

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darren Gentilquore GX1572

v.

Global Tel*Link Corporation

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:
:
:
:

Docket No. C-2014-2436227

NOTICE TO PLEAD

To: DARREN GENTILQUORE GX-1572
175 PROGRESS DRIVE
WAYNESBURG PA 15370

Global Tel*Link Corporation, the Respondent in the above-captioned proceeding, has filed a Motion for Judgment on the Pleadings, which you may answer in accordance with 52 Pa. Code § 5.102(b), unless otherwise provided by the applicable rules. You are hereby notified to file a written response to the enclosed Motion for Judgment on the Pleadings within twenty (20) days from service of this pleading or a judgment may be entered against you.

Respectfully submitted,



Edward G. Lanza, Esq.
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P.O. Box 61336
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Date: October 20, 2014

Counsel for Respondent
Global Tel*Link Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darren Gentilquore GX1572	:	
	:	
v.	:	Docket No. C-2014-2436227
	:	
Global Tel*Link Corporation	:	

MOTION FOR JUDGMENT ON THE PLEADINGS

I. INTRODUCTION

Pursuant to Section 5.102(a) of the Commission’s regulations, 52 Pa. Code § 5.102(a), Respondent Global Tel*Link Corporation (“GTL”) hereby submits this Motion for Judgment on the Pleadings and respectfully requests that the Commission dismiss the above-captioned complaint. The Complainant raises issues regarding rates charged by GTL for intrastate inter-LATA telephone service at the State Correctional Institution at Greene (“SCI Greene”), but the Commission lacks the jurisdiction to regulate GTL’s rates because in-state inter-LATA rates are competitive rates, and they are based on a contract between GTL and the Pennsylvania Department of Corrections (“DOC”). Because the Commission lacks the jurisdiction to address the issues raised by Complainant, this matter must be dismissed with prejudice.

II. BACKGROUND

On or about June 23, 2014, Complainant filed a Formal Complaint against GTL alleging that he was overcharged for telephone calls he made using the SCI Greene phone system. He claims that calls are “overpriced” and asks the Commission to order GTL to “bring their charges in line with the going rate” and to refund Complainant for overcharges. *See*, Complaint at 2-3. Also, Mr. Gentilquore claims that a monopoly exists that prevents competition and violates

antitrust laws. *See, id.* In support of his claims, Complainant states that he paid \$6.25 for an in-state call he made from Fayette County to Lackawanna County. *Id.*¹

The Complaint was served on August 8, 2014, and GTL filed a response to the Complaint on August 27, 2014. In its response, GTL maintained that the rates charged by GTL are consistent with the price list filed with the Commission, and therefore, the Complaint should be dismissed.

On September 18, 2014, Administrative Law Judge Conrad A. Johnson issued a Telephone Hearing Notice setting this matter for hearing on November 20, 2014.

III. MOTION FOR JUDGMENT ON THE PLEADINGS

1. “The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 52 Pa. Code § 5.21(d).

2. The Commission's regulations provide for the filing of Motions for Summary Judgment and Judgment on the Pleadings to dispose of frivolous cases prior to hearing. 52 Pa. Code § 5.102.

3. The Commission's rules provide, in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

...

(d) *Decisions on Motions.*

¹ It should be noted that SCI Greene is located in Greene County (not Fayette County), so there may be some confusion on the part of the Complainant regarding the call origination point.

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa. Code § 5.102(a) and (d)(1).

4. A Motion for Judgment on the Pleadings is only appropriate where no material facts remain in dispute. *Williams v. Lewis*, 466 A.2d 682, 683, (Pa. Super. 1983).

5. Only where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered. *Id.* Furthermore,

When ruling on a motion for judgment on the pleadings, the trial court must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts which he specifically admits. Judgment on the pleadings should be entered only when the case for determination is clear and free from doubt.

Reuben v. O'Brien, 496 A.2d 913, (Pa. Cmwlth. 1985)(*citations omitted*).

6. The standard for ruling on a Motion for Judgment on the Pleadings requires that the record be examined in the light most favorable to the non-moving party. *Monzo v. Pa. DOT*, 556 A.2d 493, 495 (Pa. Cmwlth. 1989).

7. For judgment on the pleadings to be properly granted, there can be no fact left for the finder of fact to decide. *Id.* In the instant case, there is no factual dispute left to be decided by the finder of fact.

8. GTL does not dispute that a fifteen-minute in-state call from the Greene facility to a number in another county would cost the inmate \$6.25. *See*, Complaint at 2.

9. According to GTL's price list, an intra-state, inter-LATA call lasting 15 minutes costs \$6.25. For a collect/direct bill call, the inmate is charged \$2.61 for the first minute and

\$0.26 for the remaining 14 minutes of the call for a total of \$6.25 ($\$2.61 + (\$0.26 \times 14) = \6.25).

GTL's price list is attached hereto as Exhibit A.

10. There is no genuine issue of material fact in this matter.

11. The only other allegations made by the Complainant are not factual claims, but legal conclusions. In his Complaint he states that GTL's service is "overpriced," that there is "no competition," that GTL is a "monopoly" and there is an unidentified violation of "anti-trust laws." *See, Id.*

12. The only question to be decided is whether the Complaint presents a legally cognizable claim.

13. The facts and the law in this case militate in favor of a dismissal of the Complaint without a hearing.

14. The basis of the Complaint is the level of rates charged by GTL for intra-state, inter-LATA calls made by the Complainant from SCI Greene.

15. Under Chapter 30 of the Public Utility Code, telecommunication service providers were explicitly permitted to declare their non-protected services as competitive and at most are only required to file price lists for those services. *See, 66 Pa. C.S. § 3016, see also, Petition of AT&T Communications of Pennsylvania, LLC, Docket Nos. P-2009-2137972; P-2010-2164470; P-2010-2164472, 2012 Pa. PUC LEXIS 994 (Order issued June 21, 2012).*

16. Under Chapter 30, designation of a telephone service as competitive eliminates direct regulation of rates for that service. *See, Bell Atlantic-Pennsylvania v. PUC, 763 A.2d 440, 500-501, 2000 Pa. Commw. LEXIS 592, 71 (Pa. Cmwlth. 2000).*

17. Carriers providing competitive services are only required to file price lists and are not subject to rate regulation. The Commission's regulations provide that "CLECs and ILECs

offering services classified by the Commission as competitive shall file with the Commission appropriate informational tariffs, price lists, and ministerial administrative tariff changes. These filings will become effective on 1-day's notice." 52 Pa. Code § 53.58(d).

18. 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.

19. The Commission lacks jurisdiction to set rates for interexchange carriers. 66 Pa.C.S. § 3018.

20. Under the provisions of Chapter 30 and the Commission's own regulations and orders, the PUC does not have the jurisdiction to regulate the rates GTL charges for service at SCI-Greene.

21. Service is provided to DOC facilities in the Commonwealth pursuant to a contract between DOC and GTL. Under Chapter 30, the PUC lacks jurisdiction to regulate contract rates for competitive services.

22. The Commission lacks jurisdiction to interpret contracts between DOC and the entity providing inmate telephone services. *Feigley v. AT&T Communications of Pa., Inc.*, Docket No. C 00981434 (Order issued April 30, 2001); *affirmed, Feigley, et al. v. Pa. PUC*, 794 A.2d 428 (Pa. Cmwlth. 2002), *appeal denied sub nom; C.U.R.E. of Pa. v. Pa. PUC*, 806 A.2d 863 (Pa. 2002).

23. The facts in the instant matter, viewed in the light most favorable to the Complainant, are not in dispute. According to the Complaint, the inmate was charged \$6.25 for

an intrastate, inter-LATA call originating at SCI-Green, which is exactly how much he should have been charged under the informational price list submitted by GTL to the Commission. *See*, Exhibit A.

24. Based on current law and precedent, the Presiding Officer must dismiss the Complaint in this case, as the Commission lacks the requisite jurisdiction to regulate GTL's contract rates with DOC or grant the relief requested by the Complainant.

IV. CONCLUSION

Based on the foregoing, Respondent Global Tel*Link Corporation respectfully requests that the Commission dismiss the Formal Complaint in this matter with prejudice.

Respectfully submitted,



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ed@lanzafirm.com

Date: October 20, 2014

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 Motion for Judgment on the Pleadings upon the parties named below in accordance with 52 Pa. Code § 1.54:

Via regular mail:

DARREN GENTILQUORE GX-1572
175 PROGRESS DRIVE
WAYNESBURG PA 15370

Via regular and/or electronic mail:

Hon. Conrad A. Johnson
Administrative Law Judge
PA Public Utility Commission
Piatt Place, Suite 220
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Attorney for Respondent

Dated: October 20, 2014