

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

May 18, 2009

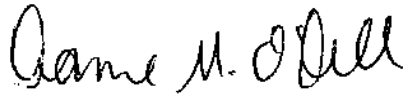
Via Electronic FilingJames McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

On behalf of Global Tel*Link Corporation enclosed for filing please find its original Motion to Dismiss Objection and Compel Answer to Interrogatories and Notice to Plead along with the electronic filing confirmation page with regard to the above-referenced matter. A copy has been served in accordance with the attached Certificate of Service.

Sincerely



Deanne M. O'Dell, Esq.

DMO/lww
Enclosurecc: Hon. Louis Cocheres, w/enc.
Robert Pezzeca, w/enc.

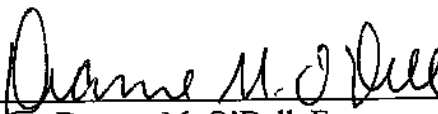
CERTIFICATE OF SERVICE

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

VIA FEDERAL EXPRESS

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

Dated: May 18, 2009



Deanne M. O'Dell, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

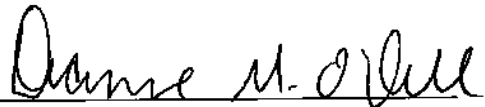
ROBERT PEZZECA #DX-1148 :
Complainant :
 :
v. : Docket No. C-2008-2080471
 :
GLOBAL TEL*LINK CORPORATION :
Respondent :

NOTICE TO PLEAD

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

Pursuant to 52 Pa. Code § 5.342(g)(1) you are hereby notified to file a written response to the enclosed Motion within five (5) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



Deanne M. O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Fl.
PO Box 1248
Harrisburg, PA 17108-1248
717.255.3744

Dated: May 18, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT PEZZECA #DX-1148	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2080471
	:	
GLOBAL TEL*LINK CORPORATION	:	
Respondent	:	

MOTION TO DISMISS OBJECTION
AND COMPEL ANSWER TO INTERROGATORIES
OF GLOBAL TEL*LINK CORPORATION

Pursuant to 52 Pa. Code § 5.342(g), Global Tel*Link Corporation ("Respondent") moves to dismiss the objections and compel answers of Robert Pezzeca ("Complainant") to all the Interrogatories and Requests for Production of Documents, Set I dated April 24, 2009. In support of this motion, 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." Complainants seek "injunctive relief in the form of" allowing "third party long distance providers other than [Respondent]; reimbursement for calls that have been

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."

2. On January 12, 2008, Respondent filed an Answer to the Complaint and Preliminary Objections to the Complaint. Respondent denied the material allegations of the complaint and asserted a lack of subject matter jurisdiction over the majority of the issues raised by the Complainant. Respondent sought dismissal of the complaint. On January 21, 2009, Respondent filed a Motion for Leave to Accept Supplemental Preliminary Objections and Supplemental Preliminary Objections to the Complaint which addressed the impact on this case of a subsequent Commission decision.

3. By Prehearing Order No. 1 dated March 31, 2009, the Presiding Officer granted in part Respondent's Preliminary Objections and dismissed the majority of the complaint. The Presiding Officer did, however, conclude that Complainant's allegations regarding disconnections are within the Commission's jurisdiction and, if proved, could carry Complainant's burden of proof that Respondent rendered inadequate service.¹

4. By pleading dated April 19, 2009, Complainant mailed a Request for Production of Documents to Respondent. On May 4, 2009, Respondent served objections to Complainant regarding two of the seven questions asked. Respondent is currently gathering responses to the remaining five questions and plans to submit them to Complainant on May 14, 2009.

5. On April 24, 2009, Respondent served Complainant with its Interrogatories and Requests for Production of Documents, Set I ("Interrogatories"). In response to the Interrogatories, Complainant filed "Plaintiff's Objections to Respondents Interrogatories Dated April 24th, 2009" which are the subject of this Motion.

¹ Prehearing Order No. 1 at 5.

6. The Interrogatories and Complainant's objections are listed below.

Respondent Request #1: Identify by (a) date, (b) time, and (c) number called, all calls that you allege were improperly disconnected.

Complainant Objection: Plaintiff is unable to answer such a request without the documentation requested.

Respondent Request #2: For each call identified in response to No. 1, please state why you believe each call was improperly disconnected.

Complainant Objection: Information cannot be provided without requested information.

Respondent Request #3: For each call identified in response to No. 1, please state (a) what refund, if any, you are seeking and (b) the underlying calculation you used to determine the amount of any such refund.

Complainant Objection: Information cannot be provided without the requested information from the defendant, Global Tel*Link Corporation.

Respondent Request #4: Identify and produce copies of all documents you intend to produce at hearing to support your complaint.

Complainant Objection: Cannot produce information without the requested information from Global Tel*Link Corporation.

Respondent Request #5: Identify (a) all witnesses you plan to present at the hearing and (b) specifically detail the subject matter of testimony for each identified witness (this includes yourself).

Complainant Objection: At this time this information is unavailable due to the lack of discovery which has been requested from the defendant, Global Tel*Link Corp.

Respondent Request #6: Identify and produce copies of (a) any complaints you submitted with the Department of Corrections regarding telephone service and (b) any written resolution of such complaints. If you do not have copies of such complaints, please provide the information requested in a narrative.

Complainant Objection: All complaints addressed to the institution where the service is being rendered have been ignored, and to retrieve copies of any ignored complaints would be burdensome, and would cause annoyance, oppression, burden and expense. Furthermore, if complaints could be retrieved from Department of Correction officials, they would likely not lead to relevant discovery of admissible evidence.²

² For the sake of completeness, there was a seventh request to which Complainant objected but did answer:

7. The Commission's regulations define the permissible scope of discovery as follows:

[A] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party ...

52 Pa. Code § 5.321(c).

8. The only type of discovery that is not permitted is discovery which is (a) sought in bad faith; (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense; (c) relates to a matter which is privileged; and/or, (d) requires the making of an unreasonable investigation. 52 Pa. Code § 5.361.

9. Respondent's Interrogatories are clearly within the scope of permissible discovery and, therefore, Complainant should be compelled to provide responses.

10. After excising the substantial non-jurisdictional verbiage from the complaint, all that remains are the following allegations regarding inadequate service:

From Para. 10: "Plaintiff asserts that some calls are actually disconnected for any number of reasons simply because the system "thinks" that there is being a violation committed. The Plaintiff again, incurring the cost of the call that must be placed again."

From Para. 11B: "disconnected or interrupted calls on a regular basis."

From Para. 14B: "Reimbursement for calls that have been disconnected and/or interrupted between August 1st, 2007 til [sic] the present date."

11. These allegations do not provide any useful factual information to enable Respondent to sufficiently prepare for a hearing in this matter. Complainant does not provide

Respondent Request #7: Identify and produce copies of (a) any complaints you submitted with Global Tel*Link Corporation regarding telephone service and (b) any written resolution of such complaints. If you do not have copies of such complaints, please provide the information requested in a narrative.
Complainant Objection: The current complaint is the only complaint filed to Global Tel*Link Corporation, and resolution is still pending in regards to the inadequate service.

details about the allegedly improperly disconnected calls to enable Respondent to research why the calls were disconnected. While the complaint does seem to narrow the timeframe from August 1, 2007 forward, there are no specifics of when these alleged “regularly” disconnected or interrupted calls occurred. Moreover, this is an extremely long time period of time. There are 649 days or 92 weeks between August 1, 2007 and May 11, 2009. Even if Complainant only made calls three times a week during this timeframe, that would leave 276 calls that could potentially – in Complainant’s view – have been improperly disconnected. Without responding to the Interrogatories to provide a narrowing of which calls or what timeframe is the subject of the complaint, Complainant leaves Respondent with no choice but to research each and every call that was placed in order to prepare a defense for the hearing. This is an impossible task and places a significant burden on Respondent that the Commission should not sanction.

12. The time to undertake all this research is enormous. Every call made by an inmate is recorded. To research why a certain call was disconnected, Respondent needs to first identify the call by the number called and the date and time of the call. Then Respondent needs to locate the recording of the call and assign personnel to listen to the conversation. That person then needs to transcribe the call and make a detailed record of why the call was disconnected. Respondent estimates that doing this for just one call would take at least a half hour of time. Doing this for 276 calls would equate to approximately 138 hours of time or the equivalent of almost four work weeks at 37.5 hours a week. This would be four weeks of work that an employee of Respondent would have to devote full time to preparing for just this one complaint. As noted in Prehearing Order No. 1, however, this is only one of ten inmate complaints – eight of which are identical and two of which are very similar in terms of this specific allegation.³

³ Prehearing Order at 4.

Requiring Respondent to undertake this type of time intensive research to prepare a defense for a total of 10 complaints (assuming 276 calls for each) would amount to 1,380 hours of time or almost 37 full work weeks spent on nothing else but researching the calls made by each of these ten inmates.

13. Allowing Complainant to force Respondent to undertake such an unreasonable and momentous task by refusing to respond to discovery cannot be permitted. On the contrary, Complainant has the burden of proof in this case⁴ and he must be required to provide some facts to enable Respondent to adequately and reasonably prepare a defense. The Interrogatories requesting details of the calls that Complainant believes were improperly disconnected were not sought in bad faith, nor would they cause unreasonable burden nor do they require an unreasonable investigation by Complainant. Rather, they were designed to enable Respondent to better understand the underlying factual basis for the allegations of the complaint and to adequately prepare a defense. This is the entire purpose of discovery.

14. The civil practice in state court regarding pre-complaint discovery is also instructive here. The Pennsylvania Rules of Civil Procedure envision that discovery may be used to aid in the preparation of a complaint but “under no circumstance should a plaintiff be allowed to embark upon a ‘fishing expedition’.”⁵ To combat use of the pre-complaint discovery process as a “fishing expedition,” Pennsylvania state courts require the plaintiff to present facts to support a reasonable belief that the evidence sought in discovery will support the allegation.⁶

⁴ 66 Pa. C.S. § 332(a).

⁵ *McNeil v. Jordan*, 934 A.2d 739, 742 (Pa.Super. 2007).

⁶ *Cooper v. Frankford Health Care System, Inc.*, 960 A.2d 134, 142 (Pa.Super. 2008).

15. In this case, no facts have been provided in the complaint to enable Respondent to determine the basis for the allegation that calls were improperly disconnected. Therefore, Respondent served Complainant Interrogatories aimed at getting that information. These Interrogatories are well within the Commission's scope of permissible discovery and are necessary to enable Respondent to present a defense to the complaint. In response, Complainant refuses to provide any information and makes clear that he is relying on information from Respondent to make his case. This is a classic example of a fishing expedition which the Presiding Officer must end.

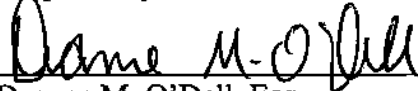
16. Complainant's refusal to provide any factual detail on any level is an abuse of the Commission's formal complaint process by allowing Complainant to "say anything," "not support anything," and force the company to expend time and money in attempting to mount a near-impossible defense. Here, Complainant has not properly plead the facts underlying his claims in his complaint and he refuses respond to reasonable discovery requests seeking to elicit those facts and he is making clear that he plans to use the discovery process to force Respondent to undertake timely, extensive research to prove his case. Such a win-win course of action for complainants will result in a tsunami of complaints on the Commission's docket.

17. If Complainant, with the burden of proof, is unable or unwilling to produce any factual support of any type to show that his allegations have some foundation in reality, then his complaint should be immediately dismissed as he will not be able to meet his burden of proof.

WHEREFORE, Global Tel*Link Corporation respectfully requests that the Presiding Officer issue an order (1) dismissing Plaintiffs' Objections to Respondents Interrogatories Dated April 24th, 2009 and (2) requiring Complainant to file responses. If such responses are not

forthcoming, Global Tel*Link Corporation requests that the Presiding Officer dismiss the complaint for failure to carry the burden of proof.

Respectfully submitted,



Deanne M. O'Dell, Esq.
Eckert, Seamans, Cherin, Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Counsel for:
Global Tel*Link Corporation

Dated: May 18, 2009