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Sent: Tuesday, June 26, 2007 3:47 PM
To: Filings@psc.state.fl.us
Subject: Docket 060614-TC
Attachments: 2007-06-26, 060614, Global, TCG Emergency Motion for Protective Order.pdf

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The Docket No. is 060614-TC - Complaine investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones.

This is being filed on behalf of Global Tel*Link Corporation and TCG Public Communications

Total Number of Pages is 9

Emergency Motion for Protective Order of TCG Public Communications, Inc. and Gobal Tel*Link Corporation

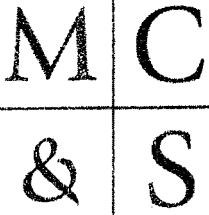
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June 26, 2007

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Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 060614-TC

Dear Ms. Cole:

Enclosed for filing on behalf of TCG Public Communications, Inc. and Global Tel*Link Corporation is an Emergency Motion for Protective Order of TCG Public Communications Inc. and Global Tel*Link Corporation.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd R. Self

FRS/amb
Enclosures

cc: David Silverman, Esq.
Ms. Roberta Bass, Assistant to Chairman Edgar
Mr. William Garner, Assistant to Commissioner Carter
Mr. Jeremy Susac, Assistant to Commission McMurrian
Mr. Larry Harris, Assistant to Commissioner Argenziano
Ms. Samantha Cibula, Acting Assistant to Commissioner Skop
Ms. Mary Bane, Executive Director
Michael Cooke, Esq., General Counsel

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones.

Docket No. 060614-TC

EMERGENCY MOTION FOR PROTECTIVE ORDER OF TCG PUBLIC COMMUNICATIONS INC. AND GLOBAL TEL*LINK CORPORATON

TCG Public Communications, Inc. ("TCG"), and Global Tel*Link Corporation ("Global"), pursuant to Sections 120.57, 364.183, and 364.185, Florida Statutes, and Rules 28-106.204 and 28-106.206, Florida Administrative Code, hereby file this Emergency Motion for Protective Order to direct that the Staff of the Florida Public Service Commission proceed with any discovery or information gathering pursuant to the discovery procedures set forth in the Florida Rules of Civil Procedure as is required by Rule 28-106.204. In support of this Motion, TCG and Global state as follows:

I. Introduction and Background

1. This docket was formally opened by the Commission Clerk at the request of the Commission Staff on September 13, 2006, by Document Number 08315. As is reflected by the title of this docket, this is a prosecutorial proceeding involving both allegations that TCG has violated Commission statutes and allegations of overcharges to be refunded to customers.

2. TCG is certificated by the Commission to provide pay telephone service. At the

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present time, TCG is a wholly owned subsidiary of Global. Global is also certificated by the Commission to provide pay telephone service. Prior to June 2, 2005, TCG was a wholly owned subsidiary of AT&T Corp. Pursuant to an asset purchase agreement dated February 17, 2005, AT&T Corp. sold certain assets to Global, including TCG. The asset purchase agreement closed on or about June 2, 2005, at which time TCG became a wholly owned subsidiary of Global.

3. The opening of this docket comes after an informal investigation of TCG's inmate phone service at the Miami-Dade County Correctional Department's facilities. This informal investigation dates back to approximately March, 2004. During the time of the informal investigation, and prior to August, 2005, the Commission Staff conducted certain tests at the Miami-Dade Correctional Department facilities and otherwise received data requested from TCG and/or AT&T, as applicable.

4. Beginning in August 2005, after AT&T informed the Commission Staff of the asset transfer of TCG to Global, Global and the Commission Staff met, TCG and Global provided certain requested information to the Commission Staff, TCG/Global and the Commission Staff cooperatively participated in a test of the equipment at the Miami-Dade Pretrial Detention Facility, and TCG/Global otherwise cooperated with the requests of the Commission Staff to the extent TCG/Global was in possession of the data requested by the Commission Staff.

5. Since the opening of this docket in September 2006 through last week, the Commission Staff has correctly changed its mode of operation from an informal investigation approach to that of formal adversarial litigation parties. Consistent with the change to a formal adversarial posture, the Commission Staff has propounded two separate sets of interrogatories

and two separate requests for production of documents to TCG. In addition, the Commission Staff has served subpoenas for documents on Global, AT&T, and Evercom Systems, Inc., TCG's sub-vendor on the Miami-Dade Correctional Department contract. Since the commencement of this docket, undersigned counsel has been counsel of record for this matter with respect to both the discovery to TCG and the subpoena to Global and has otherwise been the primary contact between TCG/Global and the Commission Staff with respect to this docket. The Commission's website identifies undersigned counsel as the attorney of record for this docket.

6. As of the date of this Motion, the Commission has not yet issued a formal or preliminary administrative complaint as contemplated by Rule 28-106.2015, Florida Administrative Code, nor has the Commission Staff issued a Staff Recommendation regarding the inmate phone service at the Miami-Dade County Correctional Department facilities. However, Commission Staff has represented to TCG/Global that such a recommendation has been prepared and is to be filed on June 27, 2007, and that the substance of the recommendation will allege certain violations, overcharges, refunds, fines and penalties, and other potential relief. While a Staff Recommendation is not an order of the Commission, and it could be rejected or modified, in whole or in part, by the Commission, at a minimum, all of the facts and circumstances since the opening of this docket demonstrate a litigation adversarial relationship between the Commission Staff and TCG/Global.

II. Request for Protective Order

7. On Friday, June 25, 2007, Kim Gordon-Perez, an official with the Miami-Dade County Correctional Department and the primary operational contact between TCG/Global and the County, contacted TCG/Global's manager for the Miami-Dade contract. Ms. Gordon-Perez

informed TCG/Global that she had received a request from the Commission Staff to conduct an immediate test of the TCG/Global inmate phone system equipment. This request from the Commission Staff was not first communicated to any TCG or Global employee nor, critically, to undersigned counsel as counsel of record in this docket. Miami-Dade has made arrangements with the Commission Staff to conduct the requested test on Wednesday, June 27, 2007. Since the request was made TCG/Global and undersigned counsel have yet to receive notice of this request from the Commission Staff.

8. This morning (June 26, 2007), Ms. Gordon-Perez again contacted TCG/Global's contract manager and advised TCG/Global that Commission employee Mr. Paul Vickery contacted Ms. Gordon-Perez to now request access to the TCG/Global equipment within the Miami-Dade County Correctional Department's facilities to conduct three days of testing and to request other information from the County pertaining to the TCG/Global inmate phone systems. Since the request was made TCG/Global and undersigned counsel have yet to receive notice of this request from the Commission Staff.

9. TCG and Global do not object to the Commission Staff conducting discovery regarding the inmate phone service equipment in the Miami-Dade County Correctional Department facilities. However, as a matter of due process under the United States Constitution and the Constitution of the State of Florida, as well as procedural fairness under the Uniform Rules of Administrative Procedure, now that there is a formal open docket, the Commission Staff must conduct itself pursuant to the discovery rules, and only such discovery rules, of the Florida Rules of Civil Procedure.

10. On information and belief, Global has been advised by the Florida Department of Corrections (“FDOC”) that the Commission Staff has requested information from the FDOC regarding TCG and/or Global inmate phone services at state and/or county correctional facilities in Florida. Again, TCG and Global do not object to the Commission Staff seeking information from third parties, as it has already done from Global, AT&T, and Evercom in this docket. But such information can only be lawfully obtained pursuant to the discovery procedures set forth in the Florida Rules of Civil Procedure utilizing subpoenas, as has already been done by the Commission Staff with respect to Global, AT&T, and Evercom. The purpose of such discovery processes is clear – adverse parties are entitled as a matter of due process to be informed as to the information that is being sought by an adverse party so that the party may protect its rights and interests. For example, already in this case when the Commission Staff subpoenaed information from Evercom, TCG filed a motion to quash in part, or in the alternative to otherwise limit, the Evercom subpoena in order to protect TCG’s confidential information. Without such notice, there was a possibility that proprietary confidential business information of TCG may have been disclosed on the public record which TCG was able to protect because TCG had timely notice of the discovery requests. With respect to the apparent requests being made by the Commission Staff to the FDOC, Global is a party to a bid dispute regarding the state contract for inmate phone services, and the Commission Staff’s actions outside of the formal discovery process could unintentionally have an adverse impact on those proceedings. Again, due process and fundamental fairness require that TCG and Global have notice of any information being sought from any third party so that the companies can protect their business interests.

11. Commission Staff counsel has advised undersigned counsel that the Commission is entitled to independently investigate in this matter pursuant to Section 364.185, Florida Statutes. However, this statute no longer affords the Commission Staff with a means to gather information that is to be used in an existing docketed matter for the purpose of building a prosecutorial case for enforcement, overcharges, refunds, fines, penalties, or any other such adverse action. This case ceased to be a Section 364.185 investigation when it became a docketed matter, the purpose of which is the Commission Staff's attempt to prove alleged violations of the statutes and a determination of the amount and appropriate method for refunding alleged overcharges. While the Commission Staff certainly may "investigate" to prepare a Staff Recommendation or to otherwise develop its prosecution case, the Uniform Rules, and in particular Rule 28-106.206, Florida Administrative Code, clearly require the Commission Staff to utilize only the discovery process: "After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.390, Florida Rules of Civil Procedure."

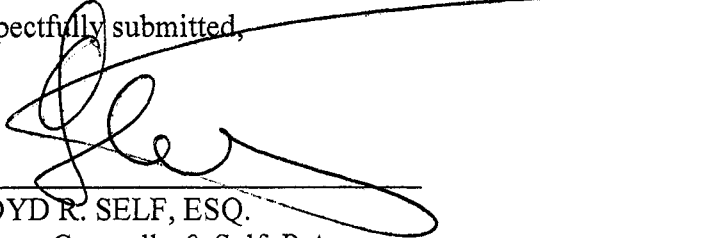
12. Even assuming the applicability of Section 364.185, or any other investigation authority of the Commission, the Commission Staff has failed to comply with the process set forth in the statute. Section 364.185 states that when the Commission is "making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter" that "the telecommunications company shall be notified of and be represented at the making of such investigations, inspections, examinations, and tests." The Commission Staff has completely failed to communicate its requests for tests or its other requests for information to any TCG or Global employee. More critically, since these efforts are unquestionably directed to gathering

information for use in this docket, Commission Staff has failed to communicate such requests to the counsel of record in this docket.¹

IV. Conclusion

WHEREFORE, TCG and Global respectfully request that this Commission grant this Emergency Motion for Protective Order, to direct its Staff to conduct any further investigation in this matter pursuant to the discovery rules of the Florida Rules of Civil Procedure, and to grant such other relief as is required by due process and in the interest of justice.

Respectfully submitted,



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¹ It should be noted that the exception in Section 364.185 to the requirement to provide prior notification and representation does not apply in this case. The exception is for onsite field inspection of equipment used to provide telecommunications services to the transient public. The inmate phones that are the subject of this investigation can not be used by the transient public and cannot be accessed by the Commission Staff or even TCG and Global employees without the express permission of the Miami-Dade County Correctional Department since the telephone equipment at issue is located in the cell blocks of the confinement facilities. Access to this equipment requires that cell blocks be locked down, that security background and clearance checks be made, and that the personnel inspecting, testing, or repairing the equipment be escorted at all times for their personal safety and security. This is just not the same thing as walking up to and testing a pay telephone in front of a convenience store.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail this 26th day of June, 2007.

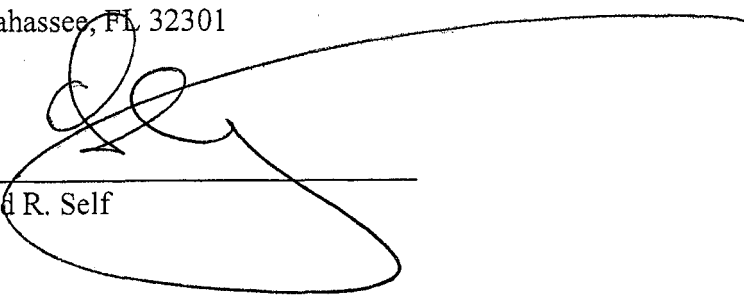
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