

**IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BENSON GITHIEYA, et al.,
Plaintiffs,

v.

GLOBAL TEL LINK CORP.,
Defendant.

Civil Action No.
1:15-CV-00986-AT

**BRIEF OF PRISON POLICY INITIATIVE
AS AMICUS CURIAE IN SUPPORT OF PROPOSED SETTLEMENT**

Pursuant to the Court’s Amended Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 333), Prison Policy Initiative (“PPI”) respectfully submits the following brief in aid of the Court’s evaluation of the proposed settlement memorialized in the parties’ Class Action Settlement Agreement and Release (the “Settlement Agreement,” ECF No. 326, Exh. 1).

I. Statement of Interest of *Amicus Curiae*

PPI is a tax-exempt nonprofit organization that uses data analysis and advocacy to demonstrate how the American system of incarceration negatively impacts society. Since 2013, PPI has been an active party to the “inmate calling services” (or “ICS”) rulemaking conducted by the Federal Communication

Commission (“FCC”).¹ PPI has also participated in ICS regulatory proceedings in the states of California, Iowa, Nevada, and New Mexico. PPI has repeatedly urged utility regulators to focus on ICS carriers’ treatment of consumer prepaid funds, which is the issue at the heart of this litigation. In light of the hazards and uncertainty inherent in litigation, PPI supports the parties’ proposed settlement, and we appear in this case to seek clarification of one potential ambiguity in the Settlement Agreement.

II. Background: GTL’s Iowa Tariff

In 2019 and 2020, the Iowa Utilities Board (“IUB”) reviewed tariffs for several ICS carriers operating in that state. The Iowa tariff of defendant Global Tel*Link Corporation (“GTL”) was docketed as IUB proceeding TF-2019-0039 (the “2019 Proceeding”). The final tariff and other documents from the 2019 Proceeding are attached to the Declaration of Stephen Raher, filed contemporaneously herewith. These duly authenticated documents are maintained by a state agency as part of a public administrative proceeding, and therefore PPI respectfully requests that the Court take judicial notice of the same pursuant to Federal Rule of Evidence 201. *See Lipton v. MCI Worldcom, Inc.*, 135 F.Supp.2d

¹ *In the Matter of Rates for Interstate Inmate Calling Services*, FCC Wireline Competition Bureau Docket No. 12-375.

182, 186 (D.D.C. 2001) (taking judicial notice of telecommunications tariffs filed with the FCC); *Marcus v. AT&T Corp.*, 938 F.Supp. 1158, 1164-1165 (S.D.N.Y. 1996) (similar holding).

On December 11, 2020, the IUB issued an order directing GTL to make various revisions to its tariff. Among other things, the IUB stated that it “agree[d] . . . that forfeiture of unused balances should be avoided whenever possible,” and for that reason, the IUB required that GTL “add a provision that explicitly states when and how the inmate or account holder shall be notified about the requirement to affirmatively request a refund.” Raher Decl., Exh. 1 at 6.

As a result of the IUB’s order, GTL revised its tariff to provide as follows:

The Customer may seek a refund of their unused AdvancePay balance at any time upon written request via the Company website or by contacting customer service. . . .

Upon seeking a refund, any remaining balance in the Account will be refunded to the Customer after deducting any call charges applicable taxes and transaction fees incurred during the current billing cycle. AdvancePay Accounts will be closed following three months of zero activity. . . . After an Account is closed, the Customer may contact the Company . . . to request a refund of any unused funds.

Raher Decl., Exh. 2 at § 3.6. Accordingly, the Iowa tariff provides a temporally unlimited right for consumers to receive refunds of their prepaid accounts.

In January 2022, GTL filed a revised tariff with the IUB reflecting a corporate name change. Rahe Decl., Exh. 3. The IUB approved that tariff “with an effective date of January 29, 2022.” *Id.* Exh. 4

PPI’s purpose for appearing in this case is to ensure the continued operation of the Iowa tariff refund provision, as well as any similar provisions in other jurisdictions’ tariffs that provide more robust protection to consumers than would otherwise be provided under the Settlement Agreement.

III. The Settlement Agreement’s Potential Ambiguity and PPI’s Proposed Resolution

PPI is informed that the Settlement Agreement is intended to preserve the effectiveness of more protective laws (such as section 3.6 of GTL’s Iowa tariff) notwithstanding the less protective 180-day inactivity policy contemplated by the Settlement Agreement. The relevant language is section IV.E of the Settlement Agreement, which states “This Settlement Agreement is subject to state, local, and federal laws and regulations, and provisions in existing contracts or procurements that have been issued as of October 6, 2021, that govern GTL and its business practices.” It is this provision that could potentially lead to disagreement in the future.

While the Settlement Agreement references laws, regulations, and contracts, it does not mention tariffs. Courts have analogized utility tariffs both to “a statute

enacted by the legislature” and “a binding contract between the utility and its customer.” 64 Am.Jur. 2d *Public Utilities* § 61 (2011). Accordingly, it is not beyond the realm of possibility that a court or arbitrator could, in the future, be asked to determine whether a state tariff constitutes a “law or regulation” or a “contract” for purposes of section IV.E of the Settlement Agreement. This dispute is potentially material because GTL’s operative Iowa tariff was approved in January 2022—i.e., after the October 6, 2021 contractual cut-off referenced in the Settlement Agreement. Accordingly, if the tariff were considered a contract, the less-robust provisions of the Settlement Agreement might control over the IUB-approved tariff.

PPI understands that the refund policy in the Settlement Agreement is intended to act as a floor, ensuring minimum procedural rights for all GTL customers. With this principle in mind, we believe that more favorable refund policies in tariffs (such as those in the Iowa tariff) should be preserved, whereas less favorable tariff provisions should yield to the Settlement Agreement. Accordingly, PPI respectfully asks that the Court approve the settlement with the following clarification: approved tariffs that require customer refunds beyond 180 days of inactivity should receive precedence over the policy contained in the Settlement Agreement; in contrast, any weaker tariff provisions should be revised

to conform with the baseline protections articulated in the Settlement Agreement.

This clarification could be made in the order approving the settlement or as part of a colloquy at the August 26 fairness hearing.

IV. Conclusion

PPI commends the parties for negotiation of the Settlement Agreement. We encourage the Court to approve the settlement subject to the clarification outlined above.

Respectfully submitted this 14th day of April, 2022.

/s/Wingo F. Smith

Wingo F. Smith
Spears & Filipovits, LLC
315 W. Ponce de Leon Ave., Ste. 865
Decatur, GA 30030
(404) 407-5418
wingo@civil-rights.law

Stephen Raher, *pro hac admission pending*
Prison Policy Initiative, Inc.
69 Garfield Ave., Floor 1
Easthampton, MA 01027
(413) 527-0845 ext. 316
sraher@prisonpolicy.org