

July 26, 2014

Tyrone Gibbs
P.O. Box 244
Graterford PA 19426

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

Re: Tyrone Gibbs v Global Tel Inc
Docket No. C-2013-2358084

Dear Secretary Chiavetta,

Enclosed for filing is the Memorandum of Law from Complainant in the above captioned matter.

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

Sincerely,



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July 20, 2014

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

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

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MEMORANDUM

Dear Judge Melillo,

According to the rules that govern, the Complainant has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v Bell Telephone Co of Pa, 72 Pa PUC 196(1990) Feinstein v Phila Suburban Water Co, 50 Pa PUC 300(1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J Lansberry, Inc v Pa PUC, 578 A2d 600 (Pa Cmwith 1990), alloc denied, 602 A2d 863(Pa 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v Marquies, 70 A2d 854(Pa 1950). Here, Mr Gibbs alleges that the Respondent improperly terminated or dropped some of his telephone calls, providing him with inadequate and unreasonable service. In this case, via testimony of witnesses, have these initial burdens been met. Albeit through much prodding, the Respondents finally did admit that there was a significant problem within their phone system, and that they had took steps during the calender year of 2014 to fix it. (N T 6/27/14)

The statue at 66 Pa C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 PA C.S. §1501, the Commission has the original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v Bell Telephone Co, 372 A2d. 1203 (Pa Super 1977) aff'd 420 A2d. 371 (Pa 1977); Behrend v Bell Telephone Co, 243 A2d. 346 (Pa 1968). As a general proposition, neither the Public Utility Code nor the Commissions regulations require public utilities to provide

constantly flawless service. The Public Utility Code at 66 Pa.C.S. §1501 does not require perfect service but does require public utilities to provide reasonable and adequate service. Analytical Laboratory Service, Inc v Metropolitan Edison Co, Docket No. C-2006608 (Order entered Dec 21, 2007); Emerald Art Glass v Duquesne Light Co, Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co, 80 Pa. PUC 662 (1993). Unfortunately for Mr Gibbs, overall reasonable and adequate service was but a distant mirage.

In the controlling case Fegley v Verizon Select Services, Inc, Docket No C-20043621, (Order entered April 24, 2006) (Fegley), the Commission determined that a complaint alleging that the telecommunications carrier wrongly terminated a telephone call between an inmate and an outside party must present evidence regarding three(3) elements in order to establish a prima facie case. First, a complainant must present evidence that the inmate connected a call between the prison and a pre-approved number. Second, a complainant must present evidence that the call was disconnected for no reason that was cause by the inmates use of the telephone. Third, a complainant must show that the recipient of the telephone call had no custom calling features, such as three way calling or call waiting and that the recipient's telephone is not a portable or cellular one.

Here, Mr Gibbs easily meets his burden in the first two prongs set in Fegley's standard. But upon reviewing the third prong, his case unfairly stalls. While Mr Gibbs has no intention of questioning the rational of Fegley's authors, he does pray that your Honor see the necessity and merit in using her discretion in modifying its standard. It's probable that Fegley's authors, at that time, were not confronted with the unique set of circumstances that this case brings. As of now, Fegley's authors have set a standard beneficial for the telecommunication entities that's higher than these same entities set for themselves.

Under Fegley, a complainant must show that "...the recipients telephone is not a portable or cellular one". This in itself sets an unfair precedent. One that the phone carriers themselves dared not set. This is because even they realized that there are instances where a cell phone cuts off through no fault of the customer (GTL policy, DOC policy Exhibit(s)4,5). As we heard from testimony elicited by GTL witness Tom

Fulton, there existed a major system problem, which occurred with extreme regularity, that affected landlines and cell phones alike. So to arbitrarily discount or ignore this fact actually undermines the very core values that this Commission was founded under; fairness, impartiality, and integrity. And for these reasons set forth does Mr Gibbs ask your Honor to modify or overrule Fegley and allow prima facie to be established and his case be allowed to move forward and be held to the next set of standards necessary for establishment of merit in his claims against GTL.

Once prima facie has been established, the burden of going forward shifts to the telecommunications carrier. The carrier must present evidence that its system disconnected the call for a legitimate reason. If the telecommunications carrier presents evidence to explain the disconnection, the burden of going forward would shift to the complainant. In that event, the complainant would have to produce evidence that discredits the reason offered by the telecommunications carrier. Once again, Tom Fulton's testimony, in conjunction with the testimony of Kathy Tarkir and Dawn Allen, solidifies Mr Gibbs' contention that GTL, and not him, was at fault for the problems he regularly incurred with the phones.

Under the doctrine of Respondent Superior, when an employer, dubbed "master", is acting through the facility of an employee or agent, dubbed "servant", and liability is incurred due to some fault of the agent, then the employer or "master" must accept the responsibility. Implicit in this is the common law notion that a duty rest upon every man to conduct his affairs so as not to injure another, whether or not in the management of his affairs he employs agents or servants. See 143 P. 2d 554, 556. This doctrine is civil in its application. See 9 N.W. 2d 518, 521.

Whether or not this PJC is governed by these principals isn't the point Mr Gibbs wishes to stress. Instead, he merely wants to point out the parallels between this law and the actions of Ms Kathy Tarkir, Ms Dawn Allen, and Mr Tom Fulton. Each of these individuals, as employees/agents of GTL had a responsibility to fully understand the rules of their jobs and then carry them out. But, because of each of their misinterpretation of their own company policy, and DOC ADM818 policy, this was impossible, and thus helped facilitate the injustice perpetuated against Mr Gibbs

and others.

When initially questioned, each one of these witnesses stated their understanding of company policy concerning cell phones; No refunds, no exceptions. And each one was initially adamant about how their performance of their job was based upon this understanding (N T 10/3/13, 3/20/14/ 6/17/14). It was only after cross examinations that these same witnesses vacillated stances and then crafted new answers to fit actual company policy terms, which state that there are exceptions to the no refunds for cell phones statute.

When given two sets of answers to one question, one is left wondering which answer to believe. In these type scenario's, the most forward thinking remedy would be to look for context clues, like what position does all of the other evidence lend credence too? Of the 5 different Discrepancy Forms Mr Gibbs submitted as evidence (Exhibit A) on three (3) of them Ms Allen offers the reason for denial of refund as being purely because Complainant called a cell phone. And of the remaining 2 Discrepancy Forms, one was forwarded to Mr Fulton (9/17/13 Discrep), only to be denied by him. And this denial was in spite of the fact that Mr Fulton had a "record of the whole system experiencing problems that day, and despite the fact that he did issue refunds to other callers that day who were on the phones at the same time as Mr Gibbs but were using landlines (N T 10/3/13, 3/20/14). So, even though it was abundantly clear that it was their phone system that failed, Mr Fulton ignored this, and instead went with what he had interpreted as company policy... No refunds for cell phones, period. Modus Operandi. Business as usual.

After this point, the Commission must determine whether the call was disconnected because of faulty equipment. If the Commission decides that the call was not disconnected through the fault of the complainant, a refund is limited to the cost of the connection fee. The Commission has the discretion to determine whether the telephone service was so faulty as to require the imposition of a penalty. The Commission has previously ruled that, where the inmate can prove the security system on the inmate phone system improperly disconnected a call, the inmate was entitled to a refund and that the utility may be penalized for providing inadequate and/or unreasonable service. Yount et al v T-Netix, Inc and T-Netix Telecommunications, Inc, Docket No. C-20042655 (Order entered May 2, 2008)

and Franks v T-Netix, Inc and T-Netix Telecommunications, Inc Docket No. C-20030123 (Order entered April 25, 2006).

Here, Complainant offers that he has proven beyond a shadow of a doubt that the faulty equipment of GTL was the culprit in the disconnections. Although Mr Tom Fulton initially said that, "He wouldn't call the problems in jail[phones] chronic, and that, "in 5 years he was only aware of a cut-off problem on September 17, 2013", at a later hearing (6/27/14) he conceded that there was an ongoing problem, which had only been discovered in 2014 and remedied on March 21, 2014 (N.T. 6/27/14). And again, although when questioned about how long the problem existed, Mr Fulton said he thinks since around late 2013, his own records show otherwise. When Mr Lanza questioned Mr Fulton about a Trouble Ticket entry four years earlier, on 12/23/10 (Exhibit 6, entry 775619), the explanation offered pointed to the exact same problem (N.T. 6/27/14). This gives us a frame of reference to begin at. For the exact same system that was operating on 12/23/10 was the exact same system that was repaired on March 21, 2014.

This all shows that the problem long existed and was perpetual. There was no evidence which pointed to the contrary.

Also, from Mr Fulton's explanation of what caused the problem within their phone system, another point must be noted; Because the phone system would shut down when too many people were using them at the same time, we can conclude that this problem was not based on the dates of calls, but instead based on the volume of calls. Meaning that not only could it, and did it occur on holidays and Tuesdays (The day DOC credits inmate accounts N T 6/27/14), but it also happened on Sundays, Mondays, Wednesdays, Thursdays, Fridays, and Saturdays. Any time that luck would have alot of people wanting to reach out to their families, would we experience this crap.

Lastly, and maybe most significantly, were the days leading up until March 21, 2014, which is when the phone system was finally fixed (N.T. 6/27/14). According to Mr Fulton's testimony of 6/27/14, on March 3, 2014, and then again on March 19, 2014, a mere two days before the system was fixed, Trouble Tickets were again opened because of complaints of dropped calls. What's to be noted is that neither of these days are a holiday, nor Tuesday (Monday, Wednesday). Also, in absence of

more discrepancy forms submitted by Mr Gibbs, which could've provided a 'receipt' for each prepaid phone call, these instances prove invaluable. They reinforce Mr Gibbs' claim of a perpetual problem with the phone system, and not just a 'few' isolated incidents of dropped calls. And only because there was no other phones I could've used, nor was there ever any sign posted telling us to "use phones at own risk" or signs alerting us that there was a problem, did I continually, day after day, call after call, patronize GTL's phone system. I would like to be reimbursed for the monies lost because of the malfeasance of GTL and their employees, and I ask that they be penalized so as to deter them from repeating these infractions in the future.

Respectfully
Tyrone Gibbs

CERTIFICATE OF SERVICE

I, Tyrone Gibbs, certify that on this date I served true and correct copies of Complainants Memorandum of Law on the below named parties by First Class Mail, postage prepaid.

Hon. Kandace F. Melillo
Administrative Law Judge
PA Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17195-3265

Edward Lanza, Esquire
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Harrisburg, PA 17106

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PA Public Utility Commission
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