

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyrone Gibbs

v.

Docket No. C-2013-2358084

Global Tel\*Link Corporation

**REPLY EXCEPTIONS OF RESPONDENT  
GLOBAL TEL\*LINK CORPORATION**

**I. INTRODUCTION**

Pursuant to Section 5.535 of the Commission’s regulations at 52 Pa. Code §5.535, Respondent Global Tel\*Link Corporation (“GTL”) hereby respectfully submits these Reply Exceptions in response to Exceptions of Complainant filed with the Commission on or about December 23, 2014.

The Complainant identified several issues that are addressed in his Exceptions. First, he argues that the Presiding Officer made findings that contradict the factual record. Next, he asks the Commission to “relax” or “modify” the legal standard properly utilized by the Judge in deciding that the Complainant was not entitled to a refund. Also, he argues that the Presiding Officer should have relied on off-the-record information to determine a refund amount. Lastly, Complainant argues that the civil penalty imposed on GTL by the Presiding Officer is insufficient. Respondent respectfully submits that the Exceptions filed by the Complainant lack merit and should be denied. The Commission should affirm and adopt the findings in Administrative Law Judge Kandace Melillo in her Initial Decision in this matter. In support of its Reply Exceptions, GTL submits the following.

## **II. REPLY EXCEPTIONS**

### **1. The ALJ's Findings Are Supported by the Factual Record**

Complainant claims that the Presiding Officer's reference to his testimony regarding the frequency of call shut-offs is incorrect and should be changed. Complainant argues that his own statement that the system would shut down "up to three times a month" due to high volumes of calls should read "at least four times a week." Exceptions at 1. In essence, the Complainant is asking the Commission to ignore the testimony that was offered at hearings in this matter, and instead, replace his own words with what he wishes the record would state.

It is clear from a simple review of the record that the Complainant stated that "at least twice a month, up to three times a month... on the days that there is a high volume of calls... the whole system shuts down." TR. 23(1). Nowhere on the record does the Complainant testify that these alleged shut-downs occur "four times a week." The Presiding Officer found, based on the Complainant's testimony, that shut-downs occurred up to three times a month. ID at 11. This finding should stand because it is supported by record evidence, and should not be disturbed as Complainant demands.

### **2. The ALJ Correctly Applied the Relevant Legal Standard to Deny the Complaint**

Complainant asks the Commission to "revisit" the Presiding Officer's ruling denying his claim for refunds and requests that the Commission "overrule its prior precedent" establishing the legal standard for a complainant to prevail in a case against a phone provider in one of the state's correctional institutions. Complainant seems to argue that the Commission should take the unwarranted step of overruling a long-established precedent that has been applied repeatedly

and consistently over the years<sup>1</sup> because the Complainant believes that it is necessary to avoid “prejudice.” Exceptions at 2-3.

The standard that the Complainant is asking the Commission to overturn was established in *Fegley v. Verizon Select Services, Inc.*, Docket No. C-20043621, (Order issued April 24, 2006) (“Fegley”). In sum, *Fegley* requires that the Complainant show that (1) he connected a call to an approved number, (2) the alleged disconnection was not his fault, and (3) the call was not made to a cell phone. The ALJ found that all the disconnected calls for which the Complainant presented evidence at hearing were made to cell phones. ID at 11. As a result, the Presiding Officer correctly found that Complainant failed to meet the third prong of the *Fegley* standard, and was therefore, not entitled to the refunds he sought. ID at 22.

The Commission should reject Complainant’s request to have *Fegley* overturned in order to satisfy his Complaint. *See*, GTL RB at 4. The Complainant has not offered any compelling reason to abandoned well-established rules for adjudicating this type of complaint. Respondent respectfully submits that the *Fegley* standard should be followed in this case, and a decision rendered based on the criteria the Commission has used in the past for similar cases. There is no reason to disturb the Commission’s well-reasoned decision in *Fegley*.

It is important to note that there are also sound policy reasons for the Commission to continue to rely on the *Fegley* standard. The Department of Corrections (“DOC”) policy provides that there will be no refunds for calls placed to cell phones, in part, because cell phone signals are deemed to be unreliable and neither DOC not GTL can guarantee that the calls will

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<sup>1</sup> A Lexis search reveals that the Commission has relied repeatedly on *Fegley* to adjudicate these types of Complaints and has not seen it fit to overrule its own precedent in these matters. *See, Yount v. T-Netix*, Docket No. C-20042655, 2008 Pa. PUC LEXIS 74 (Order issued May 2, 2008); *Griffin v. GTL*, Docket No. C-2008-2081244, 2011 Pa. PUC LEXIS 1861 (Order issued May 5, 2011); *Davis v. GTL*, Docket No. C-2013-2395438, 2014 Pa. PUC LEXIS 375 (Order issued June 19, 2014).

not be dropped as a result of “static, adverse weather conditions, weak signals.” *See*, GTL Exh.

5. Dropped call complaints should address issues with the provider’s network and not a failing signal or a bad connection at the other end of the call. The *Fegley* standard is reasonable and should be maintained because GTL should not be held responsible for a failure of a cell phone service provider over which the Company has no control.

3. The ALJ Correctly Relied on Record Evidence to Deny Refund Requests

Complainant takes issue with the Presiding Officer’s finding that Complainant is not entitled to the refund he sought because he was unable to provide on-the-record evidence to support his claim. Exceptions at 3. Complainant argues that, although he presented only six (6) discrepancy forms that showed the details of allegedly disconnected calls, the evidence should be seen as mere examples of a more widespread problem with GTL’s system. *Id.* He maintains that the Commission should reconsider the Judge’s finding that Complainant’s calendar was an inappropriate method of calculating dropped calls or refunds because the calendar was not entered into evidence. He also claims that the number of calls he made and his unsupported estimate of how many calls allegedly disconnected should be the basis for a decision to issue the refund the Presiding Officer correctly denied. *Id.*

The record does not support the claim for refunds and the Commission should not go outside the record to speculate about unsupported claims of refunds. The Presiding Officer correctly relied on the evidence submitted at hearing to reach the conclusion that the Complainant was not entitled to any refunds. ID at 22. It is well established that 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. Cmwlt. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlt. 1993). *See*, GTL MB at 4. In this matter, there is no

evidence, much less substantial evidence, to support the Complainant's allegation that "the problem took place at least 48 times per year." Exceptions at 3. As the Judge correctly found, there is no information about these alleged terminated calls, and the Complainant failed to show that he met the *Fegley* standard with regard to those undetermined calls. ID at 22-23. Based on the evidence in this case, the ALJ was correct in finding that the Complainant is not entitled to any refunds.

4. The ALJ Correctly Limited the Amount of the Civil Penalty Imposed

Complainant excepts to the Judge's finding that a relatively modest civil penalty of \$300 against GTL was appropriate under the circumstances of this case. Exceptions at 4.

Complainant argues that the "magnitude of the infraction" and the number of inmates allegedly affected by the claimed phone system issues should lead to a greater civil penalty against GTL. *Id.* Although Complainant acknowledges that it would be impossible to ascertain how many individuals were affected, he argues that "in light of the financial windfall that GTL received" the penalty should be increased to some undetermined amount.

In contrast to the Complainant's convoluted rationale for increasing the fine amount, the Presiding Officer correctly applied the Commission's statement of policy at 52 Pa. Code §69.1201(c) to arrive at a modest civil penalty in this case. ID at 28-31. ALJ Melillo considered a significant number of aggravating and mitigating factors in arriving at the civil penalty imposed. She seemed to be most concerned with the amount of time it took GTL to recognize the issue that the Company would eventually fix. ID at 30. However, she determined, among other things, that GTL's conduct was not serious and that GTL cooperated fully with the Commission's investigation and took action to correct any system issues that may have led to disconnections. *See*, ID at 28-31. The Presiding Officer's approach in determining the civil

penalty amount in this case was measured, thorough and reasonable, and therefore, her decision should not be disturbed.

### **III. CONCLUSION**

Based on the foregoing, the Complainant's Exceptions should be rejected and the Initial Decision of Administrative Law Judge Candace Melillo should be affirmed and adopted by the Commission.

Respectfully submitted,



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Date: January 2, 2015

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CERTIFICATE OF SERVICE

I, Edward G. Lanza, certify that on this date, I served a true and correct copy of Respondent Global Tel\*Link Corporation's Reply Exceptions upon the parties named below in accordance with 52 Pa. Code § 1.54:

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Dated: January 2, 2015