LEGACY
AN EDOVO COMPANY

GTL
The Power of Together

October 9, 2020

Via ECFS and IBFS (Public Version) and
Hand Delivery (Confidential Version)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Third Supplement to Joint Application
WC Docket No. 20-218
IB File No. ITC-ASG-20200708-00112

Dear Secretary Dortch:

On July 8, 2020, Global Tel*Link Corporation ("GTL") and Legacy Long Distance International, Inc. d/b/a Legacy Inmate Communications ("Legacy") (collectively, the "Applicants") filed a Joint Application seeking Commission approval to assign and/or transfer control of certain Legacy customers/contracts to GTL (the "Transaction").[1] In response to questions raised by Commission staff, the Applicants seek to supplement the Joint Application with the following information to assist the Commission staff with completing its review of the Joint Application.[2]

Legacy's Market Exit

The Transaction is intended to facilitate Legacy's exit from the inmate calling services ("ICS") market. As noted in the Joint Application[3] and reflected in Legacy's Application to Discontinue Service filed with the Commission on February 18, 2020,[4] Legacy plans to discontinue the provision of all telecommunications services in the United States. The

[1] The Applicants filed the First Supplement to the Joint Application on July 30, 2020 to provide additional ownership information, and a Second Supplement on September 21, 2020 to update the list of Correctional Facility Customers to add Doña Ana County, New Mexico.

[2] As discussed with Commission staff, some of the requested information is being filed pursuant to a request for confidential treatment.

[3] Joint Application at 10 ("Legacy is in the process of discontinuing or cancelling its authorization to provide telecommunications service in the states.").

[4] WC Docket No. 20-52, Section 63.71 Application of Legacy Long Distance International, Inc. (filed Feb. 18, 2020).

Commission approved Legacy's request to discontinue service as of April 13, 2020.[5] Legacy has given customers notice and intends to exit the market on November 15, 2020.[6]

Approval of the Transaction will ensure there is no disruption of service to Correctional Facility Customers (as defined in the Joint Application)[7] or end users of ICS as a result of Legacy's exit from the market. Applicants' request is similar to the recently-approved transaction between Embarq Corporation ("Embarq") and Inmate Calling Solutions, LLC d/b/a ICSolutions ("ICSolutions"), in which the Commission approved the transfer of control of Embarq's subsidiary, CenturyLink Public Communications, Inc. ("CPCI"), to ICSolutions in connection with Embarq's withdrawal from the ICS business.[8]

History of the Transaction

In response to a question from Commission staff, Legacy provides information on the process it undertook to ensure a smooth transition of existing customers and exit from the ICS market. *****START CONFIDENTIAL***** [redacted]

[redacted]

[redacted]

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[5] DA 20-274, *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications and/or Interconnected VoIP Services*, Public Notice (rel. Mar. 13, 2020) (stating Legacy could discontinue service on or after April 13, 2020).

[6] *See* Confidential Exhibit 1 (providing example of customer notice letter).

[7] Joint Application at 4; *see also* Second Supplement to Joint Application.

[8] WC Docket No. 20-150, Joint Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations (filed May 22, 2020) ("the transaction in large part consists of ICSolutions agreeing to take over the contracts and operational responsibility for the vast majority of CPCI's correctional facility contracts as Embarq withdraws from the business"); *see also* DA 20-866, *Applications Granted for the Transfer of Control of CenturyLink Public Communications, Inc. to Inmate Calling Solutions, LLC d/b/a ICSolutions*, Public Notice (rel. Aug. 11, 2020).

[redacted] ***END CONFIDENTIAL***

Contracts to Be Transferred

In response to a question from Commission staff, the Applicants confirm that the interstate and intrastate ICS and ancillary services will be provided at the existing rates under the Correctional Facility Customer contracts to be transferred subject to federal and state regulations, and applicable contract terms and conditions. As stated in the Joint Application, the Transaction will have no adverse effect on customers.[9] GTL will make any necessary revisions to its interstate/international web-posted rates, terms, and conditions for ICS and ancillary service charges to incorporate the Legacy existing Correctional Facility Customer contract rates as necessary.

In response to a question from Commission staff, the Applicants confirm that each of the contracts to be transferred requires approval of the relevant Correctional Facility Customer prior to the assignment of the contract from Legacy to GTL. The Applicants have prepared the necessary legal documents to effectuate the assignment, but many of the Correctional Facility Customers are waiting for Commission action on the Joint Application before executing an agreement to consent to the assignment of the contract.

Further, in response to a request from Commission staff, the Applicants provide the following information regarding the term and termination provisions in the existing Correctional Facility Customer contracts to be transferred to GTL:

*****START CONFIDENTIAL*****

[redacted]

[redacted]

[redacted]

[redacted]

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9 Joint Application at 4-5.

[redacted]

*****END CONFIDENTIAL*****

<u>Request for Confidential Treatment</u>

Pursuant to Section 0.459 of the Commission's rules,[10] the Applicants respectfully request that the CONFIDENTIAL VERSION of this filing be treated as confidential and protected from public disclosure. The Applicants provide the following information as required under 47 C.F.R. § 0.459(b):

(1) Identification of the specific information for which confidential treatment is sought: The Applicants request confidential treatment for information concerning the history of the Transaction, information concerning the term and termination provisions for the existing Legacy contracts to be transferred to GTL, and the customer notice letter provided to existing

[10] 47 C.F.R. § 0.459.

Legacy correctional facility customers (collectively, the "Confidential Information").

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission: On July 8, 2020, the Applicants filed a Joint Application seeking Commission approval to assign and/or transfer control of certain Legacy customers/contracts to GTL. The Joint Application was filed in WC Docket No. 20-218 and IB File No. ITC-ASG-20200708-00112. The instant filing is being made at the request of Commission staff and is intended to supplement the Joint Application to respond to questions raised by Commission staff on October 8, 2020.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged: Neither Applicant is a publicly traded company. The Confidential Information in the format provided herein is not available from publicly available sources and is subject to protection under the Freedom of Information Act ("FOIA") and the Commission's implementing rules. FOIA exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information.[11] Similarly, the Commission's rules state that such information is not routinely available for public inspection.[12] The Commission's rules also allow parties to seek protection for information that is "commercial or financial, or contains a trade secret or is privileged" or when "disclosure of the information could result in substantial competitive harm."[13] Protection of the Confidential Information would not affect the public interest and does not restrict interested parties from participating in this proceeding. Furthermore, the harm that would result from disclosure of the Confidential Information far outweighs the public interest in accessing the Confidential Information.

(4) Explanation of the degree to which the information concerns a service that is subject to competition: Both Applicants operate in competitive markets.

(5) Explanation of how disclosure of the information could result in substantial competitive harm: It is well-established that the requirements of FOIA and Commission policy afford confidentiality to information that could cause competitive harm when publicly disclosed.[14] Release of the Confidential Information could result in substantial competitive harm to both of the Applicants. Information concerning "business operations and plans" routinely has been withheld as disclosure could damage a company's "competitive position by

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11 5 U.S.C. § 552(b)(4).

12 47 C.F.R. § 0.457(d).

13 47 C.F.R. §§ 0.459(b)(3), 0.459(b)(5).

14 *See, e.g.*, *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (considering under FOIA whether disclosure would "cause substantial harm to the competitive position of the person from whom the information was obtained"); *Request for Confidential Treatment of Nexus Communications, Inc. Filing of FCC Form*, 28 FCC Rcd 5535, ¶ 5 (2013) ("To determine whether this information should be kept confidential, we must determine whether the preponderance of the evidence shows that disclosure of the information will cause Nexus substantial competitive harm."); 47 C.F.R. § 0.459(a)(5) (looking at how "disclosure of the information could result in substantial competitive harm").

giving the competitors insight into [the company]'s business methods and strategies."[15] Further, information that has "the potential of revealing [a company]'s market plans and positions" or providing "insight into [a company]'s business strategies" also has been deemed exempt from mandatory public disclosure.[16] Disclosure also "would help rivals to identify and exploit [] competitive weaknesses."[17] The Commission consistently has afforded "current or forward-looking business strategies or plans" a higher level of confidentiality than other information.[18] The Commission also has found "public disclosure of a list of names a business holds out as its customers is likely to cause substantial harm to the competitive position of that business" because "this information would be of interest and benefit to the business's competitors, who could use the list to contact these persons as potential customers."[19]

The Confidential Information could be used by competitors of the Applicants to gain insight into internal business operations, financial resources, and other information regarding the Applicants and their business relationship. The Confidential Information derives economic value from the fact that it is not generally known to, and not readily ascertainable by, other persons who could obtain economic value from its disclosure and use. Absent protection from disclosure, competitors of the Applicants would have access to sensitive and private proprietary information. The Applicants operate in a highly competitive market, and public availability of the Confidential Information would adversely disadvantage both Applicants. Release of the Confidential Information to the public would cause undue economic damage and substantially harm the ability of the Applicants to compete in the marketplace.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure: Neither Applicant is otherwise obligated to publicly disclose the

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[15] *Josh Wein, Warren Communications News on Request for Inspection of Records*, 24 FCC Rcd 12347, ¶ 13 (2009).

[16] *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport*, 13 FCC Rcd 13354, ¶ 9 (1998); *see also Jonathan E. Canis, Frank W. Krogh, Richard J. Metzger*, 9 FCC Rcd 6495 (1994); *see also Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶¶ 118-22 (1991) (subsequent history omitted) (discussing concerns that the filing of contracts could release competitively sensitive information).

[17] *Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 320 (D.C. Cir. 2006) (citing *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 278, 281 (D.C. Cir. 1987) and *Pub. Citizen Health Research Group*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

[18] *Pantelis Michalopoulos, Esquire, Christopher Bjornson, Esquire*, 25 FCC Rcd 7479, 2 (2010).

[19] *Mobile Relay Associates*, 14 FCC Rcd 18919, ¶¶ 8-9 (1999) (finding "customer records are among the most basic business records that a company uses in furtherance of its commercial activities" and a "customer list constitutes the type of business information that may be properly withheld under FOIA"); *see also Applications for the Transfer of Control of Licenses and Authorizations from Nextel Communications, Inc. and Its Subsidiaries to Sprint Corporation*, 20 FCC Rcd 9280, ¶ 3 (2005) ("a company's list of specific customers, customer data aggregated to a relatively detailed level (*e.g.*, zip code, county or MSA), and specific future business, build out or marketing plans, could all allow competitors to target customers and gain an unfair competitive advantage if they were to obtain the information"); *New York Public Interest Research Group v. EPA*, 249 F. Supp. 2d 327 (S.D.N.Y. 2003) ("Congress contemplated that business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiating positions, and like information that customarily would not be made public should not lose their character because the government required that information or otherwise obtained it").

Confidential Information, and both Applicants have used their best efforts to maintain the confidentiality of the Confidential Information.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties: See response (6) above. The Confidential Information in the form provided to the Commission is not available from publicly available sources. To the best of the Applicants' knowledge, the Confidential Information has not been disclosed or released to the public in the format provided to the Commission.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure: Applicants assert the Confidential Information should remain protected from public disclosure permanently.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted: None.

Accordingly, the Confidential Information is the type of material routinely protected from disclosure under FOIA and the Commission's rules. In the event there is a challenge to the Applicants' designation of the Confidential Information as confidential, the Applicants respectfully request notice of that determination and an opportunity to file an application for review prior to making the Confidential Information available for public inspection.[20]

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[20] 47 C.F.R. § 0.459(g).

As reflected in the Joint Application and herein, the Transaction is in the public interest, convenience, and necessity as it will permit the continued, uninterrupted provision of high-quality service to the Correctional Facility Customers, incarcerated individuals, and their friends and families.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

LEGACY LONG DISTANCE INTERNATIONAL, INC. d/b/a LEGACY INMATE COMMUNICATIONS

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Attachment

CONFIDENTIAL EXHIBIT 1

[REDACTED FOR PUBLIC INSPECTION]