Commission payable	18,326,707
Deferred revenue, current	5,742,737
Total current liabilities	<u>50,789,880</u>
Deferred tax liability, long term	266,560,293
Long term debt	826,653,115
Total liabilities	<u>1,144,003,288</u>
Common Stock	100
Additional paid in capital	93,773,849
Accumulated deficit	(530,419,496)
Total equity	<u>(436,645,547)</u>
Total liabilities & equity	<u>707,357,741</u>
check total s/b zero	(0)

STATEMENT OF OPERATIONS

Net revenue	322,792,155
Cost of revenue	198,548,667
General & Administrative	77,498,894
Bad Debt Expense	2,743,149
Loss on disposal of assets	314,367
Total operating expenses	<u>279,105,077</u>
Income from operations	43,687,077
Interest expense	50,495,824
Interest Income	14,841
Transaction related expenses	109,856
Expenses associated with early extinguishment of debt	(18,162,472)
Sponsor fees	(2,083,256)
Other	(37,900)
Total other income	<u>(20,158,931)</u>
Income before taxes	<u>(26,967,677)</u>
Income tax expense	<u>(7,764,010)</u>
Net income	<u>(19,203,667)</u>

APPENDIX B

IMPACT OF FCC ORDER 15 – 36

Main Components and Goals of the FCC Order – Released December 18, 2015

- Lower inmate calling rates and eliminate any additional fees
- Prison rates deadline was March 17, 2016
- County Jail deadline is June 20, 2016
- Eliminate site commissions currently paid to county jails and state prisons
- Establish on-going monitoring and regulation of inmate call rates
- Require Inmate Telephone Providers to report annually a list of facilities they serve and include call rates, fees and any monetary payments being made from inmate telephone revenues

Federal Court of Appeals Issues “Partial Stay” on March 15, 2016

- Partial stay means that the lowering of call rates was delayed until the court hears the case but the elimination and lowering of fees was not stayed or delayed
- The partial stay also requires that any **flat rate call rates** or rates containing a **surcharge** or connection fee must be converted to a pure, per minute call rate. In other words, the inmates are only charged for the number of minutes they talk on the phone
- Interstate per minute rate caps \$0.25/minute for collect calls and \$0.21/minute for pre-paid/debit remain unchanged

How does this effect County Jails?

- The FCC clearly states that although they are not prohibiting site commissions at this juncture, they are “strongly discouraged”
- The FCC now requires the inmate telephone providers to report any site commissions or any other kind of monetary payments being made to jails and if they see what they feel are excessive commissions still being paid, they will not hesitate to take further regulatory actions
- The FCC applauds the states and counties that have voluntarily removed commissions and encourages others to do the same
- The FCC’s opinion is that Counties, States or any other entities that house inmates should not be profiting from those inmates’ phone calls
- A large concern for many County elected officials is that the list of commissions being paid will be a public list for all of the inmate advocacy groups, such as the Wright Petitioners to see and use to further promote their cause. We have already seen negative press and lawsuits regarding counties who profit from inmate telephones

How will the June 20th changes effect GTL's contract with Jefferson County?

- All flat rate calling and surcharges must be converted to per/minute call rates
- The current deposit and cost recovery fees will be reduced by over 50%. For example, the current deposit fee of \$8.95 is reduced to \$3.00. Most other fees are completely eliminated
- Commission percentages will be converted to a per minute "cost recovery" fee. County still has the ability to make commission if desired.
- **GTL and Jefferson County need to amend the current agreement to prepare for the changes mandated by the FCC by June 20th.**

Current environment:

- Current Commission – 81.5%
- Current Blended Intrastate call rates = \$0.40/minute
- Interstate and International rates are to remain the same for now (Current FCC ruling does not apply to these)

What are the options for addressing these changes?

Following are 4 options we would like to review with Jefferson County:

Option 1 – Lower call rates for inmates, zero commission for Jefferson County

- ✓ Intrastate rate - \$.23/minute (removing surcharges and any flat rate calling)
- ✓ No Commission to Jefferson County
- ✓ Include Called Party IQ – no cost to Jefferson County

Option 2 – Lower call rates for inmates, reduced commission to County

- ✓ Intrastate rate - \$.31/minute (removing surcharges and any flat rate calling)
- ✓ \$0.08/minute commission
- ✓ Include Called Party IQ – no cost to Jefferson County

Option 3 – Same call rates for inmates, reduced commission to County

- ✓ Intrastate rate - \$.40/minute (removing surcharges and any flat rate calling)
- ✓ \$0.15/minute commission
- ✓ Include Called Party IQ – no cost to Jefferson County

Option 4 (revised) – Slightly higher call rate, minor reduction in commission to County

- ✓ Intrastate rate - **\$.49/minute** (removing surcharges and any flat rate calling)
- ✓ **\$0.26/minute** commission
- ✓ Include Called Party IQ – no cost to Jefferson County

Option 5 – Based on MOUs for Jefferson, \$0.32/minute equates to about the same commission return that is in place today at 81.5%.

- ✓ Intrastate rate - \$.55/minute (removing surcharges and any flat rate calling)
- ✓ \$0.32/minute commission
- ✓ Include Called Party IQ – no cost to Jefferson County

New call rate and fee structure must be implemented by June 20, 2016. A change in call rates and commission structure will require a contract amendment. To allow enough time, please review this document and let me know a good time to follow up to answer any questions.

Please contact me at the telephone number or email address below with questions.

Corby Kenter, GTL Account Executive

214-415-4866

Corby.kenter@gtl.net

GTL Jefferson County FCC Options

CURRENT BLENDED CALL RATES FOR INTRASTATE CALLING - \$0.40/MINUTE	GTL Option 1	GTL Option 2	GTL Option 3	GTL Option 4 **recommended	GTL Option 5
GTL Calling Rates/Fees					
Rate Charged Per Minute (Intrastate)	\$0.23	\$0.31	\$0.40	\$0.49	\$0.55
Rate Charged Per Minute (Interstate) - Collect (no change)	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25
Rate Charged Per Minute (Interstate) - AdvancePay/Debit (no change)	\$0.21	\$0.21	\$0.21	\$0.21	\$0.21
Convenience Fee to Deposit Funds - Current rate \$8.95	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
Jefferson County Compensation					
Per Minute Compensation to Jefferson Intrastate Only	\$0.00/minute	\$0.08/minute	\$0.17/minute	\$0.26/minute	\$0.32/minute
GTL Products/Services Provided					
ICMV Inmate Telephone System - currently installed	√	√	√	√	√
Recorded inmate phones - currently installed	√	√	√	√	√
Automated PIN Interface with County JMS - currently installed	√	√	√	√	√
Integrated Keyword search technology - currently installed	√	√	√	√	√
Voice biometrics - currently installed	√	√	√	√	√
GTL Deposit services - Lobby kiosk - currently have 1 installed, adding another at the downtown location soon.	√	√	√	√	√
GTL Video Visitation for attorneys - free for County appointed attorneys, no cost to Jefferson County - Installing now	√	√	√	√	√
GTL External IVR - Facility Secretary - not live yet	√	√	√	√	√
GTL Debit Release cards - working with IT to go-live soon	√	√	√	√	√
Debit calling for inmates - not live yet	√	√	√	√	√
GTL Called Party IQ - Detects two or more inmates calling the same number, across all GTL serviced locations - valued at \$15,000	√	√	√	√	√
Historical Phone Usage					
2015 Monthly AVG Minutes of use - Total	153,678.67				
2015 Monthly AVG Minutes of use - Interstate	27,544.08				
2015 Monthly AVG Minutes of use - Intrastate Only	126,134.58				
Projected Outcomes (not counting any stimulation for increased volumes relating to lower call rates)	Monthly Estimates	Monthly Estimates	Monthly Estimates	Monthly Estimates	Monthly Estimates
New Commission estimate to Jefferson County	\$0.00	\$10,090.77	\$21,442.88	\$32,794.99	\$40,363.07
Average Monthly Commissions paid to Jefferson in 2015	\$40,916.55	\$40,916.55	\$40,916.55	\$40,916.55	\$40,916.55
Estimated change in return to Jefferson County - (Please note, we do anticipate an increase in usage with the per minute call rates, but we did not include that increase in these numbers)	-\$40,916.55	-\$30,825.78	-\$19,473.67	-\$8,121.56	\$553.48
GTL Confidential Trade Secret and Proprietary					

APPENDIX C

Josh Belinfante
DIRECT LINE: 404-856-3262
E-mail: jbelinfante@robbinsfirm.com

July 29, 2016

BY HAND DELIVERY
AND
ELECTRONIC MAIL

Sid Johnson, Commissioner
Georgia Department of Administrative Services
Suite 1804 - West Tower
200 Piedmont Avenue, SE
Atlanta, Georgia 30334-9010
sid.johnson@doas.ga.gov

Re: Request for Formal Review and Oral Presentation on the Deputy
Commissioner's Denial of Global Tel*Link Corporation's Appeal and
Protest of Request for Proposal No. 46700-GDC0000669 Inmate
Telephone Service

Dear Commissioner Johnson:

We represent Global Tel*Link Corporation ("GTL"). On its behalf and pursuant to Section 6.5.8 of the Georgia Procurement Manual, we submit this Request for Review and for Oral Presentation on the Deputy Commissioner's July 26, 2016 decision to deny GTL's protest of Request For Proposal No. 46700-GDC0000669 Inmate Telephone Service ("RFP") (the "Decision")¹

¹ GTL submitted its Appeal and Protest of GDC's intended Contract Award for Inmate Telephone Services under e-Request for Proposal No. 46700-GDC0000669 to Securus Technologies ("Securus") on April 19, 2016, and submitted its Reply in Support of its Appeal and Protest on May 6, 2016. These documents are referred to collectively as the "GTL Appeal."

INTRODUCTION

When an entity – whether in the private sector or the public one – decides to accept less money than it could for the same service and technology, something is amiss. Either the entity does not care about value, or something has tainted the process. Yet, that is exactly what happened with this procurement: the Department of Corrections (“DOC”) (1) received less than it could have for the same service, and (2) relied on a third party that was undisputedly biased against an offeror and violated the Georgia Procurement Manual (“GPM”) to effectuate that bias.

The Department Of Administrative Services’ (“DOAS”) decision to deny the protests (“Decision”) not only approves the rejection of taxpayer value, it actually defends it by asserting the DOC can knowingly undercut its own potential revenue for its preferred technology. In doing so, the Decision relies on a false binary option between better technology and better revenue. In reality, the DOC never had to choose (and still is not bound to deciding) between enhanced technology² and a lower price, particularly after the Federal Communications Commission’s (“FCC”) proposed regulation was stayed by the D.C. Circuit. Granting GTL’s protest provides the exclusive means to be sure that Georgia taxpayers are getting the best value from the procurement process.

² Throughout its Decision, DOAS repeatedly cites the fact that GTL’s technology is fifteen years old. However, as DOAS is aware, through the course of 20 contract amendments during the past fifteen years, GTL has made multiple offers to upgrade DOC’s technology – at no cost to the State – all of which have been rejected. In fact, recent offers to upgrade DOC’s technology were made in May 2012, March 2013, April 2015 and February 2016.

Contrary to leading to an optimal (or even reasonable) result, the procurement process and the Decision barred all bidders – GTL, CenturyLink Public Communications, Inc. (“CenturyLink”), Telmate, LLC (“Telmate”), and Securus Technologies, Inc. (“Securus”) (collectively, the “Offerors”) – from offering a financial bid that reflects the current regulatory environment. Adding insult to injury, the Decision does not dispute that, as a consequence of the procurement process, (1) DOC, is deliberately taking far less than it stands to receive, and is essentially overpaying for technology in the form of opportunity cost, and (2) the technology it seeks can be offered for far less than the proposal it accepted. The Decision’s stated concerns of an unquantified delay cannot outweigh these conceded facts, especially given that tens of millions of dollars are at stake.

The Decision offers no compelling justification for the choice to make less to obtain the same. The only logical conclusion that can be drawn is that the entire process was tainted by how DOAS’ third-party consultant violated the Georgia Procurement Manual (“GPM”) to impermissibly participate in the crafting and evaluation of the RFP. Worse yet, the Decision basically admits as much and tries to shift the focus through ex parte communications and a significant weakening of the GPM. In fact, the Decision does not dispute Praeses, LLC’s (“Praeses”) bias against GTL; it simply finds (incorrectly) that GTL was too late in raising the issue.

These flaws render the GPM as largely advisory and reward offerors who submit bids which they acknowledge – in statements to the federal government – are not

feasible and, therefore, not responsible. For these reasons, GTL respectfully appeals to Commissioner Johnson to review the protest and Decision, and specifically requests a hearing before the Commissioner to address the issues raised in its protest.

I. The Purpose of the RFP

The purpose of the RFP at issue is “to establish a contract with a single, qualified supplier that will provide a comprehensive Inmate Telephone Service to Georgia’s Department of Corrections” as set out in greater detail in the RFP.³ With the RFP, the DOC sought “a qualified and experienced supplier” that would, “without cost to [the DOC], operate inmate telephones and related equipment, provide all wiring for the inmate telephones, and install the inmate telephones and the related hardware and software to enable inmates at the Facilities to complete, without limitation, local, long distance and/or international collect, pre-paid collect, debit and free calls from the Facilities.”⁴ Additionally, the Inmate Telephone Service “as provided by the selected supplier shall provide all needed functional, security/investigative and reporting capabilities.”⁵ Finally, the DOC insisted that the “[s]elected supplier must have the capability to provide service and support to 65 Facilities that house approximately

³ Georgia Department of Corrections, Electronic Request for Proposals for Inmate Telephone Service, eRFP No. # 46700-DOC0000669 posted July 16, 2013, along with subsequent amendments and attachments to the RFP, GTL Protest Ex. 1 at Attachment A (emphasis added).

⁴ Id.

⁵ Id.

50,090 inmates/offenders generating a monthly average of 195,307 calls and 2,423,842 total minutes.”⁶

II. The Decision’s Errors

The Decision approved Securus’ proposal, which falls short of these aims and requirements. It should be reversed for numerous and material errors. First, the Decision ignores the stark reality that the entire BAFO solicitation process was mired in regulatory uncertainty, and that pending changes have rendered the accepted financial offer dated and overpriced. Second, the Decision disregards the violations of the GPM, which violations simultaneously show how the procurement process became tainted and skewed against GTL and why the DOC relegated serious concerns about taxpayer value to a mere afterthought. Further, the Decision inappropriately dismisses and undervalues the significance of Securus’ irresponsibility and false promises of technological innovation.

A. Regulatory Uncertainty Led DOAS To Approve an Undervalued Financial Offer.

1. The Regulatory Environment Shifted Continuously throughout the RFP Process.

In the fall of 2015, while the RFP was still underway, the FCC issued an Order (the “2015 FCC Order”) promulgating new caps on interstate calling rates for inmates, and it set forth rate caps on intrastate inmate calls, that were previously unregulated by

⁶ Id.

the FCC.⁷ The new rate caps were scheduled to go into effect March 17, 2016 for prisons. GTL petitioned the FCC to stay the 2015 FCC Order, but the FCC denied the petition.

As a result, on January 27, 2016, GTL filed a Petition for Review of the FCC rate caps in the United States Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit”).⁸ GTL’s Petition challenges the legality of the 2015 FCC Order on statutory and constitutional grounds.⁹ GTL later moved the Court to stay implementation of the new rate caps pending final resolution of the Petition for Review.¹⁰ On February 24, 2016, before the Court had acted on either GTL’s request for a stay or its Petition for Review, DOC invited Best and Final Offers (“BAFO”) for Revenue Share Proposals reflecting the new rate caps under the 2015 FCC Order that were scheduled to take effect on March 17, 2016.¹¹ On March 1, 2016, the Offerors submitted BAFOs, which replaced the Revenue Share Proposals submitted with the RFP Responses.¹² Then, on March 7 and

⁷ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763 dated October 22, 2015, GTL Protest Ex. 12.

⁸ Petition for Review, Global Tel*Link v. FCC, Nos. 15-1461 et al. (D.C. Cir. Dec. 18, 2015), GTL Protest Ex. 13.

⁹ Id.

¹⁰ Motion of Global Tel*Link for Partial Stay Pending Judicial Review (“Motion to Stay”), Global Tel*Link v. FCC, Nos. 15-1461 et al. (Jan. 27, 2016), GTL Protest Ex.14.

¹¹ Email from J. Pytelewski to D. Eades re: Action Required: Inmate Telephone Service RFP #46700-GDC0000669 Request for Best and Final Offer, dated Feb. 24, 2016, GTL Protest Ex. 15.

¹² Best and Final Offers of GTL, Securus and CenturyLink, GTL Protest Exs. 16-18.

23, 2016, the D.C. Circuit granted GTL's request for a stay and enforcement of the stay, respectively, of the implementation of the new rate caps.¹³

More recently, on July 14, 2016, the Federal Communications Commission ("FCC") released its Fact Sheet: Providing Affordable, Sustainable Inmate Calling Services ("Fact Sheet"), indicating that the FCC intends to issue an Order on Reconsideration that would increase the previously established interstate and intrastate inmate calling service rates.¹⁴ The FCC is scheduled to vote on the Order on Reconsideration at its August 4, 2016 Open Commissioner Meeting. And, on July 20, 2016, the FCC filed a motion requesting that the D.C. Circuit hold the appeal of the 2015 FCC Order in abeyance pending the scheduled vote on the Order on Reconsideration.¹⁵

Based on the FCC's review of the record developed in the D.C. Circuit appeal, as well as in response to a Petition for Reconsideration filed with the FCC on January 19, 2016, the FCC Fact Sheet reports that it intends to **increase the rate caps** established in the 2015 FCC Order because the record now "support[s] an approach to inmate calling rate reform that expressly accounts . . . for the possibility that jails and prisons bear legitimate costs in providing access to ICS."¹⁶ This is in contrast to the FCC's previous ruling on ICS rates and site commissions under the 2015 FCC Order. In the

¹³ Order, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Mar. 7, 2016); Order, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Mar. 23, 2016), GTL Protest Exs. 19, 20.

¹⁴ See July 21, 2016 Letter from J. Belinfante to Commissioner Johnson.

¹⁵ Id.

¹⁶ Id.

2015 FCC Order, the FCC excluded site commissions as a cost of providing ICS when establishing the rate caps and discouraged payment of site commissions. The 2015 FCC Order was scheduled to take effect at the time the BAFOs were submitted.¹⁷

These potential rate modifications present a significantly different set of rates than those which exist today and upon which GTL's BAFO was premised.¹⁸

2. DOAS' Failure to Properly Appreciate the Shifting Regulatory Environment Resulted in an Award that is at Direct Odds with Statutory Mandates and the Georgia Procurement Manual.

The relationship between the recent ICS rate changes and the immediate RFP can be summarized as follows:

- At the time the BAFOs were requested, the Offerors believed (or were at least expected to assume) that the 2015 FCC Order's maximum rates of **\$0.11 per minute** of use applied for **both interstate and intrastate ICS** calls for inmates in prisons;¹⁹
- After the BAFOs were submitted, the DC Circuit issued Stays and **interstate ICS rates** were permitted to be as high as **\$0.21 and \$0.25** per minute of use, and **intrastate ICS per minute use** was set by GA PSC at **\$0.18 and \$0.19** per minute of use.²⁰

¹⁷ GTL Protest at 13.

¹⁸ GTL Protest at 10.

¹⁹ GTL Protest Ex. 15.

²⁰ GTL Protest Exs. 19, 20, 31.

- Notwithstanding the Stay, the pre-Stay rates of **\$0.11 per minute** of use applied for both interstate and intrastate ICS remained the operative rates throughout the remainder of the RFP process.

The Decision acknowledges all of this and further acknowledges that the BAFO was intended to address a rate cap regime that was never implemented.²¹ Yet, it doggedly defends the DOC's decision on the grounds that because it can be underpaid for technology, it should be underpaid. This logic flies in the face of Georgia procurement law and best practices, and the consequences are real: the Decision does not contest that tens of millions of taxpayer dollars have been left on the table.

Even more remarkably, the Decision makes additional concessions which only serve to further undermine the purported reasonableness of the award. For example, it is undisputed that:

- DOAS has the discretion to wait until the FCC vote on the Order on Reconsideration, which would potentially result in preferable ITS rates and is only weeks away now, to move forward with the award process;
- DOAS refused to wait until after the vote to move forward;
- Statutory law and the Georgia Procurement Manual require DOAS to issue procurement awards based on the "most advantageous" proposal and to identify the "best value" for the State; and

²¹ Decision at 3.

- Notwithstanding such mandates, DOAS has opted not to maximize its revenue potential under the procurement.²²

Just as important as the points which DOAS concedes are those additional points which GTL (and others) raised in its Protest and which DOAS does not dispute:

- The presumptive rates, at the time the BAFOs were submitted, were **50% lower** than rates currently available;²³
- **Tens of millions of dollars** that DOAS has left on the table could have been put to such DOC goals as 1) ensuring public safety, 2) creating opportunities for restoration to offenders through communication with family, 3) ensuring safe and secure facilities and 4) facilitating/supporting law enforcement;²⁴
- The stay of the 2015 FCC Order has had a **material impact** on the RFP process and has led to distorted results;²⁵
- Both **Securus' and CenturyLink's BAFOs critically depended on a stay of rates** being implemented for their viability (despite DOAS' instruction to the contrary);²⁶

²² Id.

²³ GTL Protest at 11.

²⁴ Id.

²⁵ Id. at 16.

²⁶ Id. at 18.

- The earlier draft BAFO, dated February 4, 2016, which would have requested that the **bidders submit two alternative offers** – one where rates stayed the same, and another where rates decreased based on the FCC Order – was more reasonable than the operative BAFO;²⁷
- DOAS ignored GTL’s inquiry whether multiple offers could be submitted in light of the regulatory uncertainty, ignored GTL’s email informing it that a stay of the 2015 FCC Order rates had been entered by the D.C. Circuit, and ignored GTL’s later notice that its BAFO would “**materially change given the new lift on the rate caps;**”²⁸
- Soliciting additional BAFOs would not be time consuming or labor intensive;²⁹ and
- As a result of the above, overall revenue to the DOC subsequently **declined from \$45,280,000 to \$19,600,000.**³⁰

Collectively, these points demonstrate that the BAFO invited unreasonable or undervalued bids and was thus arbitrary and capricious, resulting in an outcome that

²⁷ Id. at 20.

²⁸ Id. at 21.

²⁹ Id.

³⁰ Id. at 17.

ran contrary to the GPM and the animating purposes and policies of the state procurement laws, and which was a great disservice to Georgia taxpayers.³¹

DOAS attempts to excuse the fact that it overlooked these regulatory changes and stands to capture 50% less revenue than under the original RFP terms on the basis that it reserved the right to “negotiate in good faith an amendment to the awarded contract” in the event “a material change in the rules or policies of the FCC applicable to the inmate telephone services” occurred following execution of the awarded contract.³² DOAS’ optimism for the future thus rests exclusively on uncertain contract negotiations where it very likely may not be capable of achieving better terms with Securus.³³ Accordingly, without any rational basis, DOAS has resigned itself to obtaining less than the best value for the State.

3. The RFP was not Competitively Bid.

DOAS defends its Decision in part on the illusion that the RFP was “fairly competed” when in fact the opposite is true. In reality, following the 2015 FCC Order, the RFP yielded divergent proposals from the Offerors with different views of the

³¹ See GPM § 2.4.2 (RFP process is to “to identify the ‘best value’ for the state”); O.C.G.A. § 50-5-67(a)(7) (“The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state....”); O.C.G.A. § 50-5-50 (state procurement purposes and policies include, inter alia, achievement of “the lowest possible costs to the state through effective competition among such vendors,” “ensur[ing] the fair and equitable treatment of all persons who deal with the procurement system of the state,” “provid[ing] for increased public confidence in the procedures followed in public procurement,” and “provid[ing] safeguards for the maintenance of a procurement system of quality and integrity.”).

³² Decision at 2 (citing RFP § 1.1).

³³ See, e.g. Reply of Century Link Public Communications, Inc. to The Response of Securus Technologies, Inc. to Protests Filed Against the Georgia Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service at 3

undecided law. Indeed, under the law that existed between the 2015 FCC Order and the D.C. Circuit's March 7 and March 23, 2016 stays, the BAFO would have likely led to a fatal Hobson's choice for the Offerors, namely choosing between breaching an awarded contract with which it could not afford to comply or providing services at an unsustainable loss.³⁴ This warrants cancellation, as DOAS never obtained an apples-to-apples comparison.³⁵

B. The Decision Improperly Disregarded Praeses' Inappropriate Involvement in the RFP Process.

The Decision should also be overturned due to its failure to adequately address the problems created by Praeses' involvement in the RFP process. The Decision glosses over the bright-line prohibition on consultant participation in the development and evaluation of the same RFP as well as overlooks key evidence of Praeses' significant role in evaluating the RFPs at issue here. Even more troublingly, the Decision all but concedes that Praeses was biased against GTL. And, there is no other logical explanation for why the DOC would choose to receive less when all it needed to do was ask for more. These errors were arbitrary and capricious, and merit further review by the Commissioner.

1. The Decision Failed to Address Numerous Key Facts Regarding Praeses.

³⁴ Ex. 14.

³⁵ See Webcraft Packaging, Div. of Beatrice Foods Co., B-194087, 79-2 CPD ¶ 120, 1979 WL 12167 (Comp. Gen. Aug. 14, 1979) (sustaining protest and cancelling award so that contract could be rebid to promote full and robust competition in view of changes in contract specifications).

Several facts remain undisputed following the Decision:

- Praeses had been involved in litigation with GTL prior to the RFP;
- Praeses participated in negotiating the extension of GTL's contract with the DOC and gained knowledge of GTL's position that the new, lower FCC rate caps would decrease its ability to pay commissions to the DOC;
- Praeses "monitored" GTL as part of its contract with the DOC, a role that included tracking third party lawsuits against GTL;
- Praeses drafted and developed the Questions and Answers, Requests for Clarification, BAFO requests, and other documents related to the RFP;
- Multiple DOAS internal documents list Praeses employees as members of the Evaluation Committee;
- The Deputy Commissioner did not waive any restriction on Praeses involvement in the RFP process;
- GTL's technical evaluation scores dropped precipitously following a "validation meeting" in which Praeses participated; and
- The scores of the other Offerors increased following this same "validation meeting."

Each of these facts supports GTL's contention that Praeses was improperly involved in the RFP, and each stands unrefuted.³⁶

³⁶ Compare GTL Protest at 23-30 with Decision at 4-6.

2. The Decision Improperly Dismissed GTL's Challenge to Praeses' Involvement as Untimely.

Notably, the Decision **does not challenge** the assertion in GTL's protest that Praeses held a bias against GTL. Instead, the Decision states that, whatever bias Praeses held, GTL was time barred from raising such issues. The Decision contends that, because the RFP states that "[the DOC] has engaged a third party consultant, Praeses, LLC to support this procurement event and the management of its day to day activities," a challenge to Praeses' involvement must have been brought prior to the closing of the RFP.³⁷

This position misses the point. The RFP notice stated only that Praeses would "support this procurement." Based on this limited statement, GTL cannot be assumed to have been on notice that Praeses' involvement would **violate the terms of the GPM**. Indeed, the GPM provides specifically for separate notice, in the form of a written waiver from the Deputy Commissioner, if a consultant is to participate in RFP development and evaluation. Because no such waiver was provided, and because GTL could not have known the extent of Praeses' involvement until it received the documents cited in its Protest, there has been no such waiver of GTL's rights.³⁸

Especially in light of DOAS' failure to refute Praeses' bias against GTL, the Decision's finding that GTL's was time barred in its challenge to Praeses' involvement in

³⁷ Decision at 4.

³⁸ See GTL Protest at 24-30 (citing to numerous emails and internal DOAS documents evidencing Praeses' improper participation in RFP evaluations).

the RFP process was arbitrary and capricious, and warrants further review from the commissioner.

3. The Decision Improperly Blurs the GPM's Clear Prohibition of Consultant Participation in RFP Evaluations.

The Decision misstates the black letter standard set forth in the GPM. While the Decision concedes that “[t]he GPM currently contains limitations of involvement by third party consultants,”³⁹ it fails to address the clear language of those limitations. The Decision incorrectly reasons that, because the GPM “contemplates that third party consultants may be involved in a consultative role,” Praeses was free to run all aspects of the RFP process.⁴⁰ This is not so.

The GPM is clear that, while consultants may be utilized for RFPs, the use of the **same** consultants for both RFP drafting **and** evaluation is prohibited.⁴¹ The GPM presents a clear either/or rule: a consultant may assist in either developing RFP criteria or evaluating RFPs, but **not both**. This rule allows the evaluation process to be performed with fresh eyes, and assures that the winning bidder is chosen based on the merits of its offer, not preconceived notions developed prior to the submission of RFP responses. And, DOAS is not entitled to any deference of its interpretation of the

³⁹ Decision at 5.

⁴⁰ *Id.* at 5.

⁴¹ GPM § 3.2 (“Any third-party consultant who develops or drafts specifications or requirements of a solicitation document will be prohibited from . . . serving as an evaluation committee member.”).

GPM.⁴² Thus, the question presented with this appeal is whether a third party that participates in the development of and RFP and the evaluation process can avoid the impropriety of its conduct by claiming – without any supporting evidence – that its participation was limited to consulting and not writing in the score itself. The answer is an unquestioned “no,” and any other conclusion renders the GPM meaningless.

Other than an ex parte conversation, there is nothing in the Decision that explains or even attempts to justify Praeses’ prohibited dual roles. There was no waiver to authorize it. Here, it is undisputed that Praeses participated in both the development and evaluation of the RFPs. Thus, there is no question that Praeses violated the GPM, and upholding the procurement under such circumstances was arbitrary and capricious, and warrants further review from the commissioner.

4. The Decision Inaccurately Described Praeses’ Role in RFP Evaluations.

The Decision vaguely refers to Praeses as holding a “consultative role” in the RFP process. While it is unclear exactly what this characterization means, the documents referenced in GTL’s appeal demonstrate that Praeses was actively involved in both RFP development and evaluation.

As an initial matter, the Decision does not dispute that Praeses developed and drafted specifications and requirements used in soliciting RFP responses.⁴³ Nor could

⁴² Pruitt Corp. v. Ga. Dep’t of Cmty. Health, 284 Ga. 158, 160-61 (2008).

⁴³ See generally Decision.

it, as there is ample evidence of Praeses drafting key RFP documents for DOAS.⁴⁴

Instead, the Decision contends that Praeses did not “score the proposals” and thus did not participate in the RFP evaluation in violation of the GPM. Apparently, the Decision takes the position that, no matter how much Praeses influenced the RFP evaluations, because its employees were not individually assigned their own scoring sheets, Praeses could not have violated the GPM. The GPM does not define “score the proposals,” and the Decision’s interpretation would render the rule against consultant involvement toothless. However, the term need not be defined to determine that Praeses involvement was improper. Put simply, there is no material difference between a consultant advising on what to score and actually scoring.

GPM § 3.2 expressly prohibited Praeses employees from “serving as Evaluation Committee members.” Multiple documents GTL received in response to its open records requests contained a listing of “Committee Members” or a “Committee Roster.”⁴⁵ Each of these documents reflects that Praeses employees were on the evaluation committee.⁴⁶

This is direct evidence that Praeses participated in the RFP evaluation in a manner that violated the GPM. The import of this evidence cannot be brushed aside by

⁴⁴ See, e.g. GTL Protest at 24 (citing to Exhibits 38, 39, and 40, all of which are emails from Praeses to the Issuing Officer containing RFP draft documents)

⁴⁵ See GTL Protest at 24 (citing to Exhibits 7 and 8, which are materials from the RFP evaluation reflecting that Praeses employees served as evaluation committee members).

⁴⁶ Id.

referring to Praeses' "consultative role" nor the Issuing Officer's post-hoc "assurance" that Praeses' involvement complied with the GPM.⁴⁷ The Decision's failure to address this clear law and evidence was arbitrary and capricious, and merits further review by the Commissioner.

5. Praeses' Involvement Harmed GTL.

But for Praeses' improper involvement, it is likely that the results of the RFP would have been different.

The Decision concedes that, following Praeses participation in the "validation meeting," GTL's scores dropped over 50 points, while Securus' scores rose over 50 points.⁴⁸ The Decision's contention that only some of the changes to GTL's scores were made without any specific explanation does not diminish the importance of this point. Indeed, the fact that any score reductions were made based only on "group discussion" calls into question the review process, and the Decision wrongly concludes that GTL's burden was to disprove a negative.

Moreover, the Decision does not dispute that Praeses gained knowledge of how GTL would respond to the BAFO through Praeses' previous contract negotiations with GTL.⁴⁹ Instead, the Decision contends that this pre-acquired knowledge was irrelevant because all Offerors had to respond to the same BAFO. This again misses the point.

⁴⁷ Decision at 5, n. 11

⁴⁸ See GTL Protest at 28

⁴⁹ *Id.* at 25-27.

Praeses already knew that including an assumption of lower rate caps would harm GTL's ability to make a competitive bid. Nonetheless, Praeses structured the BAFO to assume these lower rate caps despite the fact that it was highly likely that the rate caps would be stayed, as they ultimately were. This too is not adequately addressed in the Decision. Had Praeses allowed for an uncapped bid, or even alternative bids, it is highly likely that the results of the BAFO would have changed. At the very least, this uncertainty further emphasizes the importance of the GPM's prohibition on consultant involvement in multiple aspects of the same procurement process.

These facts show that Praeses' involvement harmed GTL's ability to compete for the BAFO, and the Decision's finding otherwise was arbitrary and capricious, and merits further review by the commissioner.

C. The Award went to an Irresponsible and Non-responsive Bidder.

1. Securus' Bid was Irresponsible and Non-Responsive.

Worse than merely preventing the evaluation of bidders apples-to-apples, DOAS issued the award to Securus based on a BAFO which made completely unrealistic presumptions and promises, including a guaranteed annual minimum payment that would exceed the annual gross revenue generated on the Contract by several hundred thousands of dollars.⁵⁰ Specifically, Securus' offer promised a 59.6% revenue share and

⁵⁰ Candidly, GTL submitted the one and only responsive and responsible bid, as, despite DOAS' instruction to the contrary, Securus' and CenturyLink's BAFOs each critically depended on a stay of rates being implemented for their viability.

a guaranteed annual payment of \$3,900,000, which simply could not have been financially feasible, as the **guaranteed annual minimum offered by Securus would exceed annual gross revenue generated on the Contract by over \$200,000, for a total of \$839,870.88 in unsupported revenue share over the four-year term.**⁵¹

If these black-and-white figures were not telling enough, Securus even went so far as to tell the federal government that its business model would no longer be viable under the rate caps expressed in the BAFO:

- “Securus explained that, if adopted, the rates and rules in the Fact Sheet could be ‘**a business-ending event**’ for the company.”
- Securus described the new rate caps “as **an unwelcome surprise.**”
- “Securus also showed that **the draft rate caps are significantly below Securus’s costs even without site commissions**; if Securus must continue paying site commissions out of such reduced rates, that would make those draft rate caps **more than 75% below Securus’s costs.**”
- Securus represented that “[c]orrectional facilities will be worse off **under the draft rate caps, because providers will be unable to serve them.**”⁵²

⁵¹ Best and Final Offer of Securus , GTL Protest Ex. 17.

⁵² Notice of Permitted Ex Parte meeting, WC Docket No. 12-375, dated October 7, 2015, GTL Protest Ex. 57 (emphasis added).

- “Securus **could not allow online credit card processing** under the new caps.”
- “Securus would have to **discontinue Text2Connect and PayNow** under the new caps.”
- “The financial loss Securus will incur under the new rules **may prevent it from complying with covenants to its banks.**”
- “The **tremendous, unrecoverable financial losses** that the new rate caps will bring to Securus **actually threaten the sustainability of its business.**”
- “[C]onsumers will benefit from a stay [of the new rates], because Securus would not be forced to discontinue innovative, convenient services on which consumers have relied.”
- “**The public interest will be gravely impaired**” if the new rate caps become effective.⁵³

Thus, DOAS issued the award to the most reckless or non-responsive bidder and not the best or even responsive and responsible offer, as Securus effectively took a gamble on whether the rate caps would actually be implemented.

The Decision summarily dismisses this point, stating that it is “without merit” because Securus “bears all cost risk” in performing the contract.⁵⁴ However, the

⁵³ Securus Technologies, Inc. Emergency Motion for Partial Stay of FCC Order 15-136 Pending Review, Global Tel*Link v. FCC, Nos. 15-1461 et al. (Jan. 27, 2016), GTL Protest Ex. 58 (emphasis added).

allocation of risk between the State and Securus does not change the fact that awarding Securus the contract based on an irresponsible bid contravened both statutory law and the GPM.⁵⁵ This is of critical value to the procurement process overall, as it protects against illusory offers, the acceptance of which would necessitate beginning the process anew again to the detriment of the taxpayers.

The Decision similarly attempts to downplay the reality that Securus would be financially under water on the contract by stating that “GTL cites its own revenue experience in Georgia as the basis for its assertions, [and] I do not find GTL’s argument to be compelling because GTL’s current contract and pricing model is fifteen years old....”⁵⁶ This position is simply wrong. GTL cited Securus’ BAFO which was purportedly based on the assumptions incorporated into the BAFO terms (and thus applicable to all Offerors), and which objectively showed that Securus represented it was going to pay more money to the State than it was projected to make off the contract in the first place.⁵⁷ If DOAS preferred, it could have incorporated a different forecast into the BAFO terms, but it did not. And, if DOAS’ position is that it awarded the contract to

⁵⁴ Decision at 4.

⁵⁵ GPM § 5.6.2.2 (requiring suppliers to have “appropriate financial capacity and controls”); O.C.G.A. § 50-5-67(c)(1)(A) (only those offerors that submit responsible bids should be invited to negotiate or accepted).

⁵⁶ See Decision at 4. Contrary to the Decision’s characterization, GTL’s contract, including pricing and commissions, has been amended numerous times over the past fifteen years.

⁵⁷ Best and Final Offer of Securus , GTL Protest Ex. 17.

Securus based on different assumptions than those presented in the BAFO, then the award was unlawful.⁵⁸

2. Securus is Otherwise Irresponsible.

Under the GPM, a bidder's responsibility is demonstrated by, among other things, "a satisfactory record of **integrity**, appropriate financial, **organizational and operational capacity and controls**, and **acceptable performance on previous governmental and/or private contracts**, if any."⁵⁹ Examples of non-responsibility include "a supplier's history of nonperformance or performance problems on other contracts" and "business instability."⁶⁰ The requirement that a bidder be responsible stands on its own, and is not governed by the rational basis standard as the Decision incorrectly asserts.

In addition to showing how Securus' bid was untenable in the light of its statements to the federal government, GTL (and the other protesters) provided ample proof of Securus' unscrupulous business practices elsewhere. For example:

- Securus was the subject of **one of the top ten biggest data breaches of 2015**;⁶¹

⁵⁸ See, e.g. United Telephone Co. of the Northwest, B-246977, Apr. 20, 1992, 92-1 CPD ¶ 374 at 7-10 (agencies may not properly award a contract on a basis that is fundamentally different from the basis upon which the competition for the requirement was conducted).

⁵⁹ GPM § 5.6.2.2 (emphasis added).

⁶⁰ *Id.*

⁶¹ Top 10 Biggest Data Breaches of 2015, Digital Guardian, available at <https://digitalguardian.com/blog/top-10-biggest-data-breaches-2015> (last visited Apr. 16, 2016), GTL Protest Ex. 54.

- In 2014, Securus was sued in a **class action lawsuit** for recording phone calls between jail inmates and their attorneys in Travis County, Texas;⁶²
- In 2014, the Alaska Department of Corrections discovered that Securus was **inadvertently recording attorney-client calls** at state correctional facilities, requiring the state to go through the expensive and time consuming process of identifying and destroying material that should not have been recorded in the first place;⁶³ and
- On May 27, 2016, **another class action lawsuit** was filed against Securus for recording thousands of attorney-client phone calls in correctional facilities throughout the State of California.⁶⁴

DOAS responds by citing to the fact that Securus' massive data breach and one of the lawsuits against it were disclosed in Securus' RFP materials.⁶⁵ It does not even attempt to countenance the other issues which the protesting Offerors brought to DOAS' attention.⁶⁶ The Decision also does not cite anything in Securus' RFP response showing

⁶² Austin Lawyers Guild et al. v. Securus Technologies, Inc. et al., Case No. 1:14-cv-00366-LY (W.D. Tex. 2014), publicly available at <https://www.pacer.gov/>.

⁶³ Alaska Public Media, Dept. of Corrections Confirms Inadvertent Recording of Attorney-Client Calls, available at <http://www.alaskapublic.org/2014/02/03/dept-of-corrections-confirms-inadvertent-recording-of-attorney-client-calls/> (last visited Apr. 16, 2016), GTL Protest Ex. 55.

⁶⁴ June 1, 2016 Letter from J. Belinfante to Commissioner Johnson.

⁶⁵ Decision at 4.

⁶⁶ See, e.g. Supplemental Brief of CenturyLink Public Communications, Inc. in Support of CenturyLink's Protest of Department of Corrections Notice of Intent to Award E-Request Proposal Number 46700-GDC0000669 for Inmate Telephone Service at 3 (citing Comment of Securus Technologies, Domestic Section 214 Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc., WC Docket No 16-188).

that the data breach was disclosed, and it likely was not disclosed, given that Securus denied that the data breach ever occurred in its response to GTL's protest.⁶⁷ Moreover, the fact that Securus may have disclosed the Texas class action in its RFP response should not alleviate DOAS' concerns, as Securus' Litigation Summary was itself plagued with inaccurate reporting and Securus even went on to mischaracterize the disposition of that lawsuit in its response to GTL's protest.⁶⁸

3. Securus cannot Deliver on its Promises.

GTL pointed out to DOAS that Securus misrepresented its ability to deliver voice biometric technology and was non-responsive regarding its alert capabilities.⁶⁹ Securus offered virtually no rebuttal to GTL's showing, based on Securus' own sworn testimony, that Securus' RFP response on these points was puffery. Nevertheless, the Decision declines to seriously consider these issues because, together, they would only total a possible 35 points in the technical portion of the RFP, where 650 points was the maximum score.⁷⁰ DOAS forgets that a bucket fills drop by drop.

This represents a broader problem underlying the Decision: the Deputy Commissioner repeatedly rejects the notion that the protesting Offerors were prejudiced by reviewing each issue in a vacuum and never assessing the aggregate effects of, inter

⁶⁷ See Response of Securus Technologies, Inc. to the Protests filed by Global Tel*Link Corporation, Telmate, LLC and CenturyLink Public Communications, Inc. ("Response") at 11.

⁶⁸ GTL Reply at 13 (citing Response Ex. 15); Response at 12.

⁶⁹ GTL Protest at 35-37.

⁷⁰ Decision at 6.

alia, the ongoing rate changes, Securus' irresponsible and deceptive bidding, and Praeses' biased intermeddling on the RFP process.⁷¹ These actions add up and they have real consequences, namely, that DOAS issued an unlawful award that it cannot rationally justify, and in doing so, shorted various important public interests – such as ensuring public safety, creating opportunities for restoration to offenders through communication with family, ensuring safe and secure facilities, and facilitating/supporting law enforcement – by tens of millions of dollars. Put simply, if the DOC is serious about enhanced security and technological innovations, then this is surely not a rational means of seeking to achieve its goals.

III. Request for Oral Presentations

Given the questions raised in this appeal and the Deputy Commissioner's conclusory statements attempting to absolve real issues, GTL requests that the Commissioner hear oral presentation by the parties pursuant to Section 6.5.8 of the Georgia Procurement Manual.

As seen, the procurement does not live up to the goals and requirements imposed by Georgia law. There remains time to correct the wrongs caused by the procurement, and the ordering of relief or an oral presentation are well within your discretion under the Georgia Procurement Manual. GTL respectfully requests you exercise that discretion to address the flaws that materially prejudiced GTL.

⁷¹ See, e.g. Decision at 4-6.

Commissioner Sid Johnson
Department of Administrative Services
July 29, 2016
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Sincerely,



Josh Belinfante

JB/db

cc: Matthew T. Parrish, Esq.
J. Matthew Brigman, Esq.
Daniel J. Monahan, Esq.

APPENDIX D



Negotiation Invitation: Best and Final Offer

Solicitation #: 46700-GDC0000669

Solicitation Title: Inmate Telephone Service

Supplier Name: Global Tel*Link

Best and Final Offer No.: 01	Supplier's Authorized Contact: Don Eades Email: Don.Eades@gtl.net
Date of Request: February 24, 2016	Offeror's Response Due By (Date): 5:00 pm ET on Tuesday, March 1, 2016 Email Response to Issuing Officer (Name): Jan Pytelewski at email address: janet.pytelewski@doas.ga.gov
Submission Instructions: 1. A written response, as specified below, must be submitted in response to this Best and Final Offer. 2. Best and Final Offers must be submitted by e-mail and followed by a signed hard-copy confirmation via fax, email, mail or delivery, to: Issuing Officer: Jan Pytelewski Entity Name: Georgia Department of Corrections (GDC)	

GDC (Georgia Department of Corrections) is providing Contractors the opportunity to submit a Best and Final Offer (BAFO) based on the criteria listed below and specific requirements pursuant to the Federal Communications Commission's (FCC) WC Docket 12-375 Second Report and Order and Third Further Notice of Proposed Rulemaking (FCC Order) which was voted on by the FCC on October 22, 2015, released on November 5, 2015, and published to the Federal Register on December 18, 2015 with an anticipated implementation date of March 17, 2016. The specified requirements in this BAFO shall be incorporated by GDC in the subsequent Contract. Responses to this BAFO shall be evaluated/scored in accordance with Section 6 - Proposal Evaluation, Negotiations and Award of Attachment A of the eRFP.

Contractor's response to this BAFO shall be based upon all Services identified in the eRFP, Addendum No. 1, and Request for Clarification No. 1, as well as the requirements identified below which may differ from the original requirements set forth in the eRFP. The calling rates and fees specified in the Revenue Share Proposal below are consistent with the requirements of the FCC Order. Contractor must submit its BAFO using the format included herein.

REVENUE SHARE PROPOSAL

Revenue Share Percentage: Contractor shall propose a single Revenue Share percentage (%) which shall be applied to all local, intralata/intrastate, interlata/intrastate, intralata/interstate, interlata/interstate and international Gross Revenues (as defined in Section 19 – Revenue Share of the Scope of Services of the eRFP) based on the calling rates and fees below.

MMG: Contractor shall include a Minimum Monthly Guarantee (MMG) Payment. The first MMG Payment shall be made payable to GDC within 60 days of the execution date of the Contract in conjunction with the phase one timeline of the implementation plan, and all future MMG payments shall be due on the 20th day of each month under the Contract and any renewal terms. Should Contractor complete Facility installations prior to the due date of the first MMG payment, Contractor shall pay GDC Revenue Share on Gross Revenue (as defined) at the proposed Revenue Share percentage for any revenues generated by and through the ITS during such time and follow the payment requirements in Section 22 - Payment and Reporting of the Scope of Services of the eRFP. For all MMG payments, should the Revenue Share due calculated on the Gross Revenue (as defined) exceed the MMG payment received, Contractor shall begin paying GDC Revenue Share on Gross Revenue (as defined) at the proposed Revenue Share percentage. Contractor shall follow the payment requirements in Section 22 – Payment and Reporting of the Scope of Services of the eRFP. If the sum of Revenue Share calculated on the Gross Revenue (as defined) is less than the MMG, GDC shall not be responsible for refunding any portion of the MMG to Contractor.

Financial Incentive: Contractor shall include a Financial Incentive in the form of a monetary value due GDC upon execution of the Contract. (i.e. Signing Bonus, Technology Grant, etc.)

Calling Rates: Contractor must comply with the calling rates specified below.

Call Type	Collect and Direct Billed*	Pre-Paid Collect and Debit
	Per Minute Rate	Per Minute Rate
Local	\$0.13	\$0.11
Intralata/Intrastate	\$0.13	\$0.11
Interlata/Intrastate	\$0.13	\$0.11
Intralata/Interstate	\$0.13	\$0.11
Interlata/Interstate	\$0.13	\$0.11
Domestic International	\$0.50	\$0.50
International – Mexico	\$0.50	\$0.50
International	\$1.00	\$1.00

*Effective July 1, 2018, the per minute calling rate for collect and direct billed calls will be reduced to \$0.11 (contingent upon a stay of the FCC Order).

Fees, Regulatory Charges, and Taxes: Contractor must comply with the fees specified below. Additional fees shall be prohibited with the exception of regulatory required charges and taxes which are defined in Section 19 – Revenue Share of the Scope of Services of the eRFP. Contractor shall disclose the amount of the Pre-Paid Collect Transaction Fee imposed on end-users by any third-party provider(s) with whom Contractor contracts with in order to fund pre-paid collect accounts. No mark-up of such third-party fees will be allowed.

Fee/Charge Name	Description	Amount
Universal Service Fund (“USF”)	Universal Service Fund is changed quarterly by the FCC.	18.2%* *adjusted quarterly
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via IVR, website, etc.	\$3.00
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via live agent.	\$4.75
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via cash, money order or check.	\$0.00
Pre-Paid Collect Transaction Fee	Fees charged to end-users for funding a pre-paid collect account via third-parties (i.e. Money Gram, Western Union, etc.).	100% Pass Through - No Mark-up Allowed Contractor to Disclose.
All Other Fees	Fees or charges applied by Contractor or a third party for calls processed through the ITS from the GDC Facilities.	\$0.00
Applicable Taxes	All required taxes are allowed.	Varies 100% Pass Through - No Mark-up Allowed

Voicemail Messaging: Contractor shall propose a per transaction fee to be charged to the end-user for each completed voicemail message. Contractor shall deduct the voicemail messaging transaction fee from the end-user’s pre-paid collect account. Contractor shall also propose a Revenue Share amount for each voicemail message completed by the end user to the inmate. Contractor shall provide the Revenue Share on each completed voicemail message before any deductions are made for unbillable transactions, bad debt, rejected voicemail messages, uncollectible transactions, fraudulent transactions, merchant adjustments, malfunctions, or any other Contractor expenses. Additionally, GDC shall not be liable for any of Contractor’s costs including, but not limited to, taxes, shipping charges, network charges, insurance, interest, penalties, termination payments, attorney fees, or liquidated damages.

Contractor is required to submit its BAFO in this specific format and only submit the information required in the table below and the areas highlighted in blue. Contractor shall not deviate from this format or modify or edit the table or add any additional footnotes or text. Contractor's response below will be evaluated and scored.

Revenue Share Percentage:	\$0.02 Per Min or 18.2% %
MMG Payment:	\$ 0.00
Financial Incentive(s):	\$ \$6M 1 time \$1.5M ea ext
Voicemail Messaging Transaction Fee:	\$ 2.00
Voicemail Messaging Revenue Share (\$ or %):	\$ 0.00 %
Pre-Paid Collect Transaction Fee via MoneyGram:	\$ 0.00

Pre-Paid Collect Transaction Fee via Western Union:	\$	0.00
Pre-Paid Collect Transaction Fee via Other Third Party:	\$	0.00

GDC reserves the right to negotiate the impact of an implemented FCC Order on Contractor's BAFO prior to Contract execution. Negotiations may include the change affects of (1) the ITS calling rates and fees permitted to be charged by Contractor under this Contract; (2) the right of GDC to recover its ITS costs; or (3) the ability of GDC to require Contractor to pay to GDC commissions, fees (including but not limited to a cost reimbursement payment) or other ITS cost recovery mechanisms that enables GDC to fully recover its ITS costs in a manner compliant with the change in the FCC's ITS rules or policies.



Signature of Authorized Representative

Date 1-Mar-16

Jeffrey B. Haidinger, President & COO

Name and Title

CERTIFICATE OF SERVICE

I hereby certify that, on September 8, 2016, the forgoing Opposition was served via electronic mail on the following persons:

Marlene H. Dortch, Secretary
Federal Communications Commission
Marlene.Dortch@fcc.gov

Chairman Tom Wheeler
Federal Communications Commission
Tom.Wheeler@fcc.gov

Commissioner Mignon Clyburn
Federal Communications Commission
Mignon.Clyburn@fcc.gov

Commissioner Jessica Rosenworcel
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By: 
Lee G. Petro

Welcome to the FCC's new Electronic Comment Filing System, ECFS 3.0, launched June 20, 2016. This system contains the entire history of docketed proceedings from 1992 to the present. New submissions here will be added to the public record. We will continue to refine this system in response to user feedback. Please tell us about your experience using this system by sending an email to ECFSfeedback@fcc.gov (mailto:ECFSfeedback@fcc.gov).

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Name(s) of Filer(s)	The Wright Petitioners
Law Firm(s)	Drinker Biddle & Reath, LLP
Attorney/Author Name(s)	Lee G. Petro
Primary Contact Email	Lee.Petro@dbr.com
Type of Filing	OPPOSITION
File Number	
Report Number	
Bureau ID Number	
Address of	Law Firm
Address	1500 K Street, N.W. Suite 1100, Washington, DC, 20005
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