

**STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD**

IN RE:	
RELIANCE TELEPHONE OF GRAND FORKS, INC.	DOCKET NO. TF-2019-0026
PRODIGY SOLUTIONS, INC.	DOCKET NO. TF-2019-0032
SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2019-0033
ENCARTELE, INC.	DOCKET NO. TF-2019-0270

REPLY TO PRISON POLICY INITIATIVE OBJECTION TO PETITION FOR INTERVENTION

Global Tel*Link Corporation and Public Communications Services, Inc. (collectively, “GTL”) submit this Reply to the Iowa Utilities Board (“Board”) in support of their June 29, 2020 Petition for Intervention (“Petition”), pursuant to the July 6, 2020 Objection filed thereto by the Prison Policy Initiative (“PPI”). As shown in its Petition and herein, GTL has satisfied the elements of 199 IAC 7.13(3), warranting permission to intervene in the above-captioned matters.

1. According to PPI, the Petition is “untimely” pursuant to 199 IAC 7.13(1). Given the iterative quality of these proceedings, in which AOS companies have revised and clarified their submissions over time pursuant to formal orders and informal technical conferences, PPI’s invocation of “timeliness” is unwarranted. Buttressing this is 199 IAC 7.13(5), which provides that leave to intervene will generally be granted by the Board “to any person with a cognizable interest in the proceeding” and affords the Board broad authority to condition intervention “to a particular stage of the proceeding.”

2. In the absence of a formally captioned procedural order in the above-captioned dockets, PPI asserts that either the Board’s May 1, 2019 Order Docketing Tariffs for Further

Review, Canceling Certain Registration and Tariffs, and Granting Intervention (the “May 1 Order”) and the May 24, 2019 Order Granting Petitions to Intervene and Requiring Additional Information (the “May 24 Order”) should be regarded as such for purposes of 199 IAC 7.13(1). The text of these Orders, however, belies this conclusion. The May 1 Order established a May 13, 2019 deadline for comments on the *initial* tariffs filed by AOS companies (tariffs which have superseded by Board orders issued this year), while the May 24 Order established a 30-day deadline for AOS companies to respond to questions appended to it.¹ Neither Order addressed the revised tariffs currently pending before the Board, nor the prospect of additional review by Staff. PPI’s claims of “untimeliness” with respect to these Orders is untenable.²

3. PPI’s legal authority fails to rehabilitate its position. The Board’s January 29, 2004 Order Denying Petition to Intervene in Docket Nos. TF-03-180, TF-03-181, and WRU-03-30-150, *IES Utilities, Inc.*, is clearly distinguishable from this proceeding, given that the prospective intervenor tendered its request on the day the Board reviewed and signed an order approving the tariffs at issue. No equivalent timing issues are present here. (Notably, the Board afforded the prospective intervenor the opportunity to participate in subsequent compliance proceedings, undergirding the importance of the Board’s discretionary power under 199 IAC 7.13(5), as referenced above). The Board’s June 1, 2011 Order in Docket Nos. E-21948, E-21950, and E-21951, *ITC Midwest, Inc.*, has no bearing on the Petition whatsoever. In that matter, the Board predicated its decision to deny a petition to intervene based upon “due process

¹ The May 24 Order also established a 45-day deadline for reply comments on such responses.

² Assuming, *arguendo*, that a procedural schedule was set by the Board’s January 2, 2019 Order Terminating Rule Making (requiring all AOS companies to file a current tariff with the Board within 30 days) or its March 14, 2019 Order Requiring Tariff Filing (requiring all AOS companies to file a complete set of new tariffs on or before April 1, 2019), PPI’s own Petition for Intervention, filed on April 17, 2019, would itself have been untimely.

and the specific circumstances regarding the petition to intervene,” given that it was prohibited from applying the procedural rules in 199 IAC Chapter 7, which provide “the requirements and time limits for intervention,” to the electronic franchise petition at issue. PPI’s invocation of *ITC Midwest*, for the notion that GTL’s “unexplained delay” is somehow dispositive with respect to the Petition, is fatally flawed, as 199 IAC Chapter 7 does control in this matter.

4. PPI also contends that GTL has satisfied none of the factors delineated under 199 IAC 7.13. An examination of each of PPI’s supporting arguments to this end demonstrate their manifest weaknesses.

5. First, PPI claims that GTL lacks an interest in other AOS company dockets. Like the Office of Consumer Advocate (“OCA”), PPI proceeds from a fundamental misunderstanding of the nature of the above-captioned proceedings. As summarized at length in the Petition, rules and regulations incumbent upon all AOS companies will be generated from the collective output of all pending AOS tariff dockets. The OCA makes this clear in its June 29, 2020 Additional Comments, where it repeatedly urged the Board to ensure that “[a]ny decision reached by the Board in this docket should be applied uniformly to all inmate calling service providers.”³ Because issues potentially giving rise to generally applicable rules and regulations are present in non-GTL dockets, GTL has a strong and abiding interest in addressing them. In the absence of a general rulemaking, intervention is the only means by which it can do so.⁴ Strengthening this interest (and the timeliness of the Petition, as set forth above) is the fact that neither Inmate Calling Solutions, LLC nor Securus Technologies have filed their revised tariffs in docket TF-

³ Docket Nos. TF-2019-0039, *Global Tel*Link Corporation*, TF-2019-0040, *Public Communications Services, Inc.*, Additional Comments, 2, 5 (June 29, 2020).

⁴ To this end, the Petition is distinguishable from the Board’s May 22, 1996 Order Approving Pilot Project and Denying Petition to Intervene in Docket No. WRU-96-7-225, *Natural Gas Co.*, where the outcome of the subject pilot project lacked general applicability across the Iowa energy industry.

2019-0030 and TF-2019-0033, respectively, affording GTL a meaningful opportunity to engage on the promulgation of substantive AOS regulatory requirements.

6. PPI's belief that a prevailing "just and reasonable" standard in statute vitiates GTL's interest in how specific regulatory obligations and burdens are crafted is perplexing. PPI's own April 17, 2019 Petition for Intervention was predicated on participation in an individual docket, in which it would assess proposed rates and charges per the purported inability of individual correctional facility contracts to consider the needs of "incarcerated end-users and their family members."⁵ If the reference in Iowa Code § 476.8(1) to "just and reasonable rates" constitutes "uniform and consistent" regulation of AOS companies, surely PPI's involvement could have been limited to general policy statements on this principle, rather than specific objections in each AOS docket.

7. Second, PPI states that the effect of decisions upon GTL in the above-referenced matters is centered upon "the rates charged by its competitors." This characterization of GTL's position is nothing more than a straw man. The Petition clearly explained that GTL has a prevailing interest in the consistency and uniformity of the AOS regulatory framework, given its profound impact upon the competitive bidding process and the free and fair operation of the AOS marketplace. Far beyond rates, GTL believes that the nature and extent of regulatory burdens imposed upon AOS companies will be a prime determinant of whether, and to what extent, the quality, value, and technological sophistication of service offerings are the prime considerations in its future contractual relationships with Iowa correctional facilities.

8. Third, PPI concedes that participants in the above-captioned dockets are unlikely

⁵ Docket Nos. TF-2019-0026, *Reliance Telephone of Grand Forks, Inc.*, The Prison Policy Initiative's Objection to Proposed Tariff, Request for Docketing, and Petition for Intervention, 4 (Apr. 17, 2019) ("PPI Petition to Intervene").

to advocate for GTL's interests, but insists that GTL's status as "the lone ICS carrier seeking intervention in all tariff reviews bespeaks the lack of merit in its argument." This assertion is unsupported and wholly spurious. The gravamen of GTL's claim is the lack of a consistent advocate for issues affecting the industry as a whole – a justification PPI does not contest.⁶

9. Fourth, with respect to "[t]he availability of other means by which the prospective intervenor's interest may be protected," PPI claims "that GTL's broad interests are best raised in a petition for rulemaking." This speculative assertion, vis-à-vis the Board's announced intent to generate rules and regulations of general applicability from the above-referenced dockets, is untenable, particularly given PPI's own request for and leave to intervene as against its acknowledgement of the greater efficacy of "a broader rulemaking focused on developing certain uniform standards and rules for the ICS industry."

10. Finally, PPI contends that GTL will not effectively assist the Board if the Petition is granted. According to PPI, GTL has engaged in "deflecting" and "stonewalling" with respect to this proceeding, frustrating any expectation that it can aid the Board in developing an evidentiary record. Even a cursory review of GTL's involvement in the dockets arising out of Docket No. RMU-2017-0004 is sufficient to lay this unsubstantiated allegation to rest; GTL's request to intervene itself evinces GTL's desire to engage in these matters in as a fulsome a fashion as possible.

11. PPI relatedly posits that GTL's "behavior" at the July 2, 2020 Technical Conference "flatly contradicts any expectation that GTL will assist the Board in conducting a worthwhile review of tariffs." Aside from vague references to "interested parties" and

⁶ Cf. PPI Petition to Intervene at 4-5 (requesting permission to intervene as the representative of "end-users" across the AOS industry).

“questions about GTL’s policies and practices,” PPI offers nothing to support this attack.

12. In fact, during the course of the Technical Conference, GTL offered detailed information on the practical effect of numerous provisions of the tariff, such as the function of a live operator, the circumstances under which GTL would undertake an assessment of a customer’s creditworthiness, and a breakdown of the differences between prepaid collect and inmate debit services. GTL proposed, and Staff endorsed, a written response to the complex legal issues raised by OCA’s Additional Comments, in lieu of addressing them in an ad hoc fashion during an unrecorded and un-transcribed teleconference. To the extent that GTL pledged to investigate particular areas of interest to Staff (such as whether the company continues to maintain pay telephones within correctional facilities), it has prepared a separate Response to Technical Conference on these points for submission to the Board.

13. Of greater relevance to PPI’s baseless charge was GTL’s detailed discussion of matters common to all AOS companies during the Technical Conference. GTL outlined the reasons behind the telecommunications industry’s inclusion and use of seemingly outdated language in tariffs; provided a comprehensive overview of how Iowa’s statutorily mandated competitive bidding process and repealed safe harbor for AOS companies affect ICS rates; offered historical and legal background on the concept of passing through applicable taxes, fees, and surcharges to consumers; and provided a lengthy explanation of the relationship between automated transaction fees and third-party transaction fees – an explanation Staff hailed as the clearest offered on this issue by an AOS company to date.

14. GTL did not opine on matters raised during the Technical Conference wholly irrelevant to this proceeding. Speculative theories and suppositions outside the scope of these AOS matters are irrelevant to the Board’s analysis under 199 IAC 7.13(3), which focuses on

GTL's ability to assist it in developing a sound record through presentation of *relevant* evidence and argument." (emphasis added).

CONCLUSION

WHEREFORE, GTL respectfully requests that the Board issue an order permitting it to intervene in the above-captioned matters.

Respectfully submitted,

**GLOBAL TEL*LINK CORPORATION
PUBLIC COMMUNICATIONS SERVICES, INC.**

/s/ John C. Pietila

John C. Pietila (AT 0006221)
Davis, Brown, Koehn, Shors & Roberts, P.C.
4201 Westown Pkwy, Ste. 300
West Des Moines, Iowa 50266
JohnPietila@davisbrownlaw.com
(515) 246-7871

Chérie R. Kiser (*pro hac vice* filed)
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Ste. 950
Washington, D.C. 20006
ckiser@cahill.com
(202) 862-8950

Its Attorneys

Dated: July 14, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of July 2020, he had the foregoing document electronically filed with the Iowa Utilities Board using the Electronic Filing System, which will send notification of such filing (electronically) to the appropriate persons.

/s/ John C. Pietila _____