

Gerald Roylance
1168 Blackfield Way
Mountain View, CA 94040-2305
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**Before the
Federal Communications Commission
Washington DC 20544**

In the matter of	CG Docket No. 02-278
Global Tel*Link Corporation's Petition for Expedited Clarification and Declaratory Ruling Regarding Inapplicability of TCPA to Inmate Initial Telephone Contact Notifications	DA 10-997
	Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

Gerald Roylance's Reply re Global Tel*Link Petition

I. Introduction

Global Tel*Link Corporation (“GTL”) filed an expedited petition for clarification and declaratory ruling¹. On June 15, 2010, the FCC requested comments on the petition in DA 10-997². There were nine filed comments: Gerald Roylance, Securus Technologies, Robert Biggerstaff, Mark R. Lee, Michael C. Worsham, Robert H. Braver, United Parcel Service, Cargo Airline Association, and Thomas M. Pechnik.

The six individual commenters were opposed to the petition. Securus Technologies³ is in the same business as GTL and supports the petition. United Parcel Service and the Cargo Airline Association support the petition due to concerns they have about autodialed and possibly prerecorded package notification messages.

GTL has also filed a reply comment⁴. The reply is a contortion. It also ignores significant issues. GTL’s reply, for example, is silent about concurrent lawsuits. Why should the FCC step in when issue is already in a competent forum? From GTL’s statements, it is currently violating the TCPA and is seeking an exemption of its current bad acts.

¹ <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015541170>

² DA 10-997, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015658060>.

³ <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015620857> (May comments).

⁴ <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015694689>

II. Securus Technologies, Inc

Securus Technologies and other inmate telephone system providers have a system that is similar to GTL's. On page 2 of its May submission, Securus states, "When the called party's terminating carrier does not have arrangements for the party to accept collect calls, the called party must establish a separate account with Securus to receive the inmate's collect calls. Therefore, the [inmate telephone system] provider must give instructions to the called party, using an automated prerecorded voice message, on how they can establish an account if they wish to receive the inmate's collect calls. Usually, this is accomplished by providing an 800 number to speak with a customer service representative." On page 5 of its May submission, Securus states its "contacts are not telemarketing solicitations, but rather are instructional messages to assist and allow an inmate to securely complete calls to friends and loved ones."

Securus does not explain why these prerecorded "contacts" are not solicitations but rather just claims that they are not solicitations. Securus does not analyze the TCPA's definition of unsolicited advertisement or telephone solicitation. The prerecorded message is clearly announces the commercial availability of a telephone service. Although the message does close the deal, it encourages the purchase of telephone services.

If Securus were allowed to sell its services with these "instructional messages", then any telemarketer could use similar "instructional messages" to peddle other property, goods, and services. The FCC has already rejected this ruse when it refused to permit "information-only" prerecorded messages⁵.

If Securus delivers prerecorded messages to cellular telephones without prior express consent (which appears to be highly likely), then it violates 47 USC § 227(b)(1)(A)(iii).

III. United Parcel Service and Cargo Airline Association

Package delivery companies are concerned with the petition because "our members may need to notify package recipients of scheduled deliveries or failed attempts to deliver packages. These calls merely provide a customer service and do not contain any solicitation or product marketing. In addition, some of these calls are made to package recipients that are not the original sending customer where the sender has provided telephone contact information to reach the intended recipient."

Cargo carriers are in a different position than GTL. A cargo carrier has already sold its service to the sender. The carrier can easily acquire prior express consent to

⁵ 2003 Report and Order, FCC 03-153, cf ¶ 139.

make prerecorded calls to the sender at a number the sender provides⁶. Calling the sender should not be a problem.

The delivery company calling the package recipient is a different matter – and one that the comments do not clearly explain. Why does the package delivery firm need to call the recipient with an automated dialer or a prerecorded message? When UPS cannot deliver a package to me, the driver leaves a slip of paper at my door. The driver is there, he has a pad, and he leaves a note. Why should there be a telephone call at all? The form gives me instructions about getting the package. There is no telephone call, and there cannot be a TCPA violation.

In a slightly different scenario, the driver may not be able to find my home. In that case, he can use his cellular telephone to manually dial the number on the bill of lading. That manually dialed number – even if it reaches a cellular telephone – does not run afoul of the TCPA. The call isn't selling anything, so there's not even a risk of a do-not-call violation. Many contractors, repair men, and installers make such live calls.

UPS states that it relies on autodialed, prerecorded calls and SMS messages to provide various informational messages to certain customers and package recipients. UPS states that it uses notification messages for COD, signature required, adult signature required, and Return Service 3 pickup⁷. These deliveries do not appear to be different from standard package delivery attempts described above. If the attempt fails, then the driver can leave a form. If UPS wishes to use a machine to phone ahead, then it would run the risk of violating the TCPA by making autodialed telephone calls to cellular telephones.

Package delivery companies could also rely on their customers getting prior express consent for automated calls from the recipients – consent that includes calls by the package delivery company.

The package delivery companies are not in the same boat as the inmate telephone service providers. The delivery companies have already sold their services and are not telemarketing.

IV. Global Tel*Link's reply

GTL's reply avoids the key issues and misstates the record.

⁶ There is some risk of transcription or similar errors. If the carrier ends up making a prerecorded call to somebody else's cellular telephone, then there would be a TCPA cause of action.

⁷ Return Service 3 has UPS printing a return label and making three attempts to deliver that return label to the recipient so the recipient can return a package. UPS also offers Return Service 1 where UPS prints the label and will leave the label at the recipients address.

For example, GTL claims that “The majority of comments submitted support GTL’s Petition....” However, 3 out of 9 is not a majority.

GTL also claims that only one commenter provided any argument in opposition. That is an outrageous statement. Although several other individuals joined in my argument, they also provided short argument of their own. Robert Biggerstaff argued that GTL’s messages were advertisements and supported that with a dictionary definition. Mark R. Lee argued that GTL’s request is “riddled with inconsistent statements” and offered that the messages inconvenience the public. Michael C. Worsham stated that prerecorded calls are often abused. Thomas M. Pechnik argues that the prerecorded calls “are plain and simple advertisements for services provided by GTL.” He further characterizes GTL’s marketing as using “prospect lists supplied by prison inmates” and notes that GTL is not scrubbing its calls against the national do-not-call list. These arguments may be terse, but they are telling.

A. GTL ignores the plain language of the TCPA

GTL’s reply is not a legal analysis of its position but rather an unstudied argument that essentially asks the FCC to rewrite the TCPA – something that the FCC cannot do. GTL claims that its IVR notification “serves the public interest”. That is not an element of the TCPA. GTL claims that the notification “does not run afoul of the TCPA or the Congress’s objectives in enacting the legislation”. The statement is not about what the TCPA says, but rather an appeal to divine some intent to override the statute. Not even the courts can do that when a statute’s language is unambiguous. The TCPA forbids transmitting a prerecorded voice to a cellular telephone without prior express consent of the called party. There is no wiggle room.

GTL recognizes at page 2 that the FCC’s authority is limited. The FCC cannot exempt calls that include the transmission of any unsolicited advertisement or calls that go to cellular phones or are charged to the called party. GTL then buries its crucial but flawed arguments further down in its reply.

At page 7, GTL claims its IVR Notifications fall within the exemptions permitted by the TCPA. GTL argues that its messages do not transmit an “unsolicited advertisement” but rather are “informational messages”. GTL does not address the 2003 Report and Order’s analysis of “information only” calls. There is no dissection of the TCPA definition of “unsolicited advertisement”. GTL does not address my comments on the issue. GTL does admit that “the notifications strictly inform a called party how to establish an account....”

Deep Throat gave Woodward and Bernstein a clear goal: **follow the money**. The money in this case flows to GTL. Although GTL claims that it “has no means or interest in soliciting business from consumers”, GTL is interested in setting up accounts from those very consumers. Why does GTL need to set up an account if it isn’t interested in soliciting business?

GTL also claims that IVR Notifications for wireless phone numbers are not contrary to the TCPA. Once again, there is no legal analysis. GTL does not explain why its business is like a debt collector's. The difference was raised in my comments. GTL recycles other long-dead arguments such as claiming that the IVR Notification is trying to extract consent from the called party – but that butchers the notion of “prior”. GTL had to have consent before it transmits the prerecorded voice to the cellular telephone. It cannot obtain prior consent after the transmission is made.

But the telling statute is 47 USC § 227(b)(1)(A)(iii): GTL is delivering a prerecorded voice to a cellular telephone without prior express consent. The TCPA flatly forbids that practice. GTL huffs and puffs about providing identification (its messages do not identify the inmate by name) or that it is not using a predictive dialer or that it is not capturing numbers, but there is no dispute that it is delivering prerecorded messages without consent.

B. Other Points

In the middle of its reply, GTL addresses several issues.

GTL makes a long-winded argument that IVR calls serve public safety, but the argument is off the mark. There is an emergency exception at 47 USC § 227(b)(1), but there is no public safety exception for cellular telephone calls. The million or so telephone calls that GTL handles everyday are not emergencies. An emergency is a shelter-in-place warning due to a fire at the local refinery. An unexpected school closing might also be an emergency. A typical telephone call is not.

GTL cites to its contract to argue that it cannot use live operators. The logic behind this argument is absurd. Its unstated premise is that its contract should trump a statute of the United States. Under that theory, any inmate who did a contract-for-hire murder would get out of jail free.

GTL cites to the burden of using live operators for millions of calls. It is not a legal argument but rather an economic one. And it's a bad one at that. GTL could certainly get prior express consent from the called party. When it has obtained prior express consent, then it is free to place automated calls to that number. GTL is ignoring a fundamental point of its petition – it wants to set up an account. After it has set up an account (using live operators) and obtained permission, then it is free to use automated calls. It is highly unlikely that GTL is setting up millions of accounts per day.

From a public safety standpoint, it would be better if the initial contact were with a live person. That person could explain what is going on and even set up an account right then. Imagine that an inmate dials a number, but GTL doesn't have express consent for the called number. GTL's system can then acquire a live operator. That live operator (who doesn't need to talk to the inmate) presses a button to speed dial the number the inmate dialed (remember – predictive dialing is not allowed to cellular telephones). The operator can explain everything to the called party and even set up an account. The TCPA does not prohibit live telemarketing calls to cellular telephones; it prohibits

autodialed or prerecorded calls. The live operator may also be able to obtain express consent for subsequent prerecorded calls⁸. At that point, the inmate's subsequent calls to that number can go through automatically.

GTL's "Testify and I will kill you" scenario is foolish and overly dramatic. First, inmate calls are recorded, so the explicitly stated threat would backfire at trial. In most cases, the contact would violate a court order. On the other hand, if a witness got a prerecorded message at her home stating, "Will you accept a call from an inmate in County Jail", she would interpret that as a threat to her safety without any other words being spoken by the inmate. From a public safety standpoint, I would expect law enforcement to enter witnesses' telephone numbers in to a do-not-call database.

My suggestion of free three-minute call fails for other reasons. Even a hand dialed call to a cellular telephone is prohibited if a prerecorded message is played. 47 U.S.C. § 227(b)(1)(A)(iii). GTL may not play a prerecorded warning that the call is from a jail or prison.

GTL claims that a mail option is unworkable because there might be a medical crisis or a need to call an attorney. Certainly jails provide medical attention, and GTL could certainly obtain prior consent from local attorneys.

Furthermore, nothing prevents GTL from adopting a hybrid solution that uses live operators in some circumstances. An argument that no one solution covers all the possibilities does not mean that GTL's existing system must be used. In fact, the underlying premise of GTL's petition is that its current system violates the TCPA, so GTL should not be using it. GTL must find its own alternatives. Instead it wants to play dumb and argue there is no other way to do what it wants.

GTL once again does not use legal arguments about the TCPA, but rather claims that IVR Notifications are essential for inmate calling services because "any other method would be unreasonable or unpractical", IVR maximizes convenience to inmates, and IVR helps facilitate communications between inmates and their loved ones. These motherhood and apple pie arguments are not real reasons that GTL wants IVR. The real reason is IVR Notifications "allow GTL to provide its inmate calling services in a cost-effective and efficient manner." These are not elements or concerns of the TCPA.

V. Links

An internet search for Global Tel*Link turns up a host of dissatisfied consumers. I invite the FCC to look at these links.

<http://www.complaintsboard.com/complaints/global-tel-link-c45147.html> Claims GTL is a horrible company. Also several other complaint links.

⁸ The 10-18 NPRM sought comment about written express consent. There may be an issue of obtaining written consent for prerecorded calls.

http://www.sueeasy.com/class_action_detail.php?case_id=331 A class action feeler with many comments.

<http://71.159.22.28/LinkClick.aspx?fileticket=H5D6fBII53Y%3D&tabid=2790&mid=3623> City of Detroit. Auditor General.report. Detroit gets a \$10,000 signing bonus and 23.5% of the gross. Commission may be an unlegislated tax. Louisiana ordered GTL to refund \$1.2 million in over charges.

<http://www.ripoffreport.com/Ex-Wives/Correctional-Billing/correctional-billing-services-74sb5.htm> Ripoff report.

http://www.californiaprisonreform.org/pdf/telephone_justice_flyer.pdf Families United for Prison Reform.

VI. Conclusion

GTL's petition is unstudied nonsense.

GTL tells us it is currently litigating these issues in state court, so its petition is really an attempt to subvert the state court's authority and ability to resolve the issues. GTL has also pointed out that the state litigation involves unidentified state laws that the FCC should not address in the dark.

GTL's petition also runs counter to the FCC's upcoming NPRM harmonizing FCC regulations with FTC regulations.

/s/ Gerald Roylance