



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: February 16, 2006

C-20055445

HUBERT FRONT FS-4731
SCI-ALBION
10745 ROUTE 18, UNIT D-B-17
ALBION PA 16475-0002

Huber Front FS-4731 v. Verizon Select Services Inc.

TO WHOM IT MAY CONCERN:

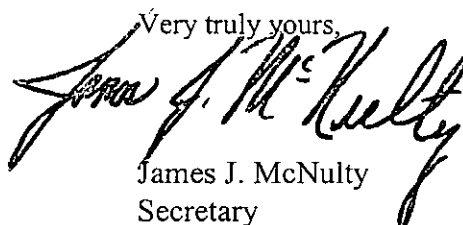
Enclosed is a copy of the Initial Decision of Administrative Law Judge John H. Corbett, Jr. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) -(protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

DOCUMENT
FOLDER

Encls.
Certified Mail
Receipt Requested
MMB

See attached list for other parties

SERVICE LIST: C-20055445

Hubert Font FS-4731
SCI-Albion
10745 Route 18, Unit D-B-17
Albion, PA 16475-0002

William E. Lehman, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778

N. Bruce Kazee, Esq.
P.O. Box 152092
Irving, TX 75038

JRO 20/10

FEB 10 2006

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Hubert Font FS-4731

v.

Verizon Select Services Inc.

:
:
:
:
:

C-20055445

INITIAL DECISION

DOCKETED
FEB 17 2006

Before
John H. Corbett, Jr.
Administrative Law Judge

**DOCUMENT
FOLDER**

HISTORY OF THE PROCEEDING

This decision denies a complaint that Hubert Font FS-4731 (“Complainant” or “Font”) filed on October 17, 2005. Font relates that he is an inmate at the State Correctional Institution (“SCI”) at Albion, Pennsylvania. As such, he makes telephone calls charged to his prepaid prisoner account using a service provided by Verizon Select Services Inc. (“Respondent” or “VSSI”). When he calls someone, recorded announcements required by state law¹ preempt his calls to inform them that they are receiving a call from someone at a SCI. These messages interfere with the amount of time that he must pay for making the call. Consequently, he wants VSSI to reimburse him \$421.20 for the elapsed time that he paid for and he was interrupted by these announcements.

VSSI answered the complaint on November 8, 2005 admitting that announcements are played during the Complainant’s telephone calls at the SCI at Albion. VSSI avers taped messages mandated by state law appear at the beginning of a call and repeat between the second and third minute and every 5-6 minutes thereafter. Each message is 5 seconds long.

¹ See, 66 Pa. C.S. §2907(a).

So during a 15-minute call, approximately 15 seconds are used. The Complainant is not billed during the initial message, because billing does not start until the called party accepts the call.

A standard Prehearing Order was issued on November 23, 2005. A telephonic hearing originating from the Pittsburgh offices of the Commission was held at 10:00 a.m. on January 17, 2006. The Complainant appeared *pro se*. The Respondent was represented by legal counsel. Neither party offered any exhibits. The hearing generated 26 pages of notes of testimony. No briefs were filed. With an Interim Order, the record closed on February 3, 2006.

FINDINGS OF FACT

1. The Complainant, Hubert Font FS-4731, is an inmate at the State Correctional Institution at Albion, Pennsylvania, where he has been incarcerated since August 25, 2004 (N.T. 7).
2. In order to make telephone calls, inmates at this SCI must use the telephone system that the Respondent, Verizon Select Services Inc., provides (N.T. 7).
3. The Complainant is permitted to make three telephone calls a week with a maximum duration of 15 minutes per call (N.T. 7).
4. Verizon charges \$2.47 to connect the call and 22¢ a minute to carry it (N.T. 9).
5. To pay for the call, the Complainant purchases a prepaid calling plan at the SCI commissary (N.T. 8).
6. The Complainant usually calls at least once and usually twice a week to his mother in West Hazelton, Pennsylvania, using the full allotment of 15 minutes each time (N.T. 7-8, 11-12).

7. At the start of each call, an announcement informs the parties that the call originates from a SCI and that the call is being recorded. After the called party accepts the call, an announcement will preempt the conversation approximately every 5 minutes during a 15-minute telephone call (N.T. 8-9).

8. While each announcement plays, neither party can hear the conversation of the other party (N.T. 9-10).

9. The inmate pays for the time occupied by these preemptive messages (N.T. 9).

10. The Complainant alleges each announcement lasts 20-30 seconds (N.T. 10).

11. The Complainant has been disconnected in the middle of telephone calls on three occasions, causing him to incur an additional reconnection fee each time (N.T. 10-11).

12. The Complainant wants to be reimbursed \$421.20 for the amount of time preempted by the messages and he wants Verizon to adjust the messages, so they play in the background and do not interrupt the parties' conversation during telephone calls (N.T. 12, 23).

13. Verizon Pennsylvania Inc. provides inmate telephone services, both local and intraLATA telephone services to the Pennsylvania Department of Corrections ("DOC"), which is subject to the rules and regulations of the DOC and the laws of Pennsylvania. An affiliate, Verizon Select Services Inc. provides interLATA telephone service and the remaining traffic to all other DOC facilities that are not within Verizon PA's territory. A subcontractor, Securus, provides the inmate call control system and software. Another contractor, Shawntech, provides the site administrators (N.T. 15-16).

14. Depending upon their security status, an inmate is permitted to make 15 minutes of calls a day. They can either make the call collect or prepaid (N.T. 16).

15. For prepaid calling, an inmate deposits money through the commissary at the facility into his/her telephone account. The inmate registers numbers with the DOC, which must approve them. Once approved, the inmate can only call those numbers on the approved calling list (N.T. 17).

16. Each call begins with an announcement of approximately 15 seconds in length to the called party that the call originates from a SCI and that it is subject to monitoring and recording (N.T. 17).

17. An inmate is not charged for the time expended during the initial announcement. The inmate's allotted time does not begin to run until the call has been accepted (N.T. 18).

18. If the call is accepted, additional shorter messages of approximately 5 seconds in length play between the second and third minute and every 5-6 minutes thereafter (N.T. 17-18).

19. An inmate is charged for the time expended during the additional messages that play after the call has been accepted (N.T. 18-19).

20. VSSI insists these messages are required by state law and the DOC contract (N.T. 17-19).²

² During the hearing on January 17, 2006, VSSI asked that I take judicial notice of testimony given by John Shaffer, Assistant Deputy Secretary for the DOC, at a previous hearing before another Administrative Law Judge. Mr. Shaffer supposedly testified that it is technologically impossible to avoid interrupting a telephone call and have these recorded messages play instead in the background. I sustained the Complainant's objection to this proffer, however, because VSSI never served him with notice of its intention to have me take judicial notice of this testimony (N.T. 20-21). *See*, 52 Pa. Code §§5.407 & 5.408. In addition, VSSI did not offer the proposed evidence in the form of an exhibit, it did not supply the number of additional copies as the Commission's Rules of Administrative Practice and Procedure require, and it did not afford the Complainant an "opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed." *See*, 52 Pa. Code §§5.407-5.409.

DISCUSSION

The case *sub judice* is akin to a series of actions that inmates incarcerated at the various State Correctional Institutions throughout Pennsylvania have brought to the Commission complaining about the telephone service they receive at these facilities. As in several previous cases, the Complainant here alleges that when he calls someone, recorded announcements preempt his calls to inform them that they are receiving a call from someone at a SCI. These messages interfere with the amount of time that he must pay for making the call.³ Consequently, he wants VSSI to reimburse him for the time elapsed while these messages disrupt his calls.⁴ As the proponent of a rule or order, Hubert Font bears the burden of proof. 66 Pa. C.S. §332(a).

The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1954); and Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). The term “preponderance of the evidence” means one party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether the Complainant has satisfied his burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the Respondent has submitted evidence of co-equal value or weight to refute the Complainant’s evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967); and Burleson v. Pa. P.U.C., 443 A.2d 1373 (Pa. Cmwlth. 1982), *affirmed*, 501 Pa. 443, 461 A.2d 1234 (1983).

³ See, Calhoun, AY-8968, v. Verizon Pennsylvania Inc., Docket No. C-20043742 (Initial Decision dated October 11, 2005); Leach, EG-2057, v. T-Netix, Inc., et al., Docket No. C-20043220 (Initial Decision dated August 19, 2005); and Feigley v. T-Netix, Inc. and T-Netix Telecommunications Services, Inc., Docket Nos. C-20029138 and C-20029154 (Initial Decision dated April 12, 2005). As of the date of this decision, these cases have not received final Commission review.

⁴ At the hearing, the Complainant also alleged that several calls were disconnected prematurely, causing him to incur additional connection fees. The Respondent’s objection that this allegation was never raised in the complaint and so it was prejudiced by not having a witness available to address this issue was sustained (N.T. 10-13).

Furthermore, substantial evidence must support the Commission's decision. *See, e.g.,* Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; and Yellow Cab Company v. Pa. P.U.C., 524 A.2d 1069 (Pa. Cmwlth. 1987). The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Pa. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984). Moreover, in order to establish a sufficient case against a utility to satisfy the burden of proof, a complainant must show the utility is responsible or accountable for the problem described in the complaint. Feinstein, supra.

Pursuant to Section 501 of the Code, 66 Pa. C.S. §501, the Commission must "enforce, execute and carry out, by its regulations, orders or otherwise" all the provisions of the Public Utility Code (the "Code"). Section 701 of the Code, 66 Pa. C.S. §701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code §5.21(a). Here, Font must demonstrate VSSI violated some provision of the Code, a Commission regulation or a Commission Order. 66 Pa. C.S. §332(a). Neither the law nor the facts provide any support for the relief that he requests.

In recognizing inmates' rights concerning the use of telephones, the Supreme Court of the United States has held that "prison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safely, 482 U.S. 78 at 84, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). In fact, persons incarcerated in penal institutions retain their First Amendment rights to communicate with family and friends. Morgan v. LaVallee, 526 F.2d 221, 225 (2nd Cir. 1975). No legitimate governmental purpose is attained by not allowing reasonable access to the telephone; such use is protected by the First Amendment. Johnson v. Galli, 596 F.Supp. 135, 138 (D. Nev. 1984).

Nevertheless, an inmate “has no right to unlimited telephone use.” Benzel v. Grammer, 869 F.2d 1105, 1108 (8th Cir 1989); Lopez v. Reyes, 692 F.2d 15, 17 (5th Cir. 1982); Feigley v. Pa. P.U.C., 794 A.2d 428 (Pa. Cmwlth. 2002); and Chimenti v. Pa. Department of Corrections, 720 A.2d 205, 213 (Pa. Cmwlth. 1998). Instead, a prisoner’s right to telephone access is “subject to rational limitations in the face of legitimate security interests of the penal institution.” Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986). The exact nature of telephone service provided to inmates is generally determined by prison administrators, subject to court scrutiny for unreasonable restrictions. Fillmore v. Ordonez, 829 F.Supp. 1544, 1563-64 (D. Kan. 1993), *affirmed*, 17 F.3d 1436 (10th Cir. 1994); Feeley v. Sampson, 570 F.2d 364, 374 (1st Cir. 1978); Washington v. Reno, 35 F.3d 1093, 1099-1100 (6th Cir. 1994); and Jeffries v. Reed, 631 F.Supp. 1212, 1219 (E.D. Wash. 1986). Thus, an inmate’s right of access to a telecommunications system is not absolute, but instead, it is subject to reasonable restrictions in light of the reasonable and legitimate security interests of the SCI.

For his part, the Complainant objects that he is not asking for anything more than any other consumer would be entitled to receive (N.T. 12, 23). The unfortunate truth is that Font is not just another consumer. He is a prisoner incarcerated at a SCI. This condition of incarceration subjects an inmate’s access to telecommunication systems to “choices circumscribed by the operation of the Commonwealth contract and prison administrative policies under which the contract is carried out.” Feigley, supra. For this reason, the lack of competitive alternative carriers at an SCI for example is an “unfortunate incidence of incarceration.” *Id.* Another “unfortunate incidence of incarceration” is the recorded announcement.

The Commonwealth’s General Assembly has mandated that:

Telecommunications service providers which provide telecommunication services to State correctional institutions shall identify to the called party any call made by an inmate as originating from a correctional institution.

66 Pa. C.S. §2907(a). To implement this policy, the DOC contracted with VSSI to not only provide telephone service to its correctional institutions, but also to carry the legislatively

required announcements. As noted, each call begins with an announcement of approximately 15 seconds in length to the called party that the call originates from a SCI and that it is subject to monitoring and recording (N.T. 8-9, 17). An inmate is not charged for the time expended during the initial announcement. The inmate's allotted time does not begin to run until the call has been accepted (N.T. 18). If the call is accepted, additional messages play between the second and third minute and every 5-6 minutes thereafter (N.T. 8-9, 17-18). An inmate is charged for the time expended during additional messages that play after the call has been accepted (N.T. 9, 18-19).

Regardless of whether each subsequent announcement lasts 20-30 seconds as the Complainant insists (N.T. 10) or merely 5 seconds as VSSI suggests (N.T. 17-18), these messages, while undoubtedly nettlesome, are not so burdensome as to constitute unreasonable public utility service. 66 Pa. C.S. §1501. On the contrary, the General Assembly, through Section 2907(a) of the Code, 66 Pa. C.S. §2907(a),⁵ has identified a need to protect the unwary public from unannounced inmate calls. These announcements appear to be a reasonable restriction on an inmate's access to the telecommunication system in light of the legitimate security interests of the Commonwealth.

Furthermore, the Complainant has failed to provide any evidence that it is technologically feasible or reasonable to have these announcements play in the background, while allowing the parties to a call an opportunity to maintain their conversation.⁶ To reiterate, the Complainant bears the burden of proving he is entitled to relief. 66 Pa. C.S. §332(a). In the absence of such proof, the Complainant has failed to prove his case. For all of these reasons, the complaint must be denied.

⁵ Further, this section cannot be construed "to create any cause of action or any legal right in any person or entity." Moreover, "this section is not intended to create any right of an inmate to make a telephone call or to compel a particular method of payment." 66 Pa. C.S. §2907(c).

⁶ Likewise, the Complainant's understanding of how the announcements should run in the background without disrupting the parties' conversations fails to provide the requisite proof since it relies upon uncorroborated hearsay evidence. Hearsay evidence is not competent to support a crucial finding of fact in an administrative hearing without corroborative evidence in the record. Anderson v. Pa. Department of Public Welfare, 468 A.2d 1167, 1169 n.5 (Pa. Cmwlth. 1983).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §§701, *et seq.*
2. The Complainant has failed to meet his burden of proving that he is entitled to relief from the Commission. 66 Pa. C.S. §332(a).
3. Section 2907(a) of the Public Utility Code, 66 Pa. C.S. §2907(a), mandates that telecommunications service providers, which provide telecommunication services to State correctional institutions, must identify to the called party any call made by an inmate as originating from a correctional institution.
4. The recorded announcements challenged here appear to be a reasonable restriction on an inmate's access to the telecommunication system in light of the legitimate security interests of the Commonwealth. 66 Pa. C.S. §2907(a).
5. The recorded announcements challenged here are not so burdensome as to constitute unreasonable public utility service. 66 Pa. C.S. §1501.

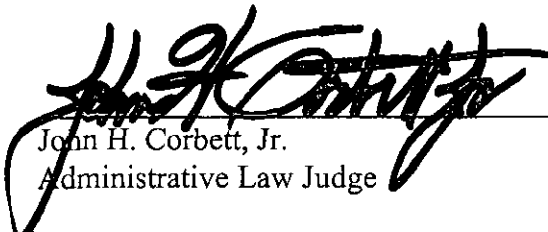
ORDER

THEREFORE,

IT IS ORDERED:

That the complaint of Hubert Font FS-4731 against Verizon Select Services Inc. Docketed at No. C-20055445 is hereby denied.

Dated: February 6, 2006



John H. Corbett, Jr.
Administrative Law Judge

SERVICE LIST: C-20055445

Hubert Font FS-4731
SCI-Albion
10745 Route 18, Unit D-B-17
Albion, PA 16475-0002

William E. Lehman, Esq.
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778

N. Bruce Kazee, Esq.
P.O. Box 152092
Irving, TX 75038

2. Article Number



7160 3901 9843 1135 8818

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

N BRUCE KAZEE ESQUIRE
C-20055445
ID

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) **EB** B. Date of Delivery **2/1/2006**

C. Signature **K. Bass** Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 1135 8825

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

WILLIAM E. LEHMANS
ESQUIRE
C-20055445
ID

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery **2/1/7**

C. Signature **William E. Lehman** Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 1135 8832

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

HUBERT FRONT FS-4731
C-20055445
ID

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) **Hubert** B. Date of Delivery **2/21/06**

C. Signature **Hubert** Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

PS Form 3811, March 2005

Domestic Return Receipt