

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Gary L. Gaskins
v.
Verizon Pennsylvania Inc.**

**Public Meeting June 7, 2012
2195549-ALJ
Docket No. C-2010-21955498**

**JOINT MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR. AND
COMMISSIONER PAMELA A. WITMER**

Before the Commission for disposition is an Initial Decision (ID) sustaining the above Formal Complaint, in part, filed against Verizon Pennsylvania Inc. (Verizon). The Complainant alleges a persistent service problem in that he hears other people talking on his telephone line. Tr. 7-9. The Complainant also alleges that he was over charged for telephone service.

For the reasons set forth at pages 10 and 11 of the ID, we agree with the findings in the ID on the service issue. This includes a finding that Verizon did not provide telephone service free from excessive distortion, noise, and cross-talk. As noted by the Complainant, he continued to hear other people talking on his telephone line and clicking noises after each of the attempted three repairs by Verizon. Tr. 7-9.

We also agree with the findings on the billing issue, as discussed at pages 7 through 10 of the ID. This includes a finding that Verizon did not properly document or substantiate that it correctly billed Complainant from June 2009 to March 2011. The credible evidence is that in June 2009, Complainant was to pay to Verizon \$8.87 per month for telephone service plus \$5.99 per month for wire maintenance (plus applicable fees, taxes, and surcharges). Therefore, we direct Verizon to re-compute the charges incurred by Complainant from June 2009 to March 2011 at a rate of \$8.87 per month for telephone service plus \$5.99 per month for wire maintenance, when applicable, plus applicable monthly fees, taxes, and surcharges.

As the credible record evidence shows, Verizon failed to provide reasonable billing in violation of Section 1501 of the Public Utility Code¹ and failed to provide voice service that is free from excessive noise, distortion and cross-talk, in violation of Section 63.63 of the Commission's regulations² and Code Section 1501. For these violations, a civil penalty may be appropriate. The Commission has issued a Statement of Policy³ that provides appropriate guidance on factors to be weighed in determining whether a civil penalty should be imposed upon a utility for violations of the Code, as well as the level of such penalty, if one is determined to be appropriate. Section 69.1201(c) lists the factors and standards to be considered. These factors are:

¹ 66 Pa. C.S. § 1501.

² 52 Pa. Code § 63.63.

³ 52 Pa. Code § 69.1201.

- (1) Whether the conduct at issue was of a serious nature . . . 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...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.

52 Pa. Code § 69.1201(c).

Upon review, there are gaps in the evidentiary record concerning certain factors in the policy statement regarding whether and how much of a penalty to impose on Respondent. Therefore, through a Tentative Order, we will request that the parties submit comments on each of the ten factors described above within twenty (20) days of the date of the Tentative Order issued in this matter. Following receipt and consideration of any comments, the Commission will issue a final opinion and order in this matter.

One of the above factors that the Commission considers in its "penalty" analysis is the response of the utility to address the conduct at issue. Thus, comments should include a discussion of any the efforts that Verizon has undertaken or intends to undertake to provide a clear explanation of its billings to Complainant from June 2009 to March 2011. To aid in this determination, we direct that Verizon's comments include a detailed billing statement for Complainant's account covering the time period in question. In addition to the items specifically identified on pages 9 and 10 of the ID, the detailed billing statement should also make clear the total re-computed charges incurred by Complainant for the period in question, the total amount received in lifeline assistance for the period in question, and the total amount of actual payments made by Complainant for the period in question. In addition, the comments should address the actions that Verizon has taken or intends to take to correct Complainant's service issue, including the date of any inspection of the relevant facilities, the findings/results of the inspection, and an estimated date of completion for any fix.

To assist the Commission with its determination of the appropriateness of a penalty in this proceeding, we also request that the Complainant submit comments as to whether the alleged service problem was properly repaired by Verizon after the third technical visit in 2011 or whether the Complainant continues to experience hearing other people talking and/or clicking noises. The Commission further requests that the Complainant indicate whether any credits or refunds received were correct in reimbursing him for the alleged improper billing. In addition, we request that Complainant comment on whether he received the telecommunications services that he ordered for the period in question.

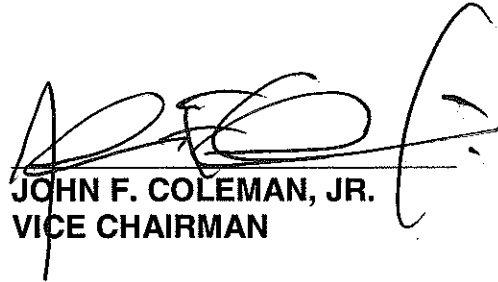
Lastly, we do not believe the Commission has jurisdiction to order the measures discussed at page 12 of the ID on the wire maintenance issue.⁴ The Commission does not regulate the rates, terms and conditions for customer premise wiring services, including wire maintenance plans offered by a telephone utility. See *Fasceski v. Bell Atlantic Pennsylvania, Inc.* 1995 Pa. PUC LEXIS 25. As such, the Commission does not have jurisdiction to require that the above service issue be covered under a wire maintenance plan. The Commission also lacks jurisdiction to require that Verizon provide the Complainant with an explanation of when and why his wire maintenance plan was discontinued, and what the Complainant must do to purchase wire maintenance service. Nevertheless, as we have said before, utilities should be responsive to customers with service and/or billing issues. To this end, we encourage Verizon to communicate with Complainant and provide a clear explanation on the wire maintenance eligibility issue.

⁴ The Complainant's original service plan with Verizon in June 2009 included a \$5.99 monthly fee for wire maintenance. However, according to Verizon, Complainant is no longer eligible for wire maintenance. Tr. 21-22.

THEREFORE, WE MOVE THAT:

1. The Initial Decision be modified, consistent with this Motion.
2. The Commission's Office of Special Assistants draft an appropriate Tentative Order consistent with this Motion.

DATE: June 7, 2012



**JOHN F. COLEMAN, JR.
VICE CHAIRMAN**



**PAMELA A. WITMER
COMMISSIONER**