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July 23, 2010

Via Electronic Filing

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

Re: Augusto Gonzalez v. Global Tel*Link Corporation, Docket No. C-2008-2080473

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
Enclosure

cc: Hon. David A. Salapa, w/enc.
Augusto Gonzalez, w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Augusto Gonzalez, BX-8259	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2080473
	:	
Global Tel*Link Corporation	:	
Respondent	:	

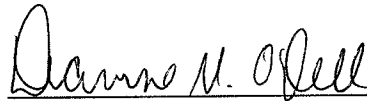
NOTICE TO PLEAD

To:

Augusto Gonzalez, BX-8259
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
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PO Box 1248
Harrisburg, PA 17108-1248
717.237.6000

Dated: July 23, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Augusto Gonzalez, BX-8259	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2080473
	:	
Global Tel*Link Corporation	:	
Respondent	:	

**MOTION TO DISMISS THE FORMAL COMPLAINT OF
AUGUSTO GONZALEZ**

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 Augusto Gonzalez (“Complainant”) for 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 4, 2010, which granted GTL’s Motion to Compel and ordered Complainant to provide full and complete responses to GTL’s interrogatories within ten days, or by June 14, 2010. To date, Complainant has provided no responses to GTL’s discovery requests, submitted over a year ago. As Complainant has evidenced no good faith effort to pursue his complaint by failing to comply with the Commission’s regulations regarding discovery as well as an order from the Administrative Law Judge compelling such compliance, GTL respectfully requests that the complaint be dismissed. In support of this motion, GTL represents as follows:

1. Respondent was served on December 24, 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 13, 2009, 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. By pleading dated January 20, 2009, Complainant filed "Plaintiffs' Response in Opposition to the Defendants Response to the Complaint and/or Any Preliminary Objections" and a Memorandum of Law in support.

3. 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. By pleading dated February 2, 2009, Complainant filed "Plaintiffs' Response to Motion for Leave to Accept Supplemental Preliminary Objections" and "Plaintiffs' Response in Opposition to Defendants' Supplemental Preliminary Objections to Formal Complaint."

4. By Prehearing Order No. 1 dated April 8, 2009, the Presiding Officer granted in part Respondent's Preliminary Objections and dismissed the majority of the complaint. The Presiding Offer 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 services. (Prehearing Order No. 1 at 10.)

5. On April 24, 2009, Respondent served Complainant with its Interrogatories and Requests for Production of Documents, Set I ("Interrogatories").¹ Pursuant to the Commission's Rules of Procedure, responses were due on May 18, 2009. Neither objections nor responses have been received to date.

6. Consequently, on May 21, 2009, Respondent filed a Motion to Compel Answer to Interrogatories and for Sanctions. GTL sought an order directing Complainant to provide full and complete answers to Respondent's discovery dated April 24, 2009 within ten days of the date of the order; and, if Complainant failed to comply, then GTL requested that the Commission dismiss the complaint, with prejudice. Complainant did not file an answer.

7. By Prehearing Order #2 dated June 4, 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 ten days of the date of the order. (PHO #2 at 3). Thus, Complainant's responses were due on June 14, 2010.

8. To date, GTL has received no responses from Complainant to its Interrogatories which were issued over a year ago. Complainant is in direct violation of the Commission's regulations as well as PHO #2. *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:

¹ Copies of Respondent's Interrogatories are attached to GTL's May 21, 2009 Motion to Compel Answer to Interrogatories and for Sanctions.

- (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. Complainant did not object to GTL's Interrogatories and, in fact, PHO #2 requires Complainant to provide responses. Despite this, Complainant has failed to respond to GTL's Interrogatories as ordered.

13. Complainant's flagrant disregard of the Commission's discovery process as well as a direct order from the Administrative Law Judge is "obstructive to the orderly conduct of the proceeding" and, therefore, dismissal of his complaint is appropriate. 66 Pa. C.S. § 332(f), 52 Pa. Code §§ 5.371(a) and 5.372(a)(3).

14. Further, the civil practice in state court regarding pre-complaint discovery is 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'."² 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.³

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 – even though he was ordered to do so – thus making clear

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

³ *Cooper v. Frankford Health Care System, Inc.*, 960 A.2d 134, 142 (Pa.Super. 2008).

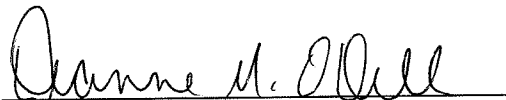
that he is relying on information from Respondent to make his case. This is a classic example of a fishing expedition.

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 Respondent to expend time and money in attempting to prepare a meaningful and responsive 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 even though he has been clearly ordered to do so and given more than sufficient time to respond (well over a year now).

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, 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 Augusto Gonzalez at Docket No. C-2008-2080473 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

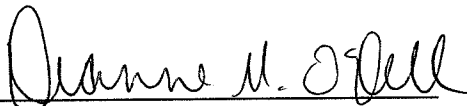
CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Global Tel*Link Corporation's Motion to Dismiss the Formal Complaint of Augusto Gonzalez 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

Augusto Gonzalez, BX-8259
State Correctional Institution Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

Dated: July 23, 2010



Deanne M. O'Dell, Esq.