BEFORE THE

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bernice F. Keebler :

:

v. :F-2010-2215057

:

Verizon Pennsylvania Inc. :

**INITIAL DECISION**

Before

Mary D. Long

Administrative Law Judge

This decision sustains in part the objection of Bernice F. Keebler against Verizon Pennsylvania Inc. because of Verizon’s failure to provide reasonable service.

HISTORY OF THE PROCEEDINGS

On December 9, 2010, Bernice F. Keebler (Complainant or Mrs. Keebler) filed a formal complaint with the Commission against Verizon Pennsylvania Inc. (Verizon), alleging that Verizon refused to provide her with the telephone numbers that she called which generated a charge of $4.19 on her bill, unless she served a subpoena or signed up for an itemized billing service. After being granted two extensions of time to file an answer, Verizon answered the complaint and included a new matter on February 18, 2011. Verizon also filed preliminary objections. The basis of both the objections and the new matter was that Verizon’s tariff permits it to charge for an itemized bill, therefore, according to Verizon, Mrs. Keebler’s complaint failed to state a claim upon which relief can be granted. Mrs. Keebler responded by letters dated February 23, 2011 and March 5, 2011. She averred that as a consumer she should be able to find out what she is being charged for without paying a fee. On March 29, 2011, I dismissed the preliminary objections on the grounds that the complaint stated a sufficient cause of action to proceed to hearing.

By notice dated March 29, 2011, the Office of Administrative Law Judge scheduled a telephonic hearing for Tuesday, May 24, 2011. On March 30, 2011, I issued a Prehearing Order which noted the date and time of the hearing and also provided procedural guidelines for the hearing.

On May 4, 2011, Verizon filed a Petition for a Protective Order. At my direction, counsel for Verizon contacted the Complainant who did not object to the issuance of a protective order. Accordingly, the petition was granted by order dated May 13, 2011.

A telephonic hearing was held as scheduled on May 24, 2011. Mrs. Keebler appeared *pro se*. Verizon was represented by William E. Lehman, Esquire. Mrs. Keebler testified on her own behalf and sponsored three exhibits, which were admitted into the record as confidential documents under the Protective Order. Verizon offered the testimony of one witness, Ms. Nancy Dascher, and sponsored two exhibits which were admitted into the record. The hearing generated a transcript of 35 pages. No briefs were filed. The record closed by order dated June 15, 2011.

Accordingly, upon consideration of the record consisting of the notes of testimony and the exhibits, I make the following:

FINDINGS OF FACT

1. The Complainant, Mrs. Bernice F. Keebler, resides at 534 Inman Terrace, Willow Grove, Pennsylvania and receives residential telephone service from Verizon Pennsylvania. (Tr. 6, 7)

2. In September 2010, Mrs. Keebler received her telephone bill from Verizon which included a local call charge of $4.19. (Tr. 6)

3. Mrs. Keebler explained that she has local home phone service which allows her to call numbers within an area identified by Verizon as “Band 1” numbers. Calling numbers outside of “Band 1” generates charges. (Tr. 7, 18)

4. Specifically, Verizon divides the local calling area into five calling bands, called Bands 1 through 5. The bands are generally geographic boundaries, with Band 1 being the closest exchanges to Mrs. Keebler and Band 5 are exchanges which are farther away. Mrs. Keebler’s calling plan includes unlimited calling within Band 1 as part of her basic calling plan. Calls in Bands 2 through 5 are defined by Verizon as “measured use calls.” These calls generate a charge based upon the time of day, duration of the call and the exchange called. (Tr. 18)

5. Calls made beyond Band 5 are defined by Verizon as toll calls. (Tr. 19)

6. Verizon Exhibit 1 lists the exchanges included within each calling band, but does not include any pricing information for calls made from one band to another. (Verizon Ex. 1)

7. Mrs. Keebler typically uses her cellular telephone for calling numbers outside of Band 1. Accordingly, she contacted Verizon after receiving her September 2010 bill to determine which specific numbers she was being charged for. (Tr. 7)

8. A Verizon customer service consultant told her that the information was not available unless she hired a lawyer to subpoena the numbers or she could pay $40 to make the search. (Tr. 8)

9. After contacting her local state representative, Verizon sent her a printed list of all numbers within each “band.” (Tr. 8; see Verizon Ex. 1)

10. Mrs. Keebler filed an informal complaint with the Commission’s Bureau of Consumer Services. When BCS resolved her complaint in favor of Verizon, she filed a formal complaint in November 2010.

11. In January 2011, Mrs. Keebler was contacted by Nancy Dascher[[1]](#footnote-1) of Verizon who again explained to Mrs. Keebler that calls outside of Band 1 would generate a charge. Ms. Dascher repeated that according to Verizon’s policy, Mrs. Keebler could only find out which numbers generated the charge of $4.19 if she secured a subpoena or paid $40 to subscribe to Verizon’s detailed billing service. However, Ms. Dascher did offer to tell her the numbers which generated the charge on the September 2010 bill. (Tr. 9)

12. Mrs. Keebler’s February bill included a local call detail for a local call that generated a charge beyond Mrs. Keebler’s basic plan. (Tr. 9)

13. Mrs. Keebler’s March bill also included a local call detail for a phone call that generated a charge beyond Mrs. Keebler’s basic plan. The charge included a two cent charge. When Mrs. Keebler complained to Verizon about the two cent charge, that amount was removed from her bill. (Tr. 10; Complainant Exhibit 2)

14. Verizon does offer a service for detailed billing of local use calls. This service is offered for a one-time set-up fee of $40 and an itemization of two cents per printed call. This service is a Commission-approved tariff which became effective December 3, 1999. (Tr. 23; Verizon Ex. 3)

15. The detailed billing service would only print detailed call information going forward after a consumer subscribes to the service. It does not capture information on calls made in the past. (Tr. 25)

16. Accordingly, a subscription to detailed billing service would not tell Mrs. Keebler which calls generated the $4.19 charge on her September 2010 bill. (Tr. 31)

17. A customer service consultant at Verizon cannot verify that a measured use call charge is correctly billed if a customer calls to complain. If a customer calls to complain about a measured local use call charge, Verizon will only go over the exchanges in the calling bands and offer counseling about which exchanges are included within each calling band. (Tr. 28-29)

18. If a customer alleges that Verizon made a mistake on their bill, it would be up to the customer to subpoena their own customer information from Verizon. (Tr. 30)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.[[2]](#footnote-2) A person seeking affirmative relief from the Commission has the burden of proof.[[3]](#footnote-3)

By complaining that Verizon is unreasonable by failing to provide her with information about a charge on her bill, it is clear that Mrs. Keebler is the party seeking affirmative relief from the Commission. Therefore she has the burden of proof. This means that she has the duty to establish the necessary facts by a preponderance of the evidence, and must show that the utility is responsible or accountable for the problem described in her complaint.[[4]](#footnote-4)

Section 1501 of the Public Utility Code mandates that public utilities, such as Verizon, shall render reasonable service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. …[[5]](#footnote-5)

“Service” is broadly defined in Section 102 of the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities,…in the performance of their duties under this part to their patrons, employees, other public utilities, and the public,…[[6]](#footnote-6)

Given this definition of “service” it is clear that the preparation and issuance of monthly telephone bills and responding to customer inquiries and complaints all constitute part of the service Verizon provides to Mrs. Keebler, as well as to its other customers.[[7]](#footnote-7)

There are two components to the situation presented by the facts in this case. First is Mrs. Keebler’s contention that Verizon should always provide her with a detailed list of calls that she has made outside her Band 1 calling area. Second is the manner in which Verizon handled Mrs. Keebler’s complaint both when she contacted them initially after receiving her September 2010 bill, and thereafter.

As to the first issue, Verizon takes the position that if Mrs. Keebler wants to have detailed local call information, it is their right to charge her for that service pursuant to Verizon’s Commission-approved December 1999 tariff. Verizon’s counsel argued that Mrs. Keebler had failed to sustain her burden of proof inasmuch as she had failed to adduce cost studies or expert testimony which would support a contention that the rate in the tariff is unreasonable or that detailed billing of residential measured use calls is feasible.[[8]](#footnote-8)

Indeed, Commission-approved tariffs have the force of law; a complainant may only evade the effect of an existing tariff by proving that the “facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.”[[9]](#footnote-9) This burden of proving these facts rests upon the complainant and it is a heavy burden.[[10]](#footnote-10) Tariff provisions previously approved by the Commission are *prima facie* reasonable.[[11]](#footnote-11)

Although there may have been sufficient advancements in technology since 1999 that call into question the reasonableness of Verizon’s tariff, I have no evidence on the record to support a finding that the tariff is no longer “just and reasonable.” Nor can I conclude that Mrs. Keebler’s circumstances justify special treatment by providing her with detailed billing service for routine listing of phone numbers which she calls in a given month without a subscription to the detailed billing plan. Finally, it does not appear that Verizon’s bill violates the Commission’s regulations governing residential telephone bills[[12]](#footnote-12) or plain language policy.[[13]](#footnote-13)

However, the record does support a conclusion that Verizon’s response to Mrs. Keebler’s initial inquiry regarding her September bill constitutes a failure to provide adequate customer service. Mrs. Keebler initially contacted Verizon to learn which numbers generated a charge of $4.19. Verizon’s response to her inquiry was that she would either have to hire a lawyer to file a subpoena or she could subscribe to Verizon’s detailed billing service at a fee of $40 plus two cents per call.

Verizon’s policy of requiring a subpoena in this situation to learn the source of a charge on a bill is tantamount to refusing to provide a customer with adequate information about charges on her bill. Verizon’s witness testified that there is no way for a customer service consultant to verify that a charge is accurate without an investigation.[[14]](#footnote-14) It is Verizon’s policy to require a subpoena before it will initiate an investigation.[[15]](#footnote-15) There is no explanation in the record for why Verizon would require Mrs. Keebler to subpoena her own telephone records in order to learn what calls generated a charge of $4.19. She simply wanted to know which numbers generated the charge so that she could make knowing and intelligent decisions about when to use her Verizon telephone service and when she should use her cellular telephone service.

Verizon contends that they provided Mrs. Keebler with a table of telephone exchanges which are in each “band” of her local calling area, which should provide her with sufficient information about charges on her telephone bill.[[16]](#footnote-16) This table consists of seven pages of calling exchanges within Mrs. Keebler’s calling area, but does not provide any information about how the call charges are calculated. Although this table might aid Mrs. Keebler if she wrote down every number every person in her household dialed, it still provides no insight into what the fee might be for making a particular call, nor does it allow her to verify that she is being properly billed in any given month.

Finally, the offer of the detailed billing service was not responsive to Mrs. Keebler’s inquiry about the September charge for $4.19. The detailed billing service is only *prospective* – that is, it would only provide information about *future* calls. Thus, had Mrs. Keebler subscribed to the service at the time she made her inquiry about her September bill, the detailed billing service would not have provided her with *any* information concerning the $4.19 that she was charged.

It is a basic matter of fair business practice that a consumer should be able to contact a utility about a charge on a bill and learn what the charge is for and learn that the charge was correctly applied. The only verification that Verizon’s witness could offer that a charge like Mrs. Keebler’s $4.19 measured use charge was accurate and billed correctly was her faith in the accuracy of Verizon’s computer system.[[17]](#footnote-17) The only way that Verizon would offer any information about a past charge in response to a consumer inquiry was to require that customer to hire a lawyer and subpoena their own usage information.[[18]](#footnote-18) By no reasonable standard could this be considered reasonable customer service.

The Commission recently held in *Maisch v. PECO Energy Company*,[[19]](#footnote-19) that the failure of a utility to provide “a complete and thorough explanation of the billing specifics to the customer prior to the litigation process . . .” is inadequate customer service under Section 1501 of the Public Utility Code, and imposed a $1,000 civil penalty. Following the guidance of that decision, a civil penalty is appropriate here as well.

Section 3301 of the Public Utility Code authorizes the Commission to assess a civil penalty for violations of the Code, regulations or orders of the Commission in an amount up to $1,000 per day per violation.[[20]](#footnote-20) The Commission’s policy statement in Section 69.1201(c)[[21]](#footnote-21) of the regulations provides the guidance factors to be weighed in determining whether a civil penalty is appropriate:

The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

Although the bill amount involved in this dispute is small, this case raises a significant issue of customer service.[[22]](#footnote-22) Any time a customer contacts a utility about a charge on his or her bill, that utility must provide sufficient information to the customer to verify that the charge is correct and to allow the customer sufficient information that they can make knowing and intelligent decisions about their utility usage. General calling plan information, as provided by Verizon here, is not sufficient. Further, Verizon’s policy of requiring a subpoena is an intentional refusal to provide adequate information about a charge.[[23]](#footnote-23) Finally, the Commission has assessed several civil penalties against Verizon for failing to provide adequate customer service.[[24]](#footnote-24)

However, Verizon has not had an opportunity to modify its internal practices or procedures,[[25]](#footnote-25) as Mrs. Keebler’s complaint appears to be unique. Similarly, there is no evidence that a large number of customers are affected by Verizon’s refusal to provide specific information about a charge.[[26]](#footnote-26)

Viewing these factors in totality, a civil penalty of $1,000 is appropriate. This represents $250 for each month that Verizon did not provide Mrs. Keebler with the numbers that she called which generated the $4.19 charge on her September 2010 bill.[[27]](#footnote-27) This amount is sufficient to provide a deterrent effect against similar violations of Section 1501 and reflects the magnitude and intent of the violation presented here.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.

2. The Complainant, Bernice Keebler, bears the burden of proof. 66 Pa. C.S. § 332(a).

3. The Complainant failed to sustain her burden of proving that Verizon Pennsylvania Inc.’s Tariff No. PA PUC No. 180A, Section 1, 2d Revised Sheet 13, Section B.2.h (Effective December 3, 1999) is unreasonable or should not be applied to her.

4. The Complainant sustained her burden of establishing that Verizon Pennsylvania Inc. failed to render reasonable service in violation of Section 1501 of the Public Utility Code by refusing to provide her with adequate information concerning a charge on her residential telephone bill. 66 Pa. C.S. § 1501.

5. It is just, reasonable and in the public interest that Verizon Pennsylvania Inc. should be assessed a civil penalty in the amount of $1,000 for the violation of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 3301.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Bernice F. Keebler against Verizon Pennsylvania Inc. at PUC Docket No. F-2010-2215057, is sustained in part and dismissed in part.

2. That within 30 days of the date of entry of the Commission’s Order in this case, Verizon Pennsylvania Inc. will remit a civil penalty in the amount of $1,000, payable by money order or certified check to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

3. That Verizon Pennsylvania Inc. shall cease and desist from further violations of the Public Utility Code or the orders and regulations of the Commission.

4. That upon receipt of the civil penalty assessed in this matter, the proceeding docketed at F-2010-2215057 shall be marked closed.

Date: June 27, 2011 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mary D. Long

Administrative Law Judge

1. Ms. Dascher serves Verizon as a manager of government relations. Her responsibilities include the investigation of formal complaints against Verizon which are filed with the Commission. (Tr. 16) [↑](#footnote-ref-1)
2. 66 Pa. C.S. § 701. [↑](#footnote-ref-2)
3. 66 Pa. C.S. § 332(a). [↑](#footnote-ref-3)
4. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). [↑](#footnote-ref-4)
5. 66 Pa. C.S. § 1501. [↑](#footnote-ref-5)
6. 66 Pa. C.S. § 102. [↑](#footnote-ref-6)
7. *Meder v. The Peoples Natural Gas Co.,* PUC Docket No. F-0162064 (Order entered August 16, 2006). [↑](#footnote-ref-7)
8. Tr. 32-33. [↑](#footnote-ref-8)
9. *Shenango Township Board of Supervisors v. Pa. Public Util. Comm’n*, 606 A.2d 910, 913 (Pa. Cmwlth. 1996). [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. 52 Pa. Code § 64.14. Section 64.14 only requires “toll calls” to be itemized on a customer’s bill. The regulations do not define a “local measured use call.” [↑](#footnote-ref-12)
13. 52 Pa. Code § 69.251. [↑](#footnote-ref-13)
14. Tr. 29. [↑](#footnote-ref-14)
15. Tr. 30. [↑](#footnote-ref-15)
16. Verizon Ex. 1. [↑](#footnote-ref-16)
17. Tr. 31. [↑](#footnote-ref-17)
18. Tr. 30. [↑](#footnote-ref-18)
19. PUC Docket No. C-2009-2118649 (Order entered May 26, 2011). [↑](#footnote-ref-19)
20. 66 Pa. C.S. § 3301. [↑](#footnote-ref-20)
21. 52 Pa. Code § 69.1201(c). [↑](#footnote-ref-21)
22. 52 Pa. Code § 69.1201(c)(1). [↑](#footnote-ref-22)
23. 52 Pa. Code § 69.1201(c)(3). [↑](#footnote-ref-23)
24. 52 Pa. Code § 69.1201(c)(6).  *E.g*., *Olubanjo v. Verizon Pennsylvania Inc.,* PUC Docket No. C‑2009-2123326 (Order entered March 18, 2011)(the Commission assessed a $250 penalty for failure to timely respond to a request to terminate service); *Dezort v. Verizon Pennsylvania Inc.*, PUC Docket No. C‑2009-2099508 (Order entered May 7, 2010)(Commission assessed a $500 penalty for failing to timely respond to a customer complaint regarding noise and static on telephone line); *Kaufman v. Verizon,* PUC Docket No. C-20055680 (Order entered November 19, 2008)(Commission assessed a $14,040 penalty for failure to provide reasonable service regarding the maintenance and repair of phone lines). [↑](#footnote-ref-24)
25. 52 Pa. Code § 69.1201(c)(4). [↑](#footnote-ref-25)
26. 52 Pa. Code § 69.1201(c)(5). Although Ms. Dascher testified that she had only come across one other complaint of this nature, she also noted that when a customer disputes a measured use charge, Verizon would likely simply adjust the customer’s bill. (Tr. 27, 28) Therefore, it is quite possible that other customers have not been provided with their usage information, but given the relatively small amounts and Verizon’s willingness to make adjustments whether the calls were correctly billed or not, it is not unreasonable to assume that most people simply don’t complain. [↑](#footnote-ref-26)
27. Mrs. Keebler called Verizon in September 2010. Verizon agreed to tell her the numbers in January 2011. [↑](#footnote-ref-27)