

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vernon Robinson CB-3895	:	
	:	
v.	:	Docket No. C-2013-2343289
	:	
Global Tel* Link Corporation	:	

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

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I. INTRODUCTION

Pursuant to Section 5.102(c)(2) of the regulations of the Public Utility Commission (“Commission”) at 52 Pa. Code § 5.102(c)(2) and in accordance with the Briefing Order of Administrative Law Judge Mark A. Hoyer (“ALJ” or “Presiding Officer”) issued on March 25, 2015, Respondent Global Tel*Link Corporation (“GTL” or “Respondent”) hereby submits its Reply Brief in the above-captioned proceeding.

II. LEGAL ARGUMENT

Respondent respectfully submits that the Complaint of Vernon Robinson should be dismissed with prejudice. As set forth in more details in GTL’s Main Brief, Complainant has failed to prove his case. The evidence presented by Complainant does not meet the standard established and applied by the Commission in deciding prison phone disconnection cases. In addition, the evidence of record contradicts Mr. Robinson’s assertions that GTL profited from alleged phone glitches at the Graterford prison. Also, the case is moot because GTL issued refunds to Mr. Robinson for calls, even when he was not entitled to credits, and the Company maintained a reliable phone system while it held the contract for phone service at the Graterford facility. Finally, Complainant has improperly attempted to rely on impermissible evidence to bolster his case. For all these reasons, the Complaint should be denied.

A. Contrary to Complainant’s Claims, GTL Does Not Profit from Phone System Malfunctions

The Complainant’s mistaken belief that GTL profited from phone malfunctions at the Graterford prison is completely baseless. In his Brief, Complainant argues that “GTL has continually employed practices that bolstered their profit line tremendously while shortchanging their customer base.” Brief at 2. He also alleges that GTL engaged in “willful neglect” that,

over a long period, “turned technical difficulties into a practice that benefited GTL.” Brief at 3. The hyperbole reaches fever pitch when Robinson claims that GTL’s disregard for their customers “to enhance profits” was almost criminal. *Id.* The reality is that there is absolutely no evidence on the record in this matter that GTL was responsible for any malfunctions alleged by Complainant or that the Company profited from technical issues. Complainant presented zero evidence regarding GTL’s profits or how disconnections could possibly have increased any Company profits. In fact, common sense would lead a reasonable person to understand that the more calls are completed and the more reliable the service is, the more revenues and profits the phone provider would enjoy. The Complainant’s unsupported theory that GTL profits from disconnections defies reason and lacks evidentiary support and should, therefore, be rejected.

B. The Record Shows Clearly that GTL Used its Discretion to Issue Refunds Even When Inmates Were Not Entitled to Them

In his Brief, Complainant creates an illusory argument about GTL’s reliance on the Department of Corrections (DOC) policy providing that disconnected calls to cell phones are not eligible for refunds. Mr. Robinson claims that the policy, DC-ADM 818 (GTL Exh. A), cannot be construed “as an edict to never refund cell phone calls.” Brief at 3. Complainant erroneously implies that GTL asserted that the DOC policy was a blanket policy allowing no refunds for cell phones. Brief at 3. The actual testimony of GTL’s witness is that, although GTL relies on the DOC policy to determine whether an allegedly disconnected call requires a refund, GTL has the discretion to issue refunds, and it has done so in the case of Mr. Robinson. TR 92, 129. Mr. Tom Fulton explained that if, in the course of an investigation, a disconnection is unexplained, he will oftentimes authorize credits and has authorized credits to inmates. TR 35. A fair review of the record reveals that there is actual agreement in the positions of the parties. Both the

Complainant and GTL agree that the DOC policy denies refunds for dropped calls to cell phones under certain circumstances, but GTL has the discretion to issue credits or refunds, even for disconnected calls to mobile phones. Mr. Robinson's arguments regarding the DOC policy and GTL's refunds practice is a red herring and should be rejected.

C. GTL Addressed Technical Issues As They Arose and Maintained a Reliable System

In his Brief, Complainant attempts to make the point that GTL knew of the problems he complained of since 2010 and did not implement fixes until 2014. Brief at 4-6. The clear, albeit misguided, implication is that GTL failed to address long-standing problems until the Company was forced to react by the inmate's Complaint. Mr. Robinson claims that GTL should have been aware of problems he experienced when he filed Discrepancy Forms in 2010. *Id.* Mr. Robinson's contentions regarding the problems he claims he experienced, their duration and GTL's awareness of them are contradicted by the record evidence. First, Mr. Robinson testified that he cannot pinpoint "the exact date and time that the problems began to occur with the system." TR 212. Next, he testified that, initially, he noticed that he was having trouble establishing a connection on high volume days. He and other inmates would have to dial repeatedly to make a call, but this did not cost them any money. TR 212. Later in his testimony, Mr. Robinson goes on to say that following inmate complaints, GTL opened some trunks and the problem was eliminated. TR 212-13.

After the initial problem was addressed, Mr. Robinson testified that a new issue emerged, namely, mass shut-offs of phones at the prison. TR 213. He states that he filed multiple discrepancy forms, but the credit requests were denied because the calls he complained of were made to cell phones. *See*, TR 244. In addition, he testified that the mass shut-off problem was

fixed by GTL. TR 242. The issue of alleged mass shut-offs is separate and distinct from the problem that Mr. Robinson identified initially, so it cannot be said that there was one recurring issue that GTL should have been aware of and fixed.

In the course of his testimony, Mr. Robinson claims that he experienced a different kind of problem when making calls out of the prison. Complainant testified that there were times when he could not hear the called party or the called party could not hear him. TR 214. He complains that this issue caused him to redial to reestablish a connection. *Id.* Again, this is a different issue than the ones GTL had fixed before, so it is incorrect to say that GTL was aware of chronic problems for years. The reality is that GTL addressed individual issues as they arose, and the Complainant has acknowledged that these issues were addressed. TR 213, 242.

Missing from Mr. Robinson's theory that GTL was aware of a recurring issue for a long time is the fact that, throughout this time, he is making most of his calls to cell phone numbers. This is important because, it is impossible to know if some or all of the issues he experienced were a result of a bad cell connection or some other reason. As Mr. Fulton testified, "Anywhere along that path there could be conditions that arise that can't be explained... So it's almost, at times, impossible to tell exactly why a call has been disconnected." TR 122. Specifically in relation to cell phones, callers may lose a connection because they get out of range of the cell tower, and sometimes, that explains why the call may be disconnected. TR 123. Sometimes a major outage of service from a network provider to the facility can result in dropped calls, and those types of issues are out of the control of GTL. *Id.* So, even if GTL was made aware of issues that an inmate may have had with a particular call, that would not necessarily lead to the conclusion that something was wrong with GTL's system.

Finally, Mr. Robinson jumps to the misguided conclusion that isolated complaints should have alerted GTL of a systemic problem. However, this is not the case at all. When questioned about a 10-minute call on August 16, 2013, Mr. Fulton testified that one can conclude from listening to the recording that one party could not hear the other at the end of the call. TR 54. But that an investigation of the call did not lead him to conclude that the interruption was caused by anything in GTL's system because there is no technical reason as to why that happened. TR 55. Although the call was worthy of a refund and a credit was issued, the one call would not be a reason to raise an alarm about something being wrong with the entire system. TR 57. In other words, a single call would not warrant an investigation, and isolated complaints from an inmate would not be indicative of a system-wide problem at Graterford. TR 58. Mr. Robinson's attempt to impute some sort of knowledge on the part of GTL that there was a phone system problem at Graterford based on isolated incidents is misplaced, and it should be rejected.

D. Complainant Has Failed to Meet the Applicable Legal Standard and Is Unable to Prove His Case

Complainant rightly cites the Commission's *Fegley* decision for the legal standard to be met by inmate complainants in this type of matter, but he incorrectly concludes that he has met the standard.¹ As set forth in more detail in Respondent's Main Brief, *Fegley* requires Mr. Robinson to prove that (1) he completed a call to an approved number, (2) the call disconnected for a reason other than his own fault, and (3) the call was not made to a mobile or cordless phone. *See*, GTL Main Brief. Complainant focuses his efforts on showing that he was not at fault for the alleged disconnections, but he cannot show that unrefunded dropped calls were

¹ *Fegley v. Verizon Select Services, Inc.*, Docket No. C-20043621 (Order issued April 24, 2006).

made to a landline. For this reason, Mr. Robinson has failed to satisfy the third prong of the *Fegley* test, and cannot succeed on the merits.

Under *Fegley*, even if the Commission accepts the argument that Mr. Robinson was not at fault for any of the alleged dropped calls, he cannot prevail in his case because disconnected calls for which he did not receive credit were all made to cell phones. *See*, GTL Main Brief, Table 1. Mr. Robinson asks the Commission to look at “the totality of the circumstances” when considering his case in light of *Fegley*. Brief at 8. However, a fair review of all the facts and circumstances of this case must still lead to the same conclusion. Under Commission precedent, inmate complainants are not entitled to relief when they cannot show that alleged dropped calls were made to cell, mobile or cordless phones. For this reason, Mr. Robinson’s claims must fail.

E. Irrelevant or Impertinent Matter in Complainant’s Brief Should Be Stricken or Ignored

In his Brief, Complainant includes irrelevant or impertinent matter that should be stricken or ignored by the Presiding Officer. First, in attempting to argue that GTL had notice of ongoing system issues, Complainant makes mention of the mediation process in this matter and a settlement offer made by GTL to resolve the dispute. Brief at 5. Under the Commission’s rules, offers of settlement are not admissible in evidence against a party. 52 Pa. Code § 5.231(d). Mr. Robinson’s attempt to use against GTL the fact that the Company engaged in good faith negotiations to settle this case should not be tolerated, and the portion of the Complainant’s brief that violates the Commission’s rules should be stricken from the brief or ignored.

In another instance, Complainant references alleged “multiple complaints” about GTL issues which are not part of the record in this case. Again, Mr. Robinson attempts to argue that GTL had notice of ongoing issues by offering new evidence at the briefing stage regarding other

complaints against GTL. He is doing so despite an objection by GTL counsel and the rejection by the Presiding Officer of evidence from other unrelated matters. TR 164. The Presiding Officer should use his discretion to strike or ignore this new and irrelevant evidence in accordance with Commission practice. *See, Trucco v. PPL*, Docket No. C-00004271, 2001 Pa. PUC LEXIS 104 (ALJ Paist Initial Decision issued Nov. 16, 2001)

III. CONCLUSION

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

Respectfully submitted,



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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:

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