

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER

Adopted: March 14, 2016

Released: March 14, 2016

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) denies a petition for a temporary waiver filed by Global Tel*Link Corporation (GTL),¹ seeking an extension of time to implement a rule adopted in the *2015 ICS Order*.² Specifically, the Bureau finds that GTL did not provide sufficient justification to warrant a temporary waiver of section 64.6100(a) of the Commission’s rules, which prohibits inmate calling service (ICS) providers from requiring end users to deposit a minimum amount of money in a debit or prepaid calling account.³ As a result, GTL, as well as all other ICS providers, must eliminate minimum deposit requirements by March 17, 2016, for inmates held in the prisons it serves.⁴

II. BACKGROUND

2. Section 64.6100(a) of the Commission’s rules was adopted as part of the *2015 ICS Order* and states that “[n]o provider shall institute a minimum balance requirement for a Consumer to use Debit or Prepaid calling.”⁵ As the Commission explained, “high purchase minimum requirements can lead to unfair compensation . . . [and] can effectively allow providers to charge exorbitant amounts for single calls.”⁶ The rule was published in the Federal Register on December 18, 2015, and becomes effective on March 17, 2016 for calls involving inmates held in prisons, and on June 20, 2016 for calls involving

¹ Petition of Global Tel*Link Corporation for Waiver of Deadline to Implement Rule 64.6100(a) for Prisons, WC Docket No. 12-375 (filed Jan. 8, 2016) (GTL Petition).

² *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*2015 ICS Order*).

³ 47 C.F.R. § 64.6100(a).

⁴ The United States Court of Appeals for the District of Columbia Circuit recently stayed parts of the Commission’s ICS rules, but that stay order did not affect the provision that is the subject of GTL’s Petition. *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016) (staying 47 C.F.R. §§ 64.6010 (setting caps on ICS calling rates) and 64.6020(b)(2) (setting caps for single-call services) and denying various motions for stay “in all other respects”).

⁵ 47 C.F.R. § 64.6100(a).

⁶ *2015 ICS Order*, 30 FCC Rcd at 12852, para. 176.

inmates held in jails.⁷ The Commission found that this implementation schedule “adequately balances the pressing need for reform,” while affording ICS providers and facilities “enough time to prepare.”⁸

III. SUBMISSIONS OF THE PARTIES

3. On January 8, 2016, GTL filed a petition seeking “a temporary waiver of the March 17, 2016 deadline by which inmate calling service (ICS) providers must comply with rule 64.6100(a) for prisons.”⁹ GTL asks for a waiver extending the deadline for implementing rule 64.6100(a) for prisons until June 20, 2016.¹⁰ GTL offers several arguments to justify its requested waiver. First, GTL asserts that it cannot tailor its payment software and systems to prohibit minimum payments for prisons on one date and for jails on another date.¹¹ Specifically, GTL states that it cannot implement rule 64.6100(a) separately in prisons and jails because it has one system for both prisons and jails, and that system associates accounts with a specific telephone number or individual, not a facility.¹² Second, GTL argues that the Commission’s reasons for adopting different effective dates for prisons and jails are not related to the minimum balance issue contemplated in rule 64.6100(a), but are instead related to the implementation of a “new rate regime” and the time needed to renegotiate contracts.¹³ Third, GTL asserts that a single implementation date will benefit the public interest by eliminating customer confusion that could potentially be caused by the staggered implementation deadlines the Commission adopted.¹⁴ Fourth, GTL notes that consumers have the ability to request a refund of any unused funds when they close their accounts.¹⁵ Finally, GTL cites a declaration from John Baker, Senior Vice President of Consumer Products and Payment Channels for GTL, in which Mr. Baker asserts that GTL cannot meet the March 17 implementation deadline.¹⁶

4. After receiving GTL’s petition, the Bureau issued a public notice seeking comment on GTL’s request for a temporary waiver of rule 64.6100(a).¹⁷ The Wright Petitioners filed the only response to GTL’s petition on January 28, 2016.¹⁸ In their comments, the Wright Petitioners oppose GTL’s request, arguing that GTL has not provided justifications sufficient to warrant the grant of a

⁷ See *id.* at 12884-85, paras. 251-52; Federal Communications Commission, Rates for Interstate Inmate Calling Services, Final Rule, 80 FR 79135 (Dec. 18, 2015); *Wireline Competition Bureau Announces the Comment Cycle and Effective Dates for the Inmate Calling Second Report and Order and Third FNPRM*, Public Notice, 30 FCC Rcd 14507 (WCB 2015).

⁸ *2015 ICS Order*, 30 FCC Rcd at 12889, para. 259. The staggered deadlines were adopted in response to record evidence indicating that providers may need more time to implement the reforms in jails than in prisons. *Id.* at 12887, para. 256.

⁹ GTL Petition at 1.

¹⁰ See *id.*

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Declaration of John Baker In Support of Global Tel*Link Corporation Petition for Waiver, GTL Petition Attach. at 1 (Baker Declaration).

¹⁷ *Wireline Competition Bureau Seeks Comment on Global Tel*Link Corporation’s Petition for Waiver of Deadline to Implement Rule 64.6100(a) For Prisons*, Public Notice, DA 16-43 (WCB Jan. 13, 2016).

¹⁸ Wright Petitioners’ Comments Regarding Global Tel*Link Petition for Waiver, WC Docket No. 12-375 (filed Jan. 28, 2016) (Wright Petitioners’ Comments).

waiver.¹⁹ The Wright Petitioners assert that the conclusory statements in the Baker Declaration are not sufficient to support a waiver without additional detail, noting that GTL does not provide any explanation for why it would take additional time to complete the necessary changes or why GTL cannot implement the necessary changes for both prisons and jails by March 17, 2016.²⁰ The Wright Petitioners also assert that GTL failed to demonstrate that grant of its petition will not undermine the purpose of section 64.6100(a), especially considering GTL's large share of the ICS market.²¹

5. GTL filed reply comments on February 1, 2016.²² In its reply comments, GTL disputes the Wright Petitioners' arguments, asserting that its waiver petition shows good cause warranting a temporary waiver of the implementation date of rule 64.6100(a) for prisons.²³ Specifically, GTL argues that the Baker Declaration provides sufficient evidence that GTL cannot alter its payment system to prohibit minimum payments in both prisons and jails by March 17, 2016.²⁴ GTL further asserts that its size and position in the ICS industry have "nothing to do with whether it has met the standard for FCC grant of its waiver request."²⁵ Finally, GTL repeats its contention that granting its petition will not undermine the purpose of rule 64.6100(a) because the regulatory purpose of the separate implementation dates for prisons and jails is not relevant to the prohibition on minimum balances.²⁶

6. On February 2, 2016, the Wright Petitioners filed an *ex parte* letter in response to GTL's reply comments.²⁷ In their letter, the Wright Petitioners underscore many of their initial arguments and argue that GTL's failure to respond to the concerns raised in the Wright Petitioners' Comments demonstrates that GTL has not provided sufficient justification for grant of a waiver.²⁸ For example, the Wright Petitioners assert that, contrary to GTL's arguments, the company's market share is relevant because the threat of unfair compensation caused by any delay in implementing rule 64.6100(a) is "significantly magnified" due to GTL's position as one of the largest providers of ICS to prisons.²⁹ The Wright Petitioners also note that GTL has not explained why it cannot come into compliance with the rule sometime after March 17, 2016, but before June 20, 2016.³⁰ Finally, the Wright Petitioners express concern that granting GTL's waiver request will have a "domino effect," spurring other ICS Providers to file similar waiver requests.³¹

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2-3.

²¹ *Id.* at 3-4. The Wright Petitioners argue that because "GTL serves 8 of the 10 largest prison systems, and more than 30 state prison systems overall, a delay in implementing Section 64.6100(a) for an additional 90 days could have a particularly substantial negative impact on ICS consumers." *Id.* at 3.

²² GTL Reply Comments on Petition for Waiver of Deadline to Implement Rule 64.6100(a) for Prisons, WC Docket No. 12-375 (filed Feb. 1, 2016).

²³ *See id.* at 1.

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.* at 4.

²⁷ *Ex Parte* Response to Reply Comments of Global Tel*Link, WC Docket No. 12-375 (filed Feb. 2, 2016) (Wright Petitioners' *Ex Parte*).

²⁸ *Id.*

²⁹ *Id.* at 2-3.

³⁰ *Id.* at 4.

³¹ *Id.* at 3.

IV. DISCUSSION

7. We conclude that GTL has failed to meet its burden of proof to establish good cause for grant of a temporary waiver of the Commission's rule governing minimum balance requirements in ICS calling accounts. GTL has failed to provide sufficient evidence to establish that it cannot comply with the Commission's deadline for implementing rule 64.6100(a) for the prisons it serves. We therefore deny GTL's request for a temporary waiver of the "no-minimum-balance" rule.

8. Section 1.3 of the Commission's rules states that that the Commission's rules may be waived "for good cause shown."³² A party seeking a waiver carries a heavy burden.³³ To be successful, a petitioner must "articulate a specific pleading, and adduce concrete support, preferably documentary"³⁴ and must "plead with particularity the facts and circumstances" which warrant the granting of the requested waiver.³⁵ Moreover, the Commission may grant a waiver "only if special circumstances warrant a deviation from the general rule The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."³⁶

9. Based on the record before us, we find that GTL has not met its burden of providing sufficient justification or showing good cause to warrant a temporary waiver of rule 64.6100(a). The information contained in GTL's petition is conclusory and lacks the particularity necessary to justify a waiver. GTL relies heavily on the Baker Declaration, but that declaration merely states that the "minimum balance prohibition" must be implemented simultaneously for both prisons and jails, and baldly asserts that "these changes cannot be completed by the March 17, 2015 [sic] implementation deadline for prisons."³⁷ Other than claiming that it cannot tailor its payment software and systems to prohibit minimum payments for prisons on one date and for jails on another date,³⁸ GTL fails to provide any information explaining why it would not be able to implement rule 64.6100(a) by March 17, 2016.³⁹ Thus, we are unable to evaluate the merits of GTL's position or assess the hardships that might prevent it from meeting the Commission's deadline.⁴⁰ As a result, we have no basis for determining that the

³² 47 C.F.R. § 1.3.

³³ See, e.g., *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Rio Grande Radio Family Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968); *Thomas Radio Co. v. FCC*, 716 F.2d 921, 924-25 (D.C. Cir. 1983); *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361 (D.C. Cir. 1987).

³⁴ *WAIT Radio*, 418 F.2d at 1157, n. 9.

³⁵ *Rio Grande*, 418 F.2d at 130.

³⁶ *Northeast Cellular*, 897 F.2d at 1166 (citing *WAIT Radio*, 428 F.2d at 1153); see also, e.g., *Rates for Interstate Inmate Calling Services; Securus Tech., Inc. Petition to Expand Pay Tel Waiver; Securus Tech., Inc. Petition for Leave to Add Fee for Voice Biometrics Technology*, Order, 29 FCC Rcd 5973, 5978, para. 10 (WCB 2014). The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest; however, waivers must be founded upon an appropriate general standard by which other parties, and a court, can determine the policy underlying the waiver. *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166-67.

³⁷ Baker Declaration at 1-2.

³⁸ GTL Petition at 3.

³⁹ See Wright Petitioners' Comments at 2.

⁴⁰ If we were to grant GTL's petition, without additional explanation from GTL regarding the factors hindering its ability to meet the March 17 deadline, we would essentially be allowing GTL to substitute its judgment for the Commission's in determining the feasibility of the deadlines established in the *2015 ICS Order*. This could encourage a wave of similar waiver requests from other ICS providers. See Wright Petitioners' *Ex Parte* at 3

(continued...)

difficulties GTL might face in meeting the March 17 deadline outweigh the public interest benefits that led the Commission to promulgate rule 64.6100(a) and establish the implementation schedule it adopted in the *2015 ICS Order*.⁴¹

10. We also note that GTL did not provide any explanation of why it cannot implement the requirements of rule 64.6100(a) before June 20, 2016. Even Mr. Baker's declaration asserts only that GTL cannot meet the March 17 deadline, but does not claim that GTL needs until June 20, 2016 to make the changes necessary to comply with the Commission's no-minimum-balance requirement.⁴² We find it telling that GTL failed to provide an alternative implementation schedule even after the Wright Petitioners suggested the possibility in its opposition.⁴³

11. The requirement that a petitioner adduce "concrete support" for a waiver pleading is more than just a point of procedure;⁴⁴ it is necessary to convince the Commission of the applicant's special circumstances and enable the Commission to determine if there is good cause to waive a particular rule. GTL has failed to provide sufficient information to support the granting of a waiver. Without an explanation of the specific reasons that GTL claims prevent it from implementing rule 64.6100(a) in a timely manner, including, for example, the steps GTL must take to comply with the Commission's rule and the time GTL estimates it would take to complete these steps, we are unable to find that a waiver is justified.⁴⁵ Accordingly, we deny GTL's petition for waiver.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 5(c), 201(b), and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 201(b), 276, and sections 0.91, 0.291, and 64.6100 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 64.6100, this Order is ADOPTED.

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(arguing that we would "not be able to provide any guidance to ICS providers as to why a waiver was granted to GTL," and that this would create a "domino effect" encouraging a spate of "me-too" waiver requests).

⁴¹ See *id.* at 2 (discussing "the significant negative impact on the public interest" that would result from granting GTL's waiver request).

⁴² Nothing in the Commission's rules prevents GTL from implementing rule 64.6100(a) before the June 20, 2016 deadline for jails. Even assuming that GTL is correct in asserting that the reasons for adopting different effective dates for jails and prisons are not applicable to rule 64.6100(a) – a point we do not concede – GTL has provided no explanation for why the June 20, 2016 deadline for jails should apply instead of the March 17 deadline for prisons.

⁴³ Wright Petitioners' Comments at 2.

⁴⁴ *WAIT Radio*, 418 F.2d at 1157.

⁴⁵ As noted above, GTL attempts to minimize the potential downside of a waiver by arguing that consumers can request refunds of unused funds when they close their accounts. See *supra* para. 3 (citing GTL Petition at 4). We have concerns, however, about how effective these refund policies are in allowing consumers to recover money they may have deposited in an ICS account. See *2015 ICS Order*, 30 FCC Rcd at 12852, para. 175 (noting CenturyLink's statements about "complex refund policies" providers may use to retain "captured funds") (quoting Letter from Thomas M. Dethlefs, Associate Counsel to CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3).

13. IT IS FURTHER ORDERED that the Petition for Waiver filed by Global Tel*Link Corporation on January 8, 2016 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief
Wireline Competition Bureau