

February 10, 2023

**Via Electronic Filing**

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place E, Suite 350  
Saint Paul, MN 55101

**Re: Docket No. P-5024/M-22-116  
Global Tel\*Link Corporation d/b/a ViaPath Technologies  
Revised Tariff No. 2**

Dear Secretary Seuffert:

Global Tel\*Link Corporation d/b/a ViaPath Technologies (“ViaPath” or the “Company”) respectfully submits these reply comments to the comments filed by the Minnesota Department of Commerce (the “Department”) on January 11, 2023 with the Minnesota Public Utilities Commission (the “Commission”) in the above-referenced matter.<sup>1</sup> ViaPath provides inmate calling services (“ICS”) to incarcerated individuals located in federal, state, and local correctional facilities in Minnesota. On December 28, 2022 (docketed on December 30, 2022), the Company filed a revised tariff (the “Tariff”). On January 11, 2023, the Department filed comments on the Tariff, which focused on the inactivity and refund provisions (the “Provisions”) contained in the Tariff relating to “AdvancePay Accounts.” AdvancePay Accounts are accounts established and funded by an incarcerated individual’s family/friends to receive and pay for collect calls from an incarcerated individual.<sup>2</sup> As explained below, the Provisions comply with applicable federal law and are consistent with ViaPath’s contractual and legal obligations.

**Applicable Federal Law**

In September 2022, the Federal Communications Commission (“FCC”) adopted new Rule 64.6130 governing the treatment of inactive ICS accounts. The new rule requires 180 days of consecutive inactivity before any remaining funds in the account can be seized or disposed of consistent with state law requirements, unless a controlling judicial or administrative decision requires other action to be taken.<sup>3</sup> FCC Rule 64.6130 applies to accounts that can be used to pay

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<sup>1</sup> On January 12, 2023, the Commission issued a Notice of Extended Reply Comment Period, which established February 10, 2023 as the new deadline for filing reply comments.

<sup>2</sup> ViaPath understands the Department does not have concerns with the refund provisions in the Tariff relating to Prepaid Debit Accounts, which are accounts held by inmates that can be used to make telephone calls and/or purchase items within the correctional facility.

<sup>3</sup> WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (rel. Sept. 30, 2022) (“2022 ICS Order”); see also 47 C.F.R. § 64.6130.



for interstate, international, and intrastate calling.<sup>4</sup> The FCC determined such accounts cannot “practically segregate the portion of the funds in those accounts that may be used to pay for interstate or international calling services from the portion that may be used to pay for intrastate calling services.”<sup>5</sup> Consequently, the FCC found its authority to regulate ICS accounts extends to “the intrastate portion” of jurisdictionally mixed accounts based on the “impossibility exception.”<sup>6</sup> The FCC rejected any suggestion that the FCC could not “preempt state law in connection with funds used to pay for intrastate” services.<sup>7</sup> Rule 64.6130 took effect January 9, 2023.<sup>8</sup>

In addition, on January 5, 2023, President Biden signed the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (the “MW-R Act”), which requires the FCC to ensure rates and charges for services provided in correctional facilities are just and reasonable.<sup>9</sup> For the first time, the MW-R Act gives the FCC authority over the provision of intrastate “inmate telephone service and advanced communications service” provided in correctional institutions as reflected in Section 276 of the federal Communications Act, as amended by the MW-R Act. The FCC is required to promulgate any regulations necessary to implement the MW-R Act within the next 24 months. Accordingly, regulation of all ICS – intrastate, interstate, and international – is now within the jurisdiction of the FCC and any inconsistent state requirements on such matters are preempted.<sup>10</sup>

### **Applicable Legal Obligations**

In August 2022, the United States District Court for the Northern Division of Georgia granted final approval to a Class Action Settlement Agreement in *Githieya v. Global Tel Link Corp.* (“Settlement Agreement”).<sup>11</sup> Under the Settlement Agreement, ViaPath agreed to increase the baseline period of time before an AdvancePay Account is considered inactive from 90 days to 180 days. ViaPath also agreed to give AdvancePay Account holders the opportunity to opt-in to receive a text notification and/or email notification that any balance remaining in the AdvancePay Account is subject to forfeiture in 30 days if the account remains inactive and that the account holder may request a refund of the remaining balance. ViaPath was required to initiate the process of implementing these changes by December 28, 2022.

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<sup>4</sup> 2022 ICS Order at n.209.

<sup>5</sup> 2022 ICS Order at n.209.

<sup>6</sup> 2022 ICS Order at n.209.

<sup>7</sup> 2022 ICS Order at n.209.

<sup>8</sup> 87 Fed. Reg. 75496 (Dec. 9, 2022). The FCC is reviewing whether additional changes should be made to its inactivity rule. The Department is participating in the FCC’s proceeding, and filed comments with the FCC in December 2022.

<sup>9</sup> S. 1541 (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/1541/text>.

<sup>10</sup> 47 U.S.C. § 276(c) (“To the extent any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.”).

<sup>11</sup> *Githieya v. Global Tel Link Corp.*, Civil Action No. 1:15-CV-00986-AT (N.D. Ga.).

The Provisions reflect ViaPath’s commitments under the Settlement Agreement. FCC Rule 64.6130 recognizes that funds deposited into an AdvancePay Account must be disposed of in accordance with any “controlling judicial or administrative mandate” entered into prior September 30, 2022.<sup>12</sup> The Settlement Agreement is consistent with FCC Rule 64.6130 in that both require the period of inactivity to be at least 180 days. The Settlement Agreement (and the Provisions) provide even more protections to consumers than the FCC rule by allowing consumers to opt-in to receive text or email notice that their account will soon expire.

### **Applicable Contractual Obligations**

The Department questions whether the Provisions are consistent with ViaPath’s obligations under its contract with the Minnesota Department of Corrections (“DOC”).<sup>13</sup> The Provisions are consistent with the DOC contract. Section 11.2.5 of the Request for Proposals (“RFP”) issued by the DOC stated: “When a prepaid account has been inactive for 60 days, Contract Vendor will automatically refund the account balance to the outside customer (prepaid) without any additional processing fees.” ViaPath’s response to this section of the RFP was “Yes.” ViaPath responded in the affirmative that it provides customers refunds of account balances *without* any additional processing fees. As reflected in ViaPath’s response to Section 2.24.1 of the RFP (which sets forth the ViaPath refund policies in effect at the time), ViaPath’s was not committing to “automatically refund” account balances after 60 days of inactivity.<sup>14</sup> As reflected in ViaPath’s tariff prior to the revisions to implement the Provisions, the Company offered incarcerated persons a more generous account inactivity policy of 90 days and charged no additional fees to issue refunds.

ViaPath is required under the DOC contract to abide by all federal, state, and local laws and the Provisions are necessary to implement the recent changes in law.<sup>15</sup> In light of new FCC Rule 64.6130 and the Settlement Agreement, ViaPath has notified the Minnesota DOC of the revisions to its inactivity and refund policy required by the changes in law.

### **The Provisions**

The Provisions comply with ViaPath’s obligations under the Settlement Agreement and new FCC Rule 64.6130, which permits providers to comply with a controlling judicial or administrative decision entered into prior to September 30, 2022.<sup>16</sup> The Provisions also are consistent with ViaPath’s contractual obligations to the Minnesota DOC.

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<sup>12</sup> 47 C.F.R. § 64.6130(a)(3).

<sup>13</sup> Department Comments at 4-5.

<sup>14</sup> See ViaPath’s response to RFP 2.24.1.

<sup>15</sup> See, e.g., Minnesota DOC Request for Proposal, General Terms, Conditions and Instructions § 7 (“Any and all services, articles or equipment offered and furnished shall comply fully with all State and federal laws and regulations. . . .”); Minnesota DOC Request for Proposal, System Specifications § 1.6.7 (“The Contract Vendor must remain fully informed of, and abide by, all federal, State and local laws, regulations, and licensing requirements.”); see also Minnesota DOC Notification of Contract Award (stating the Minnesota DOC’s RFP is incorporated by reference into the contract).

<sup>16</sup> 2022 ICS Order ¶ 76.

ViaPath cannot automatically return account balances as the Department requests,<sup>17</sup> nor are automatic refunds required under FCC Rule 64.6130 or the Settlement Agreement.<sup>18</sup> Many AdvancePay Accounts are established via the Company's interactive voice response ("IVR") system or via a live operator if the friend/family member chooses to utilize a live operator instead of the IVR. The reason IVR/live operator transactions are used to establish AdvancePay Accounts is because many friends/family members open their AdvancePay Accounts when they receive their first collect call from an inmate. Upon receiving an inmate-initiated call, the Company's system gives the friend/family member the option to establish an account to pay for and receive the collect call (and any future collect calls). The friend/family member's address is not required to set up an AdvancePay Account via the IVR or live operator. The friend/family member is required to provide only the zip code associated with the payment card used to fund the AdvancePay Account.

AdvancePay Accounts also may be opened via ViaPath's ConnectNetwork website. The ConnectNetwork website asks the friend/family member to enter an address in the initial set-up page. However, an accurate address is not a prerequisite for opening an AdvancePay Account. After log-in and password information is created on the initial set-up page, the friend/family member is given the option to enter payment card information to fund the AdvancePay Account. The payment information page asks the friend/family member to enter payment card information including the zip code associated with the payment card. There is no requirement that the zip code associated with the payment card match the zip code previously entered, and no address is required to be entered on the payment card page. AdvancePay Accounts can be established using fictitious address information as long as the zip code entered on the payment card page matches the zip code associated with the payment card. Thus, the address entered during the first step of the account setup process may not reflect the actual address of the account holder for purposes of receiving a refund.

For these same reasons, ViaPath cannot automatically give customers notice that an account will soon be deemed inactive as suggested by the Department.<sup>19</sup> ViaPath does not always have cellular telephone numbers or email addresses for AdvancePay Account holders. Nor are specific types of customer notices required under FCC Rule 64.6130 or the Settlement Agreement or lawful without customer consent.<sup>20</sup> Indeed, the FCC has asked commenters to address whether ICS providers routinely receive the type of contact information needed to notify account holders about inactive accounts and/or to refund unused balances to account holders.<sup>21</sup>

As a benefit to consumers, ViaPath has agreed to give consumers the ability to receive a text and/or email notification from the Company 30 days prior to the end of the 180-day inactivity period. A consumer must affirmatively agree to receive such communications from ViaPath and provide the preferred method of receipt (*i.e.*, a cellular telephone number or email address) to

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<sup>17</sup> Department Comments at 4.

<sup>18</sup> The FCC has sought further comments on the timing of refunds. *See, e.g., 2022 ICS Order* ¶ 101.

<sup>19</sup> Department Comments at 5-6.

<sup>20</sup> The FCC has asked commenters to address notification procedures. *See 2022 ICS Order* ¶ 105.

<sup>21</sup> *2022 ICS Order* ¶ 104.

ensure compliance with applicable law regarding the transmission of such text and electronic mail messages.<sup>22</sup> This approach ensures the consumer can direct how it would like to receive communication from ViaPath.

### **Conclusion**

The Provisions comply with applicable federal law and are consistent with ViaPath's contractual and legal obligations. ViaPath respectfully requests that the Commission approve the Provisions and close this matter.

If you have any questions regarding this filing, please contact the undersigned or our counsel, Angela F. Collins, at 202-862-8930 or [acollins@cahill.com](mailto:acollins@cahill.com).

Respectfully submitted,

*/s/ Pelicia E. Hall*

Pelicia E. Hall  
Senior Vice President

cc: Attached Service List (via electronic service)

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<sup>22</sup> For example, without obtaining consent from the consumer, ViaPath could be subject to liability under the Telephone Consumer Protection Act ("TCPA") or the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM") Act for such communications (despite the Settlement Agreement's notation that such messages shall not be deemed a violation of the TCPA).

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_22-116_M-22-116
Angela	Collins	acollins@cgrdc.com	Cahill Gordon & Reindel LLP	1990 K St NW Ste 950 Washington, DC 20006	Electronic Service	No	OFF_SL_22-116_M-22-116
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_22-116_M-22-116
Steve	Montanaro	Steve.monatanaro@gti.net	ViaPath Technologies	3120 Fairview Park Dr Ste 300 Falls Church, VA 22042	Paper Service	No	OFF_SL_22-116_M-22-116
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_22-116_M-22-116
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_22-116_M-22-116