



PUBLIC NOTICE

Federal Communications Commission
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**CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
GLOBAL TEL*LINK CORPORATION'S PETITION FOR EXPEDITED
CLARIFICATION AND DECLARATORY RULING CONCERNING
APPLICABILITY OF THE TELEPHONE CONSUMER PROTECTION ACT
AND FEDERAL COMMUNICATIONS COMMISSION RULES**

CG Docket No. 02-278

Comments Due: 15 Days After Publication in the Federal Register

Reply Comments Due: 25 Days After Publication in the Federal Register

On March 4, 2010, Global Tel*Link Corporation (Global Tel) filed a Petition for Expedited Clarification and Declaratory Ruling regarding applicability of the Telephone Consumer Protection Act (TCPA) and Federal Communications Commission (FCC or Commission) rules to its calling practices.¹ Specifically, Global Tel asks the Commission to declare that the TCPA and associated FCC rules are inapplicable to Global Tel's use of automatic notifications before completing calls to certain persons dialed by prison inmates.²

According to the *Petition*, correctional facilities contract with Global Tel to provide out-bound communication services for incarcerated persons.³ When an inmate without a pre-paid calling card or debit calling account sanctioned by the correctional facility attempts to call an individual for the first time, and that individual is not served by a local exchange carrier with which Global Tel has a billing arrangement or the inmate has dialed a called party's cell phone, the call cannot be completed unless and until a billing arrangement with the called party is established.⁴ Once the inmate dials the desired number, Global Tel captures the number and initiates an automated interactive voice response notification to inform the called party that an incarcerated person is attempting to contact him or her and the called

¹ See Petition for Expedited Clarification and Declaratory Ruling, filed by Global Tel Link Corporation on March 4, 2010 (*Petition*). The TCPA, Pub. L. No. 102-243, 105 Stat. 2394 (1991), is codified at 47 U.S.C. § 227.

² *Petition* at 1, 9.

³ *Id.* at 3. Pursuant to these contracts, Global Tel agrees to enable and complete calls from incarcerated persons to those persons with whom the inmate is permitted to communicate. *Id.* Inmates do not have the freedom to contact persons outside the facility at will. In many cases, called parties must be on an authorized list to receive inmate calls for security reasons pursuant to the Global Tel contract for services established with the correctional facility. *Id.* at 6.

⁴ *Id.* at 4.

party must establish an account in order to receive the call.⁵ Global Tel makes three attempts to notify the called party to establish an account to receive inmate calls.⁶ Global Tel maintains that it provides a valuable service to correctional facilities, inmates, and the friends and relatives of the inmates.⁷ Without the relief requested in the *Petition*, according to Global Tel, it is exposed to risk of unnecessary litigation from persons bringing private actions under the TCPA.⁸

In relevant part, the TCPA regulates the use of automated telephone equipment.⁹ Section 227(b)(1)(B) of the TCPA makes it unlawful to place a non-emergency telephone call to a residential line “using an artificial or prerecorded voice” without the recipient’s consent unless the call is “exempted by rule or order of the Commission under paragraph (2)(B).”¹⁰ Paragraph (2)(B), in turn, authorizes the Commission to enact limited exemptions from this ban, including an exemption for calls “that are not made for a commercial purpose” or “do not include the transmission of any unsolicited advertisement.”¹¹ Further, section 227(b)(1)(A) of the TCPA prohibits the use of any automatic telephone dialing system or an artificial or prerecorded voice to call any telephone number assigned to a cellular telephone service absent an emergency purpose or the “prior express consent of the called party.”¹² Section 227(b)(2)(C) gives the Commission authority to exempt from this prohibition only those “calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights the provision is intended to protect.”¹³

Global Tel presents several arguments to support its request for a declaratory ruling. First, Global Tel argues that the automated notification calls that it places to inform a called party that an incarcerated person has dialed the party’s telephone number and that a payment account is required to receive the call are not solicitation or telemarketing calls, but instead simply inform a called party how to establish an

⁵ *Id.* at 4-5.

⁶ *Id.* at 6. The called party is prompted to respond during the message to either decline to receive calls from the inmate or agree to receive calls by creating an account to which the call can be billed. *Id.* at 4.

⁷ *Id.* at 3.

⁸ *Id.* at 8, 18.

⁹ 47 U.S.C. § 227(b).

¹⁰ 47 U.S.C. § 227(b)(1)(B).

¹¹ 47 U.S.C. § 227(b)(2)(B)(i) and (ii). *See also*, Section 64.1200(a)(2) of the Commission’s rules, which prohibits the initiation of “any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call . . . is not made for a commercial purpose or is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation.” 47 C.F.R. § 64.1200(a)(2).

¹² 47 U.S.C. § 227(b)(1)(A). *See also*, Section 64.1200(a)(1)(iii) of the Commission’s rules, which prohibits the initiation of “any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to . . . cellular telephone service . . . or any service for which the called party is charged for the call.” 47 C.F.R. § 64.1200(a)(1)(iii).

¹³ 47 U.S.C. § 227(b)(2)(C).

account for the purpose of receiving calls from an inmate.¹⁴ Global Tel asserts its notification calls should be exempt pursuant Section 227(b)(2)(B) of the TCPA because the calls are not made for a commercial purpose and do not transmit an unsolicited advertisement.¹⁵ Global Tel further asserts that the Commission's ruling that autodialed and prerecorded message call to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party makes its prerecorded message calls to parties called by inmates permissible.¹⁶ Global Tel contends that the inmate possesses the prior express consent of the called party to be contacted at the number provided.¹⁷ Global Tel states that its interactive voice recognition platform is neither a predictive dialer nor a form of autodialing as contemplated by the TCPA.¹⁸ Lastly, Global Tel argues that although the TCPA should not apply to its notification calls and practices, these calls and practices meet the technical and procedural standards for artificial or prerecorded voice systems set forth in Section 227(d)(3) of the TCPA.¹⁹

We seek comment on Global Tel's petition. Comments and reply comments may be filed by: (1) using the Commission's Electronic Comment Filing System (ECFS), (2) using the Federal Government's eRulemaking Portal, or (3) sending paper copies.²⁰ Comments can be filed through the Commission's ECFS filing interface located at the following Internet address: <http://fjallfoss.fcc.gov/ecfs>. Comments can also be filed via the Federal eRulemaking Portal at <http://www.regulations.gov>.²¹ Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which is **CG Docket No. 02-278**. Parties who choose to file by paper must file an original and four copies of each filing.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the FCC continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325,

¹⁴ *Petition* at 3-5, 9-10.

¹⁵ *Id.* at 11-12.

¹⁶ *Id.* at 13. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, CG Docket No. 02-278, 23 FCC Rcd 559 (2008).

¹⁷ *Id.*

¹⁸ *Id.* at 14-15. The TCPA defines "automatic telephone dialing system" as equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. 47 U.S.C. § 227(a)(1). *See also* 47 C.F.R. § 64.1200(f)(1).

¹⁹ *Id.* at 16-17. *See* 47 U.S.C. § 227(d)(3); 47 C.F.R. § 64.1200(b).

²⁰ *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

²¹ Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

Because of the potential impact of this proceeding on persons not parties to it, it shall be treated as a permit-but-disclose proceeding under the FCC's *ex parte* rules, which are codified at 47 C.F.R. §§ 1.1200 *et seq.* Therefore, *ex parte* presentations will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its web site www.bcpiweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Karen Johnson, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-7706 (voice) or Karen.Johnson@fcc.gov.

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