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

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

ORDER

Adopted: September 21, 2015 **Released: September 21, 2015**

By the Chief, Wireline Competition Bureau:

I. BACKGROUND

1. On December 19, 2013, the Wireline Competition Bureau (Bureau) adopted a protective order in this proceeding to allow participants to have access to confidential documents and data filed in the docket, "while protecting proprietary and confidential information from improper disclosure."[1] The *Protective Order* makes clear that parties have an obligation to ensure that access to confidential information they obtain is "strictly limited as prescribed in the Protective Order."[2] The *Protective Order* also requires parties to "immediately convey" any violations to the Commission and to the party whose information is affected by the violation, and to "take all necessary steps to remedy the improper disclosure."[3] The *Protective Order* provides that the Commission retains "full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding."[4]

2. Employees of the Alabama Public Service Commission (AL PSC), a Participant in this proceeding, sought and obtained access, pursuant to the *Protective Order*, to confidential and proprietary information submitted in this proceeding. Specifically, seven individuals signed Acknowledgements of Confidentiality on behalf of the AL PSC, including Darrell A. Baker, who is listed as "Director, Utility Services Division" at the AL PSC.[5]

3. On July 8, 2015, Mr. Baker submitted to the Commission an *ex parte* letter that included confidential data that Global Tel*Link Corporation (GTL) and six other providers of inmate calling

[1] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 at para. 1 (Wireline Comp. Bur. 2013) (*Protective Order*). The *Protective Order* defines a "Participant" as "a person or entity that has filed, or has a good faith intention to file, material comments in this proceeding." *Id.* at 16955, para. 2.

[2] *Id.* at 16958, para. 11.

[3] *Id.* at para. 16.

[4] *Id*.

[5] Letter from Darrell A. Baker, Dir. Utility Services Division, AL PSC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Dec. 5, 2014).

services had filed pursuant to the *Protective Order*.[6] In accordance with the terms of the *Protective Order*, the submission was labeled "CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION." The *Protective Order* specifies that "[a] Submitting Party shall submit to the Secretary's Office one copy of each Stamped Confidential Document it wishes to file and an accompanying cover letter" and that "with respect to each Stamped Confidential Document submitted, each Submitting Party shall also file through the Commission's Electronic Comment Filing System ('ECFS') a copy of the respective Redacted Confidential Document and an accompanying cover letter."[7] Mr. Baker violated the terms of the *Protective Order*, however, by filing his confidential submission as a public document via the Commission's Electronic Comment Filing System rather than filing the confidential version with the Secretary's office as instructed by the *Protective Order*.[8]

4. The filing was posted on ECFS on the morning of July 9, 2015. GTL states that its counsel became aware of the filing that same morning and emailed Commission staff to request that the filing be removed from ECFS.[9] Mr. Baker was copied on that email.[10] The filing was removed from ECFS approximately three hours after it was posted.[11]

5. On July 16, 2015, GTL filed a motion seeking sanctions against Mr. Baker and the AL PSC for violations of the *Protective Order*.[12] 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 acted under the mistaken belief that the Commission would not post the confidential version of the filing, which was labeled with the appropriate header.[13] According to Mr. Baker, it was only after he made the filing that he "learned that the confidential version cannot be filed electronically, but must be submitted using hard copies."[14] Mr. Baker acknowledged, however, that "ignorance of the rules is no excuse" and admitted that he "should have more thoroughly researched the filing procedures."[15] Commission staff subsequently had an *ex*

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[6] Letter from Darrell A. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 8, 2015). All of the filings the AL PSC has made in this proceeding have been signed by Mr. Baker. In addition, Mr. Baker has made several filings in this docket which were not filed on AL PSC letterhead, did not list his title with the AL PSC and included a disclaimer indicating that Mr. Baker's "comments do not necessarily reflect the views of the Alabama Public Service Commission." *See, e.g., id*. at n.1.

[7] *Protective Order*, 28 FCC Rcd at 16956, para. 4.

[8] *See* 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).

[9] Global Tel*Link Corporation's Motion for Sanctions, WC Docket No. 12-375, at 5 (filed July 16, 2015) (GTL Motion).

[10] *See id*.

[11] *See id*. and Attach., Declaration of Angela F. Collins at para. 8 (Collins Declaration).

[12] *See generally* GTL Motion at 1.

[13] *See* Letter from Darrell A. Baker to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 17, 2015) (not contesting the accuracy of GTL's filing and 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").

[14] *Id*. at 1.

[15] *Id*. Mr. Baker's response to GTL's Motion was consistent with an earlier response he emailed to GTL indicating that he did not realize he had submitted the confidential information incorrectly and noting that he "clearly identified" the confidential version of the filing. *See* GTL Motion at 5 (quoting email from Darrell Baker to Angela Collins, sent July 9, 2015, attached as Exhibit 9 to the Collins Declaration).

parte conference call with Mr. Baker and other representatives of the AL PSC,[16] followed by an *ex parte* conference call with representatives of GTL.[17]

II. DISCUSSION

6. We agree with GTL that Mr. Baker's actions represent a "serious breach of the *Protective Order*."[18] As the Commission has explained,

> [u]nauthorized disclosure of proprietary information could lead to substantial competitive and financial harm to the party submitting the information. Such disclosure could also undermine public confidence in the effectiveness and integrity of the Commission's processes, and have a chilling effect on the willingness of parties to provide us with information needed to fulfill our regulatory duties.[19]

We therefore direct Mr. Baker and the AL PSC to provide by September 28, 2015 any additional information, beyond that provided in Mr. Baker's letter of July 17, 2015, that is necessary to give a full and detailed explanation of this matter, including an explanation of the steps Mr. Baker and the AL PSC took to remedy the breach once it was brought to their attention, as well as 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. The September 28th filing should include a description of the procedures that were in place to ensure compliance with the *Protective Order* and a statement regarding whether all AL PSC employees that signed Acknowledgments of Confidentiality read the *Protective Order*, including the Acknowledgement of Confidentiality.

7. We are concerned about the apparent laxity that resulted in the disclosure of confidential information. It appears that Mr. Baker did not review the *Protective Order* before submitting the confidential information, and that he did not confer with anyone else at the AL PSC to ensure that he was adhering to the requirements of the *Protective Order* or the AL PSC's own procedures regarding the handling of confidential information. We note, however, that the AL PSC has already taken action to address these issues. First, the AL PSC has certified that personnel who signed Acknowledgements of Confidentiality "have been retrained on the [Protective] Order and its requirements with respect to the proper handling of confidential information."[20] Second, the AL PSC has secured all confidential information in its possession related to this docket in the office of its Chief Administrative Law Judge.[21] Third, the AL PSC has prohibited Mr. Baker from submitting future filings in this docket.[22] And, finally, the AL PSC has indicated that any future filings it makes in this docket "will be thoroughly reviewed and

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[16] *See generally* AL PSC Letter (describing July 27, 2015 conference call between FCC staff and representatives of the AL PSC).

[17] *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).

[18] GTL Motion at 5.

[19] *Applications of America Online, Inc. and Time Warner Inc. for Transfers of Control*, CS Docket No. 00-30, Memorandum Opinion and Order, 16 FCC Rcd 2400, 2406 (Cable Serv. Bur. 2001) (quoting *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)).

[20] AL PSC Letter at 2, and attached certification.

[21] AL PSC Letter at 2.

[22] *Id.*

signed by an attorney."[23] The actions taken by the AL PSC demonstrate that it understands the gravity of the situation and has taken productive steps in an attempt to cure defects in its procedures for handling confidential information it receives, or has received, pursuant to the *Protective Order*.

8. Although we appreciate the actions taken by the AL PSC, we find that further action is needed.[24] Specifically, in addition, we direct that no AL PSC personnel may have any further access to confidential documents submitted under the *Protective Order* until the AL PSC has submitted a description of the measures and procedures to be implemented to ensure that future breaches of the *Protective Order* do not occur, along with signed acknowledgements from all relevant AL PSC personnel that they have reviewed and understand these measures and procedures.[25] A description of these procedures should be submitted to the Commission by September 28, 2015. GTL and other affected parties may file a response to Mr. Baker's and the AL PSC's submissions by October 1, 2015, and may suggest additional remedial measures or sanctions, beyond those entered in this Order. Mr. Baker and the AL PSC may reply by October 6, 2015. We also prohibit Mr. Baker, until further action by the Commission, from reviewing confidential documents submitted in this proceeding or any other proceeding before the FCC and from participating further in this proceeding.[26] Upon conclusion of our investigation, we will decide whether additional sanctions may be appropriate, beyond the actions taken in this Order and the actions already taken by the AL PSC.

9. *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

Matthew S. DelNero
Chief
Wireline Competition Bureau

[23] *Id.*

[24] *See* Applications of America Online, Inc. and Time Warner, Inc. for Transfers of Control, CS Docket No. 00-30, Order, 15 FCC Rcd 19668 (Cable Serv. Bur. 2000) (commencing investigation of protective order violation notwithstanding voluntary remedial measures already having been taken by violator).

[25] These procedures should include the safeguard that the AL PSC has imposed on itself already, requiring that an attorney sign all future confidential filings made pursuant to the *Protective Order*. *See* AL PSC Letter at 2.

[26] We recognize that the AL PSC has already prohibited Mr. Baker from submitting future filings in this proceeding, but find that an FCC-based prohibition is necessary in the event that the AL PSC chooses to lift its prohibition before the FCC is ready to permit Mr. Baker to resume participation in this proceeding.