

Before the Pennsylvania
Public Utility Commission

ORIGINAL

Sandra and George Feigley,
Complainants
v
Verizon Select Services, Inc.
and Department of Corrections
by Robert Shannon
Respondents

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: Number: C-2004 3621
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I certify that I am this day serving true and correct copies of
the herewith Complainants' Exceptions upon the persons indicated
below by first class mail, postage prepaid.

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4 January 2006

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presentations are outspoken and "aggressive," it's because they genuinely believe themselves to be treated unfairly and unreasonably, to be victims of an unjust scheme.

Findings Of Fact:

Finding 5: Computers are notoriously fickle. Their accuracy depends wholly upon the software they're fed. In this case, the Respondents or their subcontractor tells the computer what to report. It's incorrect to rely upon what the machine parrots.

It is manifest that the T-Netix (alias SecurUS) system has been programmed to lie. It does not correctly report when it's made a mistake. Therefore, refunds (if any have actually been given) have nothing to do with the failings of the system. They are based solely upon what the Respondents choose to do. There is a strong financial disadvantage for Respondents to admit errors and/or confess that the system is defective. The system is so poorly designed and so completely defective that there would be a lot of refunds, or at least the cost of re-engineering the gadget.

Finding 6: The critical fact here is "[w]hen she believes." An arbitrary subjective decision based on self-interest, not upon facts is not reasonable. In other words, a correction of a problem is based upon what the administrator feels at the time.

Finding 7: This is one of the critical findings of fact. It says that the so-called "Automated Inmate Telephone System"

or "AITS" will give a false report for the reason why it disconnects a telephone call and it will disconnect a call for many reasons other than those forbidden by the rules. In other words, the system is defective.

The system could just as easily tell the truth. The Respondents could just as easily acknowledge that the system is defective and make good faith refunds where the system malfunctions. Alternatively, human beings could monitor the phone calls. They could distinguish between a cough and a three-way call. The SecurUS gadget is defective.

Since filing this action the Feigleys have suffered numerous additional disconnections of their calls. In each case, refunds were requested and in each case no refunds were made in spite of the fact that the disconnections were due to the defects in the system.

Finding 11: This finding of fact admits that the Feigleys must pay to hear the state's message. That is contrary to well settled state and federal precedents.

Finding 12: This finding contradicts number 47. It is based upon hearsay. Much of the ALJ's reasoning is based upon the uninformed or self-serving hearsay offered by Respondents' functionaries.

Finding 13: Along with findings 7, 43, 81 and others, this finding makes it clear that the AITS disconnects telephone calls for many reasons other than violations of the rules. Where a

cough, saying a word beginning with an "s," thunder or a little static will disconnect a call, the system is defective by definition.

The finding does not accurately reflect Ms Ashelman's testimony. She said that to adjust the system's sensitivity and/or disconnect a call, she has only to contact the SecurUS operative. She's the SecurUS operative! She's got the equipment right there, see finding 82.

Finding 25: This finding of fact contradicts the evidence. Like Ms Ashelman, a guard eavesdropping on a conversation need only contact the SecurUS operative to have the sensitivity increased or the call disconnected. It defies reason to suppose that a guard who overhears a criminal plot while eavesdropping on a call can't disconnect the call. Why listen in?

Finding 35: The point of this finding is that Respondents failed to act in good faith. They made no investigation of the claim. They had the power to take the money and they did so.

Finding 40: The facts in this finding were not translated by the ALJ into a penalty on the Respondents.

Finding 42: The unreasonable and unprofessional conduct of Respondents' representative were not translated by the ALJ into a penalty on the Respondents.

Finding 48: This finding is misleading. At the time of the hearing, Mrs. Feigley had no long distance carrier. She did have a long distance carrier at the time, 8 months earlier, when

the complaint was filed, see finding 94. She gave up the long distance service when she was coerced into accepting an account with T-Netix. Her position is that T-Netix, alias SecurUS is disreputable.

Finding 51: This finding is misleading. Mrs. Feigley occasionally used a cordless telephone to talk to her husband, but not always.

Finding 53: This finding of fact is irrelevant innuendo. It is misleading. None of the disconnected calls were made to a cell phone. Collect calls cannot be made to the cell phone. If the cell phone dropped a call, the line would simply disconnect. The AITS would not be involved and wouldn't make an announcement, see finding 57.

Finding 67: The importance of this finding is that (a) Mr. Feigley satisfied the requirement of Pennsylvania law by filing an institutional grievance and exhausting administrative remedies before going to court. And (b) the prison by means of Robert Shannon had actual knowledge and personal involvement in the operation of the telephone system. This is critical in establishing that the prison system itself is a partner in a public utility, viz the phone system.

Finding 81: As in finding 7, above, this finding makes it clear that the AITS is defective and dishonest. A background sound is reported as a violation of the rules.

The finding is also misleading. The assertion that the "equipment was required for safety reasons to protect the safety of the victims, jurors and the public" was not sworn testimony. It's the ALJ's recitation of what he believes the reasons for the system are. Quite frankly, the Feigleys have other views and have published them on their website, www.prisoners.com.

Finding 83: This finding is incorrect. Pursuant to Pennsylvania law, Mr. Feigley was required to submit an institutional grievance and to exhaust administrative remedies before he could go to court. Therefore, in order to file a PUC complaint, or at least an appeal to the Commonwealth Court, his only effective avenue was to submit an institutional grievance.

Finding 86: This finding confirms that there exists a dispute of fact between the Feigleys and the Respondents. Respondents' self-serving testimony is not dispositive. They have the onus of showing that the timing of calls is accurate. This is the same responsibility that an oil dealer has to prove that what he calls a gallon really is a gallon. Respondents failed to offer any such proof.

Finding 92: This finding is simply inane. There are no "similar services in the private sector" for what the Respondents do to prisoners and their families. In the private sector, the customer has a choice of what carrier (and so, what price) to use.

Discussion:

The question presented in this case is one of equity, fairness and reasonableness. Ordinary individuals are entitled to equal consideration with big business. To the extent that the ALJ's "Discussion" is part of his opinion, the Feigleys take exception to portions of it and so to the conclusions of law which seem to flow from it.

Unauthorized Addition of Call Forwarding: Respondents' fraudulent and disreputable practices are reflected by their unilateral adding call forwarding to Mrs. Feigley's service and charging her for it. That was the point that the Feigleys were making in arguing it in their brief. See also "Fraud" infra.

After repeated complaints and long delays Verizon finally removed the unauthorized service. Mrs. Feigley never used the service, but was, nonetheless, charged for it. A public utility should not be allowed to engage in such exploitive business practices.

Department of Corrections' Public Utility Status: By any interpretation, the facts have established that the Department of Imprisonment (hereinafter "DOC") is a partner in the operation of a public utility, namely the inmate phone system. The system doesn't only serve prisoners, it also serves the public. DOC receives huge sums of money from the system and the public,

collects money to pay for calls, provides facilities for equipment and staff to work in collusion with its partners.

The Feigleys have named a "person," Robert Shannon, as the responsible party. To be effective, any remedy, whether by the PUC or the Commonwealth Court, would have to include the DOC. Their arbitrary regulations go far beyond the law which authorizes the monitoring of the phone calls. It violates the constitutional protections of equal protection and freedom of expression.

Monopoly: The Feigleys have not argued that the AITS is an illegal monopoly. They have alleged that it is a monopoly which is operated illegally. There is no question that the scheme is a monopoly. The point is that it is not operated in the public interest. To the contrary, it is operated against the public interest and at rates which are unconscionable.

Under Pennsylvania practice, monopolies are closely monitored and must act in the public interest charging rates which are reasonable. Since DOC is a part of the monopoly, it becomes a governmental monopoly and should be governed by the well settled rules related to government owned utilities.

Burdening the Right of Expression: It must be clear to even the affluent that a normal person cannot afford to pay 52¢ a minute to converse with her/his spouse. By any definition, that burdens expression. This is even more true where, as here, the jailer

gets half the money. The DOC profits by dint of holding a person's loved one captive. See Forsyth County v Nationalist Movement, 505 US 123, 112 Sct 2395, 120 LEd2d 101.

Disconnected Calls: The gravamen of the Feigleys' complaint is that the AITS is defective and the Respondents know it's defective. It disconnects telephone calls for reasons not sanctioned by the rules and thereby causes the Feigleys and others who are compelled to resort to using the system, additional charges for reconnection. The facts clearly establish the truth of this allegation.

The ALJ's discussion seems to completely ignore his finding of fact.

No one would expect a mechanical system to work flawlessly. The Respondents shouldn't pretend that it works flawlessly. It makes mistakes, a lot of mistakes and was, very frankly, badly designed. It is obviously defective. Refunds should be readily available for the disconnected calls.

If Respondents can't get the system to work properly, it should employ real human beings to do the job.

The position of the ALJ seems to be that the AITS doesn't have to really work, anything close is good enough. He excuses the system's shortcomings by blaming them on the Feigleys.

Wireless telephones, cell phones and so forth are ubiquitous. To provide reasonable service within the meaning of the PUC Code,

a system would have to accommodate such common devices which are in use by most of the population.

Automatic Interruption of Calls: Well settled state and federal precedents teach that citizens cannot be charged to receive a government message. See, for example: Wooley v Maynard, 97 Sct 1428. Even if the state may interrupt Mrs. Feigley's phone call with its propoganda, it may not charge her to listen to it.

Accuracy of Timing: The vendor of a commodity (in this case telephone time) has the burden of proving that it's delivering what it's charging for. The Respondents have failed to carry that burden. Mr. Feigley repeatedly timed his conversations with his wife. In every case, he received less time that he was charged.

Reasonable Bills: Bills for services, even public utility bills should not be written in code, gibberish or jargon. They should be clear so that they can be properly and accurately audited by persons of normal intelligence - T-Netix's bills ain't!

Where a bill is Byzantine, company representatives should be readily available to decipher the snarl - Respondents have no such decoding facility.

The ALJ flips the question of one about having a long distance carrier. As explained above (page 4, finding 48), Mrs. Feigley

didn't abandon her long distance carrier until after she'd been coerced into taking T-Netix's unwanted service. She took the T-Netix billing only because they repeatedly disconnected her service with her husband.

Customer Service: Mr. Feigley obeyed the law in complaining about his experience with the AITS. The correct legal procedure was to file an institutional grievance, see Page 5, finding 67 supra).

Mrs. Feigley who had far more avenues to obtain relief, tried them all. Respondents through their agents made it impossible for her to get even a civil conversation. Indeed, it was her treatment by Respondents' representative which finally caused her to file the present complaint, to publish articles about the prison telephone racket and the Respondents, and to personally advise acquaintances to abandon their Verizon services.

Fraud: Where a business (in this case the Respondents) falsely pretends that their product (in this case the AITS gadget) actually works, but they know it doesn't work; that's fraud. Respondent VSSI sold DOC and the taxpayers a bill of goods to the effect that their phone gadget (or really T-Netix's alias SecurUS' gadget) worked. It doesn't work as they pretended it did. They knew it didn't work. They admit that it doesn't work, but they say, well, that's okay, it doesn't have to really work.

The PUC should not allow fraudulent businesses and business practices among the utilities it permits to operate within the state.

Conclusions of Law:

The Feigleys take exception to each of the conclusions of law which flow from the discussion topics to which they have taken exception. In addition, the Feigleys take specific exception to the below listed conclusions of law.

Conclusion 11: The Feigleys' position on monopoly is stated on Page 8 of these exceptions. The monopoly is operated illegally.

Conclusions 12, 13, 14: The rates charged of the Feigleys for phone calls are not in the public interest and are unreasonable. They burden free expression in violation of the federal and state Constitutions because the Commonwealth by means of it's contract is party to the abridgment of expression.

Conclusion 15: The operation of the AITS by the Respondents violated the equal protection guarantees of the United States and Pennsylvania Constitutions. Prisoners and their loved ones are entitled to the same protections of the laws, including the Public Utility Code, as are afforded to other telephone customers. No corporation, not even Verizon, would consider for a moment doing to free persons what it systematically does to prisoners and their families.

Whatever protection accrues to a customer using a "plain old telephone" is the same protection due the Feigleys. One need not be passé or old fashioned in order to be entitled to the protection of the Public Utility Code. Having/using a cellular phone or a wireless phone doesn't exempt the Feigleys from the protection of the law.

Conclusion 17: This is not a conclusion of law. It's a statement of personal opinion. To provide "reasonable service" as defined by the Public Utility Code, the AITS must recognize and be comparable with commonly used telephone equipment, not simply old fashioned equipment. Many, if not most, telephone users today use wireless and/or cellular telephones. To provide reasonable service the AITS must accommodate that common equipment.

Conclusion 23: While the preemption of calls by the annoyance of repeated announcement may be legal, it is not legal to make the Feigleys pay to hear the announcements. See Page 10 above.

Conclusion 39: This conclusion is incorrect as it is based on incorrect assumptions. See Page 4, Finding 48. Mrs. Feigley had long distance service until she was coerced into allowing T-Netix to do the billing.

Conclusion 41: This is not a conclusion of law, nor is it based on fact. It is a statement of personal opinion made without support.

Conclusion 42: The Public Utility Code requires reputable business practices and requires a showing of good conduct by

utilities licensed to operate in the Commonwealth. Fraud as it has been shown by the evidence in this case means that the Respondents are not worthy of a license to operate.

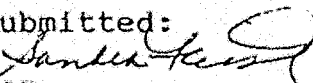
Conclusion 43: Where (as here) a utility is not worthy of a PUC permit to do business, the contracts into which it enters are illegitimate.

The ALJ's Order:

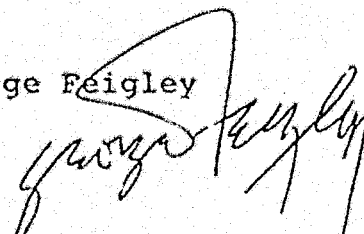
At the very least the order appended to ALJ Cocheras' Recommended Decision is incomplete. It fails to address most of the Feigleys' claims and/or the bulk of their complaint. Are the Feigleys to assume that those issues are dismissed? Are the Respondents to be penalized for any of their violations? In future will the AITS be operated in the public interest?

Conclusion:

For the forgoing reasons and in the interests of justice, Sandra and George Feigley, the Complainants, pro se, ask that the Commission's decision be modified consistent with their exceptions.

Respectfully submitted:
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Date: 4 January 2006

George Feigley 

Date: 22 December 2005

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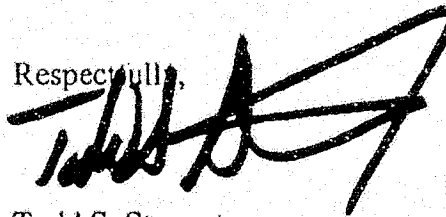
RE: Sandra and George Feigley v. Verizon Select Services Inc., Department of Corrections and Robert Shannon; Docket No. C-20043621; **EXCEPTIONS OF VERIZON SELECT SERVICES INC. TO RECOMMENDED DECISION ISSUED DECEMBER 19, 2005**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Verizon Select Services Inc.'s Exceptions to Recommended Decision Issued December 19, 2005. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Respectfully,



Todd S. Stewart
Counsel for Verizon Select Services Inc.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SANDRA AND GEORGE FEIGLEY

v.

VERIZON SELECT SERVICES INC.,
DEPARTMENT OF CORRECTIONS
AND ROBERT SHANNON

Docket No. C-2004362

SECRETARY'S BUREAU

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EXCEPTIONS OF VERIZON SELECT SERVICES INC.
TO RECOMMENDED DECISION ISSUED
DECEMBER 19, 2005

Verizon Select Services Inc. ("VSSI") by and through its counsel in the above-captioned matter, Hawke McKeon Sniscak & Kennard LLP, hereby Excepts to the Recommended Decision ("R.D.") of Administrative Law Judge Louis G. Cocheres ("ALJ") dated December 19, 2005 in the above-captioned matter. These Exceptions are filed pursuant to the Commission's Regulations at 52 Pa. Code §5 533.

I. INTRODUCTION AND BACKGROUND

On September 1, 2004, Sandra and George Feigley ("Feigleys" or "Complainants") filed the latest in a long series of complaints involving telephone services provided to inmates at correctional facilities in the Commonwealth. A hearing in this matter was held on May 6, 2005, and Briefs were filed by the Feigley's on May 24 and by VSSI on June 23, 2005. On July 1, 2005, the Feigleys filed a Motion to admit "after discovered evidence." VSSI responded and opposed the Motion. On December 19, 2005, the Commission issued the Recommended Decision of the ALJ in this matter.

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VSSI excepts to the conclusion that it should be required to refund to Mrs. Feigley any fee she may have been charged for using a credit card to pay her "VSSI" telephone bills, and to the legal and factual underpinnings of that determination, as being flawed and incorrect. VSSI does generally agree with the conclusions reached (not necessarily the reasoning) on the majority of the issues addressed in the R.D.¹ However, as discussed below, the ALJ mischaracterizes VSSI's argument with regard to the applicability of the billing and collection standards of Chapter 64 to interexchange resellers. The ALJ then concludes, incorrectly, that Mrs. Feigley has "proven" that VSSI has charged her a \$3.99 fee for using a credit card to pay her bills, when in fact there is no credible evidence in this case to support such a finding. In fact, Mrs. Feigley admitted that she could "prove" no such thing. Accordingly, VSSI excepts to the Recommended Decision and submits that the R.D. must be reversed as to the legal argument on why a refund is required and on the evidentiary issue of whether it has been proven that a fee for using the credit card was actually paid by Complainant. The R.D. should be sustained in all other respects.

Exception No. 1 – The ALJ Erred in Concluding As a Matter of Law That the Substantive Requirements of the Commission's Regulations at 52 Pa. Code §64.1, et seq., Apply to Interexchange Resellers. (RD at 36-39).

The ALJ makes a fundamental error in the application of the Commission's regulations that must be corrected -- by concluding that the substantive rules governing local telephone service found at 52 Pa. Code §64.1, et seq. ("Chapter 64"), of the Commission's Regulations

¹ One point on which VSSI strenuously disagrees with the ALJ concerns the ALJ's commentary on the Commission's jurisdiction over certain services. While VSSI does view these comments as being *dicta*, it is nonetheless concerned about the implications of such statements. In particular, the ALJ claims that VSSI has argued that "it was rendering reasonable and adequate service because the equipment which caused the disconnections was required by the DOC." (R.D. at 12). It is telling that the R.D. provides no citation for that accusation, because there is none. Simply put, VSSI made no such argument. VSSI did argue that the Commission has no jurisdiction over the inmate call control system equipment used to provide inmate telephone service. Such equipment is provided by I-Netix, is located on-site at each correctional institution, is connected on the customer's side of the network interface device and is used to satisfy certain penal and security requirements of the Department of Corrections (e.g. monitoring, recording and disconnection of inmate calls). These requirements are set forth in the contract between Verizon PA and the Department of General Services. Neither the equipment nor the penal and security requirements fall under the Commission's jurisdiction (VSSI Main Brief at pp 14-16). The ALJ obviously misunderstood these facts and consequently reached an erroneous conclusion.

apply in their entirety to interexchange resellers. The ALJ begins, on Page 38 of the R.D, by accusing VSSI of making an inaccurate argument with regard to the applicability of the substantive requirements of Chapter 64 to interexchange resellers. The ALJ concludes that there is nothing in 52 Pa. Code §63.117 which says that Chapter 64's substantive provisions "do not apply" to interexchange resellers and concludes on the contrary that those standards do apply. This legal conclusion is clearly erroneous and must be overturned.

The ALJ opines that "unfortunately, VSSI provided a response to this issue which was filled with inaccuracies..." (R.D. at 38), and goes on to quote from VSSI's Main Brief wherein VSSI argued that:

Billing and collection services of interexchange carriers ("IXC") such as VSSI or T-Netix, are not subject to the requirements of Chapter 64 of the Commission's regulations.¹⁴ Consequently, even if it were true that VSSI or T-Netix did charge \$3.99 as alleged by Mrs. Feigley just to pay the bill, that rate cannot be found to violate any regulation. Mrs. Feigley's allegation is not true, however, and the Commission can resolve this allegation on that basis alone. There is no \$3.99 fee just to pay one's bill.

¹⁴ 52 Pa. Code §63.117. This Section applies only to the informal and alternative dispute resolution procedures of Chapter 64 to actions against IXCs in enforcing "this sub-chapter," namely, sub-chapter "I", which regulates IXC resellers.

(VSSI Main Brief at 21) The ALJ then admits that he "interpreted" the argument to suggest that VSSI was arguing that it is an IXC but not an interexchange reseller, and that consequently Section 63.117 did not apply to it at all. That argument was not made by VSSI and the ALJ's interpretation is incorrect. The section quoted from VSSI's Brief merely points out the obvious fact that the substantive regulations of Chapter 64 of the Public Utility Code do not apply to interexchange resellers. While the paraphrase of the regulation may be inartful, the conclusion is nonetheless accurate and unassailable: Chapter 64, by its own terms, applies to local exchange telephone service, and 52 Pa. Code §63.117 provides for the application of Chapter 64 to

interexchange resellers only through the limited incorporation of the Chapter 64 procedural rules for disputes and informal complaints.

A review of the Commission's Rulemaking Order in *Interexchange Service Providers And Telecommunications Resellers*, 22 Pa. Bull. 1554, 1558-9 (April 4, 1992), which promulgated §63.117, makes the Commission's intention clear with regard to what sections of Chapter 64 were to be applied to interexchange resellers and how the Commission is to enforce those regulations. For example, the Order states "Section 63.117 is added to the final regulations so as to clarify the Commission's intended **procedures for enforcement of this subchapter . . .**" (emphasis added), refuting the ALJ's conclusions directly; the only substantive regulations the Commission intends to enforce with regard to interexchange resellers, are those found in Subchapter "I" of Chapter 63 (52 Pa. Code §§ 63.101, *et seq.*), and the procedures used to enforce those limited substantive requirements are the dispute and informal complaint **procedures** already found in Chapter 64.

Finally, the ALJ concludes that Section 63 117 provides for the application of the whole of Chapter 64 to interexchange resellers because it uses the word "dispute." The ALJ reasons that since the word "dispute" appears in 52 Pa. Code 63.117, and since the definition of "dispute" from Chapter 64 lists all manner of issues that may be subject to a "dispute", including actions taken pursuant to the substantive requirements of Chapter 64, that it is reasonable to conclude all of the substantive provisions of Chapter 64 are applicable to interexchange resellers. (R.D. at 40-41). Not only is this conclusion illogical, it is also flat out wrong, as is made clear by the exact language of the regulations in question.

52 Pa. Code §63.117 states:

In addition to presiding over formal complaints brought against interexchange resellers, the Commission will utilize the dispute and informal complaint

procedures prescribed for residential billing disputes under Chapter 64 (relating to standards and billing practices for residential telephone service) for *enforcing this subchapter*. The non-public spaced utility aggregator, caller or customer, the interexchange reseller and the local exchange carrier serving the non-public space utility aggregator or customer shall be given the opportunity to participate in these informal complaint proceedings. The Bureau of Consumer Services will have primary jurisdiction over informal complaints arising under this subchapter.

(emphasis added). This section is crystal clear that the Commission shall use the dispute and informal complaint *procedures* prescribed for residential billing disputes under Chapter 64, for “enforcing this subchapter.” The words “this subchapter” mean Subchapter I of Chapter 63, the interexchange reseller rules of 63 Pa. Code §63.101, *et seq.*, not Chapter 64.

As the ALJ opined, it is true that nothing in §63.117 or the definition of dispute expressly excludes interexchange resellers, such as VSSI, from the purview of Chapter 64. It is also true, however, that nothing in Chapter 64 or §63.117 or §64.2 extends the substantive regulations of Chapter 64 governing local exchange carriers to interexchange resellers. The ALJ cannot overcome the clear language of the regulations by a flawed analysis stringing together the definition of “dispute” and the term “dispute . . . procedures” in §63.117 to extend the reach of Chapter 64’s substantive regulations to interexchange resellers. Accordingly, there is no reasonable interpretation of §63.117 which would allow one to conclude that the substantive requirements of Chapter 64 apply to interexchange resellers.

Exception No. 2 – The ALJ Erred by Requiring VSSI to Refund Any \$3.99 Credit Card Payment Fees That It Never Charged Complainant. (R.D. at 36-42).

On page 42 the ALJ concludes:

I have found that the Feigleys did not carry their burden of proving they paid the \$3.99 fee when Mrs. Feigley paid her VSSI bill by check or money order. On the other hand, they did carry their burden of proving they paid the \$3.99 fee when Mrs. Feigley paid her VSSI bill by credit card, and she is entitled to a refund for each of those transactions.

The ALJ's analysis ignores completely the record evidence that the charge in question is assessed by T-Netix not VSSI. This oversight fatally flaws the ALJ's analysis. There are other reasons why the R.D. must be reversed on this point, including the fact that the analysis assumes the existence of "transactions" even though the record and the R.D. are clear that no "transaction" evidence was entered into the record and therefore no payment of the fee was proven,² and the fact that the R.D. would violate VSSI's due process rights by requiring that VSSI issue a refund based upon "transaction" records which should have been offered into the record at the hearing and were not.³ In short the R.D. overlooks the plain fact that the charge in question is not a VSSI charge and contains other errors that require the "refund" requirement of the R.D. to be reversed.

The \$3.99 charge in question is not reflected on VSSI's bill, is not a VSSI charge, is not paid to or collected by VSSI and is not assessed for any service provided by VSSI. Instead the charge is assessed by T-Netix only when a called party has a direct billing arrangement with T-Netix and pays T-Netix by telephone check or credit card. (Tr. at 52, 59-60, 109-110). Despite these facts, the ALJ failed to explain why VSSI should have the charge in its tariff or effect a refund. Indeed, there is no explanation. The ALJ's conclusion that VSSI should be required to provide a refund and to tariff this charge is insupportable and must be reversed.

² 66 Pa. C.S. § 332(a)

³ *Armour Transp. Co. v. Pa. PUC*, 138 Pa. Super. 243, 248, 10 A 2d 86, 89 (1939); *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations* 287 A 2d 161, 166 (Pa. Cmwith 1972) (emphasis added)

WHEREFORE, Verizon Select Services Inc., Respectfully Excepts to the Recommended Decision of Administrative Law Judge Louis G. Cocheres, issued on December 19, 2005, in the above captioned matter, and Requests that the Decision be modified in accordance with its Exceptions stated herein.

Respectfully submitted



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DATED: January 9, 2006

CERTIFICATE OF SERVICE

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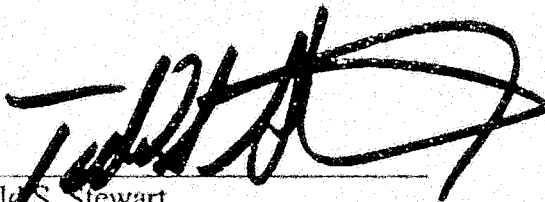
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DATED: January 9, 2006

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January 19, 2006

James J. McNulty, Secretary
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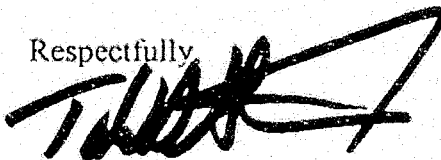
RE: Sandra and George Feigley v. Verizon Select Services Inc., Department of Corrections and Robert Shannon; Docket No. C-20043621; **REPLY EXCEPTIONS OF VERIZON SELECT SERVICES INC. TO THE RECOMMENDED DECISION OF LOUIS G. COCHERES**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Verizon Select Services Inc.'s Reply Exception to the Recommended Decision of Louis G. Cocheres. Copies of this document have been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Respectfully,



Todd S. Stewart
Counsel for Verizon Select Services Inc.

SECRETARY'S OFFICE

2006 JAN 19 PM 1:24

TSS/kml
Enclosures
cc: Per Certificate of Service

55

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SANDRA AND GEORGE FEIGLEY

v.

VERIZON SELECT SERVICES INC.,
DEPARTMENT OF CORRECTIONS
AND ROBERT SHANNON

Docket No. C-20043621

DOCUMENT
FOLDER

DOCKETED
JAN 2 8 2006

REPLY EXCEPTIONS OF
VERIZON SELECT SERVICES INC. TO THE
RECOMMENDED DECISION OF LOUIS G. COCHERES

Verizon Select Services Inc. ("VSSI"), by and through its counsel in the above-captioned matter, Hawke McKeon Sniscak & Kennard LLP, hereby Reply to the Exceptions of Sandra and George Feigley ("Feigley's" or "Complainants"), to the Recommended Decision ("RD") of Administrative Law Judge Louis G. Cocheres ("ALJ"). At the outset, VSSI wishes to point out that contrary to the specific requirements of the regulations regarding Exceptions found at 52 Pa. Code §5.533(b), the Feigley's Exceptions are not numbered and do not identify specific exceptions. Rather, the exceptions appear more akin to a ramble through the RD, serially criticizing the decision without establishing the basis of the criticism. These Replies to those Exceptions will attempt to address reasonably identifiable Exceptions. However, the failure of VSSI to address any specific Exception should not be construed as agreement with anything stated in the Feigley's Exceptions. To the contrary, VSSI disagrees with the entirety of the Exceptions submitted by the Feigley's. VSSI will attempt to consolidate its responses and identify the various places where each issue is raised in the Feigley's Exceptions.

1. The Feigley's Failed to Sustain Their Burden of Proving that VSSI Provided Them with Inadequate or Unreasonable Telephone Service.

At numerous places throughout their Exceptions (pp. 2, 3-4, 5-6, 9-10, 11-12) the Feigleys take issue with the mechanics of the service provide through the automated inmate telephone system("AITS"). Their complaint centers on allegations that the system cuts them off for no apparent reason, other than the fact that Mrs. Feigley talks to her husband using a cordless phone or cell phone or when those around them produce loud sudden noises while they are speaking and similar circumstances. They claim that the purpose of these disconnections is to extort more money out of them.

VSSI presented evidence that the AITS equipment provided by T-Netix is located on the customer side of the network interface and operates very much like a PBX. VSSI also argued that the functions of the AITS are not subject to the Commission's jurisdiction because its functions occur on the private side of the network interface device. (VSSI Main Brief at 14). VSSI also presented evidence to rebut the Feigley's claims that the system was defective or did not function properly. (VSSI Main Brief at 16-20).

However, the ALJ did not even reach those arguments in finding that the Feigley's had failed to carry their burden of proof. (RD at 30). Rather, he found to be persuasive VSSI's description of the public protection function of the AITS - - the fact that it will disconnect a call if it detects conditions on the line that it identifies as a three way call attempt - - and the fact that inmates are made aware that certain things can mimic the same conditions and are told to avoid making certain noises or using cordless telephones. In this case there was evidence that the Feigley's were disconnected very few times in light of their large volume of calls, so that even if

the Feigley's were not engaging in three-way call attempts, and there is no convincing evidence that they were not, the service to them while not perfect, was more than adequate.

In short, the AITS and its operation are not defective, as the Feigley's claim, and VSSI agrees with the ALJ's conclusion on Page 32 of the Recommended Decision that the Feigley's have failed to carry the burden proving unreasonable and inadequate service from VSSI. The Feigley's do not reference the record, nor do they cite any legal authority that would compel a finding to the contrary, and instead simply rail against the ALJ's findings, which are supported in the record and the law. Even though the Feigleys failed to demonstrate that the system was flawed, VSSI never argued that the system works flawlessly (nor is VSSI conceding that the system did not work properly at any time). Instead, VSSI argued, (assuming *arguendo* that the Commission has jurisdiction over the operation of the system) that the standard for what is reasonable and adequate service is not perfection, but, what is reasonable under the circumstances. Under the circumstances here, the ALJ correctly found that VSSI did render reasonable and adequate service and the ALJ's Decision should be sustained on this point.

2. The Alleged Unauthorized Addition of Call Forwarding to Mrs. Feigley's Verizon Pennsylvania Account was Properly Excluded From this Proceeding.

At the hearing in this case, held many months after the Feigley's filed their Complaint, Mrs. Feigley alleged for the first time that call forwarding had been added to her local telephone service provided by Verizon Pennsylvania, and requested that VSSI be punished for this alleged "fraud". (Exceptions, p. 7). The RD, however, agreed with VSSI's contention that the Feigley's had not included such a serious claim in their Complaint nor had they filed an amended complaint to provide notice to VSSI that such a claim was to be made in this case. (VSSI Main

Brief at 4) Finally, the Feigley's did not attempt to join a necessary party, namely Verizon Pennsylvania Inc. ("Verizon PA"), which actually provides the service complained of. (RD at 19-20). VSSI argued that if the claim existed at all, it was properly the subject matter of a distinct complaint. Accordingly, the ALJ recommended that the Feigley's file a complaint if Verizon PA was unwilling to disconnect the service and refund to the Feigley's any monies they may have paid to Verizon PA for the service. It is clear that the Feigley's failed to include a claim such as cramming in their complaint, and failed to provide notice to VSSI that they would attempt to litigate such a claim against it. It was wholly proper for the ALJ to have excluded the claim from this proceeding and the Feigley's Exceptions provide no sound reason why the RD was incorrect to do so.

3. The Taped Warnings Played During Inmate Calls are Required by the Public Utility Code and the Department of Corrections. (VSSI Main Brief at 17-18).

The Feigley's contend that it is "well settled law that citizens cannot be charged to receive a governmental message," and "[e]ven if the state may interrupt Mrs. Feigley's phone call with its propaganda, it may not charge her to listen." (Exceptions, p.10)¹ The Feigleys cite the case of *Wooley v. Maynard* ("Maynard"), 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d. 752 (1977), as legal authority for their argument. The *Maynard* case arose in the context of a New Hampshire man being charged with the crime of covering up the words "live free or die" on his automobile's license plate because he found those words to be morally and religiously offensive. The U.S. Supreme Court found that the state law which made it a crime for him to cover those words on his license plate violated his First Amendment right to free speech and invalidated the law. The case stands for the proposition that the State may not compel an individual to be a

¹ The Feigley's also appear to take issue with the messages on page 3 (Finding 11), page 6 (Finding 81), and on page 13 (Conclusion 23).

conduit for state speech. That is not the issue that the Feigley's raise. Rather, they contend that they are required to pay for telephone time that elapses while messages are played in accordance with a state law and that such compulsion violates their First Amendment rights. The law in question, 66 Pa. C.S. § 2907, requires that "telecommunication 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." The Feigley's argument is unsupported and otherwise without merit. In this case, the Feigley's are not being compelled to promote or be a conduit for a message with which they may disagree. And they have cited no case that stands for the proposition that it is unconstitutional for inmates or others to be charged for the time during which a five second message plays informing the called party that the call has originated from a state correctional institution. Pennsylvania Courts previously have examined the message and other restrictions on inmate telephone privileges and found that the message is required for the protection of the public and thus fulfils a rational and legitimate means of protecting the citizenry from criminal activity.² Simply put, the Feigley's Exceptions raise no valid constitutional issues.

4. The Provision of Telephone Service to the Department of Corrections is Neither a Monopoly nor is it Illegal.

The Feigley's argue that the AITS is a "monopoly which is operated illegally." (Exceptions, p. 8). The Feigley's cite no provision of the Public Utility Code that has allegedly

² *Chimenti v Pennsylvania Department of Corrections*, 720 A.2d 205, 214 (Pa. Commw. Ct. 1998), citing, *Washington v Reno*, 35 F.3d 1093, 1099-1100 (6th Cir. 1994)

been violated, even though the Commission can enforce no other substantive law.³ In particular, the Commission and the Courts have found that the Commission has no jurisdiction to adjudicate issues involving the bidding for the contract or the contract itself, which also is implicated by the Feigley's exception.⁴ More recently, the United States District Court for the Eastern District of Pennsylvania addressed the issue of monopoly in this context, in a case involving a different Pennsylvania inmate.⁵ In the *Wheeler* case, Judge Yohns concluded that the Department of Corrections has not engaged in any illegal monopolistic activity with regards to its supervision of the contracts for provision of telephone service to inmates in Pennsylvania, and that those with whom it contracts are not subject to prosecution under anti-trust laws for any such activity.⁶ In short, this Commission does not have jurisdiction to adjudicate anti-trust or similar claims, and the Feigley's have failed at the threshold to establish a legal or factual basis for such a claim. Accordingly, their claims regarding the competitive nature of the AITS and the service provided to the Department of Corrections are meritless and their exceptions must be denied.

5. The Feigley's Failed to Prove that VSSI's Rates are Unjust, Unreasonable or Unconstitutional.

The Feigley's continue to raise an argument which they have raised before,⁷ and which this Commission and the Commonwealth Court have rejected before, namely, that VSSI's rates for telephone service charged for inmates calls from state correctional facilities are a violation of

³ 66 Pa. C.S. §§ 101, *et seq.*; *Feigley v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-00981434 (Opinion and Order entered April 20, 2001), *affirmed by*, *Feigley v. Pa. PUC*, 794 A.2d 428 (Pa. Commw. Ct. 2002).

⁴ *Id.*

⁵ *Aaron Wheeler, et al v Jeffrey Beard, et al.*, Docket No. 03-4826 (Memorandum and Order entered May 19, 2005).

⁶ *Id.*

⁷ Exceptions, p. 8, *see also*, page 6 (Finding 92), and page 12 (Conclusions 12, 13, 14).

their First Amendment rights to free speech.⁸ The case cited by the Feigley's for this proposition, *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 112 S.Ct. 2359, 12 L.Ed 2d. 101 (1992), does not support their argument.⁹

The Feigleys claim that VSSI's rates "burdens expression,"(sic) and they claim that they believe that the rates are too high, despite having failed to offer any evidence that shows how VSSI's rates compare to other similar services, and despite having failed wholly to rebut VSSI's evidence that its rates were lawfully tariffed and are actually lower than VSSI's public payphone rates. Under such circumstances, the Commission considers VSSI rates to be presumptively just and reasonable, a presumption that mere dislike cannot overcome.¹⁰ The RD correctly addresses these points and finds that the Feigley's arguments must fail (RD at 26-28), and the Feigley's cite no reason that can overcome that analysis.

6. The Only Credible Evidence in this Case Shows that the Feigley's Calls Were Timed Correctly.¹¹

At the hearing before the ALJ, Mr. Feigley testified that he timed his calls with a wristwatch with a second hand and that he routinely was charged for more time than he noted on his watch, which lacks a stopwatch function. He could not provide any date on which he allegedly timed calls and admitted that any discrepancy was at most a "few seconds". (Tr. at 90) The ALJ found convincing Mr. Ries' testimony that he had reviewed Mr. Feigley's call records and found the timing to be consistent across the various switches that carried the calls, which he

⁸ *Feigley v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-00981434 (Opinion and Order entered April 20, 2001), affirmed by, *Feigley v Pa. PUC*, 794 A.2d 428 (Pa. Commw. Ct. 2002)

⁹ In *Forsyth*, the U.S. Supreme Court held that an arbitrary, non-nominal fee for public demonstrations was an unconstitutional burden on public speech. That case does not address a case of the reasonableness of a fee for transmitting private speech

¹⁰ 52 Pa. Code § 63.112.

¹¹ Exceptions, page 6 (Finding 86) and page 10.

testified shows that the calls were correctly timed, (VSSI Main Brief at 23) and VSSI's argument that Mr. Feigley's method of timing was too inaccurate to support such a claim. The ALJ agreed that the Feigley's lack of response to Verizon's testimony constituted a failure to carry their burden of proof. (RD at 36). In their Exceptions, the Feigley's wrongly contend that it was VSSI's burden to prove that they have charged the Feigley's based upon correct timing. Putting aside for the sake of argument the plain fact, as found by the ALJ, that VSSI did prove accurate timing though Mr. Ries' testimony (Tr. at 108), the Feigley's Exception is incorrect as a matter of law, 66 Pa. C.S. § 332(a). It is the Feigley's who ultimately bear the burden of proof, and in this case they failed to meet it. Accordingly, the RD must be sustained on this point.

**7. VSSI Provided Reasonable Customer Service and Billing to Complainants.
(VSSI Main Brief at 16-26).**

On pages 10 and 11 of their Exceptions, the Feigley's take issue with the ALJ's determination that they failed to prove that VSSI had not provided reasonable service to the Feigley's as to billing and customer service.¹² However, rather than addressing that conclusion by marshaling facts and/or legal arguments in an effort to point out where they believed the RD had gone astray, the Feigley's present insidious and irrelevant accusations that don't readily address any specific aspect of the RD. The ALJ found that VSSI provided reasonable service (RD at 42-45) and the Feigley's comments require no change to that determination.

The Feigley's argue that VSSI's bills are "Byzantine" and indecipherable, yet while the Feigley's offered two bills into the record, they offered no testimony that they could not understand the bills. The Feigley's also complained that VSSI provided unreasonable customer

¹² These issues are raised in part in various other places, including: page 2 (Finding 6), page 3, (Finding 7), page 4 (Findings 35, 42 and 48), page 6 (Finding 83), and page 13 (Conclusion 39)

service, failed to provide refunds for calls they claim were disconnected improperly, and claimed that a representative treated Mrs. Feigley rudely and that in response to that treatment she filed the instant complaint. In "support" of this latter argument, the Feigley's offered an article from their website describing the call, identified as having been authored by a person other than Mrs. Feigley, but which Mrs. Feigley admitted at the hearing to have written herself. That website article was hearsay on its face and was objected to at hearing, and even though it was admitted, it cannot form the basis of a finding of unreasonable service. If anything, it militates against such a finding because it calls into question the veracity of the entirety of Mrs. Feigley's testimony—did Mrs. Feigley write the article, and was she the one who allegedly had the bad experience with a Verizon representative? (VSSI Main Brief at 21).

The Feigley's admitted that they had not contacted the correct people in order to seek refunds, and rather continually contacted Ms. Ashelman even after being told that she did not have authority to refund money to them. Mr. Feigley makes a point of arguing that he needed to complain via an institutional grievance, rather than a telephone discrepancy form (the former goes through a DOC process, the latter goes to VSSI) in order to "exhaust" his remedies, making it obvious that he was less interested in refunds, than in complaining about the lack thereof. In short, the Feigley's claims of hard-to-understand bills, and bad customer service, are just that, claims. They are unsupported in the record and the ALJ appropriately found that the Feigley's had failed to carry their burden of proof on these counts. There is no basis in the Feigley's Exceptions to alter that result and accordingly, they should be denied.

8. The Feigley's Fraud Claims are Factually and Legally Unfounded and The Commission Lacks Jurisdiction to Address Such Claims in The First Instance.

On page 46 of the RD, the ALJ addresses and denies the Feigley's claim that VSSI engaged in fraudulent behavior. The ALJ found that neither the Public Utility Code,¹³ nor the Commission's regulations¹⁴ grant the Commission the authority to adjudicate claims of fraud. On Page 11 of their Exceptions, the Feigley's take issue with the ALJ's denial of their claim. The Feigley's contend that Respondents have pretended that their product actually works when they allegedly know that it doesn't work, and that such behavior constitutes fraud "in his book". Not only are the factual assumptions made by Mr. Feigley incorrect and unproven in the record, but the allegations fail even to state a *prima facie* case of fraud, even if one ignores the fact that the Commission does not have jurisdiction to determine whether fraud has in fact occurred.¹⁵ These claims are wholly lacking in merit and must be disregarded.

9. The Remainder of the Feigley's Claims Lack Merit.

Beginning on page 12 of their Exceptions, the Feigley's take issue with various conclusions of law of the ALJ's Decision. While the Feigley's contentions are largely repetitive of the issues they raise elsewhere in their Exceptions, the Feigley's do raise one additional argument with regard to Conclusion of Law No. 15. (Exceptions, p. 12). In this claim, the Feigley's contend that the operation of the AITS by the respondents violates the equal protection clauses of the U.S. and Pennsylvania Constitutions. This very same equal protection argument

¹³ 66 Pa. C.S. §§ 101, *et seq.*

¹⁴ 52 Pa. Code §§ 1.1, *et seq.*

¹⁵ *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (Pa. 1977); *Vertis Group v. Pennsylvania Public Utility Commission*, 840 A.2d 390 (Pa. Cmwlth. 2003).

was rejected by the Commonwealth Court in the Feigley's prior case.¹⁶ The fact that Mr. Feigley is incarcerated requires that the telephone service that he has the privilege of using be subject to the direct supervision and control of the Department of Corrections and that the phone equipment be able to perform certain tasks not required of "plain old telephone service." The demands of complying with the statutory and regulatory requirements concerning incarcerated persons leads directly to restrictions on Mr. Feigley's use of the phone service, which the Commonwealth Court has found to be an "incidence of incarceration".¹⁷ Both the Commission and the Court have considered the very same components of the AITS and found them to be rational and legitimate in light of the facility's overriding security concerns.¹⁸ Accordingly, the Feigley's claims in this regard are without merit and must be rejected. Similarly with regard to the Feigley's Exceptions to Conclusion of Law No. 17 on Page 13, the Feigley's underlying premise is that Mr. Feigley is entitled to the same telephone service as a person who is not incarcerated. This simply is not the case.

CONCLUSION

The Feigley's cite no relevant law and fail to identify any facts which would require this Commission to alter the conclusions already reached by the ALJ. Accordingly, their Exceptions must be denied in their entirety.

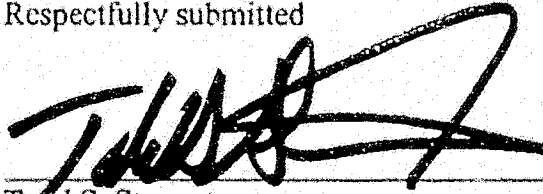
¹⁶ *Feigley v. Pa. Public Utility Comm.* 794 A.2d 428, 431.

¹⁷ *Id.*, 794 A.2d 428 at 431.

¹⁸ *Id.*, 794 A.2d 428 at 432.

WHEREFORE, Verizon Select Services Inc., respectfully requests that the Pennsylvania Public Utility Commission deny, in their entirety, the Exceptions submitted by the Feigley's to the ALJ's Decision in the above-captioned matter, sustain VSSI's Exceptions, and sustain the RD in all other respects.

Respectfully submitted



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Counsel for Respondent,
Verizon Select Services Inc.

DATED: January 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons named:

SERVICE BY FIRST CLASS MAIL:

Sandra Feigley
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Harrisburg, PA 17105

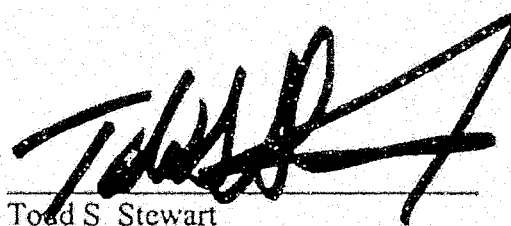
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SECRETARY'S BUREAU

2005 JAN 19 PM 4:24



Todd S. Stewart

DATED: January 19, 2006

Before the Pennsylvania
Public Utility Commission

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2006 JAN 19 AM 9:23

Sandra and George Feigley,
Complainants

v

Verizon Select Services, Inc.
and Department of Corrections
by Robert Shannon,
Respondents

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Number C-2004 3621

SECRETARY'S BUREAU

ORIGINAL

Motion to Strike

1. Administrative Law Judge Louis G Cocheras entered a Recommended Decision in the above captioned matter on 19 December 2005.

2. Exceptions to the Recommendation were due by 9 January 2006.

3. It appears that at some point Todd S. Stewart, Esq. filed exceptions in behalf of Respondent Verizon Select Services.

4. No copy of the exceptions was served upon Complainant George Feigley.

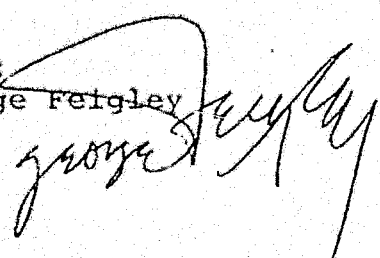
5. Service of the exceptions was improper and incomplete depriving George Feigley of the ability to respond to Respondents' exception.

Wherefore, George Feigley asks that Verizon's exceptions be stricken.

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I am:
George Feigley



13 January 2006

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Before the Pennsylvania
Public Utility Commission

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Sandra and George Feigley,
Complainants
v
Verizon Select Services, Inc.
and Department of Corrections
by Robert Shannon,
Respondents

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SECRETARY'S BUREAU

Number C-2004 3621

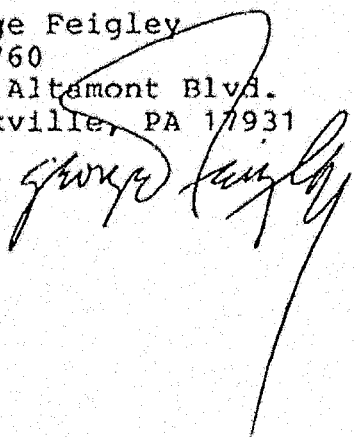
Certificate of Service

I certify that I am this day serving true and correct copies of
the herewith motion upon the persons indicated below by first
class mail, postage prepaid.

Todd S. Stewart, Esq.
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Harrisburg, PA 17105

William E. Fairall, Jr Esq.
Deputy Chief Counsel
55 Utley Drive
Camp Hill, PA 17011

I am:
George Feigley
AK 2760
1111 Altamont Blvd.
Frackville, PA 17931



Date: 16 January 2006

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January 20, 2006

James J. McNulty, Secretary
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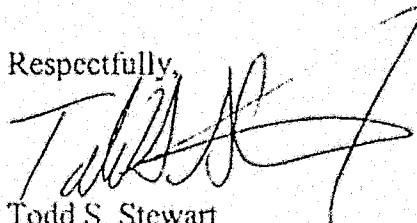
RE: Sandra and George Feigley v. Verizon Select Services Inc., *et al.*; Docket No. C-20043621; ANSWER OF VERIZON SELECT SERVICES INC. TO MOTION TO STRIKE

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Verizon Select Services Inc.'s Answer to Motion to Strike. Copies of this document have been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Respectfully,



Todd S. Stewart
Counsel for Verizon Select Services Inc.

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TSS/kml
Enclosures
cc: Per Certificate of Service

SECRETARY'S BUREAU

2006 JAN 20 11:11:09

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

SANDRA AND GEORGE FEIGLEY :

v. :

Docket No. C-20043621

VERIZON SELECT SERVICES INC., :
ET AL. :

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ANSWER OF
VERIZON SELECT SERVICES INC.
TO MOTION TO STRIKE

DOCKETED
FEB 8 2006

Verizon Select Services Inc. ("VSSI"), by and through its counsel in the above-captioned matter, Hawke McKeon Sniscak & Kennard LLP, hereby Answer the Motion to Strike filed on or about January 13, 2006 by George Feigley in the above-captioned matter.

1. In his Motion, Mr. Feigley claims that Exceptions to the Recommended Decision of Presiding Administrative Law Judge Louis G. Cocheres, entered December 19, 2005, were due to be filed with the Pennsylvania Public Utility Commission ("Commission") on or about January 9, 2006, that VSSI did not serve a copy of its Exceptions upon Mr. Feigley, even though Mr. Feigley apparently knows that VSSI did in fact file Exceptions, that VSSI's service is improper and incomplete, and that he has not had an opportunity to respond to VSSI's Exceptions. By way of relief, Mr. Feigley asks that VSSI's Exceptions be stricken.

2. Mr. Feigley's Motion is factually untrue and should be denied.

3. It is true that Exceptions to the Recommended Decision of the Presiding Administrative Law Judge were due to be filed with the Commission no later than January 9, 2006, and it is true that on that date, namely January 9, 2006, VSSI did file Exceptions with the

Commission. A copy of those Exceptions, including the Certificate of Service thereto, are appended to this Answer. As indicated by the Certificate of Service attached to VSSI's Exceptions, it served copies of its Exceptions not only on Mr. Feigley at the correct address¹, but also upon Mrs. Sandra Feigley at her correct address. That is, VSSI placed copies of the Exceptions in First Class Mail for both Mr. and Mrs. Feigley, and sent them to the correct addresses.

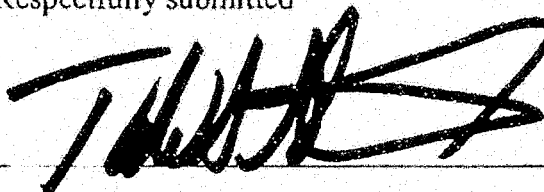
4 It is interesting that Mr. Feigley does not even discuss the fact that his wife also was served with a copy of the Exceptions. Rather, it appears that Mr. Feigley's Motion is just one more attempt to disrupt the proceedings in front of this Commission in order to harass and annoy those involved. For example, Mr. Feigley previously filed a Motion to Strike VSSI's Answer in this case alleging that he was not served with a copy thereof, even though at no time prior to serving his Motion to Strike did he provide his address and/or prisoner identification number to the parties. The Presiding Administrative Law Judge found Mr. Feigley's first Motion to Strike to be without merit and the Commission should likewise find this one to be without merit as well.

5. The copy of VSSI's Exceptions that was mailed to Mr. Feigley has not been returned by the postal service. VSSI has complied with the legal requirements of service. 52 Pa. Code §1 54(c). Mr. Feigley has presented no basis for his Motion to Strike other than his alleged non-receipt of VSSI's exceptions. It is worthwhile noting that Mr. Feigley signed his Motion to Strike on January 13, 2006, a full six days prior to the date upon which replies to exceptions are due but yet no request has been forthcoming from either Mr. Feigley or his wife to receive a copy of VSSI's Exceptions. Again, Mr. Feigley's tactics appear to be directed towards attempting to annoy rather than to respond to VSSI's Exceptions.

¹ Mr. George Feigley, AK 2760, 1111 Altamont Blvd., Frackville, PA 17931

Accordingly, VSSI requests that the Pennsylvania Public Utility Commission DENY Mr. Feigley's Motion to Strike with prejudice.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'T. Stewart', written over a horizontal line.

Todd S Stewart
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Counsel for Respondent,
Verizon Select Services Inc.

DATED January 20, 2006

Hawke

McKeon

Sniscak &

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January 9, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105-3265

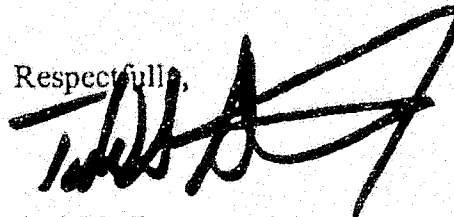
RE: Sandra and George Feigley v. Verizon Select Services Inc., Department of Corrections and Robert Shannon; Docket No. C-20043621; EXCEPTIONS OF VERIZON SELECT SERVICES INC. TO RECOMMENDED DECISION ISSUED DECEMBER 19, 2005

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and nine (9) copies of Verizon Select Services Inc.'s Exceptions to Recommended Decision Issued December 19, 2005. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Respectfully,



Todd S. Stewart
Counsel for Verizon Select Services Inc.

TSS/kml
Enclosures
cc: Per Certificate of Service

SECRETARY'S BUREAU
2006 JAN -9 PM 3:43

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

Attachment

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SANDRA AND GEORGE FEIGLEY :
 :
 :
 v. :
 :
 VERIZON SELECT SERVICES INC., :
 DEPARTMENT OF CORRECTIONS :
 AND ROBERT SHANNON :

Docket No. C-2004362

SECRETARY'S BUREAU

2005 JAN -9 PM 3:45

**EXCEPTIONS OF VERIZON SELECT SERVICES INC.
TO RECOMMENDED DECISION ISSUED
DECEMBER 19, 2005**

Verizon Select Services Inc. ("VSSI") by and through its counsel in the above-captioned matter, Hawke McKeon Sniscak & Kennard LLP, hereby Excepts to the Recommended Decision ("R.D.") of Administrative Law Judge Louis G. Cocheres ("ALJ") dated December 19, 2005 in the above-captioned matter. These Exceptions are filed pursuant to the Commission's Regulations at 52 Pa. Code §5.533.

I. INTRODUCTION AND BACKGROUND

On September 1, 2004, Sandra and George Feigley ("Feigleys" or "Complainants") filed the latest in a long series of complaints involving telephone services provided to inmates at correctional facilities in the Commonwealth. A hearing in this matter was held on May 6, 2005, and Briefs were filed by the Feigley's on May 24 and by VSSI on June 23, 2005. On July 1, 2005, the Feigleys filed a Motion to admit "after discovered evidence." VSSI responded and opposed the Motion. On December 19, 2005, the Commission issued the Recommended Decision of the ALJ in this matter.

fee she may have been charged for using a credit card to pay her VSSI telephone bills, and to the legal and factual underpinnings of that determination, as being flawed and incorrect. VSSI does generally agree with the conclusions reached (not necessarily the reasoning) on the majority of the issues addressed in the R.D.¹ However, as discussed below, the ALJ mischaracterizes VSSI's argument with regard to the applicability of the billing and collection standards of Chapter 64 to interexchange resellers. The ALJ then concludes, incorrectly, that Mrs. Feigley has "proven" that VSSI has charged her a \$3.99 fee for using a credit card to pay her bills, when in fact there is no credible evidence in this case to support such a finding. In fact, Mrs. Feigley admitted that she could "prove" no such thing. Accordingly, VSSI excepts to the Recommended Decision and submits that the R.D. must be reversed as to the legal argument on why a refund is required and on the evidentiary issue of whether it has been proven that a fee for using the credit card was actually paid by Complainant. The R.D. should be sustained in all other respects.

Exception No. 1 – The ALJ Erred in Concluding As a Matter of Law That the Substantive Requirements of the Commission's Regulations at 52 Pa. Code §64.1, et seq., Apply to Interexchange Resellers. (RD at 36-39).

The ALJ makes a fundamental error in the application of the Commission's regulations that must be corrected – by concluding that the substantive rules governing local telephone service found at 52 Pa. Code §64.1, et seq. ("Chapter 64"), of the Commission's Regulations

¹ One point on which VSSI strenuously disagrees with the ALJ concerns the ALJ's commentary on the Commission's jurisdiction over certain services. While VSSI does view these comments as being *dicta*, it is nonetheless concerned about the implications of such statements. In particular, the ALJ claims that VSSI has argued that "it was rendering reasonable and adequate service because the equipment which caused the disconnections was required by the DOC" (R.D. at 32). It is telling that the R.D. provides no citation for that accusation, because there is none. Simply put, VSSI made no such argument. VSSI did argue that the Commission has no jurisdiction over the inmate call control system equipment used to provide inmate telephone service. Such equipment is provided by T-Netix, is located on-site at each correctional institution, is connected on the customer's side of the network interface device and is used to satisfy certain penal and security requirements of the Department of Corrections (e.g. monitoring, recording and disconnection of inmate calls). These requirements are set forth in the contract between Verizon PA and the Department of General Services. Neither the equipment nor the penal and security requirements fall under the Commission's jurisdiction (VSSI Main Brief at pp.14-16). The ALJ obviously misunderstood these facts and consequently reached an erroneous conclusion.

apply in their entirety to interexchange resellers. The ALJ begins, on Page 38 of the R.D., by accusing VSSI of making an inaccurate argument with regard to the applicability of the substantive requirements of Chapter 64 to interexchange resellers. The ALJ concludes that there is nothing in 52 Pa. Code §63.117 which says that Chapter 64's substantive provisions "do not apply" to interexchange resellers and concludes on the contrary that those standards do apply. This legal conclusion is clearly erroneous and must be overturned.

The ALJ opines that "unfortunately, VSSI provided a response to this issue which was filled with inaccuracies..." (R.D. at 38), and goes on to quote from VSSI's Main Brief where VSSI argued that:

Billing and collection services of interexchange carriers ("IXC") such as VSSI or T-Netix, are not subject to the requirements of Chapter 64 of the Commission's regulations.¹⁴ Consequently, even if it were true that VSSI or T-Netix did charge \$3.99 as alleged by Mrs. Feigley just to pay the bill, that rate cannot be found to violate any regulation. Mrs. Feigley's allegation is not true, however, and the Commission can resolve this allegation on that basis alone. There is no \$3.99 fee just to pay one's bill.

¹⁴ 52 Pa. Code §63.117. This Section applies only to the informal and alternative dispute resolution procedures of Chapter 64 to actions against IXCs in enforcing "this sub-chapter," namely, sub-chapter "I", which regulates IXC resellers.

(VSSI Main Brief at 21). The ALJ then admits that he "interpreted" the argument to suggest that VSSI was arguing that it is an IXC but not an interexchange reseller, and that consequently Section 63.117 did not apply to it at all. That argument was not made by VSSI and the ALJ's interpretation is incorrect. The section quoted from VSSI's Brief merely points out the obvious fact that the substantive regulations of Chapter 64 of the Public Utility Code do not apply to interexchange resellers. While the paraphrase of the regulation may be inartful, the conclusion is nonetheless accurate and unassailable: Chapter 64, by its own terms, applies to local exchange telephone service, and 52 Pa. Code §63.117 provides for the application of Chapter 64

interexchange resellers only through the limited incorporation of the Chapter 64 procedural rules for disputes and informal complaints.

A review of the Commission's Rulemaking Order in *Interexchange Service Providers And Telecommunications Resellers*, 22 Pa. Bull. 1554, 1558-9 (April 4, 1992), which promulgated §63.117, makes the Commission's intention clear with regard to what sections of Chapter 64 were to be applied to interexchange resellers and how the Commission is to enforce those regulations. For example, the Order states "Section 63.117 is added to the final regulations so as to clarify the Commission's intended **procedures for enforcement of this subchapter . . .**" (emphasis added), refuting the ALJ's conclusions directly; the only substantive regulations the Commission intends to enforce with regard to interexchange resellers, are those found in Subchapter "F" of Chapter 63 (52 Pa. Code §§ 63.101, *et seq.*), and the procedures used to enforce those limited substantive requirements are the dispute and informal complaint procedures already found in Chapter 64.

Finally, the ALJ concludes that Section 63.117 provides for the application of the whole of Chapter 64 to interexchange resellers because it uses the word "dispute." The ALJ reasons that since the word "dispute" appears in 52 Pa. Code 63.117, and since the definition of "dispute" from Chapter 64 lists all manner of issues that may be subject to a "dispute", including actions taken pursuant to the substantive requirements of Chapter 64, that it is reasonable to conclude all of the substantive provisions of Chapter 64 are applicable to interexchange resellers. (R.D. at 40-41). Not only is this conclusion illogical, it is also flat out wrong, as is made clear by the exact language of the regulations in question.

52 Pa. Code §63.117 states:

In addition to presiding over formal complaints brought against interexchange resellers, the Commission will utilize the dispute and informal complaint

interexchange reseller and the local exchange carrier serving the non-public space utility aggregator or customer shall be given the opportunity to participate in these informal complaint proceedings. The Bureau of Consumer Services will have primary jurisdiction over informal complaints arising under this subchapter.

(emphasis added). This section is crystal clear that the Commission shall use the dispute and informal complaint *procedures* prescribed for residential billing disputes under Chapter 64, for “enforcing this subchapter.” The words “this subchapter” mean Subchapter I of Chapter 63, the interexchange reseller rules of 63 Pa. Code §63.101, *et seq.*, not Chapter 64.

As the ALJ opined, it is true that nothing in §63.117 or the definition of dispute expressly excludes interexchange resellers, such as VSSI, from the purview of Chapter 64. It is also true, however, that nothing in Chapter 64 or §63.117 or §64.2 extends the substantive regulations of Chapter 64 governing local exchange carriers to interexchange resellers. The ALJ cannot overcome the clear language of the regulations by a flawed analysis stringing together the definition of “dispute” and the term “dispute . . . procedures” in §63.117 to extend the reach of Chapter 64’s substantive regulations to interexchange resellers. Accordingly, there is no reasonable interpretation of §63.117 which would allow one to conclude that the substantive requirements of Chapter 64 apply to interexchange resellers.

Exception No. 2 – The ALJ Erred by Requiring VSSI to Refund Any \$3.99 Credit Card Payment Fees That It Never Charged Complainant. (R.D. at 36-42).

On page 42 the ALJ concludes:

I have found that the Feigleys did not carry their burden of proving they paid the \$3.99 fee when Mrs. Feigley paid her VSSI bill by check or money order. On the other hand, they did carry their burden of proving they paid the \$3.99 fee when Mrs. Feigley paid her VSSI bill by credit card, and she is entitled to a refund for each of those transactions.

The ALJ's analysis ignores completely the record evidence that the charge in question is assessed by T-Netix not VSSI. This oversight fatally flaws the ALJ's analysis. There are other reasons why the R.D. must be reversed on this point, including the fact that the analysis assumes the existence of "transactions" even though the record and the R.D. are clear that no "transaction" evidence was entered into the record and therefore no payment of the fee was proven,² and the fact that the R.D. would violate VSSI's due process rights by requiring that VSSI issue a refund based upon "transaction" records which should have been offered into the record at the hearing and were not.³ In short the R.D. overlooks the plain fact that the charge in question is not a VSSI charge and contains other errors that require the "refund" requirement of the R.D. to be reversed.

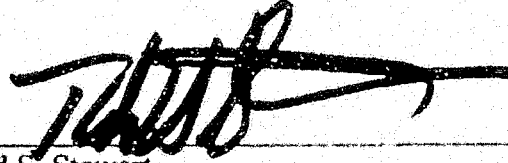
The \$3.99 charge in question is not reflected on VSSI's bill, is not a VSSI charge, is not paid to or collected by VSSI and is not assessed for any service provided by VSSI. Instead the charge is assessed by T-Netix only when a called party has a direct billing arrangement with T-Netix and pays T-Netix by telephone check or credit card. (Tr. at 52, 59-60, 109-110). Despite these facts, the ALJ failed to explain why VSSI should have the charge in its tariff or effect a refund. Indeed, there is no explanation. The ALJ's conclusion that VSSI should be required to provide a refund and to tariff this charge is insupportable and must be reversed.

² 66 Pa. C.S. § 332(a).

³ *Armour Transp Co v. Pa. PUC*, 138 Pa. Super. 243, 248, 10 A.2d 86, 89 (1939); *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations* 287 A.2d 161, 166 (Pa. Cmwlth. 1972). (emphasis added)

WHEREFORE, Verizon Select Services Inc., Respectfully Excepts to the Recommended Decision of Administrative Law Judge Louis G. Cocheres, issued on December 19, 2005, in the above captioned matter, and Requests that the Decision be modified in accordance with its Exceptions stated herein.

Respectfully submitted



Todd S. Stewart
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Post Office Box 1778
Harrisburg, PA 17105
(717) 236-1300
tsstewart@hmsk-law.com

Counsel for Respondent,
Verizon Select Services Inc.

DATED: January 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons named:

SERVICE BY FIRST CLASS MAIL:

Sandra Feigley
P.O. Box 15541
Harrisburg, PA 17105

George Feigley
AK 2760
1111 Altamont Blvd.
Frackville, PA 17931

Louise Knight
Saul Ewing Remick & Saul
Penn National Insurance Tower
2 North Second Street, 7th Fl.
Harrisburg, PA 17101

William Fairall, Jr.
Department of Corrections
Deputy Chief Counsel
55 Utley Drive
Camp Hill, PA 17011



Todd S. Stewart

DATED: January 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons named:

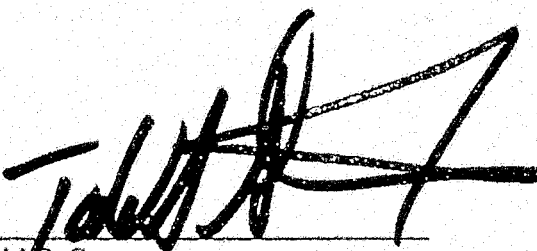
SERVICE BY FIRST CLASS MAIL:

Sandra Feigley
P.O. Box 15541
Harrisburg, PA 17105

George Feigley
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Frackville, PA 17931

Louise Knight
Saul Ewing Remick & Saul
Penn National Insurance Tower
2 North Second Street, 7th Fl.
Harrisburg, PA 17101

William Fairall, Jr.
Department of Corrections
Deputy Chief Counsel
55 Utley Drive
Camp Hill, PA 17011



Todd S. Stewart

DATED: January 20, 2006

DATE: January 23, 2006

SUBJECT: C-20043621

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James McNulty
Secretary
nvl

SANDRA AND GEORGE FEIGLEY
v.
VERIZON SELECT SERVICES INC

DOCUMENT
FOLDER

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

SANDRA AND GEORGE FEIGLEY
VERIZON SELECT SERVICES INC

Reply Exceptions have been received from

VERIZON SELECT SERVICES INC

DOCKETED
FEB 07 2006

cc: Susan Hoffner, ALJ

23 January 2006

George Feigley, AK 2760
1111 Altamont Blvd.
Frackville, PA 17931

RECEIVED
2006 JAN 25 AM 9:39
SECRETARY'S BUREAU

James J. McNulty, Secretary
Public Utility Commission
Box 3265
Harrisburg, PA 17105

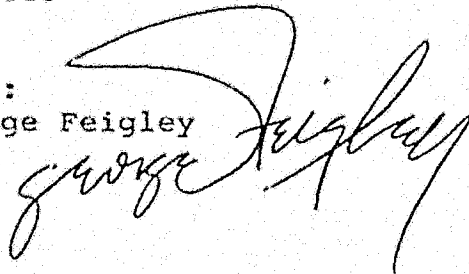
ORIGINAL

In Re: Feigley v Verizon Selective Services
Number: C-2004 3621

Sir:

I will not reply to Verizon Select Services, Inc.'s Exceptions to Recommended Decision Issued December 19, 2005 which were belatedly served on me today, 23 January 2006. They are utterly without merit and warrant no notice.

I am:
George Feigley



DOCUMENT
FOLDER

cc: Todd S. Stewart Esq.
William Fairall, Jr.

DOCKETED
JAN 30 2006

5. No copy of the answer and new matter or the objectionsto (sic) motion for subpoenas were served on George Feigley although it is perfectly clear from the first paragraph of the answer that DOC's counsel knows that Mr. Feigley is a party and that he's a prisoner within SCI-Frackville.

6. DOC's answer and new matter is untimely and must be stricken.

7. DOC's answer and new matter as well as its objectionto (sic) motion for subpoenas were not properly served and must be stricken.

8. DOC's answer and new matter as well as its objectionsto (sic) motion for subpoenas contain allegations of fact not of the record and neither is verified. Both filings must therefore be stricken.

ANSWER TO NEW MATTER

9. In the event that the DOC's answer and new matter is not stricken, the Feigleys answer DOC's new matter, to wit:

A. ¶5. Denied.

B. ¶6. Denied. By way of further answer, the Feigleys have named an individual respondent, Robert Shannon, and the PUC has jurisdiction over all public utilities.

C. ¶7. Denied. By way of further answer, the Feigleys have asserted a common law right to get what they pay for. The Feigleys

have asserted a right to enforcement of the laws governing the operation of a monopoly public utility.

D. ¶8. Denied and objected to as irrelevant.

E. ¶9. Neither admitted or denied. Feigleys are without definite information of the truth of the averment. The averment is objected to as irrelevant, immaterial and unverified.

F. ¶10. Denied. See paragraph E above.

G. ¶11. Denied. See paragraph E above. By way of further answer, it is ludicrous to assert that only the DOC is concerned about security of prisoners, the public or public employees. See www.prisoners.com. The averment is objected to as irrelevant, immaterial and unverified.

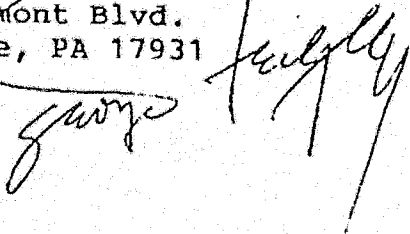
H. ¶12. Denied. By way of further answer, DOC is in partnership with Verizon, profiting financially from the telephone scheme and providing services to further their joint business.

10. DOC's new matter must be overruled and dismissed.

Respectfully Submitted:

George Feigley
AK 2760
1111 Altamont Blvd.
Frackville, PA 17931

Date: 31 March 2005

A handwritten signature in cursive script, appearing to read "George Feigley", is written over the typed name and address. The signature is written in dark ink and is somewhat stylized.

Before The Pennsylvania
Public Utility Commission

Sandra and George Feigley
Complainants

v

Verizon Select Services, Inc.
and Department of Corrections
by Robert Shannon
Respondents

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Number C-2004 3621

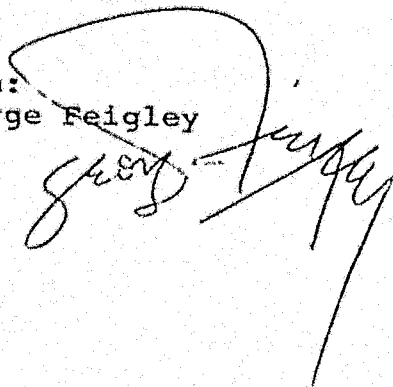
Certificate of Service

I certify that I am this day serving true copies of the herewith
motion and answer to new matter by first class mail, postage
prepaid upon the following persons:

Todd S. Stewart, Esq.
Hawke McKeon Sniscak Kennary
Box 1778
Harrisburg, PA 17105-1778

William E. Fairall, Jr., Esq.
Deputy Chief Counsel
55 Utley Drive
Camp Hill, PA 17011

I am:
George Feigley



Date: 1 April 2005