

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyrone Gibbs FS7093	:	
	:	
v.	:	Docket No. C-2013-2358084
	:	
Global Tel* Link Corporation	:	

**MAIN BRIEF OF RESPONDENT
GLOBAL TEL*LINK CORPORATION**

Kevin B. Lefton, Esq.
Senior Counsel
GLOBAL TEL*LINK CORPORATION
12021 Sunset Hills Rd., Suite 100
Reston, VA 20190

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

Date: August 13, 2014

Counsel for Respondent
Global Tel*Link Corporation

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	1
III. PROCEDURAL HISTORY	3
IV. LEGAL ARGUMENT	4
A. COMPLAINANT FAILED TO MEET HIS BURDEN OF PROOF	4
B. COMPLAINANT FAILED TO ESTABLISH A PRIMA FACIE CASE.....	6
C. COMPLAINANT IS NOT ENTITLED TO THE RELIEF HE SEEKS	13
D. THE FORMAL COMPLAINT MUST BE DENIED.....	18
V. CONCLUSION	19

TABLE OF AUTHORITIES

Cases

Edan Transportation Corp. v. Pa. PUC, 623 A.2d 6 (Pa. Cmwlth. 1993)..... 5

Elkin v. Bell Tel. Co. of Pa., 420 A.2d 371 (Pa. 1980)..... 15

Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. 1960)..... 5

Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977)..... 15

Groch v. Unemployment Comp. Bd. of Review, 472 A.2d 286 (Pa. Cmwlth. 1984) 20

Mill v. Pa. PUC, 447 A.2d 1100 (Pa. Cmwlth. 1982) 5

Norfolk and Western Ry. v. Pa. PUC, 413 A.2d 1037 (Pa. 1980);..... 5

Ostrov v. I.F.T., Inc., 586 A.2d 409 (Pa. Super. 1991)..... 15

Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)..... 19

Poorbaugh v. PUC, 666 A.2d 744 (Pa. Cmwlth. 1995). 15

Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990)..... 4

Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950)..... 4

Terminato v. Pa. National Insurance Co., 645 A.2d 1287 (Pa. 1994) 15

Vann v. Unemployment Comp. Bd. of Review, 494 A.2d 1081 (Pa. 1985)..... 20

Statutes

66 Pa. C.S. § 332..... 4

66 Pa. C.S. § 1312(a) 15

66 Pa. C.S. § 3018..... 15

66 Pa. C.S. § 3314..... 15

Other Authorities

Daskalakis v. Verizon PA, Inc., Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042, (Order issued Apr. 4, 2011)..... 13

Davis v. GTL, Docket No. C-2013-2395438 (Initial Decision, ALJ Salapa, June 19, 2014). 17

Fegley v. Verizon Select Services, Inc., Docket No. C-20043621, (Order issued Apr. 24, 2006).. 6

Griffith v. GTL, Docket No. C-2008-2081244, 2011 Pa. PUC LEXIS 1861 (Initial Decision, ALJ Salapa, May 5, 2011)..... 5, 18

Joint Application of PCS and GTL, Docket Nos. A-2010-2194392 and A-2010-2194393 (Order issued Oct. 21, 2010)..... 3

Smolsky v. GTL., Docket No. C-20078119, 2009 Pa. PUC LEXIS 455 (Order issued Jan. 15, 2009)..... 15

Yoo v. PGW, Docket No. C-2013-2369915, 2014 Pa. PUC LEXIS 257 (Initial Decision, ALJ Guhl, Apr. 7, 2014) 15

Regulations

52 Pa. Code § 5.101 1

I. INTRODUCTION

Pursuant to Section 5.101 of the regulations of the Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101 and in accordance with the Briefing Order of Administrative Law Judge Kandace F. Melillo (“ALJ” or “Presiding Officer”) issued on July 30, 2014, Respondent Global Tel*Link Corporation (“GTL” or “Respondent”) hereby submits its Main Brief in the above-captioned proceeding.

Respondent respectfully submits that the Formal Complaint in this matter must be dismissed and the relief requested by the Complainant denied. The Complaint fails to identify a statute, regulation or order of the Commission that the Respondent has violated. In addition, the Complainant has failed to satisfy his burden of proof and has neglected to put forth a *prima facie* case against Respondent such that the Commission would be able to grant him any relief. Lastly, the relief requested by the Complainant must be denied because he has failed to prove his case, he asks for a damage award which the Commission is powerless to grant, and relief is barred, at least in part, by the applicable statute of limitations. For the reasons set forth in more detail below, the Commission must dismiss the subject Complaint.

II. FACTUAL BACKGROUND

Complainant is an inmate at the State Correctional Institution at Graterford, where he has been incarcerated since 2007. TR 103 (6/27/14). At Graterford, Mr. Gibbs enjoys phone privileges and makes multiple calls daily to numbers on a pre-approved list. TR 106-107 (6/27/14). Each time Mr. Gibbs makes a local phone call, \$1.60 is deducted from his debit account at the prison. TR 104 (6/27/14). In the course of 60 months, Mr. Gibbs made thousands of calls and spent some \$5,000. TR 55, GTL Exh. 1. In 2013, Complainant filed six (6) discrepancy forms with the phone coordinator at Graterford claiming that calls were

disconnected and requesting a refund. Gibbs Exh. A(1) – A(6). At the time Mr. Gibbs submitted his discrepancy forms, his requests for refunds were denied. TR 45-46.

GTL is a Commission-licensed interexchange carrier that provides phone service to Graterford under a contract with the DOC.¹ TR 48. GTL serves approximately 4,000 inmates at Graterford and handles an average of 100,000 call per month at the facility. TR 245, 250. When an inmate submits a discrepancy form regarding GTL’s phone service at Graterford, the document is handled by a phone coordinator at the facility, who is a subcontractor to GTL. TR 25, 147. Phone coordinators do not have authority to issue refunds; refund authority rests with GTL. TR 238. If the phone coordinator is unable to ascertain the source of an issue reported in a discrepancy form, a trouble ticket is created and GTL reviews the refund request. TR 239. Discrepancies are investigated and GTL will issue credits to inmates if it is warranted. TR 207. GTL personnel rely on a DOC policy that denies refunds for calls to cell phones to determine whether a refund should be issued. TR 241. There are exceptions to the DOC policy based on GTL’s judgment. TR 59 (6/27/14).

Mr. Gibbs was issued a credit for a disconnected call on September 17, 2013. TR 97 (6/27/14). The credit was issued even though GTL could not confirm that a system issue caused the alleged disconnection. TR 231. In addition, GTL has taken steps to reduce the likelihood of dropped calls in the future. TR 30 (6/27/14).

¹ “GTL is authorized to provide interexchange toll reseller telecommunications services pursuant to an Order issued on August 16, 1994 at Docket No. A-310152. On December 8, 2009, the Commission approved GTL’s request to detariff.” *Joint Application of PCS and GTL*, Docket Nos. A-2010-2194392 and A-2010-2194393 (Order issued October 21, 2010) at 3.

III. PROCEDURAL HISTORY

On or about April 1, 2013, Tyrone Gibbs (“Complainant”) filed a Formal Complaint with the Commission alleging that there was a reliability, safety or quality problem with the telephone service provided by GTL at the State Correctional Institution at Graterford (“Graterford”). Complainant claims that GTL employs practices designed to maliciously extract funds from inmates at Graterford, and that the company neglects to fix technical glitches with the inmate telephone system at the institution. Mr. Gibbs also complains that GTL refuses to issue refunds when calls are disconnected. Complainant seeks Commission review of GTL’s billing methods, a fix to the glitches and a refund of all monies lost.

On or about June 28, 2013, Respondent filed an Answer and New Matter denying the substantive allegations in the Complaint and asking that the same be dismissed. Complainant filed an Answer to Respondent’s New Matter on or about July 23, 2013. The parties engaged in discovery and GTL provided documentation requested by Mr. Gibbs. Respondent objected to certain discovery requests, and the disputes were resolved by the Presiding Officer.

The parties participated in evidentiary hearings where testimony was taken and hearing exhibits were duly admitted into the record. Telephonic hearings were held on October 3, 2013, January 15, 2014, June 17, 2014 and June 27, 2014. Mr. Gibbs proceeded *pro se*, testified on his own behalf and offered seven (7) documents as Gibbs Exhibits A(1) – A(6) and Gibbs Exhibit B. Complainant’s Exhibits A(1) to A(6) are discrepancy forms and Exhibit B is a ledger of phone coordinator responses to the discrepancies. GTL offered eight (8) exhibits which were marked as GLT Exhibits 1 through 8. GTL’s exhibits consisted of the following: (1) Mr. Gibbs’ inmate call log, (2) a code key for the call log, (3) a call query report for certain dates requested by Mr. Gibbs, (4) GTL’s refund policy, (5) Policy DOC-ADM-818 from the Pennsylvania Department

of Corrections (“DOC”), (6) a trouble ticket report, (7) a letter from GTL counsel explaining Exh. 6, and (8) an expanded trouble ticket report with details regarding the issues addressed by GTL’s technicians. At the conclusion of the hearings, the Presiding Officer ordered the parties to file a Memorandum of Law or Brief in support of their respective positions.

IV. LEGAL ARGUMENT

The Commission must deny or dismiss Mr. Gibbs’ Formal Complaint because he has not met the applicable burden of proof, he has failed to present a *prima facie* case, and he is not entitled to the relief he seeks. To the extent that he sought legitimate relief, in the form of justified refunds and improvements to the phone system at Graterford, the same has been granted, and therefore, his demands are moot.

A. COMPLAINANT FAILED TO MEET HIS BURDEN OF PROOF

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a). The burden of proof in a Formal Complaint proceeding is on the Complainant. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993). More information is required than a mere trace of evidence or a suspicion of the existence of a fact

sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The Complainant has the burden of proof to establish by a preponderance of the evidence that the Respondent violated the Public Utility Code or Commission regulations. *Griffith v. GTL*, Docket No. C-2008-2081244, 2011 Pa. PUC LEXIS 1861 (Initial Decision, ALJ Salapa, May 5, 2011). Also, the Complainant has the burden to establish by a preponderance of the evidence the amount that the Respondent has improperly billed him. *Id.* Where the Complainant's statements regarding how much he paid for telephone service or how much the Respondent improperly billed him are inadequate, the Complaint must be dismissed. *Id.*

In his Complaint, the Complainant makes a general statement that there is a “reliability, safety or quality problem” with his service. Complaint at ¶ 4.A. He goes on to claim that GTL “maliciously extract[s] funds” from the Complainant and that GTL commits a “blatant crime” when it fails to fix “glitches.” Complaint at ¶ 4.B. Mr. Gibbs claims that “[t]he phones *always* cut off in mid conversation” and that the coordinator at the Graterford facility denies him refunds for pre-paid calls. *Id.* (emphasis added). Nowhere in his Complaint does Mr. Gibbs point to a single statute, regulation or order of the Commission that GTL has violated. In the course of lengthy testimony over four (4) days of hearing, Mr. Gibbs again failed to point to a single instance where, either by an act or omission, GTL has violated the Public Utility Code or any Commission regulation or order. The failure of the Complainant to meet his burden of proof requires that his Complaint be dismissed.

The evidence presented by Complainant regarding how much he paid for service and how much he was improperly billed is, likewise, incomplete and inadequate. Mr. Gibbs testified that he pays \$1.60 for every call he makes, and sometimes more depending on whom he calls. TR 57. He estimates that he has spent some \$5,000 in the course of the last five years.² However, he fails to provide adequate evidence of the amount he was improperly billed. Instead he makes what can only be characterized as a “guesstimate” and claims that 10% of his calls are improperly terminated. At hearing, he testified that, “[p]hones arbitrarily hang up, shut off everybody on them 10% of the time.” TR 58. Later he concedes that he has not used any record evidence to reach his conclusion, but has relied on calendars he keeps, which he conveniently failed to produce at the hearing. TR 121 (6/27/14). This baseless speculation cannot be accepted as adequate evidence of improper billings and cannot be said to suffice to meet the burden of proof in this matter.

B. COMPLAINT FAILED TO ESTABLISH A PRIMA FACIE CASE

A complainant alleging that a telecommunications carrier wrongly terminated a telephone call between an inmate and an outside party must present evidence regarding three elements in order to establish a prima facie case. A complainant must (a) present evidence that the inmate connected a call between the prison and a pre-approved number, (b) present evidence that the call was disconnected for no reason that was caused by the inmate’s use of the telephone, and (c) 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. *Fegley v. Verizon Select Services, Inc.*, Docket No. C-20043621, (Order issued April 24, 2006). As

² As discussed in more detail below, the \$5,000 figure is inappropriate for purposes of determining how much Mr. Gibbs was improperly billed because it is based on five-year’s worth of calls, and the three-year statute of limitations applies to this complaint proceeding. *See*, 66 Pa. C.S. §3314.

explained in greater detail below, the Complainant may be able to show that he connected a call between himself and a pre-approved number. Also, in some instances, he may be able to show that a particular call ended before a full 15 minutes expired, and that the call was terminated through no fault of his own. However, the record clearly establishes that all the disconnected calls he complains about either lasted the full 15 minutes or they were placed to cell phone numbers outside the prison. Because Mr. Gibbs has failed to produce evidence to satisfy all three element enumerated in the *Fegley* case, the Commission must conclude that he has not established a prima facie case that entitles him to any relief.

In support of his Complaint, Mr. Gibbs presented evidence regarding what he believed were instances in which he experienced premature disconnections or dropped calls. The Complainant chose four (4) “random discrepancies” which he filed in February, March and July of 2013 to illustrate what he claims is a pattern of unreliable service. TR 47. Complainant offered into evidence Exhibits A(1) through A(4) which are Telephone Discrepancy Forms he submitted to the phone coordinator at the Graterford facility for issues allegedly experienced on February 5, 2013, February 26, 2013, March 16, 2013 and July 16, 2013. He also offered Exhibits A(5) and A(6), both of which relate to an incident on September 17, 2013, which will be discussed further below. *See*, Gibbs Exhibits A(1) to A(6).

With regard to Exhibit A(1) and the call on February 5, 2013, the Complainant failed to show that GTL was responsible for the alleged disconnection. The discrepancy form relating to this incident states that “at 8:00 p.m. all phones simultaneously said ‘good-bye’ and hung up.” Exh. A(1) (emphasis in the original). Mr. Gibbs stated that about 8:06 p.m. on February 5, 2013, all phones at the facility disconnected simultaneously. TR 61-62. Mr. Gibbs’ call log shows that Mr. Gibbs made a number of calls on the evening of February 5th. GTL Exh. 1, p. 30. He

completed a 758-second call to (215) 385-6939 which started at 7:31 p.m.; he completed a 765-second call to the same number which began at 7:46 p.m.; and he completed a call lasting 573 seconds beginning at 8:06 p.m., again to the same phone number.³ There is no indication on the call log that there were any technical problems that caused a premature termination of the call. TR 81. The call appears to have been terminated by mutual hang-up, both parties hung up. *Id.* Mr. Fulton was not made aware of any issues with calls terminating prematurely on February 5, 2013. TR 147. He reviewed GTL's ticket logs and there is nothing that indicates there was a problem on that particular day. TR 148; GTL Exh. 6. Tom Fulton also listened to the recording of the call and concluded that no refund was justified because Mr. Gibbs clearly said "good-bye" at the end of the 10-minute call. TR 165.⁴ There is no evidence, other than the Complainant's unsupported allegations, that GTL was responsible for a simultaneous disconnection of all phones at Graterford on February 5, 2013.

Evidence that Mr. Gibbs attempted to introduce to prove his claim of a simultaneous disconnection on February 5, 2013 turned out to be inaccurate information and a misreading of GTL's exhibits. Mr. Gibbs pointed to GTL Exhibit 3, a report showing all calls made from Graterford on the dates that Mr. Gibbs requested, including February 5, 2013. He claimed that GTL Exhibit 3 showed 28 examples of calls that were disconnected simultaneously at 8:06 p.m. on February 5th. TR 34-36; 61-62. He alleged that the simultaneous disconnection of all these calls showed that there was a systemic problem with GTL's phone system at Graterford, and this was not an individual, isolated incident. TR 38. However, Mr. Gibbs' interpretation of the

³ He attempted other calls to different numbers in the course of the evening, but no other calls were completed, as the calls were either not answered or not accepted. *See*, GTL Exh. 1 and GTL Exh. 2.

⁴ Recordings of the calls related to Gibbs Exhibits A(1) – A(4) were offered as exhibits by GTL. TR168. However, the Presiding Officer, in her discretion, declined the offer to introduce the recording into the record. TR 171.

evidence is erroneous because the calls he identified on GTL Exhibit 3 were actually commenced at 8:06 p.m. and had different duration times, which means that there was no simultaneous disconnection of all phones at the Graterford facility at 8:06 p.m. on February 5, 2013. TR 79-80, 110; GTL Exh. 3. Mr. Gibbs' evidence contradicts his own version of events.

Mr. Gibbs' attempt to show that GTL was responsible for an alleged dropped call on February 26, 2013 is equally unconvincing. In his discrepancy form, he claims that at 8:17 p.m. all phones said "good-bye" and hung up. Gibbs Exh. A(2). The inmate's call log shows a telephone call to (267) 506-8150 that began at 8:18 p.m. on February 26, 2013. GTL Exh. 1, p. 33. The log shows that the call was completed after 15 seconds. *Id.* No technical problems were reported in GTL's system that may have caused a premature termination. TR 82, 149. There was no indication in GTL's trouble ticket records that there were any technical issues with the phone system at Graterford on February 26th.⁵ TR 151, GTL Exh. 6. Ms. Allen testified that the call did not appear to be a system drop call, it was just a dropped cell phone call, and as such, fell under the category of "no refund" for a dropped cell phone call. TR 28 (6/17/14). Mr. Gibbs' refund request was denied because the call was made to a cell phone, and there were no indications of system problems on that day. TR 166.

The Complainant failed to show that a call on March 19, 2013 at 6:50 p.m. was prematurely terminated as a result of a problem with GTL's phone system at the Graterford facility. His discrepancy form indicates that "the entire system shut down," and "all phones were cut off." Gibbs Exh. A(3). Ms. Allen testified that she investigated Mr. Gibbs' discrepancy and confirmed that the March 19th call was made to a cell phone. TR 243. There were other

⁵ According to the trouble ticket report, a ticket to replace an archive work station was opened on 2/26/13 and closed on 3/27/13, but this is not an issue that would affect a call going out of the Graterford facility at on 2/26/13 at 8:18 p.m. *See*, GTL Exh. 6.

complaints that day, so she issued a trouble ticket to GTL for further investigation. The outcome of the investigation was that there was an issue with a local circuit, not within the prison, and no credits were issued. TR 243. Mr. Fulton investigated the trouble ticket issued by Ms. Allen and found no evidence that there was a problem with GTL's system. All system testing queries looked completely normal, and there were active calls going on at the time of the incident. TR 153. Mr. Gibbs' refund request related to the March 19th call was denied because the call was made to a cell phone, there was no proof that GTL's circuits were experiencing problems, and no extended outage was reported that day. TR 166. It appears from the evidence of record that a local circuit outside the prison experienced issues that affected calls made from Graterford, and that GTL was not responsible for alleged dropped calls on that day. As Mr. Fulton testified, "where it's determined that there was a cable problem with a local telephone provider, I am not obligated to provide credit for those conditions because they're not in my control. My system did not cause that condition to happen." TR 74 (6/27/14).

There is scant evidence to support Mr. Gibbs' dubious claim that GTL caused the premature termination of a call he made on July 19, 2013 at 5:10 p.m. His discrepancy form alleges that all phones cut off simultaneously at that time. Gibbs Exh. A(4). However, the evidence of record shows that a call that Mr. Gibbs began at 5:08 p.m. on July 19, 2013 lasted the full 900 seconds. TR 83; GTL Exh. 1, p. 5. He made three other calls that lasted between 893 and 900 seconds. *Id.* at 5-6; TR 32 (6/17/14). There was no refund because the call was to a cell number, there were no records of any system problems on that day and no tickets correlating to any system problems were issued. TR 167, 154. In addition, the absence of any shortened calls on July 19th justifies GTL's denial of Mr. Gibbs' refund request. TR 33 (6/17/14). There is no evidence, outside the Complainant's unsupported allegations, that point to any interrupted

calls, much less that GTL was responsible for any dropped calls or disconnections on July 19, 2013.

It is important to note that GTL was fully justified in denying Mr. Gibbs' refund request for the four calls discussed above based on DOC's telephone policy and GTL's discretion. Mr. Gibbs admitted that quite a number of all the calls he makes are made to cell phones. TR 60. Each of the calls on Gibbs Exh A 1-6 were made to cell phones. TR 102. Ms. Tarkir testified that she was part of the investigation into Mr. Gibbs' discrepancy forms, and that refunds were denied because calls were made to cell phones. TR 74. Under GTL and DOC policy, that is one of the reasons for denial of a refund. *See*, GTL Exh. 4 and 5; TR 74. Mr. Fulton testified that there is a strict DOC policy (DC-ADM 818), which is given to all inmates, that states that there will be no refunds for phone calls made to cell phone numbers. TR 155; GTL Exh. 5. The DOC telephone policy is distributed to every inmate as part of their inmate handbook, and it has been in place for decades. TR 158. The DOC telephone policy clearly states:

Warning: calls placed to cell phones, or phones of inferior quality may be automatically terminated due to static, adverse weather conditions, weak signals, or activation of the call waiting feature. If this occurs, there will be no reimbursement for the call set-up fee that is incurred when the number is re-dialed. Likewise, if someone at the called number picks up an extension phone or the all waiting feature has been activated, the call may be automatically terminated, and you will not be reimbursed for the call set-up fee that will be incurred when the number is re-dialed.

DC-ADM 818 at 2-3; GTL Exh. 5. The policy forms the basis for rejection of refund requests from inmates and GTL personnel refers to the policy when investigating discrepancies. TR 159-160.

Although DOC's policy warns that there will be no refunds for terminated calls made to cell phones, GTL has the discretion to issue credits for call to cell phones. GTL has discretion to issue refunds based on its own policy. Thus, it is possible for an inmate discrepancy to result in

a refund even if inmate called a cell phone. TR 161. GTL could override the DOC policy on refunds and determine that a call has been disrupted because of GTL's system, make an exception to DOC's policy and issue a refund. TR 163. The contract between DOC and GTL does not require that GTL follow the DOC's telephone policy regarding no-refunds for call to cell phones. TR 163. In fact, Mr. Fulton testified as follows:

Now, I obviously take some discretion in dealing with individual complaints. And if I can determine through my investigation of that particular complaint that the cutoff may have been caused by my system, then I will issue credits. And I have issued credits throughout the years for those types of discrepancies.

TR 164.

The outcome of Mr. Gibbs' discrepancies regarding terminated calls on September 17, 2013 is an apt example of GTL's discretion to issue credits despite DOC's policy to deny reimbursement for calls to cell phones. On that date Mr. Gibbs reported that all the phones cut off at the same time. Gibbs Exh. A(6). Mr. Fulton testified that he had eight (8) complaints of interrupted calls from other inmates regarding the September 17th discrepancy. TR 198. When Mr. Fulton analyzed the issue, he detected no problems with the GTL system. Whatever interruption happened, it was brief, momentary and then the system recovered itself. *Id.* Mr. Fulton stated that "[t]here were no trouble tickets issued on my system for that issue and there was nothing in my system logs to show me that there was an extended outage on the entire system at Graterford." TR 198-199. Mr. Fulton concluded that inmates experienced an interruption in service on GTL's system. One of the system components failed briefly and could have resulted in calls being disconnected. TR 176. He issued credits to the affected inmates, but numbers were transposed on Mr. Gibbs' discrepancy, so he did not receive the refund that was approved. TR 177. Mr. Fulton corrected the error by authorizing a \$3.20 refund for the September 17 call drop. *Id.* A \$3.20 credit was applied to Gibbs' debit account on January 15,

2014. TR 97 (6/27/14). Where there is an issue that cannot be explained or is attributable to GTL's system, the Company will issue credits.

The detailed evidence presented above demonstrates plainly that Mr. Gibbs has failed to put forth a *prima facie* case, and he is not entitled to the refunds he seeks or any other relief. All the calls he complained of in Exhibits A(1) through A(4) were made to cell phones, and that means that he has failed to establish one of the three crucial elements he needs to prove his case. In addition all calls completed by the Complainant on July 19, 2013 lasted approximately 15 minutes, so it cannot be concluded that these calls were disconnected. Lastly, where there was an apparent interruption in service on September 17, 2013, all inmates affected, including Mr. Gibbs, were given refunds. Based on the Commission's precedent established in *Fegley*, the Complainant has not presented a *prima facie* case and his Complaint should be denied.

C. COMPLAINANT IS NOT ENTITLED TO THE RELIEF HE SEEKS

The Complainant is seeking a judgment in his favor and a sum of \$500 as a remedy for the alleged failure of GTL to provide adequate service. TR 116 (6/27/14). This penalty is intended to compensate Mr. Gibbs for calls that were allegedly disconnected or dropped and for a series of costs that he supposedly incurred. Some of these costs apparently include plenty of paperwork, typewriter ribbon, and sums he says he paid to plenty of people for plenty of advice and help along the way and for time related to drafting documents. TR 132 (6/27/14). Mr. Gibbs also stated: "I do want that time to be recognized because it was legitimate." TR 132 (6/27/14). The relief that Mr. Gibbs demands must be denied for a number of reasons.

First, the Complainant has failed to point to a statute, regulation or order that GTL has violated or failed to follow. Where a complainant fails to show an act or omission by a regulated public utility that constitutes a violation of a statute, regulation or order of the Commission, the

Complaint is properly dismissed. *Daskalakis v. Verizon PA, Inc.*, Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042, (Order issued Apr. 4, 2011) (*Pro se* Formal Complaint dismissed without a hearing). As set forth in greater detail above, the Complainant has failed to show that GTL was responsible for the alleged dropped or disconnected calls that he has identified. Mr. Gibbs seems to believe that, if he did not cause the claimed disconnection, he should be awarded damages. In testimony, he stated: "They should refund me for a call if it was no fault of my own." TR 127 (6/27/14). However, even if it is true that he did not cause the alleged disconnections, it does not follow that GTL is responsible. Since Complainant has not shown that GTL is responsible or accountable for the alleged dropped call, he is not entitled to any relief and his Complaint should be dismissed.

Second, it is a fundamental tenet of public utility law in Pennsylvania that the Commission lacks the authority to award damages. *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991); *Poorbaugh v. PUC*, 666 A.2d 744 (Pa. Cmwlth. 1995). The compensation that Mr. Gibbs demands constitutes an award of damages that the Commission is powerless to grant. Items of damages such as paper, typewriter ribbon, payments to third parties and payment for the Complainant's time fall into the category of compensatory damages, and the Commission has no authority to grant such relief.

Next, even if Complainant had shown a violation of a statute, regulation or order (which he has not), and even if the Commission had the authority to grant what he demands (which it does not), he may be entitled to a fraction of what he believes he should receive. The applicable Statute of Limitations bars recovery of any of Mr. Gibbs' claims outside a period of three (3)

years preceding the filing of his Formal Complaint. Subsection 3314(a) of the Public Utility Code states:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose."

66 Pa. C.S. §3314(a).⁶

The statute of limitations at 66 Pa. C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution may be maintained unless brought within three (3) years from the date the liability arose. This is a non-waivable statute of limitations since it terminates the right to bring an action as well as any remedy. The statute of limitations at 66 Pa. C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose. Since the statute of limitations is non-waivable, it may be raised at any time. *Yoo v. PGW*, Docket No. C-2013-2369915, 2014 Pa. PUC LEXIS 257 (Initial Decision, ALJ Guhl, Apr. 7, 2014).

Complainant filed his Formal Complaint on or about April 1, 2013. Therefore, based on the three-year statute of limitations at Section 3314 of the Code, the Commission lacks jurisdiction to adjudicate any claims arising before April 1, 2010. In addition, the three-year statute of limitations bars any remedy for claims arising before April 1, 2010. Complainant's claim that he is entitled to be compensated for alleged dropped calls for the last five (5) years must be rejected.

⁶ Although Complainant claims he was denied refunds, the four-year look-back period at 66 Pa. C.S. § 1312(a) does not apply because a finding of unreasonable rates is required before a refund is ordered, and the Commission does not have jurisdiction over the contract rates of an interexchange telecommunications carrier such as GTL. 66 Pa. C.S. § 3018; *Smolsky v. Global Tel*Link Corp.*, Docket No. C-20078119, 2009 Pa. PUC LEXIS 455 (Order issued Jan. 15, 2009).

The amount to which Mr. Gibbs believes he is entitled is erroneous and is inconsistent with the applicable statute of limitations. In testimony, Complainant claimed: "[o]ver the course of 60 months, I've spent over \$5,000 with the company." TR 16, 55. Mr. Gibbs calculated the \$5,000 amount by multiplying the number of calls listed on his call log (Exh. 1) by the usual charge for local calls of \$1.60. TR 120-121 (6/27/14). "I believe that I'm entitled to at least 10 percent of \$5,000, which would be \$500," he said. TR 116 (6/27/14). Complainant testified that he spent \$5,000 in the past five (5) years, and that 10% of the time, there are disconnections because of a problem that is yet to be corrected. TR 53. Under the applicable statute of limitations, he is not entitled to recover for allegedly dropped calls for the last five (5) years.⁷

Lastly, Mr. Gibbs' claim for damages is not supported by the record evidence in this case. Complainant looked at his calendars to figure out the 10-15% figure of calls disconnected. He did not use the call log provided by GTL (Exh. 1). TR 121 (6/27/14). He consulted his own calendars because he believes that the calendars are "more accurate," and there is "no ambiguity" in his records. TR 122 (6/27/14). Unfortunately for Mr. Gibbs, his calendars are not part of the record in this matter, and it is impossible for GTL or the Commission to verify his calculations. His own biased assertions cannot be relied upon by the Commission to reach a determination on how frequently the Complainant experienced dropped call, disconnections or calls that terminated prematurely. There is no support on the record for the number of disconnected or dropped calls he alleges he experienced or the percentage of his calls which were terminated prematurely.

⁷ If Mr. Gibbs' estimated phone expense for five years is correct, he spends an average of \$1,000 a year, and could be said to have spent about \$3,000 over the three-year period covered by the statute of limitations.

By contrast, GTL offered concrete and trustworthy evidence regarding the reliability of its own system and the low incidence of dropped calls. Ms. Allen testified that she received a "handful" of dropped call complaints in any given month, but could not give an exact number. TR 248. When pressed further, she estimated that more than 10, but less than 20 complaints per month may relate to dropped calls or disconnections. TR 249. To put that in context, GTL completes some 100,000 inmate calls per month. TR 251. Even if we assume Ms. Allen's high estimate of 20 dropped-call complaints is correct, the number of these type of complaints is an infinitesimal fraction of the number of calls that are completed ($20/100,000 = 0.0002$). In other words, 99.9998% of inmate calls do not result in dropped-call complaints.⁸

Mr. Fulton also offered firm figures on the frequency of complaints related to dropped calls or disconnections. He testified that, in general terms, GTL's phone system is operating reasonably adequately, efficiently and without disruption to the inmates' calls. TR 174. Mr. Fulton also said that the phone system at Graterford performs at the levels contracted for with DOC, even though performance is not 100%.⁹ TR 174. He added that there can be problems, but they are not chronic. TR 174-175. He explained that the Trouble Ticket Report he generated (GTL Exh. 6) showed approximately eight (8) drop or disconnect trouble tickets generated by GTL's POETS system going back to January 2010. TR 44 (6/17/14). GTL Exhibit 6 shows more than 200 trouble tickets, and thus, less than 4% of trouble tickets issued by GTL related to

⁸ Ms. Allen also offered a less useful, but instructive, number that belies Complainant's claim that 10% of his calls are disconnected prematurely. She testified that she processes an average of 550 complaints of all types per quarter (~183.3 per month). TR 240, TR 20 (6/17/14). Using the estimate of 10-20 dropped-call complaints per month, we can surmise that between 5-11% of *all complaints from all inmates* are related to dropped calls. Again, an average of 100,000 calls are completed, 183 complaints are handled by the site administrator, and only 5-11% of those complaints are likely related to dropped calls. The number simply do not support Mr. Gibbs' claims.

⁹ The Public Utility Code does not require the Respondent to provide perfect service or the best possible service, only reasonable, adequate service. *Davis v. GTL*, Docket No. C-2013-2395438 (Initial Decision, ALJ Salapa, June 19, 2014).

dropped calls ($8/205 = 0.039$). The testimony provided by GTL witnesses demonstrates conclusively that, although there are occasional issues, the system performs reliably, and that the 10% disconnect number that Mr. Gibbs claims is not supported by the evidence of record.

D. THE FORMAL COMPLAINT MUST BE DENIED

Mr. Gibbs' Formal Complaint purports to seek a fix to perceived glitches in GTL's telephone system at Graterford and a refund of monies he allegedly lost. *See*, Complaint, *generally*. As thoroughly demonstrated above, the Complainant has failed to point to a single statute, regulation or order of the Commission that Respondent has supposedly violated. He has failed to present sufficient evidence to establish a *prima facie* case that could entitle him to some kind of relief. He has failed to show that he is entitled to the relief he demands. Where he has offered traces of evidence, they do not support his case. The Complainant's testimony in support of his Complaint consisted mostly of assertions, opinions or perceptions which he seems to believe in very strongly. "These assertions, regardless of how honest or strong, cannot form the basis of a finding in his favor." *Griffith v. GTL*, Docket No. C-2008-2081244, 2011 Pa. PUC LEXIS 1861 (Initial Decision, ALJ Salapa, May 5, 2011). Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). "Even a *pro se* Complainant must provide relevant and necessary information." *Griffith, supra*. The Complainant who chooses to represent himself bears the risk of proceeding proceeded *pro se*. *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985). The Complainant, proceeding *pro se*, has failed to provide the type of relevant information that may lead the Commission to agree with his view of the world and to sustain his Complaint.

Furthermore, the issues Complainant identifies as problematic (glitches and refunds) have been addressed by GTL. The Company has refunded Mr. Gibbs for the one call that may have been disconnected as a result of an issue with GTL's system. He received \$3.20 for a disconnected call on September 17, 2013 in spite of the fact that the call was made to a cell phone. In addition, GTL has endeavored to remedy issues that its technical staff has identified as a source of possible disconnections. Mr. Fulton testified that in the spring of this year, GTL took measures to alleviate line congestion. "One was to open up the call type for all call types on all of the trunks and we also redistributed the amount of lines available to each call processor. And we believe that's made tremendous strides in reducing the number of trunk blocks and potential disconnects as a result." TR 30 (6/27/14). The Complaint should be denied because the actions that GTL has taken address the only legitimate issues Mr. Gibbs raised in his Complaint, and those particular grievances are now moot.

V. CONCLUSION

Based on the foregoing, Respondent Global Tel*Link Corporation respectfully submits that the Formal Complaint of Tyrone Gibbs must be denied.

Kevin B. Lefton, Esq.
Senior Counsel
GLOBAL TEL*LINK CORPORATION
12021 Sunset Hills Rd., Suite 100
Reston, VA 20190

Date: August 13, 2014

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 for Respondent
Global Tel*Link Corporation

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 Main Brief upon the parties named below in accordance with 52 Pa. Code § 1.54:

Via regular mail:

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

Via regular and/or electronic mail:

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

Kevin B. Lefton, Esq.
Senior Counsel
Global Tel*Link Corporation
12021 Sunset Hill Road, Suite 100
Reston, VA 20190
Kevin.Lefton@gtl.net



Edward G. Lanza, Esq.
Attorney for Respondent

Dated: August 13, 2014