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January 13, 2009

VIA ELECTRONIC FILING

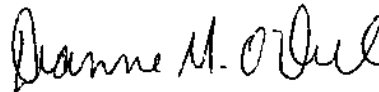
James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Robert Pezzeca v. Global Tel*Link,
Docket No. C-2008-2080471

Dear Secretary McNulty:

On behalf of Global Tel*Link, enclosed for filing please find its original Answer to Complaint and its Preliminary Objections to Complaint and the electronic filing confirmation page with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell
For WolfBlock LLP

DMO/lww
Enclosure

cc: Robert Pezzeca, w/enc.

HAR:84475.1/GLO124-252273

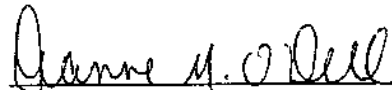
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Global Tel*Link Corporation's Answer to Complaint and Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA FIRST CLASS MAIL

Robert Pezzeca, DX-1148
State Correctional Institution Huntingdon
1100 Pike St.
Huntingdon, PA 16654

Dated: January 13, 2009



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT PEZZECA
Complainants

v.

GLOBAL TEL*LINK CORPORATION
Respondent

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:
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: Docket No. C-2008-2080471
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**GLOBAL TEL*LINK CORPORATION'S
PRELIMINARY OBJECTIONS TO COMPLAINT**

Pursuant to 52 Pa. Code § 5.101, Global Tel*Link Corporation ("Respondent") submits these Preliminary Objections to the complaint filed by Robert Pezzeca ("Complainant"). The Commission should dismiss the complaint based on a lack of jurisdiction and legal insufficiency of a pleading.¹

In specific support of its Preliminary Objections, Respondent states as follows:

1. Respondent was served on December 23, 2008 with the above-captioned complaint. The complaint: (1) alleges violations of the Telecommunications Act of 1996 and the Public Utility Code; (2) violations of Unfair Trade Practices and Consumer Protection Law; (3) invokes the Clayton Act; (4) alleges violation of the "anti-kick back law;" (5) "further violation by forced monopolized purchases;" (6) deprivation of "their constitutional right to equal protection;" and, (7) claims to "represent a class of individuals of family and friends of incarcerated people."² Complainants seek "injunctive relief in the form of" allowing "third party long distance providers other than [Respondent]; reimbursement for calls that have been

¹ Pursuant to 52 Pa. Code § 5.61, GTL is also filing an Answer to the complaint.

² Complaint at 1, ¶¶ 1-4.

disconnected, interrupted from August of 2007 up until the present, and that they be provided with a fair rate other than the one that is now in existence."³

Complainant Has Failed to State A Claim Upon Which Relief Can be Granted

2. Pursuant to 52 Pa. Code § 5.101(a)(4), a party can file preliminary objections based on the legal insufficiency of a pleading (also known as a demurrer).

3. In reviewing preliminary objections, the Commission must view the complaint in the light most favorable to the Complainant, and the complaint must be dismissed when it appears that the Complainant would not be entitled to relief under any circumstances.⁴ The moving party must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party.⁵ The motion may be granted only if the moving party prevails as a matter of law.⁶

4. The claims raised in the Complaint regarding the Equal Protection Clause, the lack of competitive alternatives and the monitoring/interruption of calls – even if accepted as true – all fail to state a claim upon which relief can be granted.

³ Complaint at 4, ¶ 14

⁴ *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

⁵ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Commw. of Pa. v. The Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988).

⁶ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

Representation & Equal Protection

5. The Complaint alleges that Complainant represents a class of individuals who are being deprived equal protection under the constitution because they have higher phone rates than those charged to the public at large.⁷

6. As an initial matter, the Commission's rules prohibit Complainant, a non-attorney, from representing anyone before the Commission but himself.⁸ Therefore, he is legally prohibited from "represent[ing] a class of individuals."

7. Even accepting the averments as true that Complainant is charged rates different from those available to the general public, the Commonwealth Court has already determined that such claim does not establish that inmate telephone rates evince discriminatory intent against inmates and their friends and families to make a sufficient claim under the Equal Protection Clause.⁹ Therefore, the complaint fails to state a claim upon which relief may be granted and must be dismissed.

Lack of Competitive Alternatives

8. GTL, like its predecessors, provides inmate telephone services pursuant to a contract between it and the Department of Corrections ("DOC"). Through this contract, the Commonwealth and DOC set forth the procedures and legal requirements for providing telephone services to inmate in state-owned correctional facilities.

⁷ Complaint at 1.

⁸ 52 Pa. Code §§ 1.21-1.23.

⁹ *Feigley v. PUC*, 794 A.2d 428, 431-432 (Pa. Cmwlth. 2002).

9. The Complaint alleges violations of state and federal law based on the claim that inmates and their relatives are required to utilize Respondent's services exclusively for the purposes of communication.¹⁰

10. The Commonwealth Court has already rejected this argument. The condition of incarceration subjects an inmate to the "choices circumscribed by operation of the Commonwealth contract and prison administrative policies under which the contract is carried out," and the lack of competitive alternatives in carriers is an "unfortunate incidence of incarceration" but not one upon which an actionable claim may be brought.¹¹ Therefore, the complaint fails to state a claim upon which relief may be granted and must be dismissed.

Monitoring/Interruption of Calls

11. The Complaint claims that Respondent has violated the law because calls are interrupted by taped messages and sometimes disconnected.¹²

12. Even accepting this factual averment as true, Complainant has failed to state a claim upon which relief can be granted. An inmate does not have a right to unlimited telephone use.¹³ Rather, access to telephone services is generally determined by prison administrators.¹⁴ Therefore, to the extent that telephone calls from incarcerated persons are subject to monitoring and/or limitation, claims opposed to such restrictions against Respondent are not sustainable.

¹⁰ Complaint at 2-3, ¶¶ 8-9, 11.

¹¹ *Id.* at 431.

¹² Complaint at 3.

¹³ *Benzel v. Grammer*, 869 F.2d 1105, 1108 (8th Cir.), *cert. denied*, 493 U.S. 895 (1989).

¹⁴ *Fillmore v. Ordonez*, 829 F. Supp. 1544, 1563-64 (D. Kan. 1993).

Commission Lacks Jurisdiction To Fix Rates Of IXC Inmate-Services

13. Pursuant to 52 Pa. Code § 5.101(a)(1), a party can file preliminary objections on the grounds that the Commission lacks jurisdiction. As a creature of statute, the Commission has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.¹⁵

14. Complainant alleges that Respondent's "inmate calls exceed the actual cost of providing service" and requests that the Commission provide them "with a fair rate other than the one that is now in existence."¹⁶

15. Pursuant to statute, the Commission does not have jurisdiction to "fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services."¹⁷ All "interexchange services" are deemed competitive.¹⁸ Inmate-only services are competitive interexchange services.¹⁹ Therefore, the Commission does not have the authority to regulate the rates and rate structure of interexchange carriers including those that provide inmate-only services.

16. Respondent is a certificated reseller of interexchange services as defined by 66 Pa.C.S. § 3018 and the Commission's recently adopted regulations at 52 Pa. Code § 63.101, et.

¹⁵ *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977).

¹⁶ Complaint at 2 and 4.

¹⁷ 66 Pa.C.S. § 3017.

¹⁸ 66 Pa. C.S. § 3018(a).

¹⁹ *Susan Strandberg v. T-Netix, Inc. and T-Netix Telecommunications, Inc.*, Docket No. C-20039780, Opinion and Order entered February 16, 2006 at n. 4. Section 3017 of the Public Utility Code replaced 66 Pa.C.S. § 3008(a) which specifically deemed interexchange service to aggregator telephones (such as inmate only telephone services) to be non-competitive. No such exception exists in the current law.

seq. As a certificated reseller of interexchange services, Respondent's inmate-only services are deemed competitive by law and the Commission lacks jurisdiction to adjudicate the complaint regarding rates and rate structure. Consequently, the Commission lacks subject matter jurisdiction necessary to adjudicate the issues raised by Complainant and the complaint must be dismissed.

17. For these reasons, the Commission does not have the jurisdiction to grant the relief requested in the complaint that Respondent be required to provide "a fair rate other than the one that is now in existence" and the complaint should be dismissed.

WHEREFORE, Respondent Global Tel*Link Corporation requests that the Commission dismiss the instant complaint for lack of jurisdiction and legal insufficiency and mark this proceeding as closed.

Respectfully submitted,



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Date: January 13, 2009