

Deanne M. O'Dell
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July 23, 2010

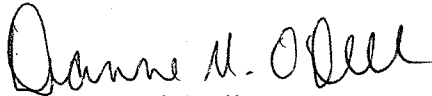
Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of Global Tel*Link Corporation enclosed for filing please find its original Motion to Dismiss Formal Complaint 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. David A. Salapa, w/enc.
Robert Pezzeca, w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

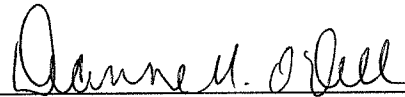
Robert Pezzeca, DX-1148	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2080471
	:	
Global Tel*Link Corporation	:	
Respondent	:	

NOTICE TO PLEAD

To:
Robert Pezzeca, DX-1148
State Correctional Institution Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

Pursuant to 52 Pa. Code § 5.103, you are hereby notified that Global Tel*Link Corporation (“GTL”) has filed a Motion to Dismiss to which you may answer in writing within twenty (20) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Motion without a response from you thereby requiring no other proof.

Respectfully submitted,



Deanne M. O'Dell, Esq.
Attorney ID 81064
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Fl.
PO Box 1248
Harrisburg, PA 17108-1248
717.237.6000

Dated: July 23, 2010

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 THE FORMAL COMPLAINT OF ROBERT PEZZECA

Global Tel* Link Corporation (“GTL” or “Respondent”) by and through its counsel, Eckert Seamans, Cherin & Mellot, LLC, and pursuant to 52 Pa. Code §§5.371-5.372, files this Motion to Dismiss the Formal Complaint of Robert Pezzeca (“Complainant”) based on Complainant’s request and also on his failure to respond to GTL’s Interrogatories, dated April 24, 2009 in violation of the Commission’s regulations and Prehearing Order No. 2 (“PHO #2”), dated June 9, 2010, which granted GTL’s Motion to Compel and ordered Complainant to provide full and complete responses to GTL’s interrogatories within twenty days, or by July 2, 2010. On September 28, 2009, Respondent received from the Office of Administrative Law Judge a copy of a letter from Complainant making clear his intention to withdraw his complaint. To date, the Commission has not closed this matter and Complainant has provided no responses to GTL’s discovery requests, submitted over a year ago. As Complainant has evidenced a desire to withdraw this complaint and has not made any efforts to pursue it by engaging in discovery, GTL respectfully requests that the complaint be dismissed. In support of this motion, GTL represents 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, Administrative Law Judge Louis G. Cocheres granted in part Respondent's Preliminary Objections and dismissed the majority of the complaint. ALJ Cocheres 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. (Prehearing Order No. 1 at 5).

4. By pleading dated April 27, 2009, Complainant mailed a Request for Production of Documents to Respondent. On May 7, 2009, Respondent served objections to two of the

seven questions asked (questions five and six) in Complainant's discovery requests.

Complainant did not file an answer to Respondent's Motion to Compel. On May 20, 2009, Respondent served answers to requests one through four and seven of Complainant's Request for Production of Documents.¹

5. On April 24, 2009, Respondent served Complainant with its Interrogatories and Requests for Production of Documents, Set I ("Interrogatories").² In response to the Interrogatories, Complainant filed "Plaintiff's Objections to Respondents Interrogatories Dated April 24th, 2009" which was dated May 7, 2009. Complainant objected to all seven of GTL's questions and has never provided a response to any of them. On May 18, 2009, GTL filed a Motion to Dismiss Objection and Compel Answers to Interrogatories. Complainant did not file an answer to the Motion.

6. Subsequently, by letter dated September 21, 2009, Complainant notified Administrative Law Judge Cocheres of his desire to withdraw the complaint.³ No subsequent action was taken by the Commission to close this proceeding.

7. By Prehearing Order #2 dated June 9, 2010 ("PHO #2"), Administrative Law Judge David A. Salapa granted GTL's Motion to Dismiss Objection and Compel Answers to Interrogatories and Complainant was ordered to respond to GTL's Interrogatories "within twenty days of receipt of this order." PHO #2 is dated June 9, 2010 on the assumption that it was sent via regular USPS mail and adding an additional three days onto the due date for the "mailbox rule," Complainant's responses were due on July 2, 2010. (PHO #2 at 4).

¹ See Attachment A which is a copy of the Certificate of Service.

² GTL's specific discovery questions as well as Complainant's objections to each are set forth in GTL's May 18, 2009 Motion to Dismiss Objection and Compel Answer to Interrogatories at 3-4.

³ A copy of Complainant's letter as forwarded to counsel from ALJ Cocheres is attached as Attachment B.

8. To date, GTL has received no responses from Complainant to its Interrogatories – issued over a year ago – which is in direct violation of the Commission’s regulations as well as PHO #2 but is consistent with his intent as expressed in his September 21, 2009 letter to withdraw his complaint. *See* 52 Pa. Code § 5.342.

9. The Commission’s Regulations at 52 Pa. Code § 5.371 and § 5.372 address the consequences of a participant’s failure to comply with the Commission’s rules regarding discovery. Section 5.371(a) provides that:

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:
 - (1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

Section 5.372(a)(3) further provides:

- (a) The presiding officer, when acting under § 5.371 (relating to sanctions --general) may make one of the following:

- (3) An order striking out pleading or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient participant or party advising the disobedience.

10. In addition, Section 332(f) of the Public Utility Code, 66 Pa.C.S. § 332(f) provides, in pertinent part:

If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel....

11. The primary source of Complainant’s discontent with his prison phone service concerns calls that were allegedly improperly disconnected or interrupted since August 1, 2007.

However, the complaint does not provide any useful factual information to enable Respondent to sufficiently prepare for a hearing in this matter. Importantly, the complaint does not provide any specific details about which calls were allegedly improperly disconnected nor any details about why or how the call was disconnected. Without this narrowing information, GTL is left with the impossible task of attempting to research each and every call Complainant made since August 2007 to determine whether or not it was improperly disconnected. Because of this, GTL followed the Commission's discovery procedures in an attempt to obtain specific information regarding these alleged interrupted and disconnected calls.

12. While Complainant did object to GTL's Interrogatories he subsequently expressed his desire to withdraw his complaint and PHO #2 requires Complainant to provide responses which Complainant has not done.

13. Complainant's disregard of the Commission's discovery process as well as a direct order from the Administrative Law Judge confirms his intent to have this complaint withdrawn and, in addition, justifies a dismissal of his complaint. 66 Pa. C.S. § 332(f), 52 Pa. Code §§ 5.371(a) and 5.372(a)(3).

WHEREFORE, for the reasons set forth above, and in accordance with the applicable provisions of the Public Utility Code and the Commission's Regulations, GTL respectfully requests that Your Honor issue an Order that dismisses the Formal complaint filed by Robert Pezzeca at Docket No. C-2008-2080471 in its entirety, with prejudice.

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: July 23, 2010

ATTACHMENT A

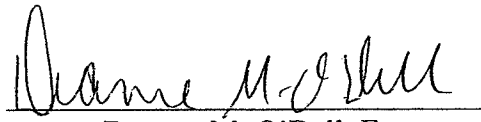
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Global Tel*Link Corporation's Responses to Request to Plaintiff's Request for Production of Documents 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 20, 2009



Deanne M. O'Dell, Esq.

ATTACHMENT B

TO: HON. LOUIS G. COCHERES
FROM: ROBERT PEZZECA #DX1148
SCI HUNTINGDON
1100 PIKE ST
HUNTINGDON, PA 16654

RECEIVED

SEP 28 2009

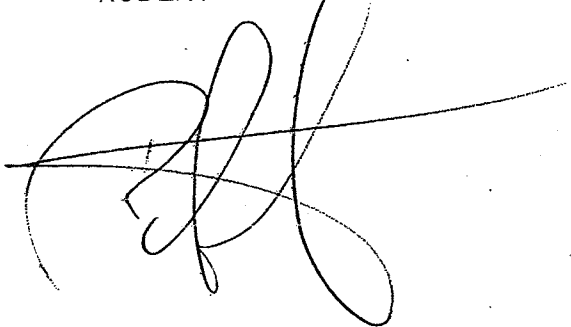
RE: ROBERT PEZZECA V. GLOBAL TEL*LINK, DOCKET NO. C-2008-2080471

DEAR JUDGE COCHERES,

I AM WRITING TO YOU TO INFORM YOU OF MY DILEMMA. THE ABOVE MENTIONED CASE IN WHICH I AM INVOLVED IN, I AM UNABLE TO PURSUE THE MATTER ANY LONGER. DUE TO UNFORESEEN PROBLEMS IT IS IMPOSSIBLE FOR ME TO PROPERLY LITIGATE THIS ISSUE. I AM NOT VERY KNOWLEDGEABLE WHEN IT COMES TO THE LAW, AND THE PRISONER WHO WAS AIDING IN THIS WAS SUDDENLY TRANSFERRED TO ANOTHER PRISON. THERE IS NO POSSIBLE WAY THAT I CAN DO THIS BY MYSELF SO I AM INFORMING YOU THAT I CANNOT GO ON ANY FURTHER WITH THIS. I HAVE NO MONEY TO EVEN THINK OF HIRING AN ATTORNEY AND I HAVE NO HELP INSIDE THE PRISON ITSELF. SO I AM FORCED TO DROP THIS MATTER. THANK YOU FOR YOUR TIME AND HELP AND PATIENCE.

SINCERELY,

ROBERT PEZZECA



PA PUC

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PA PUC

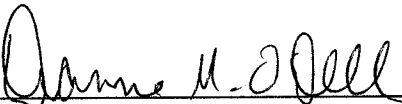
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Global Tel*Link Corporation's Motion to Dismiss the Formal Complaint of Robert Pezzeca 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 Street
Huntingdon, PA 16654-1112

Dated: July 23, 2010



Deanne M. O'Dell, Esq.