

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Christina Potter

v.

Comcast Phone of PA, LLC

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C-20055433

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ORDER DENYING MOTION TO DISMISS

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Before
Veronica A. Smith
Chief Administrative Law Judge

DOCKETED
JAN 17 2006

HISTORY OF THE PROCEEDING

On September 30, 2005, Christina Potter (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Comcast Phone of PA, LLC (Comcast). Complainant checked off on the Complaint form that she received a termination notice; however, she alleges that Respondent is improperly billing her for collect calls from a correctional facility. Complainant also alleges, although it is not clear from the Complaint, that at her request her service was discontinued, she is still being billed for calls made from September to November 2004, and that she should be being billed by AT&T, not Comcast. Complainant requests a payment agreement that does not include the calls she was allegedly improperly billed for.

On November 17, 2005¹, Respondent filed an Answer and Motion to Dismiss addressing the allegations in the Complaint and moving to dismiss the Complaint because it is

¹ Respondent was served a copy of the Complaint on October 18, 2005. On November 3, 2005, Respondent requested an extension of time to file an answer on or before November 20, 2005.

insufficient as to substance. Complainant did not respond to the Motion to Dismiss by November 28, 2005, the ten (10) day time limit, pursuant to 52 Pa. Code § 5.101(d). The Motion was assigned to me by Motion Judge Assignment Notice dated November 22, 2005 and is now procedurally ready for a ruling.

FINDINGS OF FACT

1. On September 30, 2005, Complainant filed a Complaint against Comcast alleging that Respondent is improperly billing her for collect calls from a correctional facility. Complainant also alleges, although it is not clear from the Complaint, that at her request her service was discontinued, and she is still being billed for calls made from September to November 2004, and that she should be being billed by AT&T, not Comcast.

2. Complainant, as relief, requests a payment agreement that does not include the calls for which she was improperly billed.

3. On November 17, 2005, Respondent filed an Answer and Motion to Dismiss. The Respondent moved to dismiss the Complaint because it is insufficient as to substance.

4. Complainant did not file a response to the Motion to Dismiss.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §5.101. When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). In ruling on a motion to dismiss, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true. Id. The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

Complainant is unrepresented by counsel. In Carlock v. The United Telephone Company of Pennsylvania (Carlock), Docket No. F-00163617, p. 7, adopted May 13, 1993, the Commission determined that preliminary motions filed against unrepresented complainants pursuing "small claims" against a utility, should not be granted without a hearing and the development of a record with respect to the motion. The Commission reasoned that in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form. Id.

The Complaint appears, although it is not clear, to raise three issues: (1) whether Complainant is being improperly billed for collect calls from a correctional facility; (2) whether, after discontinuing service, Complainant is still being billed for calls by Comcast; and (3) whether Comcast or AT&T is the proper service provider. Assuming the factual allegations of the Complaint are true, and without any other admitted facts, the three issues raise contested questions of fact. Therefore, Respondent's Motion to Dismiss must be denied.

A hearing in the instant case is necessary and in the public interest. Section 5.21(d) of the Commission's regulations reads, in pertinent part:

(d) The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the

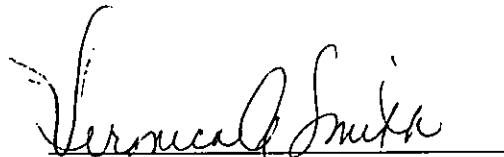
Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy, or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993). This case involves disputed questions of fact. Complainant is advised that she bears the burden of proof at the hearing and must demonstrate that she is eligible for relief. 66 Pa. C.S.A. §332(a).

THEREFORE, IT IS ORDERED:

1. That the Motion to Dismiss filed by Comcast Phone of PA, LLC, seeking dismissal of the Complaint filed by Christina Potter, at PUC Docket No. C-20055433, is denied.
2. That this matter be set for a hearing.

Dated: December 6, 2005



Veronica A. Smith
Chief Administrative Law Judge