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060476-TL

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Subject: Docket No. 060476-TL
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The Docket No. is 060476-TL - Petition to Initiate Rulemaking to Amend Rules 25-24.630(1) and 25-24.516(1), F.A.C., by BellSouth Telecommunications, Inc.

This is being filed on behalf of Global Tel*Link Corporation

Total Number of Pages is 10

Comments of Global Tel*Link Corporation

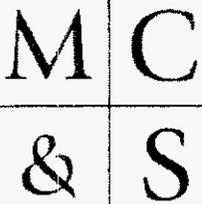
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August 31, 2009

VIA ELECTRONIC MAIL

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Commission Clerk and Administrative Services
Room 110, Easley Building
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Re: Docket No. 060476-TL

Dear Ms. Cole:

Enclosed for filing on behalf of Global Tel*Link Corporation is Comments of Global Tel*Link Corporation in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

Floyd R. Self

FRS/amb
Enclosures
cc: David Silverman, Esq.
Parties of Record

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FPSC-COMMISSIONER OFFICE

**Before the
Florida Public Service Commission**

In re)	
)	
Petition to Initiate Rulemaking)	Docket No. 060476-TL
To Amend Rules 25-24.630(1) and)	
25-24.516(1), F.A.C., by)	
BellSouth Telecommunications, Inc.)	

**COMMENTS OF
GLOBAL TEL*LINK CORPORATION**

Global Tel*Link Corporation ("GTL"), by its counsel, hereby respectfully submits its comments in the above-captioned proceeding to clarify that, specifically, inmate phone service providers ("IPSP") have been deregulated with respect to rate caps pursuant to the enactment of SB 2626, the "Consumer Choice and Protection Act," which amends various sections of Chapter 364, Florida Statutes, and generally, that IPSPs should enjoy complete deregulation by the Florida Public Service Commission ("FL PSC" or "PSC") in accordance with the recognized conflict between adherence to antiquated, historical regulation as payphone providers and by virtue of their true nature as providers of law enforcement systems to correctional facilities.

BACKGROUND

GTL provides secure, customized, highly specialized telecommunications services to correctional facilities throughout the United States. GTL serves all types of correctional facilities, from the smallest county jails to twenty three of the Nation's Departments of Correction.¹ GTL has been serving the secure telecommunications needs of the corrections industry for almost twenty years, during which time its service has evolved from traditional public payphone to sophisticated software-based security systems that not only connect inmates with friends and family by telephone but, just as importantly, assist law enforcement and corrections entities in their attempts to prevent illegal activities that may originate within their inmate populations, and prosecute such crimes when they occur.

The evolution of complex software and hardware solutions by GTL, and IPSPs generally, has far outpaced innovation in the legacy payphone industry to which they traditionally have been associated. This evolution has resulted in a circumstance where today these services have become largely distinct from one another, based both on their technical capabilities and the manner in which they serve the public interest. At the same time, however, the regulatory construct in which IPSPs operate has not kept pace with

¹ GTL serves 14 Florida accounts, providing calling capability to nearly 22,000 county inmates.

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this change and, as a result, the tension between an IPSP's obligation to its law enforcement and public safety commitments on the one hand, and its legacy regulatory characterization as a "payphone" provider must be addressed. GTL believes that in order for IPSPs to effectively fulfill their role as a critical tool in law enforcement's crime prevention and crime solution efforts, compliance with the policies and regulations issued by, and governing, correctional facilities must be balanced against the often-conflicting and contradictory regulatory constraints associated with the delivery of standard telecommunications services – vestiges of the payphone industry legacy to which IPSPs are statutorily bound.

IPSPs, by the nature of the services they provide, count among their constituents three distinct categories of users: correctional and detention facilities, the persons those facilities house, and the discrete portion of the public with whom these persons communicate. The entities and individuals that comprise these categories each have their own interests in the delivery of the service, and these interests are often in conflict. As a result, the IPSP is caught in the midst of obligations to satisfy these competing interests and, consequently, finds itself subject to inquiry and penalty from regulators for fulfilling their obligation to satisfy the lawful requests of their law enforcement customers. Quite simply, the IPSP is tied by contract to one, by regulation to another, with no ability to "just say no" to either. IPSPs are placed in the irresolvable position of serving two governmental "masters" who often have conflicting interests, objectives and requirements. Therefore, GTL respectfully suggests that it is incumbent upon the FL PSC to assess these conflicts and responsibly distinguish between the elements of public safety required by the correctional facilities, and the oft-conflicting regulations that govern the operations of inmate communications services.

In weighing the competing interests of public safety and the oversight of telecommunications service, GTL suggests that in this instance the interests of law enforcement in protecting public safety must take precedence. While IPSPs understand the importance of the PSC's obligation to ensure continuity in the provisioning of communications between incarcerated individuals and friends and family, those obligations must be tempered by an acknowledgement that an incarcerated individual's access to telecommunications facilities is a *privilege*, not a right, and that a substantial portion of these communications may not be for lawful purposes. IPSPs, in partnership with correctional facilities and law enforcement, perform a service that is ostensibly an extension of law enforcement, which function should be viewed as the element of overriding importance in serving the public interest.

The recent enactment of SB 2626 is the means by which the righting of such conflicting interests can be accomplished. The heavy lifting has been completed. GTL applauds the FL PSC for recognizing that IPSPs must be considered when implementing the rules adopted pursuant to the new law. For the reasons set forth below, GTL believes that IPSPs should be deregulated with respect to rate caps in accordance with the treatment of the standard telecommunications carrier cousins, and further, should be deregulated as telecommunications carriers entirely.

ARGUMENT

I. Inmate Phone Service Providers Are Entitled to Rate Cap Deregulation Under SB 2626

A. Inmate Phone Service Providers Are Currently Regulated Like their Distant Cousin Telecommunications Carriers and can not Be Subject to Disparate Regulatory Treatment

To date, IPSPs have been characterized like traditional telecommunications carriers, owing to roots in the public payphone industry. While time and evolution in the needs of the corrections community have altered the specificities of the provision of phone service to inmates, Florida's regulation of the IPSP industry has not necessarily kept pace.

The FL PSC has two choices to weigh when considering how to approach the implementation of SB 2626—it can either determine that the IPSP industry is part and parcel of the standard telecommunications industry, and regulate it accordingly, or it can recognize that the IPSP industry has long-since grown beyond its former payphone origins such that it no longer derives or provides benefit by being subject to the regulations that exist for standard telecommunications carriers. If the former is the case, then there is no justification for considering whether or not IPSPs are entitled to rate cap deregulation; the decision has already been made by SB 2626. If the latter is the case, then the pure factors that comprise the nature of the products and services delivered by IPSPs to correctional facilities dictates that the PSC should abate in its regulatory jurisdiction over the operations of IPSPs.

1. Inmate Phone Service Was Summarily Deregulated Under SB 2626

SB 2626 imposes sweeping modifications to Chapter 364, Florida Statutes, in recognition of the inherent benefits that accompany the presence of competition and the ever-increasing emergence of broadband and Voice over Internet Protocol-enabled services ("VoIP"). The modified rules eliminate the requirement of incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), interexchange carriers ("IXCs") and operator service providers ("OSPs") from to file rate schedules with the PSC.² It further eliminates PSC jurisdiction over broadband and VoIP services.

GTL's regulatory characterization for purposes of regulation by the FL PSC is multi-layered; one must peel through the various impositions of regulated status in an attempt to name what GTL provides as a service in the telecommunications industry. It is, at once, a combination of the entities addressed by SB 2626, and yet, distinct from them at the core of its offerings. In July, 1996, GTL received a Certificate of Convenience and Public Necessity ("CPCN") to operate as a payphone provider offering automated

² Florida Statutes, §§364.04, 364.08.

operator-assisted local, intraLATA and interexchange services to correctional facilities.³ GTL is duly tariffed for the provision of “intrastate resale common carrier communications and automated operator services” for use by Florida correctional institutions.⁴ GTL’s interoperation with standard telecommunications service providers results in GTL’s utilization of VoIP and broadband services in the course of originating and terminating calls, when such interoperation dictates such an interconnection.

Historically GTL’s operations have encompassed areas to which the PSC has regulated, and it has abided by the myriad regulations as required by Florida law as required by its authorization to conduct services in the State. However, as these service classifications now enjoy deregulation under SB 2626, it would be discriminatory to require GTL to maintain its CPCN and tariff labels, yet continue to subject it to regulations no longer imposed upon similarly-classified entities. To the extent that the PSC adheres to GTL’s outer-layer of characterization for purposes of regulation, GTL has been summarily deregulated by class. GTL dispenses automated operator services that connected calls locally, within LATAs, across LATAs, and across state lines, at times utilizing broadband and VoIP transmission. To determine that these classifications are not accurate in defining GTL for regulatory purposes then requires the PSC to discard the outer-layer of status it once imposed and consider the deeper layer of service GTL provides—highly sophisticated, technically specialized calling platforms customized for the express needs of law enforcement and correctional facilities--which also dictates that GTL’s services do not fall within the jurisdiction of the PSC.

2. Inmate Phone Service is Well-Constrained by Robust Competition

The PSC, in exercising its powers, is charged with encouraging competition through flexible regulatory treatment among providers of telecommunications services,⁵ promoting competition by encouraging investment in telecommunications markets,⁶ encouraging all providers of telecommunications services to introduce new or experimental services free of regulatory constraints,⁷ and ensuring that all providers of telecommunications services are treated fairly by eliminating unnecessary regulatory restraint.⁸ The PSC is complying with these mandates in its adherence to the directives of SB 2626. The rationale behind the PSC’s easing of oversight of the enumerated telecommunications services now enjoying deregulation applies equally to the operation of the inmate phone service industry, and GTL believes that there is no compelling reason to exclude IPSPs from the treatment afforded to other telecommunications service providers.

Inmate phone service is a microcosm of the larger universe of telecommunications services, with some extremely important distinguishing features.

³ See Order No. PSC-96-0867-FOF-TC, Docket No. 951198-TC.

⁴ FL PSC tariff No. 2, Issued March 11, 2005, Orig. Page 4.

⁵ Florida Statutes, §364.01(b).

⁶ *Id.* §364.01(d).

⁷ *Id.* §364.01(e).

⁸ *Id.* §364.01(g).

The current competitive climate that gave rise to SB 2626 exists for inmate phone service, and arguably, the competitive climate in which IPSPs operate, is more robust than that of standard telecommunications services. Over the last decade, the composition of the inmate phone service industry has changed dramatically, from a minimalist offshoot of public payphone service provided by the largest and best known providers of telecommunications services, to provisioning ever-refining security and law enforcement tools designed and offered by a cadre of highly competitive companies dedicated entirely to meeting the latest technical demands of correctional facilities and law enforcement.

In most cases, the contracts to provide communications services to correctional facilities are procured pursuant to bid, which are released by correctional facilities in accordance with both the mandatory bid procedures in place for a particular state or county, and their own internal security policies. The security requirements associated with the provision of telephone service for inmates require that only one IPSP can ultimately install its system within the walls of a correctional facility. The selection of the sole provider of inmate telephone service for a particular correctional facility must be right every time from the perspective of the correctional facility, and it is that IPSP that can meet every requirement of a bid in a manner that permits it to cover its own costs in providing the service that wins.

Providing inmate phone service is costly and growing more so in light of the demands of its law enforcement and corrections customers; higher than the cost of providing standard telecommunications services, which has decreased over time. As correctional facilities discern new security challenges and seek to improve crime prevention and crime-solving capabilities, IPSPs ratchet up their own research and development groups to meet current needs. Presently, correctional facilities nationwide are tackling the emerging challenge of thwarting the illegal use of contraband cellular telephones by inmates, the proliferation of which threatens public safety and the carriage of justice. Correctional facilities, which have fallen particularly hard to the dearth of state and local funds for governmental agencies, must turn to IPSPs for assistance in dealing with this latest law enforcement issue. Yet, nary a bid for inmate phone service is released that does not, in addition to its increased level of security requirements, insist that inmate phone service be provided at the lowest possible cost to inmates and their called parties. It is within this environment of strict requirements that IPSPs compete to win a contract. Each IPSP knows that it must offer the lowest calling rates possible in order to win, and even be considered, for a contract. In the end, the winner of the contract has succeeded in meeting all of the unique security and law enforcement requirements associated with permitting inmates to make telephonic communications at the lowest cost possible to those utilizing only one aspect of the service—the telephone call.

IPSPs are subject to consumer complaints, just like any provider of consumer goods and services, and no IPSP can afford to charge unjust and unreasonable rates. The IPSP that charges rates above those that are fair and reasonable for the service being provided will succumb to the protests of the persons paying for the calls, and thus jeopardize its participation in the contract with the correctional facility. Correctional facilities do not tolerate consumer backlash related to inmate telephone service; this is a

burden beyond the realm of what correctional facilities are designed to manage. Correctional facilities will not hesitate to terminate the services of an IPSP in the wake of an onslaught of complaints about the rates charged. Therefore, the sheer underpinnings of that which makes for a successful bid in the quest for an inmate phone service contract includes the assurance that the rates charged for an inmate telephone call are as low as possible while still enabling the requirements of the contract to be met.

This degree of competition for the opportunity to engage in a long-term contractual relationship with a correctional facility ensures that inmate calling rates, as one aspect of IPSPs offering, are as low as possible. To impose rate caps on inmate calling rates stymies the flexibility IPSPs require to meet the increasingly complex security and law enforcement requirements of inmate telephone service contracts. It detracts from the necessary freedom IPSPs require to exceed the offerings of their competitors, and it stifles the fullness of offerings that IPSPs are able to present to correctional facilities, thereby reducing the ability of correctional facilities to find and obtain the type of inmate telephone service that best fits its needs.

Continuing to impose rate caps on IPSPs conflicts with the legislative intent of SB 2626 and the FL PSC's mandatory obligation to exercise its authority and jurisdiction in a manner that complies with Section 364.01 of the Florida Statutes.

II. The FL PSC Should Exert No Influence or Jurisdiction over Inmate Phone Service

The previous arguments highlight the complexity of the characterization of inmate phone service. Rooted in the provision of public payphone service by dominant telecommunications carriers, yet evolved through the adaptations of the payphone industry to meet the distinct and specialized needs of correctional facilities and law enforcement, the current services provided by IPSPs are first and foremost law enforcement tools, and secondarily telephone services. Without the provision of specialized security and law enforcement capabilities, no inmate telephone service could exist.

The regulation of inmate telephone service has not adapted along with the evolution of its service offerings. As a result, regulations that were drafted and adopted in contemplation of the provision of public payphone service conflict with regulations governing the operation of correctional facilities and public safety interests, and IPSPs are caught squarely in the middle of needing to comply with both. Of the many elements that comprise the whole of inmate telephone service, the fact that a call is connected between an inmate (who by virtue of incarceration is subject to a different set of rights than the public) and a member of the public is but one element. The fact that one party to the call is an inmate removes the call from the realm of telecommunications services that the FL PSC regulates, and places it into the realm of inmate oversight managed exclusively by the corrections industry. That the hardware hanging in correctional facilities for use by inmates to place calls looks for all the world like a public payphone is

the only vestige of this specialized industry's payphone roots. Beyond the physical appearance of the phone, everything else has changed.

The FL PSC has recognized the inherent conflict between the regulation of plain old telephone service and the specific regulations associated with the management of incarcerated persons in issuing an Order waiving the requirement that GTL, as a certificated payphone service provider, ensure a ten-minute call connection time.⁹ GTL's request was prompted by its obligation to comply with a correctional facility's rule that GTL must promptly disconnect calls that could be three-way call attempts. In issuing the Order, the FL PSC held that GTL was bound by contract to comply with the inherent rules and regulations issued by, and governing the conduct of, correctional facilities. While the FL PSC's Rule 25-24.515(22) prohibits public payphone providers from disconnecting calls prior to an elapse of ten minutes, the FL PSC recognized that confinement facilities maintain their own set of regulations, and IPSPs were obligated to provide phone service in accordance with the confinement facility's rules and policies.¹⁰ In reaching its determination that GTL would be absolved from complying with the PSC's public payphone rule, the FL PSC noted that:

[e]ach of the facilities with which Global contracts for pay telephone service has policies and procedures to control the use of the telephones by their inmate populations. The chief correctional officers of the confinement facilities have the authority these policies and procedures pursuant to Chapter 951, Florida Statutes. Global is contractually obligated to abide by and cooperate in the implementation of the policies and procedures of the confinement facilities.¹¹

In its Petition to the FL PSC, GTL asserted that it could not refuse to comply with the lawful requests of the correctional facilities it serves,¹² and in issuing its Order waiving GTL's compliance with the ten-minute call connection requirement, the PSC agreed.

The rules and regulations enforced by the FL PSC were adopted for the purpose of regulating the provision of telephone service to the public-at-large. In its provision of specialized communications services, GTL is not providing telecommunications services to the public-at-large; it is providing specialized communications and law enforcement services to correctional facilities that make it possible for a discrete subset of the population—inmates—to place calls to a second discrete subset of the population—those persons with whom an inmate is permitted to communicate. In providing its service to correctional facilities, GTL is obligated by contract to adhere to and comply with the rules and regulations designed specifically for the governance of inmates and the protection of the public safety. At nearly every turn, GTL faces conflicts between

⁹ *In re* Petition for Declaratory Statement Regarding Applicability of Rule 25-24.515(22), F.A.C., or, in the Alternative, Petition for Waiver of Rule, by Global Tel*Link Corporation, Docket No. 050892-TP, Order No. PSC-06-0116-FOF-TP, Issued February 14, 2006 ("PSC Order").

¹⁰ *Id.* at p. 4.

¹¹ *Id.* at p.2.

¹² *Id.*

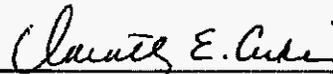
general telecommunications regulations and correctional facility regulations, and it is often impossible for GTL to comply with both.

GTL should not be required to choose between complying with one or the other set of regulations, nor should it be required to routinely expend resources to defend an action it has taken to comply with law enforcement requirements that may come into conflict with PSC regulation. The weight of contractual obligations to correctional facilities and the public safety objectives these regulations are designed to secure finds GTL, more often than not, defending its actions before the PSC, in a constant exercise of education and re-education of the true nature of the service provided. As previously described, the highly competitive environment of inmate phone service provision and the threat of losing a hard-won contract more than adequately serves to ensure that the two discrete portions of the population who engage in calling—inmates and the limited number of persons with whom they are permitted to communicate—are protected from unscrupulous business practices. The activities of IPSPs are policed internally by the inmate phone service industry, by the corrections industry, by Better Business Bureaus and Attorneys General and the Federal Communications Commission. An extra layer of state regulation imposed by the FL PSC does little to enhance the protections afforded by these other entities, and instead, increases the burden on IPSPs who already endeavor to exist within a complex set of requirements.

CONCLUSION

The FL PSC should recognize that IPSPs do not belong to a category of entities over which the PSC exercises jurisdiction. While the PSC could undertake a lengthy, costly investigation into this position, such recognition does not require any additional effort or exertion on the part of the PSC. The enactment of SB 2626, and the PSC's subsequent actions in deregulating telecommunications services has accomplished the task. The PSC need only issue a Second Order proclaiming as much, and the work is done.

GTL respectfully requests that the FL PSC find that IPSPs are no longer subject to rate caps under SB 2626, and additionally find that IPSPs do not belong under the jurisdiction of the FL PSC.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Responses were served on the following parties by Electronic Mail on this 31st day of August, 2009.

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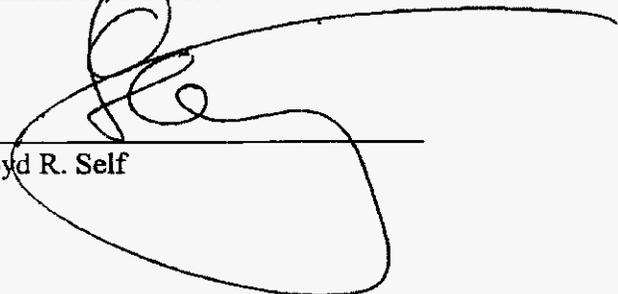
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