



Federal Communications Commission
Washington, D.C. 20554

November 13, 2020

Via Electronic Mail

DA 20-1344

Chérie R. Kiser and Angela F. Collins
Counsel to Global Tel*Link Corporation
Cahill Gordon & Reindel LLP
1990 K Street, N.W.
Washington, DC 20006

Re: GTL's Request for the Commission's Work Papers and Other Documents (WC Docket No. 12-375)

Dear Ms. Kiser and Ms. Collins:

The Wireline Competition Bureau (WCB) hereby denies Global Tel*Link Corporation's (GTL) requests for "work papers and other documentation" to the extent GTL seeks information beyond what the Commission has already made available in its *Inmate Calling Services* (ICS) docket or this letter.¹ The Commission has already provided GTL and other interested parties an opportunity to access all the information they need to be able to participate fully in the ICS rulemaking proceeding.²

The *2020 ICS Further Notice* provided a detailed explanation of the methodology and analyses the Commission used in developing its proposals for new rate caps on interstate and international calls placed from prisons or jails.³ That explanation includes four appendices that, collectively, make clear the full technical basis for the Commission's proposals.⁴ After releasing the *Further Notice*, the Commission also provided the parties the opportunity to access the database that Commission staff had developed to facilitate the Commission's ability to evaluate the confidential cost and revenue data ICS providers had

¹ Letter from Chérie R. Kiser and Angela F. Collins, Counsel to Global Tel*Link Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Sept. 11, 2020) (GTL Sept. 11 Letter); Letter from Chérie R. Kiser and Angela F. Collins, Counsel to Global Tel*Link Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Oct. 19, 2020) (GTL Oct. 19 Letter). GTL previously made similar requests in informal communications with Commission staff. *See, e.g.*, GTL Sept. 11 Letter at 1.

² *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, FCC 20-111 (rel. Aug. 7, 2020) (*2020 ICS Notice* or *Further Notice*); *Wireline Competition Bureau and Office of Economics and Analytics Make Inmate Calling Services Database Available to Eligible Individuals Pursuant to Protective Order*, WC Docket No. 12-375, Public Notice, DA 20-1128 (Sept. 24, 2020) (*Sept. 2020 ICS Public Notice*). Comments and reply comments on the *2020 ICS Notice* are respectively due November 23, 2020, and December 22, 2020. *Wireline Competition Bureau Announces Comment Dates in response to Fourth Further Notice of Proposed Rulemaking regarding Inmate Calling Services*, Docket No. WC 12-375, Public Notice, DA 12-1256 (Oct. 23, 2020).

³ *2020 ICS Notice*, paras. 66-136 & Appendices E-H.

⁴ *See id.*

submitted in response to the Commission's Second Mandatory Data Collection (the ICS Database).⁵ In addition to those confidential data, the ICS Database includes "geocoding information related to facility locations added by the Commission staff that outside parties might find difficult to replicate."⁶ As WCB and the Office of Economics and Analytics (OEA) explained when they made the ICS Database available, the database "allow[s] interested parties to rely on a common dataset in evaluating and responding to the Commission's rate cap proposals in this proceeding."⁷

GTL filed a formal request for "work papers and other documentation" on September 11, 2020, before WCB and OEA made the ICS Database available to parties in the ICS rulemaking.⁸ Subsequently, GTL's outside counsel and economists requested and received copies of the ICS Database.⁹ Nevertheless, on October 19, 2020, GTL reiterated and expanded upon its September 11 request, complaining that "the ICS Database does not include the FCC's underlying work papers associated with its analysis and applied methodologies."¹⁰ This expanded request seeks "all input data, computer programs, and intermediate data files that were used to process the raw data received by the FCC into the data files used by the FCC in its analysis, and all computer programs, intermediate data files, and output data files that were used to generate the statistical results described in the FNPRM."¹¹

GTL's request seeks access to records that are not routinely available for public inspection under sections 0.457(d) and 0.457(e) of the Commission's rules.¹² Nevertheless, the Commission has taken all steps necessary to ensure that GTL and other interested parties have a full opportunity to participate meaningfully in this rulemaking proceeding, as required under the Administrative Procedure Act (APA).¹³ The APA requires only that agencies give interested parties notice and an opportunity to participate in the rulemaking process.¹⁴ By describing in detail the methodology and analyses used in developing its rate cap proposals, making clear the full technical basis for the those proposals, and making the ICS Database available to parties' representatives, the Commission has granted participants in this proceeding access to all facts and data that the Commission relied upon in developing its proposals and that are necessary to

⁵ *Sept. 2020 ICS Public Notice* at 1 (making the ICS Database available to eligible individuals pursuant to a Protective Order in the ICS proceeding); *see also Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12862, 12891-92, paras. 198, 266-67 (2015) (adopting Second Mandatory Data Collection to take further ICS reform action, and identify and track trends in the ICS market); *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 515 (WCB 2019). The ICS Database has been entered into the ICS docket. *See* Letter from Gil M. Strobel, Chief, Pricing Policy Division, FCC Wireline Competition Bureau, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Nov. 9, 2020).

⁶ *Sept. 2020 ICS Public Notice* at 1; *see also 2020 ICS Notice* at Appendix F, para. 3.

⁷ *Sept. 2020 ICS Public Notice* at 1.

⁸ *See* GTL Sept. 11 Letter at 1.

⁹ *See* GTL Oct. 19 Letter at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 CFR § 0.457(d)-(e).

¹³ *See* GTL Oct. 19 Letter at 2 (stating that GTL requires the requested information "to have a meaningful opportunity to participate in the rulemaking process"); GTL Sept. 11 Letter at 1.

¹⁴ 5 U.S.C. § 553(b)-(c).

comment on those proposals. GTL is fully capable, based on the data and explanations the Commission has provided, of replicating the Commission's analysis and commenting on the reliability and accuracy of that analysis and the soundness of the Commission's proposals.¹⁵ Nothing more is required.¹⁶

In neither of its letters does GTL explain why it is unable to use the information already available to it to understand and meaningfully comment upon the Commission's proposals in the *Further Notice*. In fact, that information is sufficient to evaluate "the statistical results described in the [*Further Notice*]."¹⁷ In addition to the ICS Database, GTL's outside counsel and consultants have obtained the unredacted data other ICS providers submitted in response to the Commission's Second Mandatory Data Collection responses and can use them to evaluate the accuracy of the provider data included in the ICS Database.¹⁸ In generating the ICS Database and the resulting proposals, the Commission staff used non-proprietary, standard, commercially available software and conventional analytical methodologies fully described in the *Further Notice* and its Appendices and capable of replication by GTL.¹⁹ GTL simply does not need anything more from the Commission to participate fully in this rulemaking.

Accordingly, pursuant to the authority contained in sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, we deny GTL's request to the extent it asks that the Commission provide it with

¹⁵ 47 CFR § 0.457(d)-(e); *EchoStar*, 457 F.3d at 40 ("Were parties entitled to comment upon every observation an agency staff member draws from the record as it accrues, rulemaking proceedings would be interminable.").

¹⁶ See *EchoStar Satellite L.L.C. v. FCC*, 457 F.3d 31, 40 (D.C. Cir. 2006) (finding that the Commission's "data and analysis" amounted to "agency staff's own cogitations upon the evidence" and did not have to be made part of the rulemaking record); *American Radio Relay League*, 524 F.3d 227, 236, 238 (D.C. Cir. 2008) (finding that the Commission must produce certain "technical studies and data" upon which it relied in its rulemaking, stating that the Commission redacted parts of the internal technical studies "that are inextricably bound to the studies as a whole and thus to the data upon which the Commission has stated it relied, parts that explain the otherwise unidentified methodology underlying data cited by the Commission for its conclusions," but distinguishing the genuine internal deliberations at issue in *EchoStar*); see also, e.g., *Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530-32 (D.C. Cir. 1982) (finding sufficient disclosure of technical studies where there was "a common store of experience" on which the agency relied in its rulemaking).

¹⁷ GTL Oct. 19 Letter at 2.

¹⁸ See, e.g., Letter from Chérie R. Kiser and Angela F. Collins, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Sept. 14, 2020).

¹⁹ This case is thus not one where an agency made a decision based on its thinking, its methodologies or data "not included in the administrative record" or otherwise readily available to the parties. See *U.S. Lines, Inc. v. Federal Maritime Commission*, 584 F.2d 519, 533-34 (D.C. Cir. 1978) (*U.S. Lines v. Federal Maritime Commission*); GTL Sept. 11 Letter at 2 (citing *U.S. Lines v. Federal Maritime Commission*); GTL Oct. 19 Letter at 2 (same). The record in the ICS proceeding identifies all data that formed the basis for the Commission's proposals in the *Further Notice* and includes all data not readily available from public sources such as the U.S. Census Bureau. See, e.g., *Further Notice* at Appendix F, para. 3 (using the most currently available 2010 U.S. Census Block Boundaries to classify correctional facilities as urban or rural); 2010 Census Urban and Rural Classification and Urban Area Criteria, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>. We decline, and are not required, to disclose the particular commercially available software that Commission staff used. There are a number of similar products available in the market and Commission staff does not want to appear to endorse or bias the commercially available products it relies upon when competing products are available. Indeed, it would be beneficial for interested parties to use other similar commercially available analytical software programs of their own choice when replicating the Commission's analysis as that will best validate the Commission's analysis and its proposals based on that analysis.

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any “work papers and other documentation” beyond the information already made available to interested parties in this proceeding. If you have any questions regarding this matter, please contact William A. Kehoe at (202) 418-7122, or via email at William.Kehoe@fcc.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kris Anne Monteith". The signature is written in a cursive style and is positioned above a thin horizontal line.

Kris Anne Monteith
Chief
Wireline Competition Bureau