



0000078270

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

Arizona Corporation Commission

DOCKETED

OCT 30 2007

DOCKETED BY	ne
-------------	----

IN THE MATTER OF THE APPLICATION OF
GLOBAL TEL*LINK CORPORATON FOR
AUTHORIZATION TO ENCUMBER AND/OR
MORTGAGE ITS ASSETS.

DOCKET NO. T-02871A-07-0094

DECISION NO. 69952

ORDER

Open Meeting
October 23 and 24, 2007
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On February 9, 2007, Global Tel*Link Corporation ("GTL" or "Applicant") filed with the Arizona Corporation Commission ("Commission") an application for authorization to encumber and/or mortgage its Arizona assets as security for certain debt financing arrangements up to \$250 million ("Application").

2. GTL caused notice of the Application to be published in the *Arizona Republic* on March 9, 2007.

3. On July 2, 2007, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending approval of the request for encumbrance and/or mortgage of assets as security for debt financing of up to \$250 million and also recommended GTL be required to procure a performance bond or irrevocable sight draft letter of credit.

4. On September 20, 2007, Staff filed a Supplemental Staff Report.

5. GTL is a Delaware corporation certificated to provide interstate and international

1 services pursuant to the authority granted by the Federal Communications Commission and provides
2 competitive telecommunications services, especially payphones and inmate-only services, throughout
3 most parts of the country. It is authorized by the Commission to provide pay telephone services in
4 Arizona pursuant to a Certificate of Convenience and Necessity granted by Commission Decision
5 No. 59429 (December 20, 1995) and is in good standing with the Corporations Division of the
6 Commission. GTL is a wholly owned subsidiary of GTEL Holdings, Inc. ("Holdings"), which is
7 owned by The Gores Group, LLC ("Group"). The Group is comprised of three Delaware limited
8 partnerships with investment interests in the technology and telecommunications sectors as well as in
9 private equity funds.

10 6. GTL plans to borrow up to \$250 million, consisting of secured facilities and term loan
11 agreements, and seeks Commission authorization to pledge and/or mortgage its Arizona assets as
12 security for the debt. According to the Staff Report, the Applicant will procure the proposed debt
13 financing at favorable terms, and a portion of the proceeds will be used to liquidate its existing higher
14 cost debt.

15 7. In addition to liquidating higher cost debt, GTL stated that the proposed financing
16 arrangements will allow it to achieve the following objectives:

- 17
- 18 a) increase the ability of Applicant to substantially expand its operations in Arizona;
 - 19 b) allow a one time distribution by the Applicant to Holdings, the proceeds of which are
20 applied by Holdings (i) to pay a deferred redemption amount on Holdings preferred
21 stock, (ii) to pay a dividend on Holdings common stock, and (iii) to contribute to the
22 Applicant's equity incentive bonus plan, which shall be paid by the Applicant to the
23 eligible employees participating in the plan through normal payroll procedures;
 - 24 c) fund potential acquisitions; and
 - 25 d) provide Applicant with the financial resources necessary to compete effectively with
26 other service providers in Arizona.¹

27 8. According to the Applicant, the transactions are solely financial arrangements that will
28 not affect the day-to-day operations and will be entirely transparent to customers. GTL states that the
proposed debt financing arrangements and transactions will serve the public interest by enhancing its
ability to continue to provide uninterrupted services and allowing it to significantly expand its

¹ Application, p. 4.

1 operations, thereby increasing competition in Arizona.

2 9. A.R.S. § 40-301 provides that foreign public service corporations providing
3 communications services within the state whose physical facilities are also used in providing
4 communications service in interstate commerce are not required to obtain authorization from the
5 Commission to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness
6 payable at periods of more than twelve months. In its Supplemental Staff Report filed on September
7 20, 2007, Staff concluded that pursuant to A.R.S. § 40-301(D), GTL's financing is exempt from
8 Commission approval.

9 10. However, A.R.S § 40-285 requires public service corporations to obtain Commission
10 authorization to encumber certain utility assets. According to Staff, the statute serves to protect
11 captive customers from a utility's disposition of assets that are necessary for the provision of service,
12 thereby preventing any service impairment due to disposal of critical assets necessary to provide
13 service.

14 11. Staff reviewed the proposed transactions and concluded that GTL's proposal to
15 encumber its Arizona assets may not inhibit its ability to continue to serve Arizona customers. Staff
16 stated that customers could readily procure similar services from alternate providers in the event that
17 the Applicant defaults on its debt obligation.² However, Staff noted that customers may still have
18 exposure to losses to the extent that they have prepaid for service or made deposits. Accordingly,
19 Staff recommended that any authorization for encumbrances should also provide customer protection
20 for prepayments and deposits.

21 12. Based on its review of the proposed transactions, Staff determined that GTL's
22 proposal to use a portion of its new debt financing to extinguish existing high cost long-term debt, to
23 expand operations in Arizona, and to generate sufficient resources necessary to effectively compete
24 with other service providers in Arizona is in the public interest. However, Staff expressed concern
25 over Applicant's plan to distribute a portion of the debt proceeds to Holdings, its parent company, to
26 pay deferred redemption on Holdings preferred stock, to pay a dividend on Holdings common stock,

27 _____
28 ² Presumably, for those inmate customers with access to only Applicant's payphones, Staff assumes that the correctional facility will ensure that inmates have alternative access.

1 and to contribute to Applicant's equity incentive bonus plans. Staff indicated that these purposes
2 might not be in the public interest or consistent with sound financial practices. In response to Staff's
3 concerns, Applicant argued that the distribution was a return on the original capital invested and
4 reflects the strong performance of the business, and that the debt providers were aware of the use of
5 the funds and had concluded that the remaining assets and cash flows of the business were sufficient
6 to service the debt. Staff agreed that the lender is a sophisticated investor with sufficient knowledge
7 and experience to evaluate the merits and risks of its investment. Given that Applicant's customers
8 have alternate service provider choices to mitigate any inconvenience that would occur from
9 Applicant's inability to provide service, that Applicant's Arizona assets constitute only one percent of
10 its assets, and that Applicant will be required to post a bond or letter of credit, Staff's concerns about
11 the use of the proceeds to pay dividends and for redemption of preferred stock were mitigated.

12 13. Staff recommends approval of GTL's request for authorization to encumber and/or
13 mortgage its Arizona assets as security for debt financing up to \$250 million.

14 14. Staff recommends that the Commission order GTL to procure a performance bond or
15 an irrevocable sight draft letter of credit, which is excluded from the pledged assets, in an aggregate
16 amount no less than the balance of customer deposits and prepayments. We agree with Staff's
17 recommendation but will also require the minimum amount of the bond/letter to be \$10,000, in
18 recognition that many of its customers are inmate payphone users with limited or no access to
19 alternate providers. Staff recommends that GTL provide the original performance bond or irrevocable
20 sight draft letter of credit to the Commission's business office for safekeeping and file proof of the
21 performance bond or irrevocable sight draft letter of credit in Docket Control.

22 15. Staff recommends that GTL be authorized to engage in any transactions and to execute
23 or cause to be executed any documents necessary to effectuate the authorizations requested in the
24 application.

25 16. Staff states that a search of the Consumer Services database beginning January 1,
26 2004, through February 2007 indicates that the Applicant has had no complaints, inquiries, or
27 opinions.

28 17. Staff's recommendations, as modified herein, are reasonable and should be adopted.

CONCLUSIONS OF LAW

1
2 1. Applicant is a public service corporation within the meaning of Article XV of the
3 Arizona Constitution, A.R.S. § 40-285, and A.A.C. R14-2-801 *et seq.*

4 2. The Commission has jurisdiction over the Applicant and the subject matter of the
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. The encumbrance approved herein is for the purposes stated in the application and is
8 reasonably necessary for those purposes.

9 5. Pursuant to A.R.S. § 40-301, Commission approval of the financing is not required.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application by Global Tel*Link Corporation for
12 authorization to encumber assets for security for debt financing up to \$250 million as provided for
13 herein, shall be, and hereby is, granted, subject to the condition that Global Tel*Link Corporation
14 obtains and maintains a performance bond or irrevocable sight draft letter of credit as set forth herein,
15 which is excluded from the pledged assets, and provides the original to the Commission's business
16 office for safekeeping and files the appropriate copies with Docket Control, as a compliance item in
17 this docket, within 60 days of the effective date of this Decision.

18 ...
19 ...
20 ...
21 ...
22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28 ...

1 IT IS FURTHER ORDERED that Global Tel*Link Corporation is hereby authorized to
2 engage in any transactions and to execute or cause to be executed any documents so as to effectuate
3 the authorizations granted herein.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

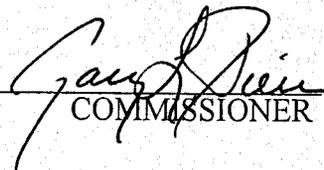
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8 CHAIRMAN


COMMISSIONER

9
10 
COMMISSIONER

COMMISSIONER


COMMISSIONER

11
12 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 30th day of Oct., 2007.

17
18 
19 DEAN S. MILLER
20 INTERIM EXECUTIVE DIRECTOR

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

DISSENT _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: GLOBAL TEL*LINK CORPORATION

DOCKET NO.: T-02871A-07-0094

Brett P. Ferenchak
BINGHAM MCCUTCH LLP
3000 K Street NW., Suite 300
Washington, DC 20007-5116
Attorneys for Global Tel*Link Corp.

Christopher C. Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007