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October 18, 2013

Via electronic filing.

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Tyrone Gibbs v. Global Tel*Link Corporation
Docket No. C-2013-2358084

Dear Secretary Chiavetta:

Enclosed for filing is the Objections of Global Tel*Link Corporation to Complainant's Motion for Leave to File Subpoenas in the above-referenced matter.

The parties of record and the Presiding Officer have been served as evidenced by the attached Certificate of Service.

Sincerely,



Edward G. Lanza

EGL/imk
Enclosures

c: Per Certificate of Service

CERTIFICATE OF SERVICE

I, Edward G. Lanza, certify that on this date I served true and correct copies of Respondent Global Tel*Link Corporation's Objections to Complainant's Motion for Leave to File Subpoenas on the below-named parties by First-Class Mail, postage prepaid:

Tyrone Gibbs FS7093
P. O. Box 244
Graterford, PA 19426

Hon. Kandace F. Melillo
Administrative Law Judge
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Kevin B. Lefton, Esq.
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12021 Sunset Hill Road, Suite 100
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Edward G. Lanza, Esq.
Attorney for Respondent

Dated: October 18, 2013

**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

Tyrone Gibbs, FS-7093	:	
	:	
v.	:	Docket No. C-2013-2358084
	:	
Global Tel Link Corporation	:	

**OBJECTIONS OF GLOBAL TEL*LINK CORPORATION
TO COMPLAINANT’S MOTION FOR LEAVE
TO FILE SUBPOENAS**

Pursuant to 52 Pa. Code §§ 5.421(f), Respondent Global Tel*Link Corporation (“GTL”) files these Objections to Complainant’s Motion for Leave to File Subpoenas (“Motion”). In support of its Objections, GTL respectfully submits the following.

I. BACKGROUND

On or about March 25, 2013, Complainant Tyrone Gibbs filed a Formal Complaint against GTL alleging service issues with the phone system at the State Correctional Institution at Graterford (“Graterford”), where the Complainant is an inmate. On June 28, 2013, Respondent GTL filed an Answer and New Matter to the Complaint. Since the start of the proceeding, GTL has attempted repeatedly to settle the matter amicably, but all settlement offers have been rejected by the Complainant. In the course of the case, Complainant has requested numerous documents and items of information, and GTL has responded to these discovery requests to the extent allowed and required by the Commission’s rules.

A hearing was originally scheduled for August 8, 2013. At the hearing, GTL again attempted to settle the case without success. The hearing was continued because

the Complainant claimed that he needed additional documents to prepare his case. The Presiding Officer continued the hearing to October 3, 2013. Prior to the hearing, GTL submitted to the Judge and Mr. Gibbs copies of exhibits the Company intended to present at the hearing. These exhibits consisted of document and records that GTL had provided to the Complainant in response to several requests for information. The Complainant failed to comply with the June 13, 2013 Prehearing Order in this matter and submitted no exhibits to the Judge or the Respondent.

At the October 3, 2013 hearing, GTL again tried unsuccessfully to resolve the matter, so the hearing went forward. Mr. Gibbs offered direct testimony in support of his Complaint and GTL called Ms. Kathi Tarkir as its witness.¹ GTL indicated at the time of the hearing that at least one other witness, Mr. Tom Fulton, was available to join the telephonic hearing if he was needed. Mr. Fulton is a Field Service Manager with GTL with knowledge of the GTL system at Graterford. However, Mr. Fulton was not called by Mr. Gibbs as part of his case, and GTL did not intend to call him as part of its presentation of evidence. The hearing was continued before Mr. Gibbs finished his cross-examination of Ms. Tarkir due to unforeseen circumstances at the Graterford facility. The Company made every effort to make available GTL witnesses with knowledge of Mr. Gibbs' claims and the operations of the phone system at Graterford.

On or about October 4, 2013, Complainant prepared a Motion for Leave to File Subpoenas.² In its Motion, Complainant requests that the Presiding Office allow him to

¹ It should be noted that Ms. Tarkir was offered as a witness during the hearing scheduled on August 8, 2013, so it is wrong to say that she was a surprise witness as Mr. Gibbs claims. Motion at 1.

² Counsel cannot confirm when the Motion was served as the Certificate of Service is undated. However, GTL received the filing on October 16, 2013.

formally subpoena witnesses and records he needs to prosecute his claims. Motion at 2. Complainant is seeking subpoenas for Dawn Allen, a phone coordinator at Graterford and a GTL field service representative.³ In addition, Mr. Gibbs is seeking additional records that were not requested before in the course of discovery. The new records sought include transcripts of technical problems at Graterford, recordings of Mr. Gibbs' calls, a listing of job duties for the GTL service rep and a policy for refunds which has already been provided and is part of the evidentiary record in this case. For the reasons set forth below, GTL objects to the Complainants' requests for subpoenas.

II. OBJECTIONS TO SUBPOENA REQUEST

A. The Presiding Officer Has Ruled Against the Complainant's Request for Further Witnesses and Additional Discovery

At the October 3, 2013 hearing in this matter, Complainant attempted to make additional discovery requests and sought to identify additional witnesses for the hearing. Tr. ____.⁴ GTL objected strongly to any additional discovery or witnesses on the grounds that the Complainant has had ample opportunity since the filing of his Complaint in March 2013 to request the information he needed to support his claims. GTL further explained that Mr. Gibbs has taken full advantage of his opportunities to request documents and records from the Company. In July, GTL provided Mr. Gibbs with GTL's contract with the Department of Corrections and a 194-page call log which he requested (GTL Exh. 1). In August, GTL provided a code key for the phone logs and a notice regarding GTL's refund policy (GTL Exh. 2 and 4). In September, pursuant to a

³ As GTL explained at the October 3, 2013 hearing, the phone coordinator at Graterford is not a GTL employee. Tr. ____.

⁴ At the time of the filing of these Objections, counsel for GTL had not received a copy of the hearing transcript in this case.

Discovery Order from the Presiding Officer, GTL provided additional phone records for the Graterford facility (GTL Exh. 3). GTL has endeavored to cooperate with the Complainant to provide the information he requests to the extent possible.

Based on these facts regarding the conduct of discovery in this matter, the Presiding Officer rejected the Complainant's further requests for information and witnesses, which should have been made prior to the hearing. Tr. _____. The Complainant's Motion for Subpoenas is an affront to the Presiding Officer's ruling on the issue, and it should be rejected once again. The Presiding Officer gave careful consideration to the question of whether Mr. Gibbs should be allowed to delay this proceeding further and made the proper ruling to avert further delays and prejudice to Respondent. The Judge was clear that there would be no further document requests or production of records and that no more witnesses needed to be called. This ruling should stand and the Motion should be denied.

The Presiding Officer properly applied the Commission's discovery rules in limiting further discovery. The Commission's regulations provide for discovery in contested matters. 52 Pa. Code § 5.341. Although the Commission generally construes its discovery rules liberally, there are limitations to the type of discovery that is permitted. 52 Pa. Code § 5.361. Section 5.361 limits the scope of discovery and prohibits discovery which would cause an unreasonable burden, expense or investigation by a participant. *City of Pittsburgh v. PUC*, 526 A.2d 1243 (Pa. Cmwlth. 1987); *appeal denied* 538 A.2d 880 (Pa. 1988). In addition, the Presiding Officer in a contested proceeding may prohibit or limit certain kinds of improper discovery. 52 Pa. Code § 5.362. GTL respectfully submits that it is proper for the Presiding Officer to confirm her

ruling limiting further discovery and requests that Her Honor reject the request for subpoenas in this matter. Allowing the Complainant to have additional records and witnesses would cause an unreasonable burden and expense to Respondent, and therefore, the Motion should be rejected.

B. Complainant's Motion for Subpoenas Is Defective and Should Be Denied on Procedural Grounds

Under the Commission's Rules of Practice and Procedure at 52 Pa. Code §5.421(b), an application for subpoenas:

(1) Must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.

(2) Must list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents.

(3) Must contain a notice that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application.

(4) Must include a certificate of service.

52 Pa. Code §5.421(b).

The Complainant's Motion for Subpoenas meets none of the basic requirements set forth in the Commission's regulations. It is evident that the Complainant is quite familiar with the Commission's subpoena rules but has chosen to ignore them. First, the Motion fails to specify the relevance, materiality and scope of the documents sought. There is no explanation of how the documents would be used at the hearing beyond the Complainant's unsupported contention that he seeks to "flesh out a complete factual picture of events." Motion at 2. There is no indication of what the requested records would add to the evidence already admitted into the record. There are more than 200 pages of documents and records that paint a full picture of what has happened with Mr.

Gibbs' phone calls at Graterford in the recent past. Also, there is ample information regarding calls placed by others on the dates and at the times that Mr. Gibbs claims there were issues with the phones at Graterford. Allowing Mr. Gibbs to further delay the proceeding and to place additional unreasonable burdens on GTL, absent basic compliance with the Commission's rules, would be improper and would prejudice the Respondent.

Further, the Complainant fails to list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents. Again, Complainant appears to be grasping at straws and hoping that more document requests will produce something that will support his claims. However, he fails to set forth what facts he is seeking to prove and why he needs the subpoenaed documents to prove those facts. He should not be allowed to further disregard the Commission's rules and prejudice the Respondent in the process.

Lastly, the Complainant's Motion for Subpoenas is technically flawed in that it failed to include a Notice to Plead and a proper Certificate of Service as required by the rules. The Notice to Plead is completely absent from the pleading filed by the Complainant and the Certificate of Service is defective in that it omits outside counsel for GTL and is not dated as required. 52 Pa. Code §1.58. Although these technical deficiencies should not, in and of themselves, be the sole basis for denial of the Motion, they are examples of a pattern indicating the Complainant's failure to abide by the Commission's rules and regulations. Failure to follow the rules should not be rewarded. For these reasons, the Presiding Officer should prohibit the production of the additional records and witnesses requested by the Complainant.

III. CONCLUSION

Based on the foregoing, the Complainant's Motion for Leave to File Subpoenas should be denied and the Presiding Officer should confirm and uphold her prior Order prohibiting further discovery and the call for additional witnesses sought by Complainant in this matter.

Respectfully submitted,



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Date: October 18, 2013

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