

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 6, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Service, Safety & Consumer Assistance (Moses) *DM*
Division of Regulatory Compliance (Curry, Kennedy) *KCC RK*
Office of the General Counsel (Tan) *TL AT*

RE: Docket No. 060614-TC – 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.

AGENDA: 08/18/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Portions of this recommendation are based on confidential material and access to material is controlled.

FILE NAME AND LOCATION: S:\PSC\SSC\WP\060614.RCM.DOC

RECEIVED-FPSC
09 AUG -5 PM 4:06
COMMISSION
CLERK

Case Background

In March 2004, staff received a customer complaint against TCG Public Communications, Inc. (TCG) regarding improper disconnection of inmate calls from a pay telephone within a correctional facility in Miami. According to the complaint, the inmate pay telephone system within the Miami-Dade Pretrial Detention Center was malfunctioning, which caused the inmate's calls to the complainant to disconnect before the conversation was completed. As a result, the complainant incurred additional costs because the inmate would call back to complete the conversation. Each call was assessed a surcharge that could have been

DOCUMENT NUMBER=DATE

08067 AUG-5 09

FPSC-COMMISSION CLERK

avoided if the original call had not disconnected prematurely. After receiving the complaint, technical staff began investigating the allegations of the customer's complaint. The complaint was ultimately resolved in April 2005.

TCG is a certificated pay telephone service provider (Certificate No. 7799), which provided inmate pay telephone services in Florida. When the complaint was filed, TCG operated and maintained the inmate pay telephone systems for Miami-Dade County and was a wholly owned subsidiary of AT&T Communications of the Southern States, Inc. (AT&T). TCG later became a wholly owned subsidiary of Global Tel*Link Corporation (Global) in June 2005 and in late 2007 TCG merged into Global.

Between 2004 and 2007, staff conducted an investigation and tested the pay telephone system at the Miami-Dade Pretrial Detention Center. The pay telephone system was tested several times during the investigation. Staff ultimately determined that the three-way detection software was causing inmate calls to prematurely disconnect. As a result of the software malfunctioning, numerous customers incurred additional surcharges of \$2.25 per local call and \$1.75 per intrastate toll calls for each additional call that had to be made to complete a telephone conversation. The malfunctioning three-way call detection software was ultimately replaced in March 2008.

On September 10, 2007, staff received a proposed settlement offer from TCG to make available a settlement pool in the amount of \$175,000 from which customers who were affected by the improper disconnection of inmate calls caused by the three-way call detection software could obtain a refund. On September 8, 2008, staff filed a recommendation to address TCG's proposed settlement offer and the results of staff's investigation. Staff's recommendation proposed that the Commission not accept TCG's proposed settlement offer and that the Commission order TCG to show cause why it should not be penalized. The Agenda Conference was held on September 16, 2008. The Commission deferred the matter and directed staff and the parties to work together to negotiate a settlement.

On October 9, 2008, staff and the parties met, in the first of several meetings, to begin negotiating a settlement. On May 27, 2009, TCG filed a revised settlement offer. The company proposed to make a payment in the amount of \$1,250,000 to be deposited into the General Revenue Fund. In addition, TCG offered other commitments, filed confidentially (Document No. 05272-09), that are not specifically discussed in this recommendation. These additional commitments will require TCG to implement specific monitoring commitments, for 18 months, to ensure continuing compliance of the inmate telephone operations at the Miami-Dade Correctional Facilities.

The Commission is vested with jurisdiction of these matters pursuant to Sections 364.03, 364.3375, 364.3376, 364.345(1), 364.285, and 364.604, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission accept TCG Public Communications, Inc.'s proposed settlement offer to submit a payment in the amount of \$1,250,000 for deposit into the General Revenue Fund and to implement specific monitoring commitments, for 18 months, to ensure continuing compliance of the inmate telephone operations at the Miami-Dade Correctional Facilities?

Recommendation: Yes, the Commission should accept TCG Public Communications, Inc.'s proposed settlement offer to submit a payment in the amount of \$1,250,000 for deposit into the General Revenue Fund and to implement specific monitoring commitments, for 18 months, to ensure continuing compliance of the inmate telephone operations at the Miami-Dade Correctional Facilities. **(Curry, Kennedy, Moses, Tan)**

Staff Analysis: On May 27, 2009, TCG (for itself and its present and past parents and successor in interest, Global) filed a revised settlement offer for the purpose of resolving the current issues in the present docket. Attachment A, attached, contains the unclassified portion of TCG's offer. TCG's additional commitments were filed confidentially. The confidential filing is not attached. It will be maintained in the Office of Commission Clerk. The confidential filing will be referenced in the Commission's Order as an integral part of TCG's settlement offer, if accepted by the Commission.

TCG replaced the three-way call detection software at the Miami-Dade Correctional Facilities in March 2008. TCG believes that the replacement system should entirely eliminate, on a going-forward basis, any concerns regarding the previous three-way call detection equipment that initially prompted staff's investigation. In making the offer of settlement, TCG does not concede that the design, operation, or management of the three-way call detection software resulted in the violation of any Commission rules, orders, or statutes under the former or present inmate phone systems.

Staff has reviewed TCG's proposed settlement offer, as set forth in Attachment A and TCG's confidential filing (Document No. 05272-09) containing additional commitments. Staff believes that company's proposed settlement offer is in the public's interest and recommends that the Commission accept TCG Public Communications, Inc.'s proposed settlement offer to submit a payment in the amount of \$1,250,000 for deposit into the General Revenue Fund and to implement specific monitoring commitments, for 18 months, to ensure continuing compliance of the inmate telephone operations at the Miami-Dade Correctional Facilities.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, this docket should remain open pending the receipt of the \$1,250,000 payment. The payment should be received by the Commission within thirty (30) calendar days after the issuance of the Final Order. The payment should be made payable to the Florida Public Service Commission and should identify the docket number and the company's name. Upon receipt of payment, the Commission shall forward it to the Department of Financial Services to be deposited into the General Revenue Fund. If TCG fails to remit the payment within thirty (30) calendar days after the issuance of the Final Order, this docket should remain open pending further proceedings. This docket should be closed administratively upon receipt of the settlement payment. **(Tan)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.

the successor in interest to TCG, which was merged into GTL in late 2007.

3. The opening of this docket comes after an informal investigation of TCG's inmate phone service provided to inmates at various Miami-Dade County Correctional Department ("Department") facilities. This informal investigation dates back to approximately March 2004 when a customer complaint was filed with the Commission. While that customer complaint ultimately was settled to the customer's satisfaction, the Commission Staff expanded its investigation of the payphone services provided by TCG to the Department with a focus on the three-way call detection software and equipment which terminates three-way calls that are not allowed under the Department's regulations. During the time of the informal investigation the Commission Staff conducted certain tests at the Department's facilities and otherwise received data requested from TCG. In addition, representatives of TCG and the Commission Staff have met numerous times to discuss the Staff investigation.

4. As a part of the ongoing process to resolve this matter, the Company filed its Offer of Settlement with the Commission on September 10, 2007. Based upon the very low number of customer complaints and the overall progress of the investigation to that point, the Company believed, and continues to believe, that the provision of the payphone services in the Department's facilities did not result in any violation of the Commission's statutes or rules at any time during the term of the Department's contract with TCG.

5. On September 28, 2008, the Commission Staff filed a memorandum with respect to its investigation and the Company's September 10, 2007 Offer of Settlement. The Staff Recommendation ("Recommendation") proposed that the Commission make various factual and legal conclusions regarding the provision of inmate phone services at Department facilities and, in particular, the three-way call detection equipment used in connection with those services. Based

upon the Staff's investigation, the Staff concluded that the three-way call detection software "may not have been capable of accurately accomplishing the task for which it was designed." Recommendation, at page 18. According to the Staff, systemic problems with, and defects in, the three-way call detection software resulted in additional surcharges to customers that should be refunded. The Staff also proposed that TCG be ordered to pay a fine for the failure to provide the Commission with call detail records in the possession of TCG's subcontractor and because, allegedly, the sensitivity of the three-way call detection software was knowingly set to levels "that would cause the inmates' calls to drop erroneously." Recommendation, at page 24.

6. At the Commission Agenda Conference on September 29, 2008, the Company strongly denied the allegations and conclusions set forth in the Recommendation. Counsel for the Company specifically responded to certain points made in the Recommendation and identified additional information ~~that was not included~~ or otherwise considered by the Staff in reaching its conclusions and recommendations. The Company also informed the Commission that in March 2008 it had completed the installation of an entirely new, GTL-proprietary inmate phone system at all Department facilities. After an extensive discussion at the Agenda Conference, the Commissioners did not vote on the Recommendation but instead deferred consideration of the matter in order to provide the Commission Staff and the Company with additional time to further discuss all of the relevant information regarding the Department's inmate phone system.

7. Pursuant to the Commissioners' directive, the Company, the Commission Staff, and other interested persons have met numerous times to further discuss the legal and factual matters associated with this matter. The Company continues to believe that there has not been any violation of the Commission's statutes or rules at any time during the term of the Department's contract with TCG or GTL. However, in view of the significant resources that have

been expended by the Commission and the Company, as well as now having the benefit of the additional discussions between the Company and the Commission Staff, the Company believes that sufficient progress has been made such that it can now offer the following Revised Offer of Settlement to fully conclude and settle this matter.

II. THE NEW INMATE PHONE SYSTEM

8. During the course of the discussions between the Company and Commission Staff, the Company has provided information regarding the replacement inmate phone system, installation of which was completed in March 2008. Much of the information regarding the new inmate phone system constitutes proprietary and confidential business information, customer information, and trade secret information that is protected from public disclosure pursuant to Section 364.183, Florida Statutes. A Confidential Addendum associated with this Revised Offer of Settlement has been filed with the Commission pursuant to Rule 25-22.006, Florida Administrative Code, which supplements and supports this Revised Offer of Settlement by describing certain operational and security requirements of the new system.

9. For purposes of the public record, the Company can represent to the Commission that the replacement of the inmate phone system for the Department was complete and extensive in every respect. The new system was implemented over many months with the cooperation of Department officials and included the replacement of every phone instrument, the controllers, channel banks, the interior wiring, and all hardware and software associated with the inmate phone system. The equipment was extensively tested and calibrated based upon the characteristics of each Department facility. All of the equipment now in place is GTL-proprietary equipment that was installed by agreement with the Department. With the completion of this system replacement, GTL is now solely in control of all of the equipment and its maintenance and

operation at the seven Department facilities.

10. Moreover, in contrast to the customer service for calls originating from the Department inmate phone system provided during the time period at issue in the Staff Recommendation (which was provided by a TCG subcontractor), all aspects of the inmate phone service are now within the exclusive control of GTL employees. The Company has worked cooperatively with the Department to make available to consumers information regarding billing, payments, and customer service information through printed materials at inmate intake, signs and documentation within the facilities to inmates and visitors, on the Department's website, on the GTL website, as a part of the incoming message to consumers receiving calls, through customer bills, through calls to customer service, and through calls directly to consumers who receive such calls. The Company remains committed to assisting consumers to the fullest extent possible so that their ability to receive calls from inmates can occur in a reasonable manner and so that any questions or problems can be resolved directly and promptly.

11. It is critical for Department officials to be able to utilize the inmate phone system in a manner that enables law enforcement to fulfill its obligations to protect the public, inmates, Company employees or equipment, and Department employees. The Company believes that the new system facilitates these important objectives. Accordingly, it must be in a position to undertake routine hardware and software upgrades and changes that are requested by Department officials or which the Company otherwise determines are necessary to maintain the efficacy of the inmate phone system.

12. Now that the Company has exclusive control of the inmate phone system, it has instituted new internal procedures to ensure that its management is notified promptly of changes to the equipment, and that all such changes are documented, tested, reported, and subsequently re-

evaluated to ensure that the equipment and software is operating in a safe, efficient, and effective manner. These new internal processes and procedures will enable the Company to timely and meaningfully respond to customer concerns or inquiries from the Commission in the ordinary course of business.

13. The Company is committed to working cooperatively with the Commission, the Department, and consumers in order to fulfill its contractual obligations to the Department as well as its obligations to customers. The Company believes that the implementation of the new phone system, its control and operation by its employees, and the associated new internal processes and procedures will in combination have a significant positive impact on the services delivered by the Company to the Department and consumers.

III. REVISED SETTLEMENT PROPOSAL

14. In making this Offer of Settlement, the Company does not concede that the design, operation, or management of the three-way call detection software resulted in the violation of any Commission rules, orders, or statutes under the former or present inmate phone systems. Accordingly, it is the Company's view that, if this matter were to be litigated, the Commission ultimately would conclude that no basis exists for assessing damages in this matter, and no basis exists for the imposition of any fine or penalty with respect to the conduct of the Company. Moreover, the complete replacement of the system as of March 2008 with the new GTL system should entirely eliminate, on a going-forward basis, any concerns regarding the prior three-way call detection equipment that formed the basis of the Recommendation.

15. Notwithstanding the foregoing, and in view of the further discussions between the Commission Staff and the Company and the additional information developed during this process, the Company is prepared to offer the following revised terms in full and complete settlement of

this matter:

- (1) GTL will make a payment to the State of Florida in the amount of \$1,250,000.00 within thirty (30) days of the Commission's Order accepting the Revised Settlement Offer becoming final and nonappealable.
- (2) The Commission will issue a Final Order with the following specific terms and conditions:
 - Accepting the \$1,250,000.00 payment.
 - Not finding any guilt or liability on the part of TCG or GTL or any of their present and past corporate parents, subsidiaries, affiliates, predecessors or successors with respect to the allegations in the Recommendation and specifically with regard to the inmate phone system or three-way call detection hardware and software operations for the period January 1, 2000 through the date of the Commission's Final Order accepting this settlement. However, the Company shall be responsible for addressing any specific individual consumer complaints that may be pending at the time of the Final Order accepting this revised settlement or which pertain to billing issues that arose on or after April 1, 2008.
 - Recognizing that in early 2008 the Company completed the institution of a new hardware and software inmate phone system for the Miami-Dade Correctional Department. These changes were routine upgrades in the normal course of business and independent of this docket, the Recommendation, or any request by this Commission. GTL has provided the Commission with information regarding the new GTL-proprietary inmate phone system, and based upon that information the Commission is satisfied that it can close this docket without further action.
 - Acknowledging GTL's commitment to work cooperatively with consumers and the Commission to address any fraudulent calling or other consumer service problems that may occur in the future. GTL shall timely respond to consumer complaints made directly to the company, the Commission, the Department, or any other governmental entity.
 - Finding that, although in the Commission's view the former three-way call detection hardware and software that was replaced in March 2008 may have been defective or improperly maintained, the Company was not at fault for implementing or utilizing such systems.
 - Accepting the additional settlement terms provided by the Company in the Confidential Addendum that is a part of this revised settlement and which is incorporated by reference and

accepted as confidential proprietary business information exempt from public disclosure pursuant to Section 364.185, Florida Statutes.

- Closing the docket without any further action or obligation of TCG or GTL other than as set forth in this Revised Offer of Settlement.
- (3) Nothing in this settlement shall prevent GTL from undertaking the necessary routine hardware and software upgrades and changes necessary to the successful management and operation of the Department's inmate phone system.
- (4) Nothing in this settlement shall prevent GTL from undertaking those lawful changes to the Department's inmate phone system requested by Department officials or the management of GTL that are necessary to the safe and efficient operation, management, and control of the Department facilities to protect the public, inmates, GTL employees or equipment, or Department employees.

16. By its nature, a settlement recognizes that parties make compromises in order to fulfill other objectives. In view of the extensive discussions that have occurred since the September 29, 2008, Agenda Conference, the Company believes that the terms now being offered in this Revised Offer of Settlement represent the best resolution of this matter and are in the public interest.

IV. CONCLUSION

17. The Company makes this offer solely in connection with its effort to settle and resolve this investigation for itself and or any present and past corporate parents, subsidiaries,

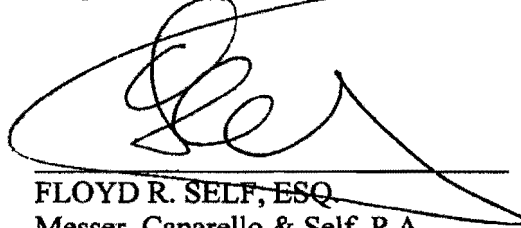
affiliates, successors or predecessors, and this revised settlement may not be used for any other purpose. TCG and GTL for each company and for or any present and past corporate parents, subsidiaries, affiliates, successors, or predecessors of TCG and GTL, do not admit to any wrongdoing, and submission of this proposal and its acceptance by the Commission shall not be construed as any admission of liability on the part of any of TCG, GTL, or any of their present and past corporate parents, subsidiaries, affiliates, successors, predecessors, employees or officers. TCG and GTL, and any of their present and past corporate parents, subsidiaries, affiliates, successors or predecessors, fully reserve each and all of their rights, positions, and arguments if this Revised Offer of Settlement is not accepted and approved by the Commission and incorporated into a Final Order and, ultimately, a final order in accordance with its terms.

18. This proposal shall be valid and binding upon TCG and GTL, and any of their present and past corporate parents, subsidiaries, affiliates, successors, or predecessors, only to the extent it is adopted in its entirety as presented to the Commission. If this proposal is accepted by the Commission, then the investigation will be resolved as it relates to TCG and GTL, and any of their present and past corporate parents, subsidiaries, affiliates, successors, or predecessors. In addition, if this proposal is accepted by the Commission in its entirety as proposed, then TCG and GTL, and any of their present and past corporate parents, subsidiaries, affiliates, successors, or predecessors, shall not request reconsideration or appeal of the orders of the Commission approving this proposal in accordance with its terms.

19. The Company appreciates the Commission's consideration of this offer and for the opportunity the Commission has provided to meet and further work with the Commission Staff in an attempt to reach a reasonable resolution of this matter. Based upon the entire process to date, and given the alternative of extensive litigation, the Company believes that this Revised

Offer of Settlement proposal is in the public interest and should be approved.

Respectfully submitted,



FLOYD R. SELF, ESQ.
Messer, Caparello & Self, P.A.
Post Office Box 15579
Tallahassee, FL 32317
(850) 222-0720 (voice)
(850) 558-0656 (direct facsimile)

and

CHRISTOPHER M. KISE, ESQ.
ROBERT H. HOSAY, ESQ.
Foley & Lardner LLP
106 East College Avenue, Suite 900
Tallahassee, FL 32301-7732
(850) 222-6100 (voice)
(850) 561-6475 (facsimilie)

Counsel for TCG Public Communications, Inc. and its
present and past corporate parents, subsidiaries, affiliates,
and successor in interest, Global Tel*Link Corporation