



# Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 14, 2015

The Honorable Tom Wheeler, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> St. S.W.  
Washington, D.C. 20554

## **Re: Comment for WC Docket 12-375**

Dear Chairman Wheeler:

The Human Rights Defense Center (HRDC) respectfully submits this comment for WC Docket No. 12-375 regarding the lack of transparency by Inmate Calling Service (ICS) providers and the critical need for the Commission to address this issue as part of comprehensive ICS reform. Specifically, HRDC requests that the Commission require all ICS providers to publicly post on their websites all of their contracts to provide telephone services at detention facilities, and to also publicly disclose on their websites all payments, goods and in-kind services they provide to detention facility agencies to secure monopoly contracts for ICS and other services, including services bundled with telecom services.

### **ICS Contracts**

As the thousands of submissions in this docket have illustrated over the past decade, the ICS industry is shrouded in secrecy and characterized by an almost total lack of transparency on the part of both ICS providers and the government agencies from which they secure their monopoly contracts. Moreover, the stunning amount of commission kickbacks that ICS providers give to detention facility agencies has been largely undisclosed, especially at the local level. To facilitate the democratic process and to protect consumers (as it is readily admitted by ICS providers that they view their “customers” as the prisons and jails that award them the monopoly contracts for telephone services, not the people who actually pay the inflated phone bills and hand over their hard-earned money), all ICS contracts and payments made to secure those contracts must be made publicly available and disclosed to the actual consumers of ICS services.

Contracts between ICS providers and detention facilities are public documents and should be accessible to consumers through each state’s public records laws. Yet ICS providers frustrate the disclosure of these contracts – which typically include details about commission kickbacks – to prevent transparency of the terms under which they contract with government agencies.

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Since 2009, HRDC has devoted a significant amount of time and effort to obtain ICS contracts from all 50 state DOCs as well as the federal Bureau of Prisons and a sampling of jails. Data from those documents has been published in our monthly publication, *Prison Legal News*, and is maintained by HRDC on our prison phone justice website ([www.prisonphonejustice.org](http://www.prisonphonejustice.org)). As the Commission is aware, our data is utilized by many organizations and individuals working on issues related to the prison phone industry. While we understood that a project of this size would tax our limited resources, unnecessary and questionable opposition from ICS providers has only increased the amount of staff time devoted to repeated follow-ups and, in some cases, litigation. For example, when Global Tel\*Link (GTL) and the Mississippi Department of Corrections refused to produce ICS contracts and related records under the guise of a protective order, HRDC was forced to file a lawsuit in order to obtain the records.<sup>1</sup> The case settled in May 2009 and the records were finally produced. **See Attachment 1.**

GTL, now joined by Securus, is currently trying to block the release of public documents in Pennsylvania. The Pennsylvania DOC produced a heavily redacted ICS contract with GTL in response to a public records request made by HRDC in April 2015. HRDC filed a formal appeal for the unredacted contract and we were informed last month that GTL's request to participate in our appeal as "a direct interest participant" had been granted. In addition to its own lack of transparency, GTL has a practice of partnering with government agencies, citing "proprietary information," to improperly block the production of public documents – at least with respect to public records requests made by HRDC. Securus has also intervened in our Pennsylvania public records appeal, seeking to prevent disclosure of the ICS records we are seeking. GTL's and Securus's actions demonstrate not only a lack of transparency but also intentional interference with the production of documents under state public records laws, including ICS contracts. **See Attachment 2.**

The integrity and transparency of the telecom industry in general and ICS providers in particular are too important to be entrusted to the vagaries of public records laws. Even if HRDC litigates and prevails in such cases, the delay in disclosure harms our advocacy efforts and impedes public and regulatory understanding of the underlying issues. It is also a drain on the resources of a small non-profit organization confronting the secrecy and vast resources of the ICS industry.

We are experiencing the same type of interference with a pending ICS public records request filed with the Ohio DOC. At the present time, the Ohio DOC is refusing to produce GTL's response to its Request for Proposal upon which the DOC's current ICS contract is based. The Ohio DOC is claiming GTL's response is protected by "copyright." **See Attachment 3.**

Further, in a letter dated April 6, 2015, the Illinois DOC summarily rejected our request for public records including ICS contracts and documents related to commission kickbacks as being "unduly burdensome." **See Attachment 4.** The Alabama DOC requires that HRDC send someone to their office in Montgomery, Alabama to photocopy the records in person (**See Attachment 5**), and Tennessee's public records law limits the ability to request documents to Tennessee citizens. See: T.C.A. § 10-7-503 (a)(2). Some government agencies do not provide the requested records in electronic format, meaning we must pay copy and postage fees – and such fees are used to eliminate or discourage access to public records. These barriers make it

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<sup>1</sup> *Prison Legal News v. Mississippi Department of Corrections and Global Tel\*Link Corporation*, Hinds County, Mississippi, Civil Action No. G2009-391 T/1.

impossible for consumers in some states, particularly at the local level, to obtain access to ICS contracts, rates, and fee and commission data.

Lack of transparency by governmental officials who oversee correctional institutions is not limited to state agencies. We were required to retain counsel and file suit against the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) for failure to timely produce an ICS contract under the Freedom of Information Act (FOIA), and for relying on improper exemptions.<sup>2</sup> In a ruling granting HRDC's summary judgment motion, U.S. District Court Judge Marsha Pechman found that DHS and ICE "violated FOIA by failing to respond to Plaintiff's requests and have failed to prove that [ICS provider] Talton's performance incentive falls within one of FOIA's exemptions." **See Attachment 6, at 11.**

In theory, state public records laws and FOIA should provide the means necessary to obtain ICS contracts and data related to commission kickbacks, and while about 40 state DOCs have responded to HRDC's requests in accordance with the law, the remaining 20% have not. The failure of these state DOCs to produce ICS-related documents requires us to expend yet more of our limited resources, sometimes to the level of litigation. This, coupled with the lack of transparency by ICS providers, makes ICS data in some states practically unattainable. Darrell Baker notes in his most recent filing on this Docket that "The lack of transparency in the ICS industry is problematic."<sup>3</sup>

### **ICS Ancillary Fees**

HRDC continues to support the elimination of all ICS-related ancillary fees. There is significant data in the record documenting the excessive fees prisoners and their families have been required to pay for decades to stay in touch during times of incarceration. One only needs to look at the 28 different fees listed in the Joint Provider Proposal<sup>4</sup> to see how out of hand this particular form of price gouging has been allowed to become. HRDC has reported on and been actively involved with all aspects of the prison telephone industry for over 25 years, yet we were not aware that many of these fees were being charged. Absent the elimination of ancillary fees, ICS providers should be required to disclose any and all fees 1) in terms and conditions provided to customers; 2) on their websites; and 3) prior to the connection of every call.

### **Disclosure of Kickbacks**

As HRDC has noted in our prior filings with the Commission, the payment of ICS commission kickbacks to detention facilities in exchange for monopoly ICS contracts deeply subverts our democracy by giving prison and jail administrators the ability to externalize their costs and avoid the democratic process by affording them their own cash spigot by selling phone access to their captive population. Until HRDC began collecting and publicizing the data on kickbacks in 2009 very little was known about the extent or amount of money at stake. While we have fairly good documentation of ICS commissions at the DOC level, we know relatively little about the extent at the local level with more than 3,100 city and county jails profiting from giving ICS providers exclusive access to their prisoners and detainees in exchange for kickbacks.

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<sup>2</sup> *Prison Legal News v. United States Department of Homeland Security, et al.*, U.S. District Court, Western District of Washington, Case No. 2:14-cv-00479-MJP.

<sup>3</sup> Darrell Baker, Notice of *Ex Parte* Presentation, WC Docket No. 12-375, July 13, 2015

<sup>4</sup> Attachment to Joint Provider Proposal, WC Docket No. 12-375, September 15, 2014.

While HRDC is hopeful that the Commission will end kickbacks in their entirety, we are not so naïve as to believe that government agencies that have grown fat off ICS commissions paid by prisoners' families will be quick to obey any restrictions on kickbacks for monopoly contracts. We are already seeing examples of signing bonuses and payments based on Average Daily Population counts in correctional facilities, and in the past ICS providers have acted as a police supply catalog for jails in particular. For the last 25 years ICS has been a pay-to-play business, yet the public, legislators and regulators are largely in the dark about how much ICS providers are paying to play. As noted above, the kickbacks subvert the democratic process and we are unaware of any other government agencies that receive hundreds of millions of dollars annually from corporations in exchange for monopoly contracts to exploit a captive market.

Taxpayers and ICS consumers alike have a right to know the price they are paying for their elected officials – especially the sheriffs and jailers at the local level – to sell monopoly ICS contracts. If that information was widely known it could spur the democratic process to include election discussion, debate and dialogue by other government officials, and empower voters to take action. None of this can or does occur when the kickbacks are negotiated in secret and the information is not made readily available to the public. Regardless of whether or not the FCC has the legal authority to ban kickbacks, it does have the authority to mandate the public disclosure of kickback payments by ICS providers. It is beyond dispute that nothing requires monopoly ICS contracts or kickbacks, and the legislative and executive branches have the ability to end the practice of commission kickbacks as they have done in New York, New Mexico, California and several other states at the state prison system level.

It is telling that while there has been modest ICS reform at the state DOC level, to the best of our knowledge not a single jail or sheriff in America is refusing to accept commission kickbacks from ICS providers. Instead, sheriffs have threatened to end telephone access if their kickbacks are eliminated. The concept of bidding contracts based on the lowest phone rate to the person actually paying for the call is as alien to these officials as thermodynamics is to a mole.

In addition, HRDC has specifically asked both Securus and GTL to provide us with copies of their ICS contracts and kickback amounts so we do not have to expend our limited resources by filing public records requests – which, as noted above, can be problematic. Both refused. To the extent that these two largest ICS providers are privately-held companies owned by hedge funds, they are even less transparent than publicly-traded telecom companies like AT&T or Verizon, which must at least file reports with the SEC and are answerable to their shareholders.

To remedy these shortcomings, we request that the Commission require all ICS providers to post their contracts with detention facilities on their websites where they are publicly available. They should also be required to post the annual itemized amounts they pay to government agencies as well as related law enforcement and corrections associations such as the National Sheriffs' Association, American Correctional Association, American Jail Association, etc. in exchange for monopoly ICS contracts. This includes money paid as commissions, donations, campaign contributions, in-kind equipment or services, and related payments. These disclosures should be made within 30 days of each payment made.

Even if the Commission eliminates ICS kickbacks or commissions, this is still necessary to bring much-needed light and transparency to the ICS industry, which for far too long has languished in darkness and secrecy.

## Attempts to Chill HRDC's Speech

HRDC received a cease and desist letter from GTL's legal counsel, dated June 16, 2015. **See Attachment 7.** The letter accuses HRDC of posting "false and misleading rates" for calls made in North Carolina and goes on to say that our use of the term "kickback" is damaging GTL's reputation and business. As noted in the response from our counsel dated June 26, 2015, the rate posted on our website for North Carolina at the time we received GTL's letter had been provided to us by the North Carolina DOC in April 2015. **See Attachment 8.** We contacted the North Carolina DOC immediately upon receipt of GTL's letter, notified them of the error in their records production and corrected the rate on our website.

Accuracy is our top priority and we appreciate GTL bringing this issue to our attention. We note, however, that their cease and desist letter simply informed us we had posted incorrect rates while failing to provide us with the *correct* ICS rates. This demonstrates, yet again, that ICS providers are non-transparent with respect to providing details about ICS-related issues – in this case the rates charged by the North Carolina DOC. This further illustrates that corrections officials are sometimes incapable of providing accurate information about the rates consumers are charged for ICS services, since the North Carolina DOC had provided us with incorrect rates.

Equally important is HRDC's First Amendment right to express our opinion about the prison phone industry and the practices of ICS providers, as detailed in our counsel's response to GTL. *Id.* While we understand that GTL is tired of HRDC standing up for the rights of prisoners and their families, and demanding an end to the price gouging and financial exploitation of this very marginalized group of consumers that has gone on for decades, attempting to intimidate us into silence is yet another example of the need for comprehensive ICS reform. GTL General Counsel David Silverman and I have each other's cell phone numbers and email addresses, and we have communicated about issues related to ICS during the pendency of this proceeding. Mr. Silverman could have easily picked up the phone and called me to correct the North Carolina rates as opposed to trying to intimidate us by sending a cease and desist letter from counsel. Which in turn required HRDC to retain counsel to respond. We note that GTL has not yet responded to our reply letter and has yet to provide us with correct ICS rates for the North Carolina DOC.

GTL also objected to our use of the term "kickback" to describe their business practice of giving money to government officials in exchange for monopoly ICS contracts that allow them to financially exploit prisoners and their families. In the 23 years HRDC has been advocating on this issue, no one has expressed confusion about the use of the term "kickback" to refer to ICS commissions. We also have yet to meet a single consumer who would voluntarily agree to such kickbacks, which serve to inflate ICS phone rates. GTL is very clear that it views the government officials to whom it provides the kickbacks as its real customers, not the poor working people who actually pay for GTL's high-priced ICS services. Nor does anyone think that such practices are illegal or unlawful. Indeed, that is the crux of the problem: They are perfectly legal. When GTL stops giving kickbacks to government officials, we will stop referring to them as such.

As another example of efforts to chill speech with respect to ICS-related issues by those profiting from the status quo, HRDC associate director Alex Friedmann attended the National Sheriffs' Association (NSA) annual conference in Baltimore, Maryland from June 30 to July 1, 2015, having pre-registered and paid in advance. He was attending the conference in his capacity as president of the [Private Corrections Institute](#), a non-profit organization that advocates on issues related to the privatization of correctional services. Mr. Friedmann attended the first day of the

conference and participated in sessions without incident. On the second day of the conference he attended a session on FCC updates related to prison/jail phone issues led by Breanna Bock-Nielsen, Director of Government Affairs for the NSA.

When Mr. Friedmann returned to attend the last session of the day he was stopped by an NSA staffer and told the NSA would not allow him to attend any more sessions because they were limiting attendance to law enforcement only. When Mr. Friedmann noted that other non-law enforcement personnel were being allowed to attend the sessions, he was told the restriction applied to “only you,” and that the NSA had received reports that Mr. Friedmann was being “disruptive.” He was also accused of using a false name – although the name “Alex Friedmann” was clearly displayed on his conference name tag.

Mr. Friedmann then spoke with Fred Wilson, the NSA’s Director of Outreach and Law Enforcement Relations. Mr. Wilson reiterated that Mr. Friedmann was being disruptive and *did not share the interests of the NSA*. Mr. Friedmann was asked to produce his ID, which, when provided, again confirmed that he was not attending the conference under a false name.

Notably, there was no problem with Mr. Friedmann attending the NSA conference until he attended the FCC update session and commented on the use of commission payments for costs unrelated to inmate welfare in response to a question from the presenter. One of the sheriffs who attended that same session complained he wanted the NSA to stop “prostituting” itself to corporate sponsors (such as ICS companies like GTL) that provide funding to the NSA through sponsorship fees. That sheriff was not barred from attending other sessions, even though his comments could be considered “disruptive” and not sharing the interests of the NSA. Only Mr. Friedmann was barred from attending other sessions after he commented during the FCC update session.

In closing, I would point out that I have personally requested copies of all ICS contracts and commission-related data from both David Silverman (as noted in our response letter to GTL) and Richard Smith with Securus, and both declined to produce those documents, which are public records. The two largest ICS providers have thus clearly demonstrated that they will not provide any transparency in this process unless required to do so, and it is therefore critical that any action taken by the FCC with respect to comprehensive ICS reform include regulations specific to transparency requirements by ICS providers. Accordingly, we ask that the FCC, as part of its next order on ICS regulation and reform, require all ICS providers to post their ICS contracts on their websites and disclose, at least annually, all payments made to detention facility agencies and related agencies or organizations in exchange for monopoly ICS contracts.

Sincerely,



Paul Wright  
Executive Director, HRDC

Enclosures: Attachments 1-8

# **Attachment 1**

*PLN v GTL and Mississippi DOC*

- **Complaint**
- **Release and Settlement Agreement**

**FILED**  
MAR 10 2009

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

EDDIE JEAN CARR, CHANCERY CLERK  
BY \_\_\_\_\_ D.C.

**PRISON LEGAL NEWS,**

**Plaintiff,**

**v.**

Case No. G 2009-3917

**THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, and  
GLOBAL TEL\*LINK CORPORATION**

**Defendants.**

## **COMPLAINT**

### *Introduction*

This case is brought to redress the failure of the Mississippi Department of Corrections (MDOC) to comply with the Mississippi Public Records Act (Act), Miss. Code Ann. §§ 25-61-1 *et seq.*, in responding to a public records request from the Prison Legal News (PLN), a nonprofit organization which publishes a monthly magazine that reviews prisoner rights, court rulings and news about prison issues. MDOC has failed to produce public records pertaining to their contracts for inmate phone services and the amount of prison phone commissions paid to the State of Mississippi.

### *Jurisdiction and Venue*

1. Jurisdiction and venue are proper in this Court pursuant to Miss. Code Ann. § 25-61-13(1), which provides that an action to enforce the Public Records Act shall be brought in the chancery court of the county where the public body is located.

### *Parties*

2. Prison Legal News, (PLN), is a nonprofit corporation with its principal headquarters in Seattle, Washington. PLN has subscribers in all 50 states, including Mississippi.

3. The Mississippi Department of Corrections (MDOC) is a public body. MDOC's principal business office is in Hinds County, Mississippi.

4. Global Tel\*Link Corporation is a Delaware corporation licensed to do business in Mississippi. Its registered agent for service of process is National Registered Agents, Inc., 840 Trustmark Building, 248 E. Capitol Street, Jackson, Mississippi, which is located in Hinds County, Mississippi.

### *Statutory Framework*

5. The Mississippi Public Records Act provides that "all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or obtain a reproduction of any public records of any public body," subject to certain exceptions set forth in the statute. Miss. Code Ann. §§ 25-61-1 *et seq.*

### *Factual Background*

6. As part of its efforts to monitor fairness in the awarding of prison telephone contracts and fairness in the amounts charged to the families and friends of inmates for collect telephone calls, PLN has obtained public records from a number of states throughout the country through public records requests regarding the award process for prison telephone

contracts and the commissions paid to states by telecommunications companies. PLN has been analyzing and monitoring contracts between telecommunications companies and government agencies for several years.

7. MDOC contracts with a private telecommunications company to provide telephone service to inmates so that they may make collect telephone calls to friends and family members. PLN submitted a public records request to MDOC seeking public records in the form of the current inmate phone contract and any other inmate phone contract that had been in effect in the last five years. PLN also requested “commission” totals (i.e. revenue paid to the state of Mississippi by the inmate telephone service providers) for fiscal years 2004, 2005, 2006, 2007, and 2008. Finally, PLN requested copies of any organizational policies regarding inmate telephone use and records that described which State agency received contract commissions and for what purposes such funds were used.

8. MDOC responded by providing the information relating to organizational policies regarding inmate telephone use and records that describe which State agency receives commissions from inmate phone services and for what purposes such funds are used. However, MDOC refused to provide the current inmate phone contract and those for the last five years. MDOC also refused to provide commission totals for fiscal years 2004, 2005, 2006, 2007, and 2008. MDOC stated that it is prohibited from disclosing the information by a Protective Order entered in Hinds County Chancery Court on November 8, 2008 (*In Re Global Tel\*Link Corporations’s Petition for Protective Order Preventing*

*Disclosure of Information Contained in Documents Filed With the Mississippi Department of Corrections, Civil Action No. G2008-1972) .*

9. The order upon which MDOC relies in support of its refusal to disclose these public records was obtained *ex parte*, in a non-adversarial proceeding, without the benefit of an evidentiary hearing, and was entered on the same day as the petition was filed that requested the order. Furthermore, the protective order was not sought by MDOC, but rather the petition was filed by Global Tel\*Link, the telecommunications business which holds the current inmate phone contract with MDOC. In its petition, Global Tel\*Link presented a one-sided and incomplete statement of the relevant facts and the applicable law. That order should not be binding on parties who were not represented in that proceeding or given notice by Global Tel\*Link or an opportunity to participate prior to Global Tel\*Link's one-sided presentation to the Court in that case. More specifically, that order should not be binding in this civil action filed by PLN and should not be construed to prohibit MDOC from providing the requested documents to PLN. Neither PLN nor MDOC were parties to Global Tel\*Link's *ex parte* filing in Case No. G2008-1972.<sup>1</sup> Global Tel\*Link knew, or in the alternative should have known, that the documents at issue were properly subject to

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<sup>1</sup> There was an additional protective order, also requested by Global Tel Link, entered on May 1, 2008, which prohibited the Mississippi Department of Information Technology from disclosing information regarding Global Tel Link's inmate telephone contract with MDOC (*In Re Global Tel\*Link Corporations's Petition for Protective Order Preventing Disclosure of Information Contained in Documents Filed With the Mississippi Department of Information Technology Services*, Civil Action No. G2008-714). The facts surrounding the entry of this order are similar to the November 8, 2008, order in that the May 1 order was also obtained *ex parte*, in a non-adversarial proceeding, without the benefit of an evidentiary hearing, and was entered on the same day as the petition for it was filed. The arguments just made with respect to the November 8, 2008 order in Case No. G2008-1972 apply equally to the May 1, 2008 order in Civil Action No. G2008-714.

disclosure under the Public Records Act.

10. The records requested by PLN are clearly public documents. They are contracts entered into by a public body that provide information which impacts many citizens of the State of Mississippi. Those contracts relate to rates that are charged to many Mississippi citizens for phone service when speaking with family and friends who are incarcerated by MDOC, and they relate to revenue received by the state government. Similarly, documents reflecting the amount of prison phone commissions paid to the State of Mississippi for 2004-2008 also relate to revenue received by state government.

11. Contrary to the Chancery Court protective order obtained by Global Tel\*Link in the *ex parte* proceedings in the cases cited in paragraph 7 and footnote 1 of this complaint, the documents and information requested here do not fall within any relevant exception to the Public Records Act.

12. In its requests to other government agencies related to correctional phone services in various parts of the country, PLN has never been refused access to the type of documents at issue here.

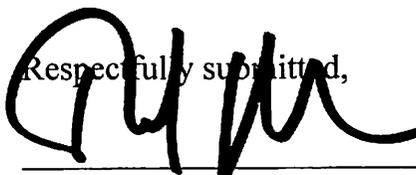
#### *Violations*

13. The Mississippi Department of Corrections is withholding the foregoing documents and information that should be made publicly available under Miss. Code Ann. § 25-61-5. It claims that it is doing so because of a protective order obtained by Global Tel\*Link in *ex parte* non-adversarial proceedings.

14. The actions of MDOC and/or Global Tel\*Link in taking steps to withhold these documents from public view are willful and knowing violations of the Public Records Act.

*Relief*

15. In light of the foregoing, the plaintiff requests that this Court order the Mississippi Department of Corrections to produce the public records sought here and further to award to the plaintiff against Global Tel\*Link and/or MDOC all costs and expenses, including attorneys' fees.

Respectfully submitted,  


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(601) 969-0802

Counsel for the Plaintiff

Dated: March 10, 2009

*PLN v GTL and Mississippi DOC*

- **Release and Settlement Agreement**

## RELEASE AND SETTLEMENT AGREEMENT

1. For and in consideration of the release and production of certain documents previously protected from disclosure under the Mississippi Public Records Act of 1983 (the "Act"), as well as certain other documents requested under the Act, Prison Legal News ("PLN") does hereby release, acquit and forever discharge Global Tel\*Link Corporation ("Global Tel\*Link"), the Mississippi Department of Corrections ("MDOC"), and the Mississippi Department of Information Technology Services ("ITS"), as well as their affiliates, subsidiaries, agents, officers, directors, employees, insurers, attorneys, heirs, successors and assigns and the agents, employees, insurers, officers, directors, attorneys, heirs, successors and assigns of any affiliated companies (hereinafter collectively and individually referred to as the "Released Parties") of and from any and all claims, causes of action, suits or other proceedings relating to any and all claims against the Released Parties (a) related to the documents on file with MDOC or ITS which were previously shielded from production by this Court's November 6, 2008 Protective Order (the "11/06/08 Protective Order"); and (b) which were asserted in the case captioned as follows: *Prison Legal News v. The Mississippi Department of Corrections and Global Tel\*Link Corporation*; In the Chancery Court of Hinds County, Mississippi; Civil Action No. G2009-391 T/1 (hereinafter referred to as the "Lawsuit").

2. The Released Parties agree to produce the following documents and information previously exempt from disclosure by the 11/06/08 Protective Order:

- (a) an unredacted copy of "Project Number 35765, Inmate Calling Service Agreement between Global Tel\*Link Corporation and the Mississippi Department of Information and Technology Services as Contracting Agent for the Mississippi Department of Corrections" dated December 13, 2005;
- (b) a redacted copy of "Project Number 37027, Inmate Calling Service Agreement between Global Tel\*Link Corporation and the Mississippi Department of Information and Technology Services as Contracting Agent for the Mississippi Department of Corrections" dated November 20, 2007

– the only portions redacted from such Contract will be Article 34 (regarding the negotiated liquidated damages provision) and Exhibit B to the Contract (regarding the negotiated exceptions to the RFP and standard form contract);

- (c) an unredacted copy of Amendment #1 to the 11/20/07 Contract, dated on or about February 6, 2008; and
- (d) certain annual “Phone Commission Reports” generated by the MDOC and/or ITS which show the actual commissions received from Global Tel\*Link by MDOC and/or ITS from December of 2005 to the present.

3. The Released Parties reserve any and all rights, defenses and objections they have under the 11/06/08 Protective Order, a copy of which is attached hereto as Exhibit “A,” and under Mississippi law, including but not limited to their defenses under the Act and under Miss. Code Ann. §§ 25-61-9 and 79-23-1, with respect to all other Global Tel\*Link documents on file with MDOC and/or ITS. None of the other documents previously shielded from production by the 11/06/08 Protective Order will be released or produced by the Released Parties. No other documents pertaining to Global Tel\*Link’s contractual agreement with MDOC and/or ITS will be released or produced by the Released Parties.

4. PLN waives all rights to pursue any further or additional claim regarding the documents previously shielded from production by the 11/06/08 Protective Order, but reserves all rights to seek production of any contracts or documents generated in the future.

5. As further consideration for the release of these documents, PLN agrees to voluntarily dismiss its claims in the Lawsuit, with prejudice, with each party to bear its own costs and attorneys fees.

6. It is further understood and agreed that this Release and Settlement Agreement is not to be construed as and does not constitute an admission of liability or wrongdoing on the part of the Released Parties.

7. It is further understood and agreed that should any portion of this Release and Settlement Agreement be held invalid by operation of law or otherwise, the remaining portion shall be given full force and effect and shall not in any way be affected thereby.

8. This Release and Settlement Agreement contains the entire agreement between these parties, and the terms and conditions of this Release and Settlement Agreement are contractual and not a mere recital. Interpretation of the terms and conditions of this Release and Settlement Agreement are to be construed according to the laws of the State of Mississippi.

Date: 5/25/09

PRISON LEGAL NEWS  
By:  Paul Wright  
Its: President/Editor

The undersigned represents that he is one of the attorneys for Prison Legal News. In that capacity, he has reviewed and hereby approves the form of the foregoing Agreement, and agrees (to the extent applicable) to be bound thereby.

This, the \_\_\_\_ day of May, 2009.

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Robert B. McDuff, Esq.

## **Attachment 2**

### **Response to HRDC Public Records Request to Pennsylvania DOC**

- **Page 1 of Pennsylvania DOC Response**
- **GTL Request to Participate in Appeal**
- **Securus Request to Participate in Appeal**

**Pennsylvania Department of Corrections  
Right-to-Know Office  
Office of Chief Counsel  
1920 Technology Parkway  
Mechanicsburg, PA 17050  
Telephone 717-728-7763  
Fax 717-728-0312**

May 12, 2015

Paul Wright  
Executive Director, HRDC  
Human Rights Defense Center  
P.O. Box 1151  
Lake Worth, FL 33460

Re: RTKL 0524-15

Dear Mr. Wright,

This letter acknowledges receipt by the Department of Corrections of your written request for records under the Pennsylvania Right-to-Know Law (RTKL). Your request was received by this office on March 27, 2015. On March 31, 2015, an interim response was sent to you extending the final response date to May 1, 2015. On April 20, 2015, you agreed to an additional extension of time to May 20, 2015. A copy of the original request letter and additional correspondence is enclosed.

Item 1 of your request is granted in part. Specifically, you are granted access to a redacted version of the Global Tel Link Corporation contract, including all amendments, and a redacted version of the Securus Technologies, Inc. contract, which has not yet been amended. The redacted Global Tel Link Corporation contract is located at the corresponding web address below and the amendments responsive to this item of your request and are included on the enclosed compact disc (Item 1 – Global Tel Link Corporation Contract Amendments). The redacted Securus Technologies, Inc. contract included on the enclosed compact disc (Item 1 – Securus Technologies, Inc.). Please note, a document containing a web link to the following contract is also included on the enclosed compact disc:

Global Tel Link Corporation: <http://contracts.patreasury.gov/View.aspx?ContractID=125566>

Please note that the contracts granted in response to item 1 of your request must be redacted to protect nonpublic and sensitive data. Insofar as redaction constitutes a denial to records, the basis for the denial and instructions for filing exceptions are outlined below in accordance with the law.

Item 2 of your request is granted. The payments made to the Department from the inmate telephone service providers from 2013 to the present amount to \$16,184,405.84.

Item 3 and 4 of your request are granted. The rates/fees pertaining to the Global Tel Link Corp contract are included in the records granted in response to item 1 of your request (Item 1 – Global Tel Link Corp Contract Amendments). The rates/fees pertaining to Securus Technologies, Inc. are included on the enclosed compact disc (Items 3 and 4 – Securus Technologies, Inc. Fees - Rates).

Item 5 of your request is granted in part. Specifically, you are granted access to redacted versions of the contracts with Scotlandyard Security Services, Inc. and PA Prison Society, including all amendments. The redacted records responsive to this item of your request are included on the enclosed compact disc (Item 5 – Scotlandyard Security Services, Inc. and Item 5 – PA Prison Society). Please note that the contracts granted in response to this item of your request must be redacted to protect nonpublic and sensitive data. Insofar as redaction constitutes a denial to records, the basis for the denial and instructions for filing exceptions are outlined below in accordance with the law.

# **GTL Request to Participate in Appeal**

**REQUEST TO PARTICIPATE BEFORE THE OOR**

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOB Docket No: 2015-0909

Today's date: 6/19/2015

Name: Global Tel\*Link Corp. c/o Karl S. Myers, Esquire

**IF YOU ARE OBJECTING TO THE DISCLOSURE OF YOUR HOME ADDRESS, DO NOT PROVIDE THE OFFICE OF OPEN RECORDS WITH YOUR HOME ADDRESS. PROVIDE AN ALTERNATE ADDRESS IF YOU DO NOT HAVE ACCESS TO E-MAIL.**

Address/City/State/Zip 2600 One Commerce Square, 2005 Market Street, Philadelphia, PA 19103

E-mail kmyers@stradley.com

Fax Number: 215-564-8120

Name of Requester: Paul Wright

Address/City/State/Zip P. O. Box 1151, Lake Worth, FL 33460

Telephone/Fax Number: 561-360-2523 / 866-735-7136

E-mail pwright@prisonlegalnews.org

Name of Agency: Department of Corrections

Address/City/State/Zip 1920 Technology Parkway, Mechanicsburg, PA 17050

Telephone/Fax Number: 717-728-7763 / \_\_\_\_\_

E-mail vjanosik-n@pa.gov

Record at issue: See attached

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Respectfully submitted,  (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.



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June 19, 2015

**Via Email (kyapplegat@pa.gov)  
& First Class US Mail**

---

Kyle Applegate, Esquire  
Appeals Officer  
Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

**Re: Wright v. Department of Corrections  
OOR Docket No. AP 2015-0909**

---

Dear Mr. Applegate:

This firm represents Global Tel\*Link Corporation ("GTL"). Our purpose in writing to you today is twofold.

*First*, GTL requests permission, pursuant to 65 P.S. §67.1101(c), to appear as a direct interest party before the OOR with respect to the above-referenced Right-to-Know Law appeal.

*Second*, GTL asserts that certain materials requested by Paul Wright, Executive Director of the Human Rights Defense Center ("Requestor"), cannot be required to be disclosed because several RTKL exemptions apply to preclude disclosure. GTL therefore asserts that the partial denial of Requestor's RTKL request (the "Request") by the Pennsylvania Department of Corrections should be sustained by the OOR and, as a consequence, the Department should not be required to take any further action on the Request.

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**I. GTL requests permission to participate as a direct interest party.**

GTL hereby requests, pursuant to 65 P.S. §67.1101(c), permission to appear before the OOR in order to assert its support for the partial denial of the Request by the Department. In this regard, also enclosed is a completed OOR Request to Participate as Direct Interest Party form. This request is timely under section 1101(c), as GTL was first notified and became aware of the Requestor's appeal to the OOR on June 5, 2015.

GTL should be allowed to participate because it has a direct and substantial interest in this dispute, and wishes to submit probative information and argument in support of its interest. Requestor seeks, among other things, copies of the inmate telephone services and kiosk contracts between GTL and the Department. The Department denied the Request as to those contracts, in part. The denials that relate to GTL pertain to information that has been redacted from the GTL contracts. GTL now seeks to protect two types of information redacted from the contracts:

- (1) GTL's confidential, internal, and proprietary financial information, which was submitted to the Department for both contracts to demonstrate GTL's financial capability as a prospective contractor, as well as the same information of a predecessor and subcontractor; and
- (2) descriptions of the confidential functions of the Investigative Management System, a security feature provided to the Department pursuant to the inmate telephone services contract.

The Department, in its partial denial, invoked several exemptions to disclosure under the RTKL that are pertinent to these redactions in GTL's contracts:

- (a) the "financial information of a bidder or offeror" exemption found in section 708(b)(26);
- (b) the "public safety" and "physical security" exemptions of sections 708(b)(2) and (3); and
- (c) the "trade secrets" and "confidential proprietary information" exemptions found in section 708(b)(11).

GTL asks that it be permitted to present the OOR with additional information and arguments concerning its position on the foregoing grounds for exemption, beyond the submissions that may be submitted by the Department and other third parties. GTL's presentation will be of assistance to the OOR in reaching a just determination on these important issues. Moreover, the interests of GTL will not be sufficiently protected unless it is permitted to

participate, as GTL is the only party with a full and complete interest in protecting its internal information from disclosure, particularly its internal financial information. No party will seek to protect that and the other information at issue here as vigorously as GTL.

For these reasons, GTL respectfully requests that the OOR allow it to participate in this matter, pursuant to 65 P.S. §67.1101(c).

**II. The information redacted from the GTL-Department inmate telephone services and kiosk contracts is exempt under the RTKL.**

GTL asserts that the redacted information sought by Requestor in the GTL contracts cannot be required to be disclosed because several exemptions contained within the RTKL apply to preclude disclosure here. In support, GTL submits the below arguments, as well as the enclosed Declaration of Steve Montanaro, Vice-President of Sales and Marketing Operations of GTL, who provides factual support for GTL's position that the materials sought are protected from disclosure. For the reasons expressed below, as supported by the Declaration, GTL submits that the Department should not be required to take any further action as to the GTL materials sought by Requestor.

**A. GTL's confidential financials are exempt from disclosure under section 708(b)(26).**

The Department's redactions 29, 32, and 45 are proper because the information subject to those redactions constitutes "financial information of a bidder or offeror" exempt under section 708(b)(26) of the RTKL.<sup>1</sup> That section provides an exemption for:

*A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. § 513 (relating to competitive sealed proposals).*

65 P.S. §67.708(b)(26).

Here, redaction 29 covers the financial information that GTL provided to the Department, at the Department's request, in connection with the request for proposal process for the kiosk contract, in order to demonstrate GTL's economic capability. Declaration at ¶6. Redaction 45 covers the same information that GTL's predecessor-in-interest supplied respecting the telephone contract. Declaration at ¶7. The information supplied is highly confidential, and

---

<sup>1</sup> GTL's references to redaction numbers in this submission are to those listed in Exhibit C to Requestor's appeal, which was filed with the OOR on or about June 3, 2015.

includes audited financial statements over several years, including information about GTL's assets, income, cash on hand, receivables, expenses, licenses, taxes, property, goodwill, and other assets and liabilities. Declaration at ¶¶8-9. Each page of the redacted documents is stamped "CONFIDENTIAL." Declaration at ¶10. This redacted information is maintained by GTL with the highest degree of confidence, both internally and externally. Declaration at ¶11. Were this information to be disclosed, it would be highly damaging to GTL, a non-public company. Declaration at ¶12.

Applying the plain language of section 708(b)(26), the OOR routinely holds that financial information submitted by an offeror in connection with its bid on a government contract is exempt from disclosure. *See, e.g., Smith v. Spring Cove Sch. Dist.*, No. AP 2011-0805, 2011 WL 3097860, \*4 (OOR July 20, 2011) (holding financial information of offeror exempt even after contract awarded and even though agency did not invoke exception); *Hodges v. Dep't of Corr.*, No. AP 2015-0241, 2015 WL 1431794, \*5 (OOR Mar. 23, 2015) (holding declaration stating that documents submitted by offeror constituted its financial information was sufficient to invoke exemption); *Larson v. Cheltenham Twp. Sch. Dist.*, No. AP 2014-02562014 WL 1284527, \*1 (OOR Mar. 13, 2014) (same); *see also* 62 Pa.C.S. §513(f) (Procurement Code requirement of confidentiality of offerors' submissions). Accordingly, GTL's financials are exempt from disclosure.

In addition, redaction 32 covers financial information that GTL's subcontractor, Mid Atlantic Consultants, submitted in connection with GTL's offer. Specifically, that redaction covers two quarterly federal tax returns that include sensitive financial information about Mid Atlantic. Declaration at ¶¶13-14. Like the financials submitted by GTL, it is similarly well-settled that tax return documents are exempt from disclosure. *See, e.g., Howard v. Dep't of Corr.*, No. AP 2010-0776, 2010 WL 3925177, \*4-\*5 (OOR Sept. 17, 2010) (tax return submitted by offeror in connection with RFP properly withheld as constituting an offeror's financial information under section 708(b)(26)); *see also Office of the Budget v. Campbell*, 25 A.3d 1318 (Pa. Commw. 2011) (federal tax forms exempt under 65 P.S. §67.305 because federal law requires tax returns to be kept confidential); *Fort Cherry Sch. Dist. v. Coppola*, 37 A.3d 1259 (Pa. Commw. 2012) (same); *Kerns v. Pa. Turnpike Comm'n*, No. AP 2013-0959, 2013 WL 3865451, \*5 (OOR July 22, 2013) (tax identification numbers required to be redacted from proposal due to federal law); *Pittsburgh Post-Gazette v. Dep't of Agriculture*, No. AP 2011-1226, 2011 WL 5517403, \*7 (OOR Nov. 8, 2011) (company's audited financial statement, which contained tax return information, held exempt due to federal law).

Accordingly, redactions 29, 32, and 45 were properly made by the Department, as the materials covered by those redactions are exempt from disclosure under the RTKL.

**B. Redactions covering the Investigative Management System were properly made under sections 708(b)(2) and (3).**

The Department's redactions 46 through 50 are proper because those redactions cover details respecting the Investigative Management System, the disclosure of which would cause a threat to public safety and physical security. Those materials thus are exempt under sections 708(b)(2) and (3) of the RTKL. Those sections provide exemption for:

(2) A record maintained by an agency in connection with ... law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity ....

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act ....

65 P.S. §67.708(b)(2) & (3).

Here, redactions 46 through 50 cover details concerning the functionality and operation of the Investigative Management System. This important tool, as well as other similar tools, are at the Department's disposal in order to detect and obtain intelligence respecting otherwise hidden activities, which it then uses to prevent prison violence and other violations and to otherwise foster institutional security. Declaration at ¶¶15-16. Were these details to be publicly disclosed, inmates and others could use that information to circumvent the Department's investigations, thus exposing prison institutions to increased risk of violence. Declaration at ¶17.

The OOR routinely holds information like this protected from disclosure under sections 708(b)(2) and (3). See, e.g., Shaffer v. Dep't of Corr., No. AP 2015-0237, 2015 WL 1883580 (OOR Apr. 21, 2015) (holding securities procedures manual exempt because disclosure could threaten security); Buehl v. Dep't of Corr., No. AP 2015-0607, 2015 WL 2374271 (OOR May 13, 2015) (holding prison's daily logs exempt because inmates could use and manipulate that information to adversely affect safety and security); Brown v. Dep't of Corr., No. AP 2015-0427, 2015 WL 1924168 (OOR Apr. 23, 2015) (holding inmate discipline records exempt because exposing sensitive information could jeopardize prison security).

Accordingly, redactions 46 through 50 were properly made by the Department, as the material covered by those redactions is exempt from disclosure under the RTKL.

**C. Alternatively, the redacted information is covered by the “confidential proprietary information” and “trade secret” exemptions in section 708(b)(11).**

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Finally, and in the alternative, each of the redacted items discussed above in sections A and B constitutes confidential and secret information protected from disclosure by section 708(b)(11) of the RTKL.

Indeed, the GTL financials and IMS details each constitute commercial and financial information, are maintained in confidence, their disclosure would injure GTL competitively, they are of value to GTL, and they cannot readily be ascertained by others, who could benefit financially if they knew that information. Declaration at ¶¶18-25.

Prior OOR decisions have held that similar information is exempt under this RTKL exemption. See, e.g., Colgate-Palmolive Co. v. Pa. Ins. Dep’t, No. AP 2013-1631, 2014 WL 930154 (OOR Mar. 7, 2014) (holding financial projections and forecasts exempt under section 708(b)(11)); Jackson v. Dep’t of Corr., No. AP 2010-1192, 2011 WL 382827 (OOR Jan. 19, 2011) (holding Department contractor’s “Implementation Plan and Technical Submittals and Oral Presentation” exempt under this section); Citizens For Pa.’s Future v. Pa. Dep’t of Conserv. & Nat. Res., No. AP 2013-0402, 2013 WL 5352641, \*3-\*5 (OOR Sept. 13, 2013) (holding plan submitted by private company to agency exempt under this exemption); Nixon v. Pa. Ins. Dep’t, No. AP 2013-0729, 2013 WL 2949126, \*5 (OOR June 11, 2013) (holding report containing sensitive private company information exempt under this exemption); Barnes v. Phila. Sch. Dist., No. AP 2011-0638, 2011 WL 2973433, \*6-\*7 (OOR July 13, 2011) (holding documents showing proprietary information of contractor exempt under this exemption); McElroy v. Pa. Dep’t of Pub. Welfare, No. AP 2014-0194, 2014 WL 1492879, \*8-\*9 (OOR Apr. 9, 2014) (holding materials relating to private contractor’s proprietary system exempt under this exemption); see also 12 Pa.C.S. §§5301 to 5308 (Pennsylvania Uniform Trade Secrets Act); 65 P.S. §67.102 (defining “public record” to exclude records “exempt from being disclosed under any other Federal or State law”).

Accordingly, the above redactions were properly made by the Department on the alternative basis that the covered materials are exempt under section 708(b)(11) of the RTKL.

\* \* \* \* \*

Kyle Applegate, Esquire  
June 19, 2015  
Page 7

For the reasons expressed above and as supported by GTL's Declaration, GTL submits that the partial denial of the Request by the Department should be sustained by the OOR. Accordingly, the Department should not be required to take any further action on the Request.

Respectfully submitted,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized, somewhat abstract shape.

Karl S. Myers

cc: Paul Wright (via Email and US Mail)  
Valerie Janosik-Nehilla, Esquire (via Email and US Mail)

**BEFORE THE PENNSYLVANIA OFFICE OF OPEN RECORDS**

PAUL WRIGHT,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

Docket No. AP 2015-0909

**DECLARATION OF STEVE MONTANARO**

I, Steve Montanaro, hereby declare and affirm as follows:

1. I am the Vice-President of Sales and Marketing Operations of Global Tel\*Link Corporation (“GTL”).
2. I am familiar with the Right-to-Know Law request submitted by Paul Wright, Executive Director of the Human Rights Defense Center, to the Pennsylvania Department of Corrections (“DOC”).
3. I am making this Declaration in connection with GTL’s submission respecting Mr. Wright’s appeal to the Office of Open Records, which was filed after DOC partially denied Mr. Wright’s request.
4. Mr. Wright seeks, among other things, complete and unredacted copies of the inmate telephone services and kiosk contracts between GTL and DOC.
5. This Declaration addresses two types of information redacted by the DOC from those contracts:
  - (1) Financial information submitted to the Department for both contracts to demonstrate GTL’s financial capability as a prospective contractor, as well as the same information of GTL’s predecessor-in-interest and GTL’s subcontractor; and

- (2) Descriptions of the confidential functions of the Investigative Management System, a security feature provided to the Department pursuant to the inmate telephone services contract.

6. First, as to GTL's financials, the redaction numbered 29 by Mr. Wright covers the financial information that GTL provided to the Department, at the Department's request, in connection with the request for proposal process for the kiosk contract, in order to demonstrate GTL's economic capability.

7. Redaction 45 covers the same information that GTL's predecessor-in-interest supplied respecting the telephone contract.

8. These two redactions cover information that is highly confidential to GTL.

9. The redacted information includes audited financial statements for GTL over several years, including information about GTL's assets, income, cash on hand, receivables, expenses, licenses, taxes, property, goodwill, and other assets and liabilities.

10. Each page of the redacted documents is stamped "CONFIDENTIAL."

11. This redacted information is maintained by GTL with the highest degree of confidence, both internally and externally.

12. Were this information to be disclosed, it would be highly damaging to GTL, a non-public company.

13. Similarly, redaction 32 covers financial information that GTL's subcontractor, Mid Atlantic Consultants, submitted in connection with GTL's offer on the kiosk contract.

14. In particular, that redaction covers two quarterly federal tax returns that include sensitive financial information about Mid Atlantic.

15. Second, the redactions numbered 46 through 50 by Mr. Wright relate to details concerning the functionality and operation of the Investigative Management System (IMS).

16. The IMS tool, as well as other similar tools, are at the Department's disposal in order to detect and obtain intelligence respecting otherwise hidden activities, which it then uses to prevent prison violence and other violations and to otherwise foster institutional security.

17. If details about IMS or similar investigative tools were to be publicly disclosed, then inmates and others could use that information to circumvent the Department's investigations, thus exposing prison institutions to increased risk of violence.

18. Third and finally, each of the above redactions, relating to GTL's financials and the details of the IMS tool, cover material that is confidential and proprietary to GTL and a trade secret of GTL.

19. The redacted information is treated by GTL as confidential.

20. Release would unfairly cause harm to the competitive position of GTL.

21. Competitors in this industry keep the subject information confidential.

22. GTL takes steps to limit access to this information internally and externally.

23. This information has independent economic value because, if disclosed, it could be used by a competitor as part of an effort to win business away from GTL.

24. Substantial time and effort was invested to generate the information subject to the redactions.

25. Accordingly, and in sum, the redacted information constitutes commercial and financial information, is maintained in confidence, its disclosure could cause competitive harm, the information is of value to GTL, and it cannot readily be ascertained by others, who could benefit from knowing it.

I hereby declare and affirm that the foregoing statements are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "S Montanaro", is written over a horizontal line.

Steve Montanaro

# **Securus Request to Participate in Appeal**

**REQUEST TO PARTICIPATE BEFORE THE OOR**

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

**NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.**

OOR Docket No: AP 2015-0909

Today's date: June 26, 2015

Name: Securus Technologies, Inc.

**IF YOU ARE OBJECTING TO THE DISCLOSURE OF YOUR HOME ADDRESS, DO NOT PROVIDE THE OFFICE OF OPEN RECORDS WITH YOUR HOME ADDRESS. PROVIDE AN ALTERNATE ADDRESS IF YOU DO NOT HAVE ACCESS TO E-MAIL.**

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E-mail grainger.bowman@klgates.com

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Name of Requester: Human Rights Defense Center

Address/City/State/Zip P.O. Box 1151, Lake Worth, FL 33460

Telephone/Fax Number: 561-360-2523 / 866-735-7136

E-mail pwright@prisonlegalnews.org

Name of Agency: Pennsylvania Department of Corrections

Address/City/State/Zip 1920 Technology Parkway, Mechanicsburg, PA 17050

Telephone/Fax Number: 717-728-7746 / 717-728-0312

E-mail RA-docrighttoknow@pa.gov

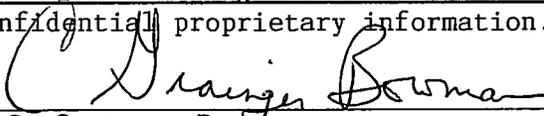
Record at issue: Portions of PADO contract with Securus Technologies, Inc.

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) \_\_\_\_\_

**I have attached a copy of all evidence and arguments I wish to submit in support of my position.**

Record contains confidential/proprietary information. See attached statement.

Respectfully submitted,  (must be signed)  
C. Grainger Bowman

**Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.**

**K&L GATES**

**K&L GATES LLP**  
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June 19, 2015

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**Via Electronic Mail Only**

Kyle Applegate, Esquire  
Appeals Officer  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

**Re: Pennsylvania Office of Open Records - Right-to-Know Law Appeal  
Docket No. AP 2015-0909  
Position Statement of Securus Technologies, Inc.**

Dear Mr. Applegate:

Securus Technologies, Inc. ("Securus"), enters its appearance, by and through its undersigned attorneys K&L Gates LLP and C. Grainger Bowman, Esquire, in this Right-to-Know Appeal. Securus participates in the above-referenced appeal as a direct interest party and submits this position statement ("Position Statement") in support of the decision by the Pennsylvania Department of Corrections ("PADOC") to exempt from disclosure under the Pennsylvania Right-to-Know Law ("RTKL"), Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, certain confidential proprietary information or trade secrets of Securus. As discussed below, the requester's June 3, 2015 appeal of the decision by PADOC should be denied.

**I. Procedural History and Background**

Securus accepts the procedural history recited in the submission of counsel for the Pennsylvania Department of Corrections dated June 19, 2015. Securus submits additional background information in the paragraphs below.

On October 28, 2013, the PADOC issued RFP No. 2013-90 ("RFP") to procure inmate telephone services for inmates in the Commonwealth's correctional institutions. On December 16, 2013, PADOC received three proposals in response to the RFP, including one from Securus. On April 24, 2014, the contract was awarded to Securus by PADOC. As set forth in the RFP, the contract incorporates and includes the proposal submitted by Securus in response to the RFP.

On December 2, 2014, the Prison Legal News (“PLN”) submitted a records request (“Request”) to the PADO. The Request sought the “current contract with Securus and the current rate sheet for all call types[.]” In response, on December 4, 2014, PADO released the requested documents to PLN but redacted (1) confidential proprietary information or trade secrets of Securus (“Securus Confidential Information”) and (2) certain security information (“Security Information”) contained in the contract.

On December 24, 2014, PLN appealed PADO’s determination to redact the Securus Confidential Information and the Security Information. PLN argues, without any legal or factual support, that all types of the redacted information (except for a federal I.D. number) are not properly subject to any exemptions under the RTKL and have been improperly withheld from public disclosure.

This Securus submission, together with the Affidavit of Steven Cadwell, Senior Account Executive -- DOC, West Region, Securus Technologies, provides factual support for Securus’ claims to the PADO’s redacting of Securus’ confidential information, as more fully set forth below.

The Securus Confidential Information consists of two principal categories of confidential information: (1) financial information submitted by Securus to demonstrate its economic ability to perform the services under the contract (“Financial Information”); and (2) Securus’ implementation plan for providing the telephone services (“Implementation Plan”). See Affidavit of Steven Cadwell ¶ 10 (“Cadwell Affidavit”). Securus provided this information to PADO with the understanding that the information would remain confidential. See *id.* ¶ 11. At the time of submission, Securus marked the documents as confidential and provided a written statement to PADO that the records contain a trade secret or confidential proprietary information. See *id.*

## II. PADO Properly Excluded the Securus Confidential Information

PADO properly redacted the Securus Confidential Information as exempt from public disclosure pursuant to Section 708(b)(11) of the RTKL as “confidential proprietary information” or a “trade secret.” As a general matter, records in the possession of a Commonwealth agency such as PADO are presumed public unless exempt under the RTKL or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. In this case, the Securus Confidential Information is exempt from disclosure pursuant to section 708(b)(11) of the RTKL, which prohibits a Commonwealth agency from releasing “[a] record that constitutes or reveals a trade secret or confidential proprietary information.” 65 P.S. § 67.708(b)(11).

As will be discussed in detail below, the Securus Confidential Information falls squarely within the “confidential proprietary information” or “trade secret” exemption under Section 708(b)(11).

**A. The Securus Confidential Information is exempt under Section 708(b)(11) as confidential proprietary information.**

The Securus Confidential Information satisfies the statutory definition of “confidential proprietary information.” “Confidential proprietary information” is defined as “[c]ommercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.” 65 P.S. § 67.102. The Financial Information and the Implementation Plan each satisfy both elements of this two-part test required for the exemption to apply.

First, the Securus Confidential Information is confidential to Securus. In determining whether certain information is “confidential,” the key is to consider “the efforts the parties undertook to maintain their secrecy.” *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Cmwlth. Ct. 2014). In this case, Securus took reasonable and significant steps to maintain the secrecy of the documents. Securus marked each document as confidential at the time of submission to PADO and informed PADO that the documents contain confidential information. Cadwell Affidavit ¶ 11. Securus closely restricted access to the documents to only those employees essential to preparation of Securus’ response to the RFP. *Id.* To protect against unintended disclosure of its confidential information, Securus provides confidentiality training to its employees. *Id.* Securus has not otherwise disclosed the documents or confidential information to any other party except for PADO. *Id.* Finally, Securus destroyed all non-essential copies of the documents submitted to PADO in order to further ensure no additional dissemination of this information. *Id.*

Second, the disclosure of Securus’ confidential information will cause substantial harm to Securus’ competitive position. “In determining whether disclosure of confidential information will cause ‘substantial harm to the competitive position’ of the person from whom the information was obtained, an entity needs to show: (1) actual competition in the relevant market; and, (2) a likelihood of substantial competitive injury if the information were released.” *Id.* at 1128. A “competitive harm analysis” looks to the “harm flowing from the affirmative use of proprietary information by competitors.” *Id.*

Actual competition exists in the relevant market. Here, Securus was one of three entities that submitted proposals in response to the RFP, with Securus selected by the PADO as the winning bidder. Cadwell Affidavit ¶ 6. This provides clear evidence of actual competition in this market. Securus has faced the same or similar competitors numerous times in other public procurements throughout the United States. *Id.* ¶ 8. Each of the competitors closely guards their financial and pricing information and their operational plans to avoid inadvertent public disclosure. *Id.* ¶ 7.

Securus will suffer substantial competitive injury if the Securus Confidential Information documents are released. The Securus Confidential Information represents closely-guarded information that, if disclosed, would enable Securus’ competitors to review and to understand Securus’ financial and operational capabilities. This information can be utilized by Securus’ competitors to gain a competitive advantage against Securus in future procurements.

Specifically, with respect to the Financial Information documents, Securus submitted a proposal package to PADOE that contained specific financial and related pricing information in response to the RFP that demonstrated Securus' financial capability to perform the contract. *Id.* ¶ 13. The Financial Information submitted by Securus includes key financial data and related financial disclosures. *Id.* If disclosed, Securus' competitors would gain insight into Securus' expected revenues, financial margins, cost structures, and profitability. *Id.* ¶ 17. This information could be utilized in subsequent procurements by the competitors to tailor and to structure their proposals in a competitively-advantageous manner. *Id.*

Indeed, the Office of Open Records has previously recognized the importance of protecting the confidentiality of such information by finding that "fees and pricing information are confidential proprietary information and may be protected as confidential proprietary information or trade secrets when the necessary facts are substantiated by the evidence submitted into the record." *Ropart Asset Mgmt. v. Pa. Turnpike Comm'n*, 2014 PA O.O.R.D. LEXIS 55, \*7 (Pa. O.O.R.D. 2014). See also *In re: Colgate-Palmolive Co.*, 2014 PA O.O.R.D. LEXIS 252 (Pa. O.O.R.D. 2014); *Office of the Governor v. Bari*, 20 A.3d 634, 647-49 (Pa. Cmwlth. 2011).

With respect to the Implementation Plan documents, Securus included in its proposal to PADOE Securus' proprietary methods and processes for providing telephone services to inmates. Cadwell Affidavit ¶ 14. Securus developed its unique Implementation Plan in order to, among other things, differentiate Securus and its operations from its competitors. *Id.* Securus expended considerable financial resources developing the methods and techniques embodied in its Implementation Plan to accomplish this goal. *Id.* ¶ 15. If the Implementation Plan documents are disclosed to the public, Securus' competitors would gain insight into how Securus' system operates, how Securus manages the inmate calling process and how Securus generates revenues and incurs costs under the system. *Id.* ¶ 18. Securus' competitors would know exactly how to identify and to address both the strengths and weaknesses of the Securus system for use in future procurement competitions. *Id.* This information could be utilized by its competitors to tailor and to structure their systems and operational plans. *Id.* ¶ 19. In this highly competitive market, such disclosure will place Securus in a significant competitive disadvantage for future public procurements.

The key point is that Securus competes in a highly-competitive niche market by providing telephone services to inmates within prison systems. *Id.* ¶ 16. If the Securus Confidential Information is disclosed to the public, this disclosure would afford Securus' competitors insight into both Securus' financial capabilities and its Implementation Plan, as well as Securus' goals and objectives for this procurement and contract. Accordingly, disclosure of the Securus Confidential Information will place Securus in a competitive disadvantage for future public procurements against many of the same competitors. Therefore, the Securus Confidential Information is confidential proprietary information as set forth in Section 708(b)(11) and exempt from disclosure under the RTKL.

**B. The Implementation Plan is a trade secret of Securus.**

In addition to being confidential proprietary information, the Implementation Plan is also exempt under Section 708(b)(11) as a trade secret. A "trade secret" is defined as follows:

Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

65 P.S. § 67.102.

The Implementation Plan constitutes a trade secret of Securus. The Implementation Plan reflects Securus' proprietary methods, techniques and processes to efficiently and effectively provide inmate telephone services. Cadwell Affidavit ¶¶ 14-15. Securus developed the unique Implementation Plan for its own exclusive use. *Id.* ¶ 14. The Implementation Plan is not publicly available and Securus closely guards against public disclosure of this information. *Id.* ¶ 7. In fact, the Implementation Plan derives independent economic value to Securus because it is not known by Securus' competitors and is not reasonably ascertainable by proper means. *Id.* ¶ 20. Disclosure of this information to Securus' competitors will allow them to simulate those processes or otherwise impede Securus' ability to compete on future procurements. *Id.* Furthermore, Securus has expended considerable financial resources developing the methods and techniques embodied in the redacted information. *Id.* ¶ 15. Securus would suffer great financial harm if this information is made public.

The bottom line is that the Implementation Plan is not available to the public and the disclosure of this information will result in substantial economic harm as Securus' competitors would have access to this confidential information for their own use. Therefore, the Implementation Plan information falls squarely within the definition of a trade secret under the RTKL and, accordingly, is exempt from public disclosure under Section 708(b)(11). See 65 P.S. §§ 67.102 & 67.708(b)(11).

**III. Conclusion**

For the reasons stated above, Securus requests that PLN's appeal be denied and, specifically, that the Securus Confidential Information be deemed as exempt from production as confidential proprietary information under Section 708(b)(11), 65 P.S. § 67.708(b)(11), of the RTKL.

Very truly yours,

C. Grainger Bowman

cc:

Paul Wright, c/o Prison Legal News, Human Rights Defense Center, P.O. Box 1151, Lake Worth, FL 33460, [pwright@prisonlegalnews.org](mailto:pwright@prisonlegalnews.org) (via email)

Valerie Janosik-Nehilla, Assistant Counsel, Pennsylvania Department of Corrections, 1920 Technology Parkway, Mechanicsburg, PA 17050



numerous jurisdictions throughout the United States. In many cases, the competitions are very close and each competitor looks for any advantage to be selected for the contract.

9. For the RFP, each competitor submitted confidential information to the PADOE in order for the PADOE to evaluate and to select the offeror most advantageous to the Commonwealth. In their proposal, each competitor attempts to provide support for PADOE to reach the conclusion that their proposal is most advantageous to the Commonwealth. The competitors submit this information with the understanding that PADOE will not disclose confidential information to the public.

10. In this case, Securus submitted a proposal in response to the RFP that included several categories of confidential information that Securus takes great pains to ensure that its confidentiality is protected. This confidential information ("Confidential Information") consists of two principal categories of confidential information: (1) financial information submitted by Securus to demonstrate its economic ability to perform the services under the contract ("Financial Information"); and (2) Securus' implementation plan for providing the telephone services under the contract ("Implementation Plan").

11. Securus provided the Confidential Information to PADOE with the understanding that the information would remain confidential. At the time of submission, Securus marked the documents as confidential and provided a written statement to PADOE that the records contain a trade secret or confidential proprietary information.

12. Securus took other substantial and reasonable measures to protect the confidentiality of the Confidential Information. Securus closely restricted access to the documents submitted with its proposal to only those employees essential to preparation of Securus' response to the RFP. Securus provides confidentiality training to its employees. In addition, Securus has not otherwise disclosed the documents or confidential information to any other party except for PADOE. Finally, Securus destroyed all non-essential copies of the documents submitted to PADOE in order to further ensure no additional dissemination of this information.

13. The Financial Information contains specific financial and related pricing information that demonstrates Securus' financial capability to perform the contract that would be awarded pursuant to the RFP. This information includes key data and related financial information. If disclosed to the public, this information could be used by competitors of Securus to structure their proposals to the competitive disadvantage of Securus.

14. The Implementation Plan contains Securus' proprietary methods and processes for providing telephone services to inmates under the contract. Securus developed this unique Implementation Plan to, among other things, differentiate Securus and its operations from competitors like CenturyLink and GTL. The Implementation Plan was developed for exclusive use by Securus.

15. Securus has made a considerable financial investment in the Implementation Plan in order to develop the unique methods and techniques. One of the goals of this investment was to provide a system to correctional agencies that is both efficient and effective.

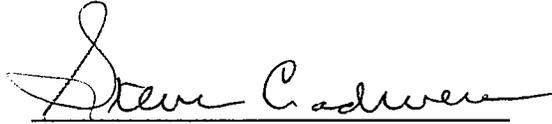
16. Securus competes in a highly-competitive niche market by providing telephone services to inmates within prison systems.

17. If the Financial Information is disclosed to the public, this disclosure would afford Securus' competitors insight into Securus' financial capabilities, goals and objectives for this procurement and contract, which will place Securus in a competitive disadvantage for future public procurements against many of the same competitors. Securus' competitors would gain insight into Securus' expected revenues, financial margins, cost structures, and profitability. This information could be utilized in subsequent procurements by the competitors to prepare their proposals in a competitively-advantageous manner and to Securus' disadvantage.

18. Similar to the Financial Information, if the Implementation Plan is disclosed to the public, this disclosure would afford Securus' competitors insight into Securus' proprietary methods and processes for providing such telephone services for PADO. Securus' competitors would gain insight into how Securus' system operates, what its components are, how Securus manages the inmate calling process and how Securus generates revenues and incurs costs. Securus' competitors would know exactly how to identify and to address both the strengths and weaknesses of the Securus' system for use in future procurement competitions.

19. This information could be utilized by the competitors to tailor and to structure their systems and implementation plan to the competitive disadvantage of Securus.

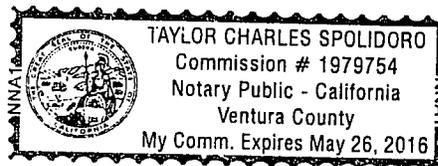
20. The Implementation Plan derives independent economic value to Securus because it is not known by Securus' competitors and is not reasonably ascertainable by proper means. Disclosure of this information to Securus' competitors will allow them to simulate the processes that Securus developed for its own use or otherwise impede Securus' ability to compete on future procurements.

  
Steven Cadwell

Sworn to and subscribed before me this  
day of June, 2015.

  
Notary Public

My Commission Expires: May 26, 2016



State of California  
County of Ventura

## **Attachment 3**

**From:** Young, Stephen  
**Sent:** Thursday, April 02, 2015 6:27 PM  
**To:** 'rbarrett@prisonlegalnews.org'  
**Subject:** Ohio Inmate Telephone Contract

Per your record request dated April 2, 2015, I have attached a copy of the following records which are completely responsive to your requests #1 and #4.

The records are partially responsive to your requests #5 - #8, inclusive. As indicated by attached Contract Amendment #1, Global Tel Link (GTL) ceased providing video visitation services and another provider took over. Thus, responses on that other provider responsive to your requests #5 - #8, inclusive, will be provided by other DRC staff.

Attached Contract Amendment #2 is partially responsive to your request #3. I will soon be supplementing my response as it applies to completing DRC's response to your request #3.

The following records are attached: Inmate Call-Out Program Contract with GTL Effective 02-29-2010; Final Request For Proposal (RFP) 07-27-09; Four RFP Addendums; Revised RFP Attachment B; and Contract Amendments #1 & #2.

However, GTL's proposal to the RFP is not included given that it is copyrighted. If you want to review said proposal it is available for inspection by contacting my office for an appointment.

The fees are waived relative to these attached records. I hope you find this information helpful to your organization.

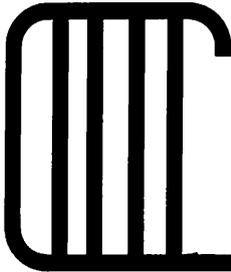
Other DRC staff will be responding to the remainder of your record request dated April 2, 2015.

Thanks

Stephen A. Young  
Legal Counsel  
Dept. of Rehabilitation & Correction  
770 West Broad St.  
Columbus, OH 43222  
(614) 752-1784 phone  
(614) 752-1034 fax

Please note that this message and/or any attachments may contain confidential attorney work product and/or may otherwise be privileged or confidential and/or protected from disclosure by applicable law. If you are not the intended recipient, you are hereby notified that you have received this message in error. Any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error, please notify the sender by reply or by telephone at 614-752-1784 and immediately delete this message and any attachments.

## **Attachment 4**



**Illinois**  
**Department of**  
**Corrections**

**Bruce Rauner**  
Governor

**Donald Stolworthy**  
Director

1301 Concordia Court • P.O. Box 19277  
Springfield IL 62794-9277

Telephone: (217) 558-2200  
TDD: (800) 526-0844

April 6, 2015

Paul Wright  
P.O. Box 1151  
Lake Worth, Fl. 33460

**Re: Freedom of Information Act Request 150403046**

Dear Mr. Wright:

This is in response to your request to the Illinois Department of Corrections (“IDOC”) for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq.

You have requested many different documents as part of your 24-part request. The subject matter of the various request are very diverse and said records are kept in several different locations. The documents would need to be obtained from dozens of different units within IDOC.

Your request is unduly burdensome. Please limit your request to manageable proportions. Once we receive your refined request, we will be better able to determine if we can provide documents responsive to your request [5 ILCS 140/3(g)].

Please submit your refined request, using the above-referenced FOIA number.

Sincerely,

A handwritten signature in black ink, appearing to read 'Millicent Bliesener', with a long horizontal line extending to the right.

Millicent Bliesener  
Office Associate  
Freedom of Information Office

## **Attachment 5**

**From:** Carpenter, Jerry [<mailto:Jerry.Carpenter@finance.alabama.gov>]  
**Sent:** Monday, June 08, 2015 7:52 AM  
**To:** Paul Wright  
**Cc:** Ryan Barrett  
**Subject:** Public Records Request

The inmate pay telephone contract is TA497, ITB#12-X-2238645. It is available for viewing by appointment between 8:00 a.m. and 5:00 p.m., CDT, Monday through Friday, except holidays, at the office of the Department of Finance's Division of Purchasing. You may arrange an appointment by emailing Shirley Jackson at [shirley.jackson@purchasing.alabama.gov](mailto:shirley.jackson@purchasing.alabama.gov). The division does not provide copies but will accommodate your bringing your own copier, or you may photograph the documents with a cell phone or other hand-held device.

*Jerry Carpenter  
Deputy Attorney General  
Department of Finance, Legal Division  
E-309 State Capitol  
Montgomery, AL 36130  
334-242-4520*

CONFIDENTIALITY NOTICE AND DISCLAIMER: This electronic mail transmission may contain information that is confidential, privileged, proprietary in nature, or is otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, in whole or in part, including any attachments thereto. If you have received this transmission in error, please delete it and any attachments thereto and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including attorney-client privilege, that may attach to this communication.

## **Attachment 6**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PRISON LEGAL NEWS,  
  
Plaintiff,  
  
v.  
  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, et al.,  
  
Defendants.

CASE NO. C14-479 MJP  
  
ORDER GRANTING PLAINTIFF’S  
MOTION FOR SUMMARY  
JUDGMENT, DENYING  
DEFENDANTS’ MOTION FOR  
SUMMARY JUDGMENT

THIS MATTER comes before the Court on the Parties’ cross-motions for summary judgment. (Dkt. Nos. 24, 28.) Having considered the Parties’ briefing and the related record, the Court hereby GRANTS Plaintiff’s Motion for Summary Judgment (Dkt. No. 24) and DENIES Defendants’ Cross-Motion for Summary Judgment (Dkt. No. 28).

**Background**

Plaintiff Prison Legal News, a monthly news magazine dedicated to reporting and advocacy concerning the elevated telephone rates that prisons and contractors charge incarcerated people, brings suit against the Department of Homeland Security (“DHS”) and

1 Immigration and Customs Enforcement (“ICE”) alleging that various actions taken by  
2 Defendants have violated the Freedom of Information Act (“FOIA”). (Dkt. No. 33.)

3 Prison Legal News is a project of the Human Rights Defense Center (“HRDC”), a  
4 nonprofit charitable organization that focuses on “public education, prisoner education, advocacy  
5 and outreach in support of the rights of prisoners and in furtherance of basic human rights.”  
6 (Dkt. Nos. 24 at 7, 25 at 1-3.) For several years, Plaintiff and HRDC have been gathering  
7 information through public records requests about prison phone policies and practices, with  
8 special focus on identifying where prisoners are charged high rates for basic telephone services.  
9 (Dkt. No. 25 at 1-3.) In 2013, HRDC staff members testified before the Federal  
10 Communications Commission (“FCC”) about capping prison phone rates, and the FCC cited  
11 Plaintiff and HRDC more than forty-five times in its report and order implementing new  
12 regulations of prison telecommunications companies. (Dkt. No. 25 at 59-189.) Plaintiff’s FOIA  
13 records requests in this case also sought information related to telephone practices and policies as  
14 part of the same investigative project, this time targeted towards ICE’s federal immigration  
15 detention centers. (Dkt. Nos. 24 at 7-9, 25 at 1-3.)

16 Plaintiff’s first FOIA request was mailed to Defendants on July 30, 2013, and was signed  
17 for by Defendants on August 5, 2013. (Dkt. No. 25 at 3, 213-17.) Plaintiff asserts that it never  
18 received a response to this request. (Id. at 3.) Defendants assert that they issued a request  
19 acknowledgment letter on August 7, 2013, and have produced evidence that a responsive letter  
20 was generated, though not that it was mailed. (Dkt. Nos. 29 at 4, 29-1.) Regardless of whether  
21 the response letter was sent or not, Plaintiff informed Defendants by letter dated December 21,  
22 2013, that Plaintiff had not received any response but remained interested in the information.

1 (Dkt. No. 25 at 3, 219.) It is uncontested that Defendants received but did not respond to the  
2 second letter. (Id.)

3 On April 2, 2014, Plaintiff filed this suit, alleging that Defendants were violating FOIA  
4 by failing to respond to its two requests. (Dkt. No. 1.) Plaintiff then received the first round of  
5 responsive records from ICE on August 1, 2014. (Dkt. Nos. 25 at 3-4, 29.) In the months  
6 between September 2014 and February 2015, ICE produced several additional rounds of records  
7 and several rounds of reprocessed and corrected records. (Id.)

8 Portions of the produced records were redacted pursuant to FOIA Exemptions 4  
9 (confidential commercial information), 6 (personal privacy), 7(C) (law enforcement personal  
10 privacy), and 7(E) (law enforcement techniques and procedures). (Dkt. Nos. 25 at 3-4, 29 at 12.)  
11 In January 2015, Plaintiff amended its complaint to clarify that it sought to challenge not only  
12 ICE's failure to timely respond to its FOIA requests (the only disputed issue at the time the suit  
13 was filed), but also ICE's Exemption 4 and 7(E) redactions in the documents produced by ICE  
14 between August and December 2014. (Dkt. Nos. 24 at 11, 33.)

15 After Plaintiff amended its complaint and filed its motion for summary judgment arguing  
16 that Defendants had failed to properly respond to its FOIA requests and had improperly redacted  
17 non-exempt public information under Exemptions 4 and 7(E), ICE determined that information  
18 redacted pursuant to Exemption 7(E) "had previously been publicly disclosed," and thus  
19 produced the unredacted documents in full. (Dkt. No. 28 at 2 n.1.)

20 Accordingly, the only remaining issue regarding redactions involves ICE's Exemption 4  
21 redaction of Talton Communications, Inc.'s performance incentive rate, which reflects a  
22 percentage of revenue earned by the phone services contractor that is set aside in escrow and  
23 only paid to the contractor upon ICE's determination that Talton has performed the contract

1 successfully. (Dkt. Nos. 28, 36.) ICE redacted the incentive rate used by Talton in its successful  
2 2009 contract bid because it determined that disclosing the rate would result in competitive harm  
3 to Talton when it bids for subsequent contracts, including the contract to be bid for in 2015.  
4 (Dkt. Nos. 28, 37.) Plaintiff contends the rate was improperly redacted because this information  
5 is not exempt under proper application of Exemption 4. (Dkt. Nos. 24, 36.)

## 6 Discussion

### 7 I. Legal Standard

8 Summary judgment is proper where “the movant shows that there is no genuine issue as  
9 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
10 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue  
11 of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In assessing whether a party has met  
12 its burden, the underlying evidence must be viewed in the light most favorable to the non-  
13 moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

14 The Court conducts a de novo review of an agency's response to a FOIA request. 5  
15 U.S.C. § 552(a)(4)(B); U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press, 489 U.S.  
16 749, 755 (1989). When presented with a summary judgment motion in a FOIA case, courts  
17 follow a two-step inquiry. See, e.g., Los Angeles Times Commc'ns, LLC v. U.S. Dep't of the  
18 Army, 442 F. Supp. 2d 880, 892-94 (C.D. Cal. 2006). First, courts evaluate whether the agency  
19 has met its burden of proving that it fully discharged its obligations under FOIA. Zemansky v.  
20 EPA, 767 F.2d 569, 571 (9th Cir. 1985) (citing Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344,  
21 1350-1351 (D.C. Cir. 1983)). To do this, the agency must demonstrate that it has conducted a  
22 search reasonably calculated to uncover all relevant documents. Id. Second, if the agency  
23 satisfies its initial burden, courts determine whether the agency has proven that the information

1 that it did not disclose falls within one of the nine FOIA exemptions. Dobronski v. FCC, 17 F.3d  
2 275, 277 (9th Cir. 1994). In meeting its burden, the government may not rely on conclusory and  
3 generalized allegations of exemptions. Church of Scientology of Cal. v. U.S. Dep't of the Army,  
4 611 F.2d 738, 742 (9th Cir. 1980) (citing Vaughn v. Rosen, 484 F.2d 820, 826 (D.C. Cir. 1973)).  
5 Furthermore, these exemptions “must be narrowly construed” so as not to undermine FOIA's  
6 basic purpose: “to ensure an informed citizenry, vital to the functioning of a democratic society,  
7 needed to check against corruption and to hold the governors accountable to the governed.” John  
8 Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (internal quotation marks and citations  
9 omitted).

10 In sum, in order to prevail on summary judgment, the agency must prove “it has fully  
11 discharged [these burdens] under FOIA, after the underlying facts and the inferences to be drawn  
12 from them are construed in the light most favorable to the FOIA requester.” Miller v. U.S. Dep't  
13 of State, 779 F.2d 1378, 1382 (8th Cir. 1985) (citing Weisberg, 705 F.2d at 1350); see also  
14 Zemansky, 767 F.2d at 571.

## 15 II. Redactions Pursuant to Exemption 4

16 Plaintiff argues that Defendants cannot meet their burden of proving that Talton  
17 Communications is likely to suffer substantial competitive harm if the performance incentive rate  
18 from its successful 2009 detainee telephone services contract bid is disclosed, and therefore that  
19 the performance incentive rate is not exempt from disclosure. (Dkt. Nos. 24 at 16, 36 at 5-8.)

20 The trade secret exemption to FOIA states, “[t]his section does not apply to matters that  
21 are (4) trade secrets and commercial or financial information obtained from a person and  
22 privileged and confidential.” 5 U.S.C. § 552(b). “In order to invoke Exemption 4 in the Ninth  
23 Circuit, the government agency must demonstrate that the information it sought to protect is (1)

1 commercial and financial information, (2) obtained from a person or by the government, (3) that  
2 is privileged or confidential.” Watkins v. U.S. Bureau of Customs & Border Prot., 643 F.3d  
3 1189, 1194 (9th Cir. 2011) (internal quotations marks omitted). Commercial or financial  
4 information is “confidential” for purposes of the exemption if disclosure of the information is  
5 likely to have either of the following effects: “(1) to impair the Government’s ability to obtain  
6 necessary information in the future; or (2) to cause substantial harm to the competitive position  
7 of the person from whom the information was obtained.” Id.

8       Where, as here, resolution of the issue before the Court turns on the “substantial harm”  
9 prong, the government need not show that releasing the information would cause “actual  
10 competitive harm.” Watkins, 643 F.3d at 1194. Rather, the government need only show that  
11 there is: “(1) actual competition in the relevant market, and (2) a likelihood of substantial  
12 competitive injury if the information were released.” Id. “Competitive harm analysis is ...  
13 limited to harm flowing from the affirmative use of proprietary information by competitors.  
14 Competitive harm should not be taken to mean simply any injury to competitive position....  
15 Although the court need not conduct a sophisticated economic analysis of the likely effects of  
16 disclosure[,] ... [c]onclusory and generalized allegations of substantial competitive harm ... are  
17 unacceptable and cannot support an agency’s decision to withhold requested documents.” Id. at  
18 1195 (internal quotation marks and citations omitted).

19       Defendants argue that disclosure of the performance incentive rate would result in  
20 substantial competitive harm to Talton Communications and would undermine the integrity of  
21 the bidding process for ICE’s future telephone services contracts because Talton’s competitors  
22 could use the information to underbid Talton. (Dkt. No. 28 at 13-16.) Defendants contend that  
23 ICE considered three factors in awarding the 2009 telecommunications contract—(1) technical

1 and management capabilities, (2) past performance, and (3) price—and that Talton was  
2 successful in securing the 2009 contract because it offered the lowest price proposal that was  
3 technically acceptable. (Dkt. Nos. 28 at 14, 32 at 2-7, 38 at 6-8.) Included in the price proposal  
4 were the telephone rates to be charged to detainees—which are now posted publicly at ICE’s  
5 Northwest Detention Center and which were already disclosed to Plaintiff—and the performance  
6 incentive rate. (Id.) Defendants submit that because Talton’s telephone rates are available to its  
7 competitors, the “only competitive edge Talton still has over its competitors in future bids is its  
8 strategy regarding the percentage of the revenue the company agreed to set aside as a  
9 performance incentive in order to win the current Detainee Telephone System contract.” (Dkt.  
10 No. 32 at 7.) Defendants also note that Talton invested considerable resources, including hiring  
11 an outside consultant, to develop an attractive bid for the 2009 contract, which included  
12 developing a “risk allocation approach” that Defendants contend would be revealed if the  
13 performance incentive rate were disclosed. (Dkt. Nos. 28 at 14-15, 31 at 1-6.)

14 Defendants have not met their burden of demonstrating a likelihood of substantial  
15 competitive injury to Talton upon disclosure of its 2009 performance incentive rate, and  
16 therefore the performance incentive rate is not exempt from disclosure under FOIA. Defendants  
17 base their arguments on the theory that disclosing Talton’s 2009 performance incentive rate  
18 would expose Talton’s current risk tolerance, without reciprocal disclosures from its competitors,  
19 therefore providing competitors with an unfair advantage in the bidding process for upcoming  
20 contracts by allowing them to estimate and undercut Talton’s bids. (Dkt. Nos. 28 at 14, 31 at 3-  
21 6, 32 at 5-7, 37 at 4, 38 at 6-8). But the performance incentive rate to be disclosed would reveal  
22 only Talton’s risk tolerance in 2009, based on the state of the company then, as evaluated by a  
23 consultant hired to craft a bid specifically for the 2009 contract. (See Dkt. No. 31.) There is no

1 indication in the record that Talton Communications in 2015 is in exactly the same financial  
2 position as it was in 2009; Talton today may have a higher or lower risk tolerance than it did in  
3 2009. Because Talton is free to determine its current risk tolerance separate from its 2009 risk  
4 tolerance, disclosure of the 2009 rate will not provide Talton's competitors with insight into its  
5 future bids for future contracts. In other words, disclosure of the 2009 rate, without more, does  
6 not allow competitors to "estimate and undercut" Talton's 2015 bid because there is no  
7 indication that Talton will use the same rate in 2015.<sup>1</sup> Furthermore, Defendants have provided  
8 neither evidence nor argument to explain how disclosure of the 2009 rate would allow  
9 competitors to reverse engineer Talton's entire business strategy or its current or future risk  
10 tolerance.

11 Moreover, the record does not support Defendants' contentions that the performance  
12 incentive rate was the "single distinguishing and important element of Talton's 2009 [detainee  
13 telephone services] proposal which allowed Talton to win the award and will likely be just as  
14 significant should Talton choose to compete for the follow-on [detainee telephone services]  
15 contract." (Dkt. No. 37 at 4.) Rather, the record shows that price was the deciding factor in  
16 2009, and that the performance incentive rate was one piece of Talton's price proposal. (Dkt.  
17 Nos. 32 at 2-7, 38 at 6-8.) The record also shows that ICE evaluates a variety of factors when  
18 choosing between proposals, and that the importance of any one of the factors fluctuates  
19 according to ICE's evaluation of the proposal's other factors and sub-factors. (Id.) ICE has  
20 identified eight sub-factors for the technical and management capabilities category alone. (Dkt.

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23 <sup>1</sup> Furthermore, it is unclear from the record when bidding for the 2015 contract is  
24 expected to take place, and in fact it may have already occurred. The Parties have specified that  
Talton's 2009 contract expired on May 12, 2015, (Dkt. No. 38 at 5), but have not specified when  
a new contract will be bid for or will enter into effect.

1 No. 32 at 4.) That a contractor’s performance incentive rate will be the single determinative  
2 factor in a future bidding process is pure speculation, and, in light of “the strong public interest  
3 in favor of disclosure,” GC Micro Corp. v. Defense Logistics Agency, 33 F.3d 1109, 1115 (9th  
4 Cir. 1994), cannot support a finding that Talton is likely to sustain substantial competitive harm  
5 from disclosure of the performance incentive rate.

6 In sum, the Court finds that Talton’s performance incentive rate is not exempt from  
7 disclosure under FOIA because Defendants have not demonstrated a likelihood of substantial  
8 competitive injury to Talton if the rate were disclosed. Defendants must therefore disclose the  
9 rate to Plaintiff.

### 10 III. Excessive Delay in Responding to Requests

11 Plaintiff argues that, in addition to improperly redacting documents, Defendants violated  
12 FOIA by failing to timely respond to its FOIA requests. (Dkt. Nos. 24 at 11-13, 36 at 3-5.)  
13 Plaintiff requests that the Court declare that ICE’s delay in responding has violated the letter and  
14 spirit of FOIA. (Id.) Defendants admit that they failed to timely respond to Plaintiff’s requests,  
15 but argue that that failure was inadvertent and that Plaintiff has already availed itself of the  
16 proper remedy for that failure—filing suit for immediate judicial review without having to  
17 exhaust administrative remedies. (Dkt. Nos. 28 at 16-17, 37 at 7-8.)

18 FOIA requires an agency to, within twenty days of receiving a record request, (1)  
19 determine whether it will comply with a record request, and (2) notify the requester of its  
20 determination and its reasoning. 5 U.S.C. § 552(a)(6)(A)(i). The determination response must  
21 include: (1) a statement of what the agency will and will not release; (2) the agency’s rationale  
22 for any withholdings; and (3) notice of the requester’s right to appeal. Id. Where “unusual  
23  
24

1 circumstances” exist, the Act allows agencies to extend that deadline by as many as ten days. 5  
2 U.S.C. § 552(a)(6)(B)(i).

3 Declaratory judgment, the granting of which is within the discretion of the Court, is  
4 proper when there are purely legal questions at issue and if the judgment will clarify the legal  
5 issues and provide clarity to the parties and the public. Natural Res. Def. Council, Inc. v. EPA,  
6 966 F.2d 1292, 1299 (9th Cir. 1992) (granting declaratory relief because the agency “does not  
7 have the authority to ignore unambiguous deadlines set by Congress” in Clean Water Act case).

8 Defendants correctly note that where an agency fails to respond within the statutory time  
9 period, the requestor is deemed to have constructively exhausted his or her administrative  
10 remedies and may file suit in federal court. (Dkt. No. 37 at 7) (citing 5 U.S.C. § 552(a)(6)(C)  
11 and Citizens for Responsibility and Ethics in Wash. v. FEC, 711 F.3d 180, 188 (D.C. Cir. 2013).)  
12 Exhaustion of administrative remedies aside, “[i]t seems fair to say that in the Ninth Circuit,  
13 courts sometimes enforce FOIA's timeliness requirements independent of the underlying  
14 disclosure issues, at least when the violation is ‘egregious’ or when there is a ‘pattern or practice’  
15 of delay.” Munger, Tolles & Olson LLP ex rel. Am. Mgmt. Servs. LLC v. U.S. Dep’t of Army,  
16 58 F. Supp. 3d 1050, 1054-55 (C.D. Cal. 2014) (collecting cases). See, e.g., Oregon Natural  
17 Desert Ass’n v. Gutierrez, 409 F. Supp. 2d 1237, 1247-48 (D. Or. 2006) (holding that an eight  
18 month delay was “a violation of FOIA, regardless of the final outcome of the request”).

19 The Court finds the delay in responding to Plaintiff’s requests to be egregious. It is  
20 uncontested that Plaintiff did not receive ICE’s first production of documents (or any other  
21 determination) until 361 days after mailing its first FOIA request letter, seven months after  
22 mailing its second request letter, and almost four months after filing this lawsuit. (Dkt. Nos. 25  
23 at 2-4, 29 at 12-14.) Production of the remainder of the requested documents was not completed

1 for several additional months. (Id.) Response times of this sort clearly exceed the unambiguous  
2 time allowance contemplated by Congress. See 5 U.S.C. § 552(a)(6)(A)(i). Consequently, the  
3 Court hereby declares that, independent of the exemption issues, Defendants violated FOIA by  
4 failing to make a timely determination on Plaintiff’s requests.

5 IV. Attorney’s Fees

6 As the prevailing party, Plaintiff is eligible for reasonable attorney’s fees and costs. 5  
7 U.S.C. § 552(a)(4)(E); Church of Scientology of Cal. v. U.S. Postal Serv., 700 F.2d 486, 489  
8 (9th Cir. 1983). The Court finds that an award of fees and costs is appropriate in this case, and  
9 that Plaintiff is entitled to such an award. See Church of Scientology of Cal., 700 F.2d at 492-  
10 93. Therefore, Plaintiff is hereby awarded reasonable attorney’s fees and costs, and must  
11 petition the Court for a determination of fees and costs within thirty (30) days of the date of this  
12 order, if the Parties are unable to agree on a determination.

13 **Conclusion**

14 Because Defendants have violated FOIA by failing to timely respond to Plaintiff’s  
15 requests and have failed to prove that Talton’s performance incentive rate falls within one of  
16 FOIA’s exemptions, the Court GRANTS Plaintiff’s Motion for Summary Judgment and  
17 DENIES Defendants’ Cross-Motion for Summary Judgment. Plaintiff is awarded reasonable  
18 attorney’s fees and costs, in an amount to be determined later should the Parties be unable to  
19 agree on a determination.

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The clerk is ordered to provide copies of this order to all counsel.

Dated this 18th day of June, 2015.



Marsha J. Pechman  
Chief United States District Judge

## **Attachment 7**

June 16, 2015

**VIA CERTIFIED MAIL**

Mr. Paul White  
Prison Phone Justice Campaign  
c/o Human Rights Defense Center  
P.O. Box 1151  
Lake Worth, FL 33460

**Re: Cease and Desist**

Dear Mr. White:

On behalf of my client, Global Tel\*Link Corporation (GTL), this letter constitutes a formal demand that the Prison Phone Justice Campaign cease posting and attributing incorrect telephone rates to GTL on your website at [www.prisonphonejustice.org](http://www.prisonphonejustice.org). The prepaid rates for intrastate telephone calls made in the state of North Carolina are incorrect. A copy of the false and misleading rates and alleged source contract references are attached.

Your failure to correctly list GTL's telephone rates for North Carolina is misleading and causes consumer confusion. Additionally, your references to "kickbacks" are false and do not accurately depict the contractual relationship between GTL and the facilities. Your repeated references to "kickbacks" on your website as a means of describing a lawful activity is disparaging and could cause consumers to incorrectly believe GTL is engaging in activity that violates civil or criminal law.

Your actions have damaged GTL, its reputation and its business. GTL demands that your company and any affiliated or related persons or companies:

(1) immediately remove from your website any and all false and misleading GTL telephone rates for the state of North Carolina; and

(2) cease and desist from posting or publishing any false or misleading information about GTL and its telephone rates.

We require your written assurance, *by no later than 5:00 p.m. on June 26, 2015*, that your organization and each and every affiliated or related person or company have complied with the above demands. Our client is prepared to take immediate steps to protect its valuable rights by pursuing legal action. This letter is not an exhaustive statement of our position, nor is it a

Mr. Paul White  
Prison Phone Justice Campaign  
c/o Human Rights Defense Center  
June 16, 2015  
Page 2

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waiver or limitation of any of GTL's legal or equitable rights or those of its subsidiaries, all of which are expressly reserved. Please govern yourself accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Sklaire", with a stylized flourish at the end.

Michael R. Sklaire

[← back to map \(/\)](#)

## North Carolina phone rates and kickbacks

North Carolina ranks 25th in the nation for the affordability of a 15 minute call.

### Kickbacks paid per year

\$6,881,021.44 per year.

Percentage of call cost going to kickbacks: 58%

#### Cost of a 15-minute Intrastate Call

	Collect	Prepaid	Debit
<b>Same state</b>	\$3.40	\$3.15	\$3.06
<b>Local</b>	\$1.25	\$1.25	\$1.13

#### Detailed rates

	Collect	Prepaid	Debit
<b>Same state</b>	3.40 flat	3.15 flat	3.06 flat
<b>Local</b>	1.25 flat	1.25 flat	1.13 flat

#### Phone service providers

- [GTL \(/provider/gtl/\)](#)

#### Notes

Data current as of 2014-2015, except for kickback information, which is from FY2012.

Data current as of 2014-2015

### Primary source documents

#### State DOC Rates

[\(/NC/2013-north-carolina-inmate-phone-rates/\)](#) 2013 North Carolina Inmate Phone Rates [\(/NC/2013-north-carolina-inmate-phone-rates/\)](#)

(/NC/NC-Rates-and-Fees-2014/) NC Rates and Fees 2014 (/NC/NC-Rates-and-Fees-2014/)

(/NC/nc-phone-rates-from-2004-contract/) NC Phone Rates from 2004 Contract (/NC/nc-phone-rates-from-2004-contract/)

#### State DOC Contracts

(/NC/NC-Contract-with-GTL-Amendment-3-Extension-Through-6--30--15/) NC Contract With GTL Amendment 3 Extension Through 6-30-15 (/NC/NC-Contract-with-GTL-Amendment-3-Extension-Through-6--30--15/)

(/NC/nc-contract-extension-with-gtl-through-june-2012/) NC Contract Extension with GTL through June 2012 (/NC/nc-contract-extension-with-gtl-through-june-2012/)

(/NC/nc-contract-award-to-att-2004/) NC Contract Award to AT&T 2004 (/NC/nc-contract-award-to-att-2004/)

#### State DOC Commission Data

(/NC/nc-phone-kickbacks-2008/) NC Phone Kickbacks 2008 (/NC/nc-phone-kickbacks-2008/)

(/NC/nc-phone-kickbacks-2009-2012/) NC Phone Kickbacks 2009-2012 (/NC/nc-phone-kickbacks-2009-2012/)

### Key Prison Phone Documents

PLN Dec. 2013 cover story on the prison phone industry (/media/issues/12pln13.pdf)

PLN April 2011 cover story on the prison phone industry (/media/issues/04pln11.pdf)

HRDC comment to FCC re WA phone rates Sept. 2014 (/media/publications/FCC%20comment%20re%20WA%20jail%20rates%209-18-14.pdf)

HRDC response to PayTel comments Jan. 2014 (/media/publications/HRDC%20reply%20comment%20to%20FCC%201-13-14.pdf)

HRDC comment to FCC on FNPRM Dec. 2013 (/media/publications/HRDC%20FCC%20comments%2012-20-13.pdf)

HRDC comment to FCC on NPRM March 2013 (/media/publications/HRDC%20comments%20to%20FCC%20final%203-25-13.pdf)

HRDC reply comment to FCC on NPRM April 2013 (/media/publications/HRDC%

## **Attachment 8**

June 26, 2015

Michael R. Sklaire  
Greenberg Traurig  
1750 Tysons Boulevard, Suite 1000  
McLean, VA 22102

*Via email to sklairem@gtlaw.com*

Dear Mr. Sklaire:

We represent the Human Rights Defense Center (“HRDC”).

I write today about the cease-and-desist letter that you sent my client on behalf of Global Tel\*Link Corporation (GTL), demanding that the Prison Phone Justice Campaign (PPJC) “cease posting and attributing incorrect telephone rates to GTL.”

The letter alleges that the “prepaid rates for intrastate telephone calls made in the state of North Carolina are incorrect,” but does not set forth the correct rates. Attached to your letter was a printout from the PPJC website ([www.prisonphonejustice.org](http://www.prisonphonejustice.org)), dated June 12, 2015, which details a “Prepaid” rate for the “Cost of a 15-minute Intrastate Call” as \$3.15. The PPJC website also provides a detailed rate of “\$3.15 flat” for prepaid calls from North Carolina state prisons. The North Carolina Department of Public Safety (NCDPS) provided HRDC those rates in April 2015. (See enclosure, attached.)

Apparently the NCDPS provided HRDC with incorrect information, as the department has now posted different rates on its website that reflect a flat rate of \$3.40 for AdvancePay intrastate calls and \$.21/minute for AdvancePay interstate calls. See: <https://www.ncdps.gov/Index2.cfm?a=000003,002240,002344>. HRDC has revised the data on its site to reflect the data currently posted on the state’s website: a rate of \$3.40 for intrastate prepaid calls. If your client believes those figures are inaccurate, please provide GTL’s current NCDPS rates for prepaid calls, both intrastate and interstate.

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Michael R. Sklaire  
Greenberg Traurig  
June 26, 2015  
Page 2

Please note also that several months ago, HRDC asked Mr. Silverman to provide copies of the contracts and rates for the various facilities that GTL provides telephone services. He declined.

You also requested that HRDC not use the term “kickbacks” to refer to the contractual commission payments that GTL and other ICS providers provide to the government agencies with which they contract.

In HRDC’s opinion, the term “kickback” accurately describes prisons’ practice of collecting a percentage of telephone revenue in exchange for permission to render services to prisoners and their families under a monopoly contract. Note that HRDC has never said or claimed that the kickbacks GTL provides to government officials are illegal. HRDC has expressed no opinion yet as to whether GTL’s business activities violate civil or criminal law.

As you know, the First Amendment absolutely protects HRDC’s right to express its opinions about such contract terms and about your client’s business practices. Under the First Amendment, there is no such thing as a false idea.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). “However pernicious an opinion may seem,” the Court stated, “we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.” *Id.* See also, e.g., *Finkelstein v. Wachtel*, 2003 WL 1918309, \*7 (S.D.N.Y. 2003) (statements that plaintiff was a “crook” involved a “very dirty business” were protected opinion, because the terms are “colloquial, loose, figurative terms that do not necessarily convey to the listener that plaintiff had, in fact, engaged in criminal behavior”); *Gitter v. Phoenicia Times, Inc.*, 880 N.Y.S.2d 223, 2008 N.Y. Misc. LEXIS 7359 (Sup. Ct. 2008) (statements “that plaintiff **bribed** government officials” were not actionable when based on the disclosed and undisputed fact “that plaintiff paid lobbying fees, which is not a crime”). Indeed, the courts also protect even hyperbolic expression of opinion. *Greenbelt Co-op. Publ’g Ass’n v. Bresler*, 398 U.S. 6, 13-14 (1970) (Newspaper’s report that critics had characterized developer’s negotiating position as “blackmail” was protected opinion because reasonably understood in context to be “rhetorical hyperbole”); see also *Melius v. Glacken*, 943 N.Y.S.2d 134 (App. Div. 2012) (statements by one mayoral candidate calling another mayoral candidate an “extortionist” seeking “to extort money” was protected opinion when made in the context “of a heated political debate, a forum where the audience would anticipate the use of epithets, fiery rhetoric or hyperbole”) (internal quotations omitted).

In our view, your cease-and-desist letter is designed to chill HRDC’s speech and curtail its petitions to the relevant government agencies. In fact, the media in this country, including HRDC, has wide latitude in its exercise of its right to editorial speech as it is critical to a functioning democracy.

HRDC looks forward to your confirmation of the current correct rates for telephone calls from the NCDPS.

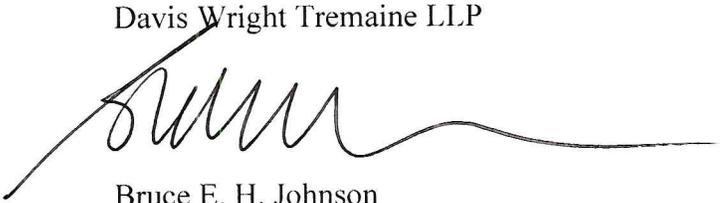
Michael R. Sklaire  
Greenberg Traurig  
June 26, 2015  
Page 3

Thank you for your time and attention in this regard, and feel free to contact me if you have any other concerns.

Sincerely,

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "B. Johnson", with a long horizontal flourish extending to the right.

Bruce E. H. Johnson

cc: HRDC  
Enclosure

**GTL**

Date	Commission
February-15	\$671,369.53
January-15	\$630,652.24
December-14	\$668,455.41
November-14	\$619,109.14
October-14	\$605,206.40
September-14	\$581,068.45
August-14	\$603,793.72
July-14	\$600,412.48
June -14	\$603,037.79
May-14	\$648,047.71
April-14	\$663,487.40
March-14	\$732,785.84
February-14	\$524,368.17
January-14	\$606,050.56
December-13	\$658,059.85
November-13	\$624,042.22
October-13	\$602,726.36
September-13	\$584,514.98
August-13	\$600,274.62
July-13	\$601,677.56
June -13	\$615,761.69
May-13	\$655,052.63
April-13	\$640,702.70
March-13	\$740,945.48
February-13	\$624,395.72
January-13	\$618,368.53
<b>Total</b>	<b>\$16,328,367.11</b>

**Call Rates**

2/11/14 to Current Date	
AdvancePay Rates	Local calls will be a flat rate of All long-distance calls will be a
Collect Call Rates	Local calls will be a flat rate of All long-distance calls will be a
Debit Call Rates	Local calls will be a flat rate of All long-distance calls will be a
International Debit Calls	10% discount on AdvancePay

1/1/13-2/10/14	
AdvancePay Rates	Local calls will be a flat rate of All long-distance calls will be a
Collect Call Rates	Local calls will be a flat rate of All long-distance calls will be a
Debit Call Rates	Local calls will be a flat rate of All long-distance calls will be a
International Debit Calls	10% discount on AdvancePay

**Fees**

1/1/13-2/10/14	
Check or Money Order Payment	No charge and no limit on dep
Credit Card Payment	\$4.75 processing fee
Internet Web Payment	\$4.75 processing fee
Western Union	\$10.95 (Western Union determ
Close an Account	\$0