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December 12, 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 Global Tel\*Link Corporation's Answer to Complainant's Motion for Reconsideration 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 Answer to Complainant's Motion for Reconsideration 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.  
Senior Counsel  
Global Tel\*Link Corporation  
12021 Sunset Hill Road, Suite 100  
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Edward G. Lanza, Esq.  
Attorney for Respondent

Dated: December 12, 2013

**BEFORE THE  
PENNSYLVANIA UTILITY COMMISSION**

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

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**ANSWER OF GLOBAL TEL\*LINK CORPORATION  
TO COMPLAINANT’S MOTION FOR RECONSIDERATION**

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Pursuant to 52 Pa. Code §§ 5.103(c), 5.301, and 5.572, Respondent Global Tel\*Link Corporation (“GTL”) files this Answer to Complainant’s Motion for Reconsideration of Order Denying Complainant’s Application for Subpoena and Admittance of Evidence (“Motion”). GTL respectfully submits that the Motion should be denied because (a) it is an improper and untimely Petition for Reconsideration, (b) it seeks review of an interlocutory discovery order, which is impermissible under the Commission’s rules, (c) it aims to reverse two prior correct decisions of the Presiding Officer on the same issue with no compelling reasons to do so, and (d) it relies on misstatements of fact and unverified assertions to support the alleged need for more witnesses and records. In support of its Answer, GTL respectfully submits the following.

**I. BACKGROUND**

On October 28, 2013, the Presiding Officer issued an Order properly denying Complainant’s Application for Subpoenas and documents for the telephonic hearing scheduled in this matter for January 8, 2014. The application was denied as untimely and

not sufficiently supported.<sup>1</sup> Now, Complainant is asking that the Presiding Officer grant reconsideration of the October 28, 2013 Order and cause subpoenas to be issued and additional exhibits to be offered as record evidence in the case. For the many reasons set forth below, the request is improper and should be denied.

The basic facts in this matter point to a pattern by Complainant of failing to follow the Commission's rules and the Presiding Officer's directives in the prosecution of his Complaint. Mr. Gibbs filed his Formal Complaint on or about March 25, 2013, and thus, has had approximately nine months to gather and present evidence to support his case. 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. And yet, Complainant continues to claim that he requires additional information and more witnesses to "complete a case in chief."<sup>2</sup> A hearing scheduled for August 8, 2013 was continued because the Complainant claimed the he needed additional documents to prepare his case. Prior to the telephonic hearing of October 3, 2013, Complainant failed to comply with the June 13, 2013 Prehearing Order and submitted no exhibits to the Judge or the Respondent.

At the October 3, 2013 hearing, Mr. Gibbs offered direct testimony in support of his Complaint and GTL called Ms. Kathi Tarkir as its witness. At the time of the hearing, Mr. Gibbs again requested that he be permitted to call additional witnesses and to request additional information, and the Judge properly denied the request.<sup>3</sup> The hearing was continued before Mr. Gibbs finished his cross-examination of Ms. Tarkir due to

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<sup>1</sup> Order at 4-5.

<sup>2</sup> Motion at 3.

<sup>3</sup> Tr. at 115-116.

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. However, Mr. Gibbs insisted on making untimely requests to present additional witnesses and documents.

On or about October 4, 2013, Complainant prepared a Motion for Leave to File Subpoenas. In his Subpoena Motion, Complainant again requested that the Presiding Officer allow him to formally subpoena witnesses and records he needs to prosecute his claims. Responded objected to the request for subpoenas, and the Presiding Officer denied the request. In other words, the Complainant's request for additional witnesses and documents has been denied twice by the Presiding Officer, and the Complainant continues to improperly seek additional information and witnesses.<sup>4</sup> As the Judge correctly pointed out in her October 28, 2013 Order, "this case must have an end."<sup>5</sup> Complainant cannot be allowed to continue in his pattern of disregarding the Presiding Officer's rulings.

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<sup>4</sup> Mr. Gibbs acknowledges that he has been "derelict" in his responsibility to the Commission. Motion at 3.

<sup>5</sup> Order at 4.

## II. ANSWER TO MOTION FOR RECONSIDERATION

### A. Complainant's Motion for Reconsideration Is Improper Under the Commission's Rules and Should Be Rejected.

The Commission's Rules of Practice and Procedure permit the filing of a petition for reconsideration under certain limited circumstances.<sup>6</sup> Section 5.572 of the Commission's rules states, in relevant part, as follows:

(a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) A copy of every petition covered by subsection (a) shall be served upon each party to the proceeding.

(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

52 Pa. Code § 5.572 (emphasis added).

A plain reading of this section of the Commission's rules reveals that petitions for reconsideration are only proper after the Commission has entered a final order in the case.<sup>7</sup> In this matter, the Commission has not acted, as the hearing in this matter has not concluded and the Presiding Officer has not yet issued a decision. A motion for reconsideration at this stage of the proceeding is untimely and improper, and as such, should be denied. The Presiding Officer's Order of October 28, 2013 denying the Complainant's Motion for Subpoenas is an interlocutory order and not subject to the Commission's rules with regard to reconsideration.

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<sup>6</sup> 52 Pa. Code § 5.572.

<sup>7</sup> 52 Pa. Code § 5.572(c).

Even if Complainant's Motion was deemed to be a proper reconsideration petition, the filing fails to meet the established Commission standards for granting reconsideration. Under Commission precedent, where the petitioner fails to raise new or novel arguments not previously considered by the Commission in the petition for reconsideration, the petitions does not meet the established standard to warrant that the Commission reconsider its decision.<sup>8</sup> Here, Mr. Gibbs has not raised any new or novel arguments that the Presiding Officer has not considered. All he has done is offer excuses for his failure to secure discovery and to admit that he has not followed the Commission's rules and orders. He goes on to say that despite this, he should be given yet another chance to present more evidence at the time of the hearing. This is not sufficient to support his Motion. Under well-established Commission precedent, this defective and untimely Motion should be denied.

**B. Complainant's Motion for Reconsideration Seeks an Impermissible Interlocutory Review of a Ruling Made by a Presiding Officer During the Course of Proceedings and Should Be Denied.**

The October 28, 2013 Order denying Complainant's request for subpoenas and further discovery is an interlocutory order – a non-final decree that addresses a question raised in the case, but which does not adjudicate the matter fully on the merits. Under the Commission's rules, an interlocutory order may be reviewed by the Commission if it is presented to the Commission as a material question.<sup>9</sup> The rules governing review of an interlocutory order are very specific and relatively complex. However, it is clear that a

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<sup>8</sup> *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995) (citing, *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982)).

<sup>9</sup> 52 Pa. Code §§ 5.301-5.306.

discovery order such as the October 28, 2013 Order is not subject to interlocutory review unless one or more of the following apply: (1) interlocutory review is ordered by the Commission; (2) interlocutory review is certified by the presiding officer; or (3) the ruling has as its subject matter the deposing of a Commissioner or Commission employee.<sup>10</sup>

In this particular case, the Commission has not ordered review of the Order, the Judge has not certified the question to the Commission, and the ruling does not relate to the deposition of a Commissioner or a Commission employee. The Complainant's Motion for Reconsideration does not meet the basic requirements of the rules to justify a review of the October 28, 2013 Order. In fact, under Section 5.304, review of the October 28, 2013 Order is impermissible, and therefore, the Presiding Officer should deny Mr. Gibbs' Motion to assure compliance with the Commission's rules of practice and procedure.

**C. The Presiding Officer Properly Has Ruled Against the Complainant's Request for Further Witnesses and Additional Discovery and those Rulings Should Stand.**

The Order of October 28, 2013 confirmed and reinforced a prior ruling on October 3, 2013 that the Complainant's request for subpoenas and additional discovery was untimely and that such request should be denied. Nothing in the Complainant's Motion for Reconsideration changes the findings of the Presiding Officer regarding the same issue that has now been raised three times. In her Order, the Presiding Officer explained the importance of following the process and the schedule set forth in the

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<sup>10</sup> 52 Pa. Code § 5.304.

Prehearing Order in this matter. The Complainant's failure to request subpoenas in a timely manner was a significant factor in the ruling denying the issuance of subpoenas. The same problem exists now that existed in October. Mr. Gibbs did not follow the Judge's specific instructions regarding discovery, witnesses and evidence.

In the October 28, 2013 Order, the Judge also explained that the Complainant had failed to set forth "the relevance, materiality, and scope of the documents (or the witnesses) sought, how they would be used, or why they were necessary."<sup>11</sup> Even at this late date, Mr. Gibbs has not met this requirement of the rules, except to say he needs additional witnesses and information to paint a "full picture... instead of a half painted canvas."<sup>12</sup> As the Judge correctly pointed out, the failure to provide the proper justification for the request is prejudicial to the Respondent.

The Presiding Officer has twice before given careful consideration to the question of whether Mr. Gibbs should be allowed to delay this proceeding further and has already made the appropriate 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. These rulings should stand and the Motion should be denied.

**D. Complainant Relies on Misstatements of the Record and Unsupported Assertions to Support His Motion for Reconsideration.**

In his Motion for Reconsideration, Mr. Gibbs attempts to show that he needs additional witnesses and discovery because the witness that GTL presented at the October

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<sup>11</sup> Order at 4.

<sup>12</sup> Motion at 3.

3, 2013 hearing did not shed light on the facts of the case.<sup>13</sup> For instance, Complainant claims that “Ms. Tarkir didn’t know if the phones [at the facility] had ever been serviced, and if so, for what reason.”<sup>14</sup> Complainant does not point to any part of the record or any page of the hearing transcript where Ms. Tarkir made such as statement, so his recollection of the testimony cannot be verified. What is clear and verifiable is that Ms. Tarkir testified that the GTL field representative is responsible for maintaining the equipment at the facility.<sup>15</sup> Nowhere in that portion of her testimony does she say that she does not know if the phones had ever been serviced.

Complainant also asserts that Ms. Tarkir “also didn’t know how many complaints had ever been filed with GTL in reference to the phone system, of if any complaints had ever been filed with GTL concerning the phones.”<sup>16</sup> This is misstatement of the record. The fact is that Ms. Tarkir testifies extensively regarding her roles as a complaint analyst for GTL and stated that she was aware of phone complaints from Graterford, and specifically, complaints from Mr. Gibbs about the phones at the facility.<sup>17</sup> Also, Mr. Gibbs claims that Ms. Tarkir “didn’t seem to know GTL’s own protocol when it came to cell phones.”<sup>18</sup> Again, Mr. Gibbs misstates the facts. Ms. Tarkir testified at length about GTL’s policy of not issuing refunds for disconnected calls made to cell phones.<sup>19</sup> Mr. Gibbs attempts to justify the need for further witnesses and records is not supported by

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<sup>13</sup> Motion at 2.

<sup>14</sup> *Id.* (emphasis in the original).

<sup>15</sup> Tr. at 95.

<sup>16</sup> *Id.* (emphasis in the original).

<sup>17</sup> Tr. at 70-72.

<sup>18</sup> Motion at 2.

<sup>19</sup> Tr. at 73, 74, 88, 92 and 97.

his misstatements of the record and his unverifiable assertions. Ms. Tarkir testified competently and with knowledge about the relevant facts of this case. For these reasons, Complainant's Motion for Reconsideration should be denied.

### III. CONCLUSION

Based on the foregoing, the Complainant's Motion for Reconsideration of Order Denying Complainant's Application for Subpoenas and Admittance of Evidence should be denied and the Presiding Officer should confirm and uphold her prior decisions prohibiting further discovery and the call for additional witnesses sought by Complainant in this matter.

Respectfully submitted,



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