

**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

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

**ANSWER OF GLOBAL TEL*LINK CORPORATION
TO COMPLAINANT’S MOTION FOR OPEN DISCOVERY**

Pursuant to 52 Pa. Code §§ 5.103(c), Respondent Global Tel*Link Corporation (“GTL”) files this Answer to Complainant’s Motion for Open Discovery (“Motion”). GTL respectfully submits that the Motion should be denied because (a) it is untimely, (b) it seeks to reverse three (3) prior correct decisions of the Presiding Officer on the issue of whether additional discovery or documentary evidence should be permitted at this stage of the proceeding with no compelling reasons to do so, and (c) it relies on mischaracterizations of the record unfounded assertions to support the alleged need for more records. In support of its Answer, GTL respectfully submits the following.

I. BACKGROUND

At the October 3, 2013 hearing in this matter, Mr. Gibbs offered direct testimony in support of his Complaint and began his cross-examination of GTL’s witness. At the time of the hearing, Mr. Gibbs requested that he be permitted to call additional witnesses and to request additional information, and the Judge properly denied the request.¹ The hearing was continued before Mr. Gibbs finished his cross-examination of GTL witness Ms. Tarkir due to unforeseen

¹ Tr. at 115-116.

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 again.

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.² The Complainant's request for additional witnesses and documents was denied for a second time by the Presiding Officer, and the Complainant continues to improperly seek additional information and witnesses.³ As the Judge correctly pointed out in her October 28, 2013 Order, "this case must have an end."⁴ Complainant cannot be allowed to continue in his pattern of disregarding the Presiding Officer's rulings.

On December 18, 2013, in response to a Motion for Reconsideration, the Presiding Officer issued an Order requiring GTL to present one additional witness to offer technical evidence at the January 15, 2014 hearing to supplement the evidentiary record. In the same

² October 28, 2013 Order at 4-5.

³ Mr. Gibbs acknowledged that he has been "derelict" in his responsibility to the Commission. Reconsideration Motion at 3.

⁴ Order at 4.

Order, the Presiding Officer to change her prior rulings about subpoenas and additional Complainant exhibits.⁵ A request for the introduction of additional discovery and/or record evidence was denied for a third time by the Judge. Now, Complainant again is asking that the Presiding Officer grant his Motion for Open Discovery and to order the production of additional documentary evidence in the case. For the reasons set forth below, Respondent respectfully submits that the request is improper and the same should be denied.

II. ANSWER TO MOTION FOR OPEN DISCOVERY

A. Complainant's Motion for Open Discovery Should Be Denied as Untimely.

The Motion is the latest example of the Complainant's refusal to accept the Presiding Officer's rulings despite repeated Orders making it clear that no more documents should be allowed on the record. Almost a year has transpired since the filing of the Formal Complaint in this matter, and the Complainant has had ample opportunity to request documents that he could use to support his claims. GTL has provided information requested by Mr. Gibbs in the course of discovery in this matter and submitted exhibits that Mr. Gibbs has used in the prosecution of his case. Despite all the information that has been provided to the Complainant and all the documentary evidence that has been introduced into the record, Mr. Gibbs continues to argue that the Presiding Officer should reverse herself and allow more document to come in at this late stage in the proceeding. This request is untimely and unreasonable and should be rejected.

Mr. Gibbs acknowledges that he had an obligation to engage in discovery as early in the proceeding as possible, but failed to do so.⁶ He correctly cites Section 5.331(b) of the Commission's regulations, which states,

⁵ December 18, 2013 Order at 4.

⁶ *See*, Motion at 2

A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.⁷

The Complainant has had ample opportunity to obtain records from GTL to bolster his case and has failed to take full advantage of his opportunity. 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. Now, he wants a document that relates to “complaints & problems with, and the maintenance of, the phone system dating back to January 2010.”⁸ Since his Complaint deals with allegations of issues with the phone system at SCI Graterford, it stands to reason that Mr. Gibbs would have requested any such records shortly after filing his Complaint. He failed to request relevant documents or present relevant exhibits when he had an opportunity, and it is too late now to attempt to correct this glaring oversight. His Motion seeks to extend discovery beyond any reasonable time frame and, as such, should be denied as untimely.

B. The Presiding Officers Prior Rulings on Whether Additional Records Should Be Produced Are Correct and Should Not Be Reversed.

The December 18, 2013 Order is consistent with the Order of October 28, 2013 which 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 Open Discovery changes the findings of the Presiding Officer regarding the same issue that has now been raised four times. In her Orders, the

⁷ 52 Pa. Code §5.331(b).

⁸ Motion at 2.

Presiding Officer explained the importance of following the process and the schedule set forth in the Prehearing Order in this matter. The Complainant's failure to request subpoenas, discovery and evidentiary records in a timely manner was a significant factor in the Presiding Officer's prior rulings denying the issuance of subpoenas or records. The same problem exists now that existed in October and December. Mr. Gibbs did not follow the Judge's specific instructions regarding discovery, witnesses, exhibits and evidence.

In his latest Motion, Mr. Gibbs argues that he should be allowed to have and introduce records that were referenced by GTL witness Mr. Fulton at the January 15, 2014 hearing. The document that Mr. Gibbs seeks to have introduced at this late stage in the proceeding is the type of document that should have been sought in the course of discovery and should have been submitted as a proposed exhibit prior to the commencement of hearings in the case. The Complainant has not exercised the type of diligence that is expected by the Commission's regulations and the Presiding Officer's prehearing order in this matter. The failure of Mr. Gibbs to follow the correct process for acquiring and introducing evidence to support his case should not be rewarded by granting his Motion for Open Discovery.

The Presiding Officer has repeatedly given careful consideration to the question of whether Mr. Gibbs should be allowed to delay this proceeding further by requesting more records, and she 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. These rulings should stand and the Motion should be denied.

C. Complainant Relies on Misstatements of the Record and Unfounded Assertions to Support His Motion for Open Discovery.

In his latest Motion, Mr. Gibbs attempts to argue that he needs additional witnesses and discovery because GTL witness Mr. Fulton referred to a document that he believes would help

his case.⁹ The document is described by Mr. Gibbs as a lengthy ledger that allegedly documents all complaint, problems and maintenance related to the phone systems at Graterford. Setting aside the fact that this is Mr. Gibbs' own characterization of the document (and not necessarily an accurate one), he goes on to say that Mr. Fulton gave "cursory answers" to his questions, but fails to cite any instance on the records where such cursory answers can be found.¹⁰ He also claims that Mr. Fulton's testimony was "totally contradictory," but again fails to point out where in the records this contradictory testimony can be found.¹¹ Complainant does not point to any part of the record or any page of the hearing transcript where Mr. Fulton gave cursory answers or offered contradictory testimony, so it is impossible for Respondent to address these alleged inconsistencies. Mr. Gibbs' attempts to justify the need for further records and evidence is not supported by his misstatements of the record and his unverifiable assertions. To the extent that Mr. Gibbs' Motion is based on these alleged issues with Mr. Fulton's testimony, the Motion is unsupported and should be denied.

⁹ Motion at 2-3.

¹⁰ Motion at 3

¹¹ *Id.*

III. CONCLUSION

Based on the foregoing, the Complainant's Motion for Open Discovery should be denied and the Presiding Officer should confirm and uphold her prior decisions prohibiting further discovery and the introduction of additional record evidence sought by Complainant in this matter.

Respectfully submitted,



Edward G. Lanza, Esq.
The Lanza Firm, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696
ed@lanzafirm.com

Counsel:

Kevin B. Lefton, Esq.
Senior Counsel
Global Tel*Link Corporation
12021 Sunset Hills Road, Suite 100
Reston, VA 20190
(703) 439-1673
kevin.lefton@gtl.net

Date: March 3, 2014

Counsel for Global Tel*Link Corporation

CERTIFICATE OF SERVICE

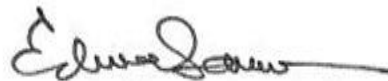
I hereby certify that this day I served a copy of the attached document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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

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

Kevin B. Lefton, Esq.
Senior Counsel & Compliance Officer
Global Tel*Link Corporation
12021 Sunset Hill Road, Suite 100
Reston, VA 20190



Date: March 3, 2014

Edward G. Lanza, Esq.