

November 21, 2022

PUBLIC DOCUMENT

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: In the Matter of the Global Tel*Link Revised Tariff No. 2 filing cancels and replaces, in its entirety, the current tariff on file with the Commission, Minnesota Tariff No. 1, issued by Global Tel*Link Corporation d/b/a ViaPath Technologies
Docket No. P5024/M-22-116

Dear Mr. Seuffert,

Attached are the **PUBLIC** comments of the Minnesota Department of Commerce (Department) in the above matter.

The Department is available to answer any questions.

Sincerely,
/s/Lisa Gonzalez
Telecom Analyst

LG/ar
Attachment



Before the Minnesota Public Utilities Commission

PUBLIC Comments of the Minnesota Department of Commerce

Docket No. P5024/M-22-116

I. PROCEDURAL BACKGROUND

On December 20, 2021, Global Tel*Link Corporation (GTL or the Company) filed a letter to inform the Minnesota Public Utilities Commission (Commission) that GTL and its affiliate, Value-Added Communications (VAC), had registered the D/B/A ViaPath Technologies (ViaPath) with the Minnesota Secretary of State.¹ Both entities provide communications services, including voice service, to incarcerated people in federal and state facilities located in Minnesota.

The Commission approved the addition of the D/B/A ViaPath Technologies to the names Global Tel*Link Corporation and Value-Added Communications, Inc., via Order dated January 28, 2022. The Order required GTL and VAC to file new tariffs that reflected only the D/B/A. The Commission also adopted the Department's recommendation that tariff changes beyond just the name change be assigned a new docket number, so that the Commission could address those changes.²

On February 17, 2022, GTL submitted two tariffs to reflect the new D/B/A and new terms, creating Dockets No. P5024/M-22-116 (GTL) and P3030/M-22-117 (VAC).

On July 26, 2022, GTL petitioned to relinquish VAC's certificate of authority and withdraw VAC's tariff, stating that VAC had no Minnesota customers. These requests were approved. Accordingly, the remaining issues arise only with respect to the GTL tariff, filed in Docket No. P5024/M-22-116.

II. STATEMENT OF THE ISSUE

These comments concern provisions of GTL's tariff and GTL's practices with respect to the handling of advance payments deposited with the Company. Although the Company's tariff states that "The Company does not normally require advance payment for service," in fact, for certain services, the Company requires advance payment as a matter of course. For those services, funds may be deposited to an account by the inmate's friends and family and used to pay for collect calls from the inmate. Notwithstanding GTL's assurance to the Department of Corrections that unused balances would be refunded "automatically" when an account has been inactive for 60 days, it has been GTL's practice to only make such refunds when expressly requested by the party depositing the funds. As a result, GTL has retained substantial amounts deposited to pay for service that was not provided.

The question presented here for the Commission's consideration is whether GTL's practice of retaining funds for services that have not been provided constitutes an unreasonable charge prohibited by Minnesota law.

¹ Docket No. P5024,P3030/M-21-846.

² See Comments of the Department of Commerce, p. 2, adopted as part of the January 28, 2022 Order, Doc. Number 20221-182106-01.

III. JURISDICTION AND APPLICABLE LAW

A. *THE COMMISSION HAS AUTHORITY OVER PROVIDERS OF INMATE TELEPHONE SERVICE PURSUANT TO ITS GENERAL AUTHORITY TO REGULATE TELECOMMUNICATIONS CARRIERS*

In 2007, the Commission addressed the regulation of inmate telephone services in Docket No. P999/DI-07-204. In its July 26, 2007 Order, the Commission found that Inmate telephone service providers offer “telephone” or “telecommunications” service, including the provision of local and long distance service, both of which are regulated under Minn. Stat. Chapter 237.³

The Commission went on to determine that telephone service providers at jails and prisons are most like competitive local exchange companies (CLECs) because they are “front-line providers of local and long distance service to a specific set of customers.”⁴ Some specific filing requirements – e.g. an approved 911 plan, approved interconnection agreements, posting of certain notices – do not apply due to the nature of the service and the companies’ clientele. Prison and jail telephone service providers are exempt from such requirements.

In the July 26, 2007 Order, the Commission stated that “inmate service provider filings should be as closely matched as feasible to competitive local exchange filings required pursuant to Minn. Rules Parts 7811 and 7812....”⁵ In the same Order, the Commission found that providers of inmate telephone services must file tariffs.⁶

B. *THE COMMISSION HAS BROAD AUTHORITY TO DETERMINE THE REASONABLENESS OF RATES, TERMS AND CONDITIONS OF PROVIDERS OF TELEPHONE SERVICE*

Minn. Stat. §237.07, subd. 1 (2020), requires that “every telephone company shall keep on file with the department a specific rate, toll or charge for every kind of noncompetitive service and a price list for every kind of service subject to emerging competition, together with all rules and classifications used by it in the conduct of telephone business.” Minnesota law also grants the Commission broad authority over tariff rates, terms, and conditions per Minn. Stat. § 216A.05, subd. 2, which states: “The commission shall, to the extent prescribed by law ... review and ascertain the reasonableness of tariffs of rates, fares, and charges, or any part or classification thereof, and prescribe the form and manner of filing, posting, and publication thereof.”

Minn. Stat. § 237.06 (2020) states that “it shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful. Any telephone company may include in its charges a reasonable deposit fee for facilities furnished.”

³ *In the Matter of the Petition of the Minnesota Department of Commerce Regarding Regulation of Inmate Telephone Service*, Order Affirming and Modifying Regulatory Treatment of Inmate Telephone Service Providers, Docket No. P999/DI-07-204, July 26, 2007, (Prison Phone Service Order) at II.A, p. 3.

⁴ See Minn. Stat. §§ 237.16 (local) and 237.74 (long distance).

⁵ Prison Phone Service Order at II.B, p. 4.

⁶ Prison Phone Service Order at II.C. (2), p. 4.

IV. DEPARTMENT ANALYSIS

A. GTL HAS AGREED TO FURTHER REVISE ITS RECENTLY FILED TARIFF.

At the request of Commerce, GTL agreed to file an updated tariff to clarify and conform to Minnesota standards:

1. Charge for paper statement: The tariff filed on February 17, 2022, included a provision that required customers to pay \$2 to receive a paper copy of their statement.⁷ In keeping with prior Orders from the Commission,⁸ GTL agreed to remove the charge.⁹
2. Different rates apply in state vs. federal facilities: The February 17, 2022 tariff did not clearly indicate that some rates occurred in Federal Bureau of Prisons (FBOP) facilities operating in Minnesota while other rates applied to Minnesota Department of Correction (MNDOC) facilities. Tariffed rates in MNDOC facilities are subject to lower negotiated rates. To ease confusion, GTL has agreed to clearly indicate the facilities where the appropriate rates apply.¹⁰
3. Tariff includes irrelevant information: GTL's February 17, 2022 tariff included rates and information on services that are not offered in Minnesota but were in the past or may be in the future. GTL has agreed to limit the tariff to only rates, terms, and conditions to services currently offered.¹¹

B. IT IS GTL'S PRACTICE TO RETAIN UNUSED FUNDS DEPOSITED INTO AN ADVANCEPAY ACCOUNT UNLESS THE DEPOSITING PARTY SPECIFICALLY REQUESTS A REFUND

Experts on recidivism and reentry widely acknowledge that incarcerated individuals who maintain communication with family and friends are less likely to re-offend.¹² GTL provides an important service to those who wish to communicate with people in jails and prisons through its special AdvancePay account option. The Company, however, uses procedures that allow it to retain abandoned funds from these same customers.

The AdvancePay account allows friends and family to open an account to pay for collect calls from an incarcerated individual to the account owners and vice versa. Friends and family of inmates in state and federal facilities most often open AdvancePay Accounts. GTL requires account holders to deposit funds into the prepaid account before calls are possible. When a call occurs, GTL draws the fee for the call from the AdvancePay account. When no funds are drawn down from an account for three months, the account is deemed inactive and automatically closed.¹³

⁷ See Global Tel*Link Corporation, Minnesota Revised Tariff No. 2 (GTL Tariff), Sec. 3.9.3 Paper Bill/Statement Fee, Doc. No. 20222-182900-02.

⁸ See *In the Matter of a Filing to Institute a Charge for Paper Bills for Customers*, Docket No. P-405/AM-17-427, Sept. 11, 2017.

⁹ Response to Information Request #8, question 2, Attachment A.

¹⁰ Response to Information Request #9, question 2, Attachment B.

¹¹ Response to Information Request #9, question 1, Attachment B.

¹² Wang, Leah, "Research roundup: The positive impacts of family contact for incarcerated people and their families," Prison Policy Institute, Dec. 21, 2021, https://www.prisonpolicy.org/blog/2021/12/21/family_contact/.

¹³ See GTL Tariff, Section 3.6 Advance Pay Accounts, 4th Revised page 26.

1. *GTL retains abandoned funds from almost all closed AdvancePay accounts, including those associated with individuals incarcerated in Minnesota.*

When an AdvancePay account is deemed inactive and subsequently closed, GTL will only reimburse the remaining funds at the account holder's request, which shifts the burden of refunding remaining funds to the account holder. The Company states that customers can request refunds at any time, even after accounts are closed, but unused funds will not be returned unless requested by the account holders. The majority of AdvancePay accounts established to pay for calls from or to individuals in Minnesota correctional facilities contain abandoned balances after their accounts are deemed inactive and subsequently closed. GTL reported to Commerce that **[TRADE SECRET DATA HAS BEEN EXCISED]** of these AdvancePay accounts did not request a refund of remaining account balances.¹⁴ The account balances not returned to AdvancePay account holders associated with calls to Minnesota facilities for the years 2019, 2020, and 2021 are in the following table¹⁵:

YEAR	AMOUNT
[TRADE SECRET DATA HAS BEEN EXCISED]	

2. *GTL does not automatically return unused AdvancePay account funds, citing a lack of information about payment preferences and mailing addresses.*

The Department asked GTL to provide information about its customer data retention policy, and in response the Company provided links to its Privacy Policy¹⁶ and its Terms and Conditions,¹⁷ posted online. According to both pages, these policies "...apply when you access, visit or use the Site or use any of the products or services provided by Global Tel*Link Corporation ("GTL"), or one of its affiliates...." In the "How We Use Your Information" section of the Privacy Policy, GTL lists reasons for collecting and retaining personal data in its books and records.

Included on that list are:

- to contact you when necessary about your account or your use of our Service;
- to comply with regulatory requirements for the maintenance of records;
- to send you by mail, phone, text or email, information and promotional materials about our products and Services as well as our company in general

¹⁴ Response to Information Request #12, question 1, Attachment C.

¹⁵ Response to Information Request #12, question 2, Attachment C.

¹⁶ <https://www.viapath.com/privacy-policy/>

¹⁷ <https://www.viapath.com/terms-and-conditions/>

The "Registration" section of the Privacy Policy also indicates that GTL collects contact information from AdvancePay and other types of account holders (e.g. phone number, email address, etc):

In order to access our products and services you will need to register with the Service. You may register with the Service either through the Site or by phone when you speak with one of our authorized customer service representatives or use our automated voice service. As part of the registration process you may be asked to provide your name, mailing address, phone number, and email address, and to create a user name and password.

The Company also stated that GTL "...retains the name and address information entered on the initial set-up page [of the website] indefinitely."¹⁸

The Department asked if remaining funds are automatically credited back to the credit card charged for the deposit, which would satisfy a requirement to which GTL agreed as part of the Corrections RFP.¹⁹ GTL stated:

[GTL] does not automatically credit refunds to the payment card used to fund an AdvancePay account because the payment card may no longer be active or the AdvancePay account holder may want its refund in another manner. Further, in some cases, [GTL] may no longer have the payment card information used to fund an AdvancePay account on file. [GTL] will credit the same payment card used to fund an AdvancePay account if directed to do so by the AdvancePay account holder when the account holder requests a refund.

Customers who use the Company website to add funds to their AdvancePay account balances have the option to store their credit card information to simplify future charges.²⁰ In the event a customer requests GTL to store credit card data, the Company retains the relevant information for six months before purging the data from GTL books and records.²¹ AdvancePay accounts are deemed inactive after only three months, as noted in Section 3.6 of the GTL tariff, leaving three months remaining for the Company to attempt to automatically credit back the unused funds to the last used and stored credit card, as required by the Department of Corrections RFP and to which GTL agreed. GTL also stated in response to an information request that it will only return unused balances upon request because it "does not have AdvancePay account holders' mailing addresses."²² When creating a new account through the company website, however, the user must provide an address, phone number, and email address.²³

¹⁸ See Response to IR #17, question 1b., Attachment D.

¹⁹ See RFP (Attachment E) which states, "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." The Award Letter to GTL signature page (Attachment F) states: "The following documents, in order of precedence, are incorporated herein by reference and constitute the entire Contract between you and the State: (1) this Notification of Contract Award, together with Exhibits A, B-1, C-1, D-1, and any attachments or subsequent purchase orders, amendments or similar documents; (2) the State's solicitation; and (3) your response...." No Exhibits mention the AdvancePay account option.

²⁰ See screenshot from GTL of credit card payment page, Attachment G.

²¹ See Response to IR #18 question d., Attachment H.

²² See Response to IR #11 question 2, Attachment I.

²³ See Screenshot of new account sign up page, Attachment J.

When asked to explain the inconsistency between the IR response and the website, the Company said that most AdvancePay accounts are established via an Interactive Voice Response (IVR) system or through a live operator when the account holder (a friend or family) receives their first call.²⁴ The Company agreed that some users open accounts through the website and go through the set-up page, but also stated that the website allows account holders to deposit funds in their accounts with only a name and zip code.²⁵

GTL makes no effort to use the information it retains in its books and records to return unused balances to owners of closed accounts. Given that the Company indefinitely retains the name and addresses of those that use the website to establish accounts, GTL has basic information to reach out to account holders who establish accounts through the online portal to determine the preferred method of refunds.

C. IT IS NEITHER FAIR NOR REASONABLE FOR GTL TO RETAIN FUNDS DEPOSITED TO PAY FOR TELEPHONE SERVICE THAT WAS NOT PROVIDED

As a provider of telephone service in Minnesota, GTL is prohibited from charging rates that are not fair and reasonable. A charge that is unreasonable is unlawful.²⁶ It is unreasonable on its face for GTL to retain funds that have been deposited to allow an inmate to make collect calls that remain unused when the inmate is released. GTL has done nothing to earn these funds and to allow GTL to keep them gives GTL an unjustified windfall.

The public policy issues presented by this case are similar to those raised by an attempt by CenturyLink to revise their local residential tariffs to eliminate pro rated, partial month billing.²⁷ Under this proposed change, if a customer discontinued service after the beginning of the month, CenturyLink would not pro rate the customer's charges so that the customer would not be charged for the balance of the month after the customer cancelled service. This represented a departure from CenturyLink's previous practice, which was to credit the customer for any days remaining in the monthly billing cycle after service cancellation.

Both the Department and the Office of the Attorney General objected to the change on the ground that it was not reasonable for CenturyLink to charge its customers for cancelled service.²⁸ The Commission did not ultimately have to decide the issue, however, because CenturyLink elected to withdraw the revised tariff. As it did in connection with the CenturyLink tariff revisions, the Department objects here to the Company's keeping funds that have been paid for services that the Company did not provide. The Department also objects to the fact that GTL passes the burden for return of account holders' unused funds to the account holders, who may not realize that they have a balance in their AdvancePay account.

To obtain the contract to provide service, GTL provided assurances that unused funds would be automatically returned. The Department of Corrections' request for proposals for a prison phone vendor required that "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."²⁹ In an information request

²⁴ See Response to IR #13, Attachment K.

²⁵ See Id. and Attachment G, screenshot from GTL of credit card payment page.

²⁶ Minn. Stat. § 237.06 (2020).

²⁷ *In the Matter of tariff changes to eliminate pro-rata billing for residential customer requested terminations of service for CenturyLink Communications, LLC, et al.*, MPUC Docket Nos. P5096/M-20-572, P509/M-20-573, P551/M-20-574, P563/M20-575, P430/AM-20-576, and P421/M-20-577.

²⁸ Id., Comments of the Department of Commerce, e-docket i.d. 20207-165205-02. Comments of the Office of the Attorney General-Residential Utilities Division, e-docket i.d. 20208-166174-12.

²⁹ Minnesota Department of Corrections Request for Proposals (RFP) at 11.2.5, Attachment E.

concerning this requirement, GTL stated, "ViaPath [i.e., GTL] responded in the affirmative that it provides customers refunds of account balances without any additional processing fees."³⁰ To refund unused deposited amounts only when requested is not "automatic." Dictionary.com defines "automatically" to mean "without volition or from force of habit; mechanically" and "by a device or process requiring no human intervention."

Inmates who wish to make collect calls have no choice but to make collect calls; many friends and family members use GTL's AdvancePay service to streamline the process. Any competition to provide inmate telephone service takes place at the institutional level, not at the level of those who actually use the service. GTL serves, literally, a captive customer base. This makes it all the more important for the Commission to assure that GTL treats its customers fairly.

Nor is it a defense to claim, as GTL has, that it does not, in all cases have information in its possession necessary to make refunds. The Department is skeptical of this claim. As GTL has acknowledged, it already collects a wealth of personal information, including credit card information. GTL can and should use the information already available to it in order to make refunds to people who have established AdvancePay accounts. To the extent that information is not sufficient to process refunds, it would presumably be a simple matter for GTL to collect and maintain the necessary information. GTL should not be able to use strategic ignorance as an excuse to keep money that does not belong to it.

V. COMMISSION ALTERNATIVES

1. Require GTL to include a provision in its tariff that, when accepting funds for prepayment of service, the Company will collect and retain information sufficient to comply with the obligation to automatically refund unused funds when an account has been inactive for 60 days.
2. Prospectively, when a GTL AdvancePay account, or other account with payments collected in advance of the service being used, is associated with an inmate in a Minnesota facility, retains a balance, and becomes inactive, GTL shall:
 - i. Apply a credit to any credit card used to establish the account, when the credit card account information is in GTL's books and records; or
 - ii. If a credit cannot be applied to a credit card in GTL's books and records, GTL shall make reasonable efforts to reach the account holder using customer data in GTL's books and records.
3. Approve GTL's tariff as written and allow GTL to continue its practice of retaining funds deposited to pay for collect calls that remain unused when an inmate is release from incarceration unless the party depositing the funds expressly requests a refund.
4. Take other action that the Commission deems appropriate.

VI. DEPARTMENT RECOMMENDATION

The Department recommends Commission alternatives 1 and 2.

³⁰ Response to Information Request #4, question 3, Attachment L.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Public Comments**

Docket No. P5024/M-22-116

Dated this 21st day of November 2022

/s/Sharon Ferguson

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