

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 3, 2015**

**Released: December 3, 2015**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (Order), we consider the facts and circumstances surrounding the violation of the *Protective Order* in this proceeding<sup>1</sup> by Alabama Public Service Commission (AL PSC) personnel.<sup>2</sup> For the reasons set forth below, we admonish the AL PSC, and the employee involved, for their breach of the *Protective Order*. We find, however, that the remedial measures already taken by the AL PSC are sufficient to preserve the integrity of the Federal Communications Commission’s (FCC or Commission) processes. Accordingly, we impose no additional sanctions on the AL PSC. We continue to prohibit Darrell A. Baker from reviewing confidential documents submitted in this proceeding, or any other proceeding before the Commission, however, and also exclude him from participating further in this proceeding for at least one year.<sup>3</sup> After one year from the date of this Order, the AL PSC may petition the Wireline Competition Bureau (Bureau) to have the ban lifted.

**II. BACKGROUND**

2. After initiating a Mandatory Data Collection for providers of inmate calling services (ICS) in this proceeding, the Bureau adopted the *Protective Order* to allow parties to have access to confidential documents and data filed in the docket “while protecting proprietary and confidential information from improper disclosure.”<sup>4</sup> Pursuant to the *Protective Order*, employees of the AL PSC, including Darrell A. Baker, obtained access to confidential information submitted in this proceeding.<sup>5</sup>

3. On July 8, 2015, Mr. Baker submitted to the Commission an *ex parte* letter that included confidential data that seven ICS providers – including Global Tel\*Link Corporation (GTL) – had filed

<sup>1</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (Wireline Comp. Bur. 2013) (*Protective Order*).

<sup>2</sup> Neither the AL PSC, nor the specific employee named by GTL, have denied that a violation occurred. They merely contend that the violation was inadvertent. See Letter from Darrell A. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 17, 2015) (Baker July 17 Letter) (not contesting the accuracy of GTL’s filing and “acknowledging [his] mistake”); Response of AL PSC, WC Docket No. 12-375, at 2 (filed Sept. 24, 2015) (AL PSC Response).

<sup>3</sup> See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order Addressing Violations of Protective Order, 30 FCC Rcd 10130, 10133, para. 8 (Wireline Comp. Bur. 2015) (*Initial Order*).

<sup>4</sup> *Protective Order*, 28 FCC Rcd at 16954, para. 1.

<sup>5</sup> *Initial Order*, 30 FCC Rcd at 10130, para. 2.

pursuant to the *Protective Order*.<sup>6</sup> Although Mr. Baker did label the filing as confidential, he filed the letter via the Commission's public Electronic Comment Filing System (ECFS), thus providing the general public access to the confidential letter, instead of filing the confidential letter with the Secretary's Office and filing only a redacted version of the letter via ECFS, as required by the *Protective Order*.<sup>7</sup> The record indicates that the confidential filing remained available on ECFS for approximately three hours before it was removed.<sup>8</sup>

### III. SUBMISSIONS OF THE PARTIES

4. On July 16, 2015, GTL filed a motion seeking sanctions against Mr. Baker and the AL PSC for violating the *Protective Order* by filing confidential data via ECFS where it was available for public review.<sup>9</sup> Mr. Baker responded in a brief letter, filed July 17, 2015, in which he did not contest the facts presented by GTL, but explained that he had acted under the mistaken belief that the Commission would not post the confidential version of the filing on the publicly-available ECFS website because he had labeled the document in accordance with the requirements of the *Protective Order*.<sup>10</sup> Commission staff subsequently had an *ex parte* conference call with Mr. Baker and other representatives of the AL PSC,<sup>11</sup> followed by an *ex parte* conference call with representatives of GTL.<sup>12</sup>

5. In response to GTL's filing, the Bureau released the *Initial Order* on September 21, 2015, prohibiting Mr. Baker from reviewing confidential documents and from participating further in this proceeding.<sup>13</sup> The *Initial Order* also directed Mr. Baker and the AL PSC to provide a full and detailed explanation of the violation of the *Protective Order*, the steps taken to remedy the breach, and a description of any notice Mr. Baker or the AL PSC provided to other parties whose confidential information was included in the public ECFS filing.<sup>14</sup> In addition, the *Initial Order* noted that the AL PSC had taken action to address the breach, including retraining personnel on the proper handling of confidential information, securing all confidential information in its possession related to this docket in the office of its Chief Administrative Law Judge, and requiring future filings made in this docket to be thoroughly reviewed and signed by an attorney.<sup>15</sup> GTL and other providers whose confidential information was disclosed were given opportunities to respond to the *Initial Order* and to the AL PSC's filing, and Mr. Baker and the AL PSC were offered an opportunity to reply.<sup>16</sup>

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<sup>6</sup> Letter from Darrell A. Baker, Director, Utility Services Division, AL PSC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 8, 2015).

<sup>7</sup> *Protective Order*, 28 FCC Rcd at 16956, para. 4.

<sup>8</sup> Global Tel\*Link Corporation's Motion for Sanctions, WC Docket No. 12-375, at Attach., Declaration of Angela F. Collins (filed July 16, 2015).

<sup>9</sup> *See id.* at 1.

<sup>10</sup> *See* Baker July 17 Letter at 1 (explaining that "[m]y presumption was that the Commission would only post the redacted (for public view) version of the Ex Parte Presentation to the ECFS webpage").

<sup>11</sup> *See generally* Letter from John A. Garner, Exec. Dir. and Chief Administrative Law Judge, AL PSC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 29, 2015) (AL PSC Letter) (describing July 27, 2015 conference call between FCC staff and representatives of the AL PSC).

<sup>12</sup> *See generally* Letter from Chérie R. Kiser, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 31, 2015).

<sup>13</sup> *Initial Order*, 30 FCC Rcd at 10133, para. 8.

<sup>14</sup> *Id.* at 10132, para. 6.

<sup>15</sup> *Id.* at 10132-33, para. 7 (citing AL PSC Letter).

<sup>16</sup> *Id.* at 10133, para. 8.

6. On September 22, 2015, following the release of the *Initial Order*, Mr. Baker sent an email to Bureau staff discussing his violation of the *Protective Order* and stating, *inter alia*, that he “got into a hurry, assumed I knew the correct filing procedures which I should have researched before submitting.”<sup>17</sup> The AL PSC then filed its response to the *Initial Order* on September 24, 2015.<sup>18</sup> In its response, the AL PSC listed the steps it had taken to ensure that there would be no future violations, including retraining staff on the proper handling of confidential information, securing confidential information in the Chief Administrative Law Judge’s office, prohibiting Mr. Baker from submitting filings in WC Docket No. 12-375, and ensuring that any future filings by the AL PSC in this docket will be signed by an attorney.<sup>19</sup> The AL PSC also discussed its newly implemented “Protective Order Compliance Protocol,” which requires approval from the Executive Director to submit any filing containing confidential information.<sup>20</sup>

7. GTL filed its response on October 1, 2015.<sup>21</sup> In its response, GTL focused almost exclusively on Mr. Baker’s email and requested further sanctions based on what it described as “the recidivistic conduct of Mr. Baker on behalf of the APSC.”<sup>22</sup> GTL offered no comment on the steps that the AL PSC had taken to address the breach of the *Protective Order* and to prevent future violations.

8. Two other ICS providers whose confidential data was included in the AL PSC document filed on ECFS, Pay Tel Communications, Inc. (Pay Tel) and Network Communications International Corp. (NCIC), also submitted filings in response to the Bureau’s invitation in the *Initial Order*.<sup>23</sup> Both providers argue that the remedial actions taken by the AL PSC are sufficient to prevent future violations of the *Protective Order*, and both mention the valuable contributions that Mr. Baker and the AL PSC made to this proceeding.<sup>24</sup> NCIC recommends that the Commission not impose any further sanctions on the AL PSC or Mr. Baker.<sup>25</sup> No other parties made any filings related to the breach of the *Protective Order*.

9. Finally, the AL PSC submitted a reply to GTL’s filing.<sup>26</sup> In its reply, the AL PSC defended the appropriateness of Mr. Baker’s email to Bureau staff, explaining that the email was a response to a directive in the *Initial Order*, and, as such, was not a violation of the prohibition on Mr. Baker from filing in the docket.<sup>27</sup>

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<sup>17</sup> Email Correspondence from Darrell A. Baker, Director, Utility Services Division, AL PSC, to Lynne Engledow, Acting Deputy Chief, Pricing Policy Division, Wireline Competition Bureau, FCC, WC Docket No. 12-375 (filed Sept. 22, 2015); *see also Initial Order*, 30 FCC Rcd at 10132, para. 6 (asking Mr. Baker and the AL PSC to provide a “full and detailed explanation of this matter”).

<sup>18</sup> AL PSC Response.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 5. The AL PSC also explained that Mr. Baker’s email was consistent with the Commission’s *Initial Order*, which sought additional explanation from Mr. Baker. *Id.* at 2.

<sup>21</sup> Response of GTL, WC Docket No. 12-375 (filed Oct. 1, 2015) (GTL Response).

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *See* Response of Pay Tel Communications, Inc. to Submissions of Darrell A. Baker and the Alabama Public Service Commission, WC Docket No. 12-375 (filed Oct. 1, 2015) (Pay Tel Response); Response of Network Communications International Corp. to GTL Motion Recommending Sanctions Against APSC, WC Docket No. 12-375 (filed Oct. 9, 2015) (NCIC Response); *see also Initial Order*, 30 FCC Rcd at 10133, para. 8 (inviting responses from GTL and “other affected parties”).

<sup>24</sup> *See* Pay Tel Response at 1, 2; NCIC Response at 2, 3.

<sup>25</sup> NCIC Response at 3.

<sup>26</sup> Response of the AL PSC, WC Docket No. 12-375 (filed Oct. 6, 2015) (AL PSC Reply).

<sup>27</sup> *Id.* at 2.

#### IV. DISCUSSION

10. Based on the record before us, we find no need to impose additional sanctions on the AL PSC.<sup>28</sup> We take violations of protective orders very seriously. As the Commission has explained, “[p]rotection of commercially sensitive materials submitted by parties pursuant to protective orders . . . is a very serious matter requiring vigilance by Commission staff as well as parties gaining access to such information. Unauthorized disclosure of proprietary information could lead to substantial competitive and financial harm to the party submitting that information.”<sup>29</sup> We note that the interim measures adopted in the *Initial Order* have already prevented Mr. Baker from reviewing confidential documents and from submitting additional filings in this proceeding. This is a substantial penalty that reinforces our commitment to strict enforcement of protective orders. The additional remedial measures taken by the AL PSC, including retraining employees on protective order filings and the “Protective Order Compliance Protocol,”<sup>30</sup> also demonstrate that the AL PSC recognizes the seriousness of the mistakes that led to the violation of the *Protective Order*.

11. The responses of other parties affected by the violation further reinforce our decision not to impose additional sanctions on Mr. Baker or the AL PSC. As noted above, the filing at issue included confidential data from six ICS providers in addition to GTL.<sup>31</sup> Of these six additional providers, four did not respond to the *Initial Order*, or responses thereto, at all. The two providers that did respond, Pay Tel and NCIC, did not support any additional sanctions against Mr. Baker and the AL PSC.<sup>32</sup> To the contrary, NCIC argued that no ICS providers were harmed by Mr. Baker’s filing because it did not contain detailed cost information.<sup>33</sup> GTL’s response to the *Initial Order* failed to address the merits of the issues raised by GTL’s initial motion or to justify additional sanctions against either the AL PSC or Mr. Baker.<sup>34</sup>

12. In addition, we note that there is no compelling evidence that Mr. Baker engaged in a pattern of carelessness or that he willfully violated the *Protective Order*. Nor do we find that Mr. Baker’s September 22, 2015 email to Bureau staff constituted a violation of the *Initial Order*. As the AL PSC points out, the *Initial Order* directed Mr. Baker and the AL PSC to provide any additional information necessary to give a full and detailed explanation of this matter.<sup>35</sup> We conclude that Mr. Baker’s email was merely part of the response he was directed to provide and, therefore, was entirely consistent with the *Initial Order*.<sup>36</sup>

13. In sum, although we find that Mr. Baker and the AL PSC were not sufficiently diligent in complying with the *Protective Order*, we do not find that either deliberately violated the *Protective*

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<sup>28</sup> See GTL Response at 4 (suggesting that the Commission could take additional actions, including “[s]uspension or disbarment of [c]ounsel or [o]utside consultants from practice before the Commission; [f]orfeitures; and [c]ease and desist orders”).

<sup>29</sup> *Applications of Craig O. McCaw, Transferor, and American Telephone and Telegraph Company, Transferee*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5923-24, para. 163 (1994) (also noting that disclosure of such information could undermine public confidence in the Commission’s processes and “have a chilling effect” on parties’ willingness to file confidential information).

<sup>30</sup> AL PSC Response at 3, 5.

<sup>31</sup> See *Initial Order*, 30 FCC Rcd at 10130-31, para. 3.

<sup>32</sup> See Pay Tel Response at 1, 2; NCIC Response at 2, 3.

<sup>33</sup> NCIC Response at 2.

<sup>34</sup> See GTL Response.

<sup>35</sup> AL PSC Response at 1.

<sup>36</sup> Mr. Baker’s email response to the *Initial Order* was included in the docket of this proceeding, as were all of the other responses. Cf. AL PSC Reply at 4 (characterizing Mr. Baker’s email as “a filing in response to a directive by the FCC . . .”).

*Order* or that there is a substantial risk of future violations by either Mr. Baker or the AL PSC. Accordingly, we conclude that no further action is warranted beyond the measures taken in the *Initial Order* and the steps described below. We continue to prohibit Mr. Baker from reviewing confidential documents submitted in this proceeding, or any other proceeding before the Commission, and also exclude him from participating further in this proceeding. This ban will remain in place for at least one year after the date of this Order, at which time the AL PSC may petition the Bureau to have the ban lifted.

14. *Authority.* This Order is issued pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and is effective upon its release pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1).

FEDERAL COMMUNICATIONS COMMISSION

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