

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

OPTATUS CHAILLA

Complainant,

V.

DOCKET # C-2019-3008691
**Complainant's Motion
for Summary Judgement**

VERIZON PENNSYLVANIA LLC

Respondent.

Motion for Summary Judgment, which are requests for the PUC to make a decision without a hearing. In this motion, the Complainant party believes there are no facts that need to be decided, but that the PUC only needs to apply the facts to the law. The June 13, 2019, pre-hearing is not required as there are no genuine material facts that are disputed to warrant a hearing. New evidence provided yesterday is Verizon Pennsylvania, LLC's offer. In it, FRE 804(3) and FRCP 36(3)(4) admissions were made against its own penal, pecuniary and proprietary interest:

**VERIZON's TERMS AND CONDITIONS
OF AN OFFER**

Paiva, Suzan D <suzan.d.paiva@verizon.com> _____ **BEGIN**

To: Florence Parker

Cc: A R Tibbs Jr

Jun 4 at 2:05 PM

Dear Ms. Parker Chaila,

I have reviewed your June 3 PUC filing that you sent to Randy Tibbs. If I am understanding correctly, you only wish for the PUC case to address the billing issues and you plan to raise the other issues relating to privacy and the share drive in a separate federal complaint.

If I am correct, then I would like to make a proposal to resolve the PUC case before the June 13 hearing, as follows:

- (1) On the billing issues, Verizon will credit your account in the amount of \$523.37. This will eliminate the balance due of \$434.79 and will put \$88.58 toward your upcoming bill that will be due on June 28.
- (2) On the service issue, after our technician was unable to visit you on May 23 **we asked them to see if they could make repairs to our facilities outside without disturbing you. They tell me that both the phone and DSL are now working.** If you are still experiencing any issues, let me know and we will have a technician dispatched to your home at a convenient time.
- (3) The settlement would be without prejudice to your right to file a complaint in federal court relating to the issues discussed in your June 3 pleading. It would only close the PUC case.

Please let me know if you are willing to resolve the PUC case on these terms. If so, I can prepare the necessary papers and ask the PUC to cancel the June 13th hearing. Feel free to contact me by email (suzan.d.paiva@verizon.com) or by phone (267-768-6184).

Regards,

Suzan Paiva _____ **END**

Verizon Pennsylvania, LLC's offer for the crammed billing on its own would be acceptable, however, that offer does not account for the personal losses or make Complainant whole due to suffering caused by the unreasonable delay or for the harassment and intentional actions of Respondent's own conduct; therefore, because the offered terms and conditions fails to address the aggrieved Complainant's personal losses, and Consumer Rights, it is inadequate. Further, because of the protracted nature of the

harm that was continuous for over 100-days and after nearly six filed (resubmitted) documents with the PAPUC; to be fair and objective Verizon's conduct must be reviewed: Illustrated is the time, effort, research and writing of the filed PAPUC documents

FILED DOCUMENTS WITH PAPUC

1.	Formal Complaint	March 14, 2019	10 pages	hrs. 3-4
2.	Rebuttal	April 12, 2019	14 pages	hrs. 5-5
3.	Resubmission	April 14, 2019	14 pages	hrs. 7-9
4.	Reconsideration	April 25, 2019	14 pages	hrs. 7-8
5.	Followup	May 2, 2019	14 pages	hrs. 9-6
6.	Invasion of privacy	June 4, 2019	7 pages	hrs. 10-12 ¹

The above filed PAPUC documents pre-dates those of February 28 through March 8, 2019, when Complainant emailed Verizon attempting to resolve the billing problems before contacting the PAPUC. Seventy-three, (73) pages of writing, research and time consuming effort to get Verizon's attention on the problems easily repaired, according to Ms. Pavia's 2nd paragraph, "(2) On the service issue, after our technician was unable to visit you on May 23 **we asked them to see if they could make repairs to our facilities outside without disturbing you. They tell me that both the phone and DSL are now working.**" Really, such a flash of inspiration for completing repairs 100-days later! While my wife has earned her Jurist Doctorate, but is not licensed in Pennsylvania, she cannot charge attorney fees, however, she can charge paralegal fees on an average salary of \$69,700.00 an hourly, at a rate of \$34.80/hour (\$69,700/2000). As costs \$6,368.40 was expended to submit a Formal Complaint, write and research laws for Complainant

¹ First number is research, second is for writing. For Formal Complaint 3 was research, 4 to write that 7 hour document was expended for its preparation, completion and filing with the PAPUC.

documents filed with the PAPUC in this matter. To support other claimed expenses were incurred such as traveling to and from the Stroud Police Department to order and then pick up the March 10, 2019, dropped-911 call and payment of \$2.00 with mileage \$4.06 ($\$0.58 \times 7$). March 8, 2019, my wife paid to take the GRE exam she paid \$205.00 as shown by the bank account excerpted entry below:

188	03/06/2019	ETS*GRE Exam 866-473-4373	-205.00
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The intent was to take the GRE preparation examination online via the Verizon DSL at home on a home-based study program. Between March 6 till April 21, 2019, continuous access to Verizon's DSL was not possible. As a result, my wife was required to go to the local public library due to the inconvenience and degraded connection with Verizon's DSL service. The intent was to achieve the highest score possible on the GRE while working on the preparation course in the piece and quiet of our home; she was deprived of that solitude. Verizons' degraded DSL service prevented what was one of the purposes for purchasing its service. While the mileage calculations are easy to derived, $\$99.18 (3.9 \times 45 \times \$0.58)$ the lost time due to the degraded DSL and her peace of mind cannot. Therefore, it is left to the ALJ and Commissioners to derive a figure.

Getting Verizon's attention after, hours of research and writing required to voice the problems it was fully informed of between February 28 till March 14, 2019, as well as experienced humiliation by Stroud Police Officer who visited our home on a bright and sunny Sunday, March 10, 2019, at 10:00 a.m., Strange to us and our neighbors, who

watched at our home's doorway for Cop to exit; all over a dropped 911-call. A scratchy phone sounds and non-working DSL. With the annoyance of non-working phone and DSL, then to have both denounced as not true by Ms. Paiva's filed reply. Now these same issues have 100-days later been miraculously and easily remedied by Verizon, all the while it had immediate access to its physical equipment outside our unit at a vantage point that was accessible from day one - February 28, 2019.

For these reasons, Verizon's offer as suggested, if accepted, it would surely undermine **Consumer Rights laws**. Along with the associated actual costs Complainant incurred \$6,679.27 that Verizon caused. These and other violation of Complainant's Consumer rights, harassment and humiliation carried out with impunity are part of the claim not taken into consideration. Additionally, punitive damages should be considered to ensure this does not happen again to others.

VERIZON' OFFER FAILS TO CONSIDERATION HARASSMENT AND HUMILIATION IT CAUSED CONSUMERS AND ITS OWN INTENTIONAL ACTS; THOSE ACTIONS MUST BE ADDRESSED EACH TO REACH A REASONABLE REMEDY FOR BILLING/SERVICE AND RELATED PERSONAL LOSSES ISSUES FROM 2/22 TILL 6/04/2019

Yes, finally, the landline telephone allows the ring to be heard to answer and it allows telephone calls to be made from that phone. From February 22, 2019, thru June 4, 2019, Verizon had the wherewithal to correct the telephone landline. Access from their outside box vantage point, affixed to our home was

all they needed. Without any annoyance, appointment or meshing of schedules, it only needed Technical Support, not - the consumer - to review its outside connection.

So, what was the hold up? Why take 100-days to fix a phone problem when it seemed a repair took only flicking of a switch . . . 'abracadabra and hocus pocus' there you have it . . . fixed! Was that delay intended to achieve annoyance, harassment or poke jokes at seniors? Well, it. Was. Not. Funny!

Clearly, for 100-days, the antics of calling to arrange an appointment to repair the landline telephone unilaterally on May 23, 2019, was not required. Neither was the April 12, 2019, repair where we did remain home to accommodate Techn Support's repair visit. However, that did not work thereafter and was a sheer waste of our time. Verizons' own installed box outside our home, it had access all the while without our having to remain at our home, it repaired the home phone landline, finally.

PENNSYLVANIA UNFAIR TRADE PRACTICES & CONSUMER PROTECTION LAWS APPLY AND WARRANT REMEDIES

Pennsylvania Unfair Trade Practices and Consumer Protection Law, (UTPCPL) - 73 P.S. §§ 201-1-201-9.2 lists a number of "unfair or deceptive acts or practices." These include, but are not limited to:

- Passing off goods or services as those of another.
- Using deceptive representations or designations of geographic origin in connection with goods or services.
- Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand.
- Advertising goods or services with intent not to sell them as advertised
- (xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;

Anyone who violates the state's deceptive trade practices law may face a temporary or permanent injunction from engaging in that practice. Whenever a permanent injunction is ordered, the court may also order the defendant (i.e., business owner) to compensate victims for any losses they may have suffered, such as refunding the cost of a fraudulently advertised product.

Two important points regarding Verizon's conduct are:

- (1) Despite its knowledge that neither DSL nor the landline telephone worked as intended for 60-days for DSL and 100-days for the landline telephone; nevertheless, it continued to bill monthly for both services.

With regard to point one, Verizon failed to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made for the DSL service TechSure Insurance coverage purchased prior to the time of installation; and continued to

bill as if the guarantee or warranty played no part in covering the cost of the installation of the jack and wires to deliver Verizon services; when each had. It made no adjustments to the bill alleged to be crammed until June 4, 2019.

Additionally, Verizons' description of TechSure Insurance after purchasing, it (ii) Caused likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services; that would be covered under that insurance. Yet to settle this matter it is willing to remove the entire billed debt and leave a credit.

- (2) With regard to the, 'Shared Verizondrive' it alleged that it was created by my device according to the April 29, 2019, email of Mr. Tibbs, Jr.
 - a. Apple, our home computer manufacturer and seller was contacted to discuss the 'Shared Verizondrive', it issued a Case number cited in the Invasion of Privacy filing of June 3, 2019.
 - b. Verizon made willful material misrepresentations as was learned from Apple during our conference about the 'Shared Verizondrive.' Please see June 3, 2019, filing for more details.

The first point speaks to Verizon's negligence or a reckless disregard for the rights of others; the second to willful intentional misrepresented actions.

A customer purchased services, Verizon owed a duty of care to ensure the products and services it sold worked as intended to obtain payment. Verizon

obtained payment, but it breached that duty by failing to ensure that the DSL and the landline telephone worked as intended. The lackadaisical manner was the proximate cause to Complainant's injury and costs associated with the lack of services. As a result, it caused actual damage injury costs of \$6,679.27 and personal injury of harassment and humiliation et al.

Willfully or with an intent it had a desire or substantial certainty that it knew or should have known that the services purchased did not work as intended. Because of the failure to correct what Verizon knew was not working in a timely manner; Complainant suffered for more than 100-days of the ongoing harmful defects and lack of service. As a result, my wife was directly injured by needing 24/7 access to the DSL Internet to complete her home-study GRE preparation for her upcoming exam. Complainant was harmed because he could not reach family members nor could they reach him to ensure that his health was good and they - Complainant's wife and he were safe.

With regard to point 2 above, Verizon - it made (xi) Made false or misleading statements of fact concerning the reasons for, existence of, the 'Shared Verizondrive' was on our Apple computer when it was placed onto and removed from our computer by Verizon. Additionally, Verizon directly

(viii) Disparaged the goods, services or business of - Apple Computers - another by false or misleading representation of facts; asserting that Apple device inserted the 'Shared Verizondrive' onto the Apple computer, when it had not.

For these reasons, Complainant is not made whole by the terms and conditions of the Verizon offer.

Therefore, consistent with Pennsylvania Consumer Protection Laws - Verizon has violated 201-3. Unlawful acts or practices: exclusions - Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section 2 of this act [§201- 2(4) (i-xxi)] and regulations promulgated under section 3.1 of this act [§ 201-3.1] are hereby declared unlawful.

PUNITIVE DAMAGED ARE SOUGHT

In Schwartz v. Rockey et al., the Supreme Court of Pennsylvania lowered the standard for Plaintiffs to win punitive damages in a private action under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL). The court also made a somewhat limited ruling regarding the application of the election of remedies doctrine. Section §9.2 of UTPCPL governs private actions and allows a court, in its discretion, to award "up to three times the actual

damages sustained,” and also allows such additional relief as the court deems necessary and proper, including costs and reasonable attorneys fees. However, the statute does not explicitly provide a standard for awarding treble damages. In construing the terms of the statute, the Schwartz Court looked at the principles of statutory construction pertaining to the occasion and necessity of the statute, the mischief to be remedied, the object to be attained and the consequences of a particular interpretation.

The Court found, as a matter of statutory construction, that the court’s discretion to award treble damages under the UTPCPL should not be closely constrained by the common law requirements for punitive damages. Essentially, the court is saying that treble damages in UTPCPL cases should be awarded more generously than punitive damages. However, the court does limit its ruling by requiring a court to consider intentional or reckless wrongful conduct for which an award of treble damages would be remedial in nature when deciding whether to award treble damages. The Court also warns that there is plenary appellate review of decisions regarding punitive damages. The reasoning set forth by the court for its decision is that a consumer protection statute that

awards treble damages for a violation is both punitive and remedial, and thus, should not be bound only by the stricter punitive considerations.

With regard to the election of remedies issue, the Court points out that the substantive application of this doctrine has been to prevent double recovery for a single injury. The justices point out that the tangential purpose of preventing parties from pleading and pursuing inconsistent forms of relief in litigation has been nearly eliminated by the permissive rules of pleading.

In the Schwartz case, the Court declines to make a more general ruling regarding the admissibility of simultaneously pursuing inconsistent remedies in a civil action in Pennsylvania. Rather it makes the more limited ruling that a Complaint containing a prayer of relief seeking contract-based damages does NOT foreclose a subsequent amendment substituting an inconsistent equitable remedy. The Court's rationale for this decision is that the Plaintiff may not know the extent of the damages at the time the Complaint is filed.

Chief Justice Cappy wrote a concurring and dissenting opinion. He concurred with the portion of the opinion relating to election of remedies, but stresses that the decision in this case should be based more closely on the principles of rescission, and not on the principles of election of remedies.

However, Chief Justice Cappy dissents from the majority on the treble damages issues. Chief Justice Cappy points out that the Court purports to make its decision on the plain language of the statute then proceeds to consider external considerations such as legislative intent. Chief Justice Cappy argues that if the legislature intended a departure from the traditional, well-established standards for punitive damages, it would have specifically set forth the standard for awarding treble damages in the statute. Since the statute does not so specify and treble damages are very much akin to punitive damages, the standards for punitive damages should apply.

CIVIL DAMAGES

§201-8 Civil penalties provides:

(a) Any person who violates the terms of an injunction issued under section 4 of this act or any of the terms of an assurance of voluntary compliance duly filed in court under section 5 of this act shall forfeit and pay to the Commonwealth a civil penalty of not more than five thousand dollars (\$5,000) for each violation. For the purposes of this section the court issuing an injunction or in which an assurance of voluntary compliance is filed shall retain jurisdiction, and the cause shall be continued; and, in such cases, the Attorney General, or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may petition for recovery of civil penalties and any other equitable relief deemed needed or proper.

(b) In any action brought under section 4 of this act, if the court finds that a person, firm or corporation is willfully using or has willfully used

a method, act or practice declared unlawful by section 3 of this act, the Attorney General or the appropriate District Attorney, acting in the name of the Commonwealth of Pennsylvania, may recover, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1000) per violation, which civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 of this act. Where the victim of the willful use of a method, act or practice declared unlawful by section 3 of this act is sixty years of age or older, **at the time of the Formal Complaint, Complainant was 67; now 68 years old** the civil penalty shall not exceed three thousand dollars (\$3000) per violation, which penalty shall be in addition to other relief which may be granted under sections 2 and 4.1 of this act.

§201-9.2. Private actions provides:

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

(b) Any permanent injunction, judgment or order of the court made under section 4 of this act shall be prima facie evidence in an action brought under section 9.2 of this act that the defendant used or employed acts or practices declared unlawful by section 3 of this act.

Complainant seeks reimbursed actual costs \$6,679.27, for civil damages for harassment, humiliation; for treble and punitive damages for Verizons'

willful and intentional actions that caused harm to Complainant and his wife and any other damages this ALJ or Commissioners find are appropriate,

That the ALJ and Commissioners take into consideration Civil Penalties for persons 60-years and older as both Complainant and his wife are over 60.²

Via admissions made by Verizon in its email of yesterday, it is also requested that the PAPUC holds it accountable for the reversed crammed billing; especially since it knew services purchased were not working as it stated in its email of yesterday.

IN CONCLUSION

No one should be subject to the problems, issues and conduct exhibited by Verizon Pennsylvania LLC with regard to telecommunication services; yet Complainant and his wife were, for over 100-days. But for their persistence, this matter like many others regarding degraded telephone service, it may not have seen light of day and especially not dealt with by PAPUC.

In this case Complainant hopes will send a signal to Verizon. It must be known that not only young adults have grown weary of these types of

² §201-8 Civil penalties - Where the victim of the willful use of a method, act or practice declared unlawful by section 3 of this act is sixty years of age or older, ***at the time of the Formal Complaint, Complainant was 67; now 68 years old*** the civil penalty shall not exceed three thousand dollars (\$3000) per violation,

problems, i.e., bill cramming; degraded service and long delays with repairs. Yet, Verizon caused seniors a great deal of cost and anxiety. Just to make issues known, it could have been avoided. Just with a little ***thinking-power, especially in this particular matter, that Verizon proves could have been easily corrected on day-one.***

It should not have taken over 100-days for Verizon to figure out that its own access box, that it installed outside of this unit was the place to conduct repairs needed. See Pavia email # 2.

At a completely different level, seniors need connectivity to ensure they are safe. Worries by my wife and I for our family and they for us occurred in a way that caused a great deal of emotional distress without telephone landline communications. Attempts to communicate using cell phones with difficult connectivity is not a viable substitution in this area. Nevertheless in the 100-days it took Verizon Pennsylvania, LLC to get its act together, that is the only way communication was achieved, somewhat.

June 3, 2019, it took the urged attention of Verizon Pennsylvania LLC to correct its bill. By Complainants 6/3/19 filing, it amassed almost \$600.00 between March till June 2019 when it knew the DSL did not work from

February 28 through April 22; and the landline telephone did not work from approximately February 28 until June 4, 2019. Now, again 100-days later it reviewed its bill, reduced its bill by \$523.37. Again with the stroke of a pen, poof the crammed bill is gone, like magic, albeit 100-days later! Not only is the compounded debt of \$439.70 gone, but a credit of \$88.58 remains to cover a bill for June 2019.

There are no genuine material facts in dispute that Verizon Pennsylvania LLC can raise with evidence to the contrary that requires a hearing, particularly since it has made material admissions of fact.

Therefore, Complainant requests the pre-hearing be cancelled, that an ALJ hear on the papers this Summary Judgment motion by applying the law to the facts to reach an initial decision on the merits in an expedited manner.

Respectfully submitted,

Dated: June 5, 2019

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CERTIFICATION

We affirm that the foregoing statements made herein are true to the best of our knowledge and belief. We are aware that if any of the foregoing is willfully false, we will be punished.

Respectfully submitted,

Dated May 31, 2019

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