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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Consider Regulating
Telecommunications Services Used
by Incarcerated People.

Rulemaking 20-10-002

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING PRISON POLICY
INITIATIVE'S MOTION TO COMPEL GLOBAL TEL*LINK TO
RESPOND TO DATA REQUESTS**

Summary

This ruling denies the Prison Policy Initiative's *Motion to Compel Global Tel*Link to Respond to Data Requests*. It recommends that Prison Policy Initiative Inc. narrow its data request prior to resubmitting it to Global Tel*Link.

1. Background

The Prison Policy Initiative Inc. (PPI) filed a *Motion to Compel Global Tel*Link to Respond to Data Requests* (Motion) on March 18, 2021. Global Tel*Link Corporation (GTL) filed a *Response of Global Tel*Link Corporation to the Motion of the Prison Policy Initiative, Inc. to Compel* (Response) on March 29, 2021. At issue in the Motion and Response is PPI's request that the Commission order GTL to respond to three questions in PPI's First Data Request to GTL, which are for GTL to provide:

REQUEST NO. 1: All contracts between GTL and any person that receives or processes payments from end-users on GTL's behalf. This request includes contracts with payment-card processors, acquiring banks, and money transmitters.

REQUEST NO. 2: In relation to each contract identified in response to Request No. 1, provide all documents showing any compensation collected within the last 24 months by the contractual counter-party, whether such compensation was paid directly by GTL or deducted from end-user funds. * * *

REQUEST NO. 6: ... [C]opies of your responses to any data requests propounded to you by other parties to this proceeding or by Public Utilities Commission staff.¹

Both the Motion and the Response appropriately append declarations from Stephan A. Raher, on behalf of PPI, and from Matthew L. Conaty, on behalf of GTL. These declarations state the facts of the dispute as each party sees them, as required in the Commission's Rules of Practice and Procedure (Rules) 11.3(a). However, it is not entirely clear from the Motion and the facts provided in the Declaration of Stephan R. Raher that PPI has yet made a "good faith attempt at informal resolution of the discovery dispute" as required under Rule 11.3(a).

The Motion states that, "[b]ased on the parties' discussion at a February 26, 2021 discovery conference, it appears that GTL's only real objection to Requests 1 and 2 is that the company believes the Commission lacks jurisdiction to regulate ancillary fees."² However, GTL in its February 12, 2021 response to PPI's First Data Request,³ appended to PPI's Motion as Exhibit 2, states that, "the reference to 'any person' [in Request No. 1] contemplates

¹ PPI Motion, Exhibit 1 at 3-4.

² PPI Motion at 3.

³ Identified in Exhibit 2 as being issued on January 29, 2021, and in the Declaration and body of the Motion as being issued on February 3, 2021.

production of contracts with entities that do not serve end users outside of the State of California.⁴” GTL’s Response reiterates this objection:

GTL has, in fact, maintained that the phrasing of Request 1 (specifically, its reference to “any person”) contemplates the production of contracts between GTL and entities that do not serve end users in the State of California, in contravention to the Scoping Memorandum. GTL has also maintained that Request 2 (specifically, its reference to “all documents” and “any compensation”) is facially overbroad, compelling GTL to search each and every document within its possession, custody, and control for each and every reference to or demonstration of the “compensation” for the past 24 months, with no geographical limitation [footnote 12].⁵

Financial service fees to end users for third-party financial transaction and single-call ancillary services are germane to this rulemaking, but only if they pertain to communications services provided to incarcerated or detained persons in California prisons or jails. PPI’s Motion to compel GTL to respond to Request No. 1 as currently written is denied. If PPI wishes to continue to pursue this discovery request, PPI must revise Request No. 1 to limit its request to third-party financial transactions pertaining to incarcerated or detained persons within the State of California.

⁴ Motion, Exhibit 2 at 2. The phrase “do not serve end users *outside of* the State of California” (emphasis added) appears to be a typographical error that GTL corrects in its Response at 5, where it states, “do not serve end users *in the* State of California” (emphasis added).

⁵ GTL Response at 5. Footnote 12 at GTL Response at 5 states “GTL serves approximately 2,300 correctional facilities and 1.8 million inmates in 50 states, the District of Columbia and Puerto Rico. To this end, PPI’s Proposed Order is wholly unreasonable, affording GTL only three business days to complete and produce a company-wide search of correspondence, accounting, and operational materials.”

PPI's Request No. 2, summarized in PPI's Motion, contravenes Commission Rule 10.1, which limits discovery to:

...any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.⁶

PPI's use of the phrases "all documents" and "any compensation" in its Request No. 2 is overly broad. As a result, it is unlikely that much of the information GTL produced in response to PPI's Request No. 2 as currently written would lead to the discovery of admissible evidence in this proceeding. Producing the documentation as requested by PPI in its First Data Request would burden GTL. As with Request No. 1, PPI did not limit Request No. 2 to third-party financial transaction contracts for incarcerated or detained persons solely in California prisons or jails.

For these reasons, PPI's Motion to compel GTL to respond to PPI's Request No. 2 as currently written is denied. If PPI wishes to continue to pursue this discovery request, PPI must revise Request No. 2 to limit its request to third-party financial transactions pertaining to incarcerated or detained persons within the State of California. PPI should also narrow its request to identify a reasonable set of specific types of documents likely to contain evidence admissible in this proceeding.

PPI's Motion to compel GTL to respond to its Request No. 6 is also denied. The Motion and the Response indicate that the dispute surrounding Request

⁶ Commission Rules of Practice and Procedure, Rule 10.1.

No. 6 pertains to data submitted by GTL to the Public Advocates Office in response to a data request. GTL did not provide a copy of its response to the Public Advocates Office to PPI, stating that it would not produce confidential information arising from Federal Communications Commission (FCC) WC Docket No. 12-375 proceeding unless PPI complied with the FCC's protective order.

As detailed in GTL's Response, PPI had several opportunities to discuss issues surrounding Request No. 6 prior to executing a Non-Disclosure and Use of Information Agreement (Agreement) with GTL on March 2, 2021.⁷ The executed Agreement clearly obligates PPI to comply with the "Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information set forth by the FCC Protective Order," including the:

...execution and filing with the FCC's Wireline Competition Bureau of the Acknowledgement of Confidentiality appended thereto, and (ii) until the FCC resolves objections, if any, arising from the Receiving Party's compliance with the FCC Protective Order's Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information, as detailed therein.⁸

GTL's Response explains that Paragraph 5 of the FCC Protection Order "specifies that '[a]ny person' desiring access to Stamped Confidential Documents and Confidential Information filed by GTL must execute the

⁷ GTL Response, Exhibit 3, Global Tel*Link Corporation and Prison Policy Initiative, Inc. executed *Non-Disclosure and Use of Information Agreement*.

⁸ GTL Response, Declaration of Matthey L. Conaty, and Exhibits 1, 2, and 3 at pages 3, February 23, 2021 Proposed Non-Disclosure and Use of Information Agreement, February 26, 2021 Proposed Non-Disclosure and Use of Information Agreement, and March 3, 2021 executed Non-Disclosure and Use of Information Agreement.

Acknowledgement appended to the FCC Protective Order and submit it to [Wireless Competition Bureau], which will resolve any objections thereto.⁹”

Neither PPI’s Motion nor GTL’s Response state that PPI has executed an FCC Protective Order in FCC WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*. Further, neither PPI’s Motion nor GTL’s Response state that PPI has completed Paragraph 5 of the FCC Protective Order. Thus, some facts remain unclear regarding PPI’s Request No. 6. What is quite clear, however, is that the FCC Protective Order requires that any person obtaining access to confidential information pursuant to the Order must not use it for any purpose other than FCC WC Docket No. 12-375:

Use of Confidential Information. Persons obtaining access to Confidential Information (including Stamped Confidential Documents) under this Protective Order shall use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.¹⁰

This Commission lacks the authority to compel GTL to release information stamped as “confidential” in FCC WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*. Further this Commission would certainly not consider this absent PPI’s declaration that it has executed and fully complied with the FCC’s Protective Order.

⁹ GTL Response at 9, citing FCC Protective Order, Paragraph 5, available here:

¹⁰ FCC Protective Order in *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16954, ¶ 7 (2013).

IT IS RULED that The Prison Policy Initiative Inc.'s March 18, 2021 *Motion to Compel Global Tel*Link to Respond to Data Requests* is denied.

Dated April 27, 2021, at San Francisco, California.

/s/ CATHLEEN A FOGEL

Cathleen A. Fogel

Administrative Law Judge