

Charles P. McCullough

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August 26, 2011

Rosemary Chiavetta, Secretary
Penna. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Jacqueline Fielder v. Verizon Pennsylvania, Inc.
Docket No. C-2010-2189352


Dear Ms. Chiavetta:

Enclosed please find an original and nine (9) copies of the Exceptions to Initial Decision filed on behalf of Complainant, Jacqueline Fielder.

By copy of this correspondence, the Office of Special Assistants and counsel for Respondent have also been served with a copy of the Exceptions.

Thank you for your attention to this matter.

Very truly yours,


Charles P. McCullough, Esquire

Encl.

C: Office of Special Assistants (w/encl.)
William E. Lehman (w/encl.)

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SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JACQUELINE FIELDER,
Complainant

v.

VERIZON PENNSYLVANIA INC.,
Respondent

Docket No. C-2010-2189352

P.P.U.C.
SECRETARY'S BUREAU

EXCEPTIONS TO INITIAL DECISION

AND NOW, comes Complainant, Jacqueline Fielder, by and through her counsel Charles P. McCullough, Esquire and files the following Exceptions to the Initial Decision of ALJ John H. Corbett, Jr. (herein the "ALJ") dated June 16, 2011.

Complainant's exceptions are as follows:

1. The ALJ abused his discretion and committed error of law by denying Complainant's complaint.

2. The ALJ abused his discretion and committed error of law by permitting Respondent witness Nancy Dasher to testify over the telephone and to refer to notes that were not a part of the record nor made available to Complainant's counsel.

3. The ALJ abused his discretion and committed error of law by accepting into evidence relying upon various exhibits introduced by Respondent at the hearing, including exhibits purporting to track the number of phone calls made from the phone number at issue (412-661-1919) and the number of complaints about said phone number purportedly made by Complainant. It was not established at the hearing that these exhibits were records of the regularly conducted business activity of Respondent and were therefore hearsay. See Pa.R.E. 801, 802 and 803(6). Said exhibits also were not properly authenticated. See Pa.R.E. 901.

4. The ALJ abused his discretion and committed error of law by denying Complainant's complaint, in part at least, because she only complained six times. There is nothing in the relevant law that mandates how many times a service or dial tone complaint must be made to Respondent or any other public utility before it is to be acted upon. One should be enough.

5. The ALJ abused his discretion and committed error of law by accepting the testimony of Respondent's witnesses Anthony Nigro and Joe Seles who lacked firsthand knowledge of the matters they testified about relative to Complainant's complaint and were relying upon exhibits that, as noted above, were hearsay documents.


6. The ALJ abused his discretion and committed error in relying upon the fact that Complainant continued to pay her telephone bill to Respondent for 17 months even though she did not have service despite Complainant's un-refuted testimony explaining her reasons there for.

7. In light of the exceptions noted above at paragraphs 2, 3 and 5, the ALJ abused his discretion and committed error of law in relying upon incompetent evidence to support his decision. The exhibits and testimony referred to in said paragraphs should have been stricken, and without such evidence, Complainant clearly met any burden of proof that was required of her to sustain her complaint.

8. In any event, the ALJ abused his discretion and committed error of law in not finding that Complainant met any burden of proof that was required of her to sustain her complaint. The evidence of record demonstrated Respondent's culpability and liability to Complainant for the sums complained of.

WHEREFORE, the Initial Decision should be reversed and judgment entered for Complainant in the amount of \$1,618.18 as set forth in the complaint.

Respectfully submitted,


Charles P. McCullough, Esquire
Counsel for Complainant

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Exceptions to Initial Decision was made the 26th day of August, 2011, by U.S. Mail, first class postage prepaid, as follows:

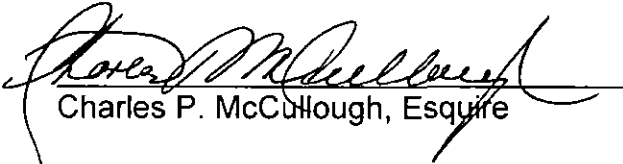
Rosemary Chiavetta, Secretary
Penna. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(Original and nine copies)

Office of Special Assistants
Third Floor, Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120
(one copy)

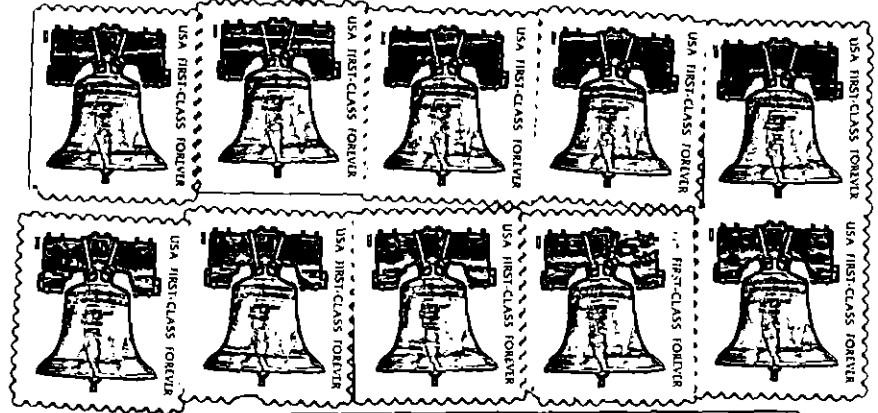
and a copy also mailed to:
Office of Special Assistant
Penna. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

William E. Lehman, Esquire
Counsel for Respondent
108 North Tenth Street
Harrisburg, PA 17101
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