

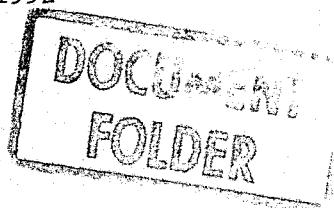


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

ISSUED: December 14, 1992

IN REPLY PLEASE
REFER TO OUR FILE

F-00162260



BRUCE KACZMARCZYK
RD 2
BOX 186 - BARNESVILLE
GRIER CITY PA 18214

Bruce Kaczmarczyk

vs

Lakewood Telephone Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Michael C. Schnierle. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-18, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions.

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

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

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs. ALJ SCHNIERLE, OFFICE OF ALJ, CHAIRMAN, COMMISSIONERS, OSA, OTS, LB, BCS, PIB, NEW FILING, OUR FILE

Very truly yours,

Allison K. Turner
Chief Administrative Law Judge

AMH

kk
Encls.
Certified Mail
Receipt Requested
JAMES P MELIA ESQUIRE
116 PINE STREET
HARRISBURG PA 17101

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Bruce Kaczmarczyk

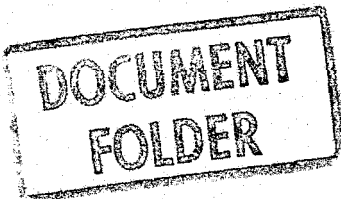
v.

Lakewood Telephone Company

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Docket No. F-00162260

DOCKETED
DEC 17 1992



INITIAL DECISION

Before
Michael C. Schnierle
Administrative Law Judge

History of the Proceedings

On September 17, 1992, Bruce Kaczmarczyk filed a complaint against Lakewood Telephone Company in the nature of an appeal from a decision of the Bureau of Consumer Services (BCS) in an informal complaint docketed at BCS Docket No. CS 0162260. The complaint was served upon Lakewood. On October 9, 1992, Lakewood filed an answer to the complaint and a motion for summary judgment, or in the alternative motion to dismiss the complaint. To date, more than 20 days later, neither the Commission's document folder for this case, nor the Commission's computerized docket entry system, contains any evidence of an answer having been filed to Lakewood's motion. Accordingly, the case is ripe for decision. 52 Pa. Code §§5.101(d), 5.102(b)(1).

The Pleadings

In his complaint, Kaczmarczyk complains that his telephone bill contains charges for calls to 900 numbers.

Kaczmarczyk further alleges that he did not place the 900 number calls, and that they were placed by other persons using his telephone. He further alleges that he requested from Lakewood a 900 number block, but that Lakewood, instead of providing the 900 number block, convinced Kaczmarczyk to subscribe to a voice mail service that is incompatible with the 900 block. In other words, Kaczmarczyk claims that Lakewood convinced him to purchase a service that would preclude the installation of a 900 number block on his telephone line. Kaczmarczyk acknowledges that Lakewood has previously removed charges for 900 number calls from his bill. Kaczmarczyk requests that the Commission direct Lakewood to remove from his telephone bill the charges for 900 number calls made after his subscription to the voice mail service.

In its answer to the complaint, Lakewood averred, in pertinent part, as follows:

3. Admitted in part and denied in part. It is admitted that the subject matter of this Complaint relates to Complainant's outstanding liability to Lakewood for charges incurred in the use of "900" telephone service. It is denied that Complainant initially requested that a block be put on his telephone for "900" numbers. Further answering, Lakewood initially suggested that a "900" block be placed on Complainant's telephone in response to Complainant's concerns over the magnitude and cost of certain "900" telephone calls incurred by Complainant prior to March 24, 1992. Further, Complainant agreed in writing, on March 25, 1992, to go on "900" number block in consideration for Lakewood's forgiveness of \$1,551.09 worth of "900" calls. (See Attachment A).

It is further denied that Lakewood "wanted to sell voice box mail" to Complainant. Complainant requested the installation of the voice box mail feature on March 26, 1992 and was advised that Lakewood could not then continue to offer "900" block. Lakewood's central office switch will not permit the offering of both services simultaneously. At that time, Complainant voluntarily signed a form indicating that, in resigning "900" number block, he agreed to be responsible for all "900" calls made after March 24, 1992. (See Attachment B). Subsequently, on April 9, 1992, Complainant was again put on "900" number block and voice box mail was removed with the Complainant's consent. Complainant's return to "900" number block was the result of Lakewood's discovery of an additional \$7,596.30 worth of "900" number calls appearing on Complainant's April 5, 1992 billing but occurring before March 24, 1992. These charges were also forgiven. Complainant returned to the business office on May 20, 1992 with his May 5, 1992 telephone bill showing "900" number calls totaling \$4,368.74 made prior to March 24, 1992. Lakewood likewise removed these calls per its prior conversation with Complainant of March 25, 1992. Most recently, Complainant seeks removal of charges in the amount of \$5,557.05. Of this amount, \$2,067.02 represented "900" number charges incurred prior to March 24, 1992 and Lakewood has likewise forgiven this amount. The remainder, or \$3,490.03, represents "900" number charges incurred by Complainant after March 24, 1992. To date, Lakewood has, in good faith, removed a total of \$15,583 of "900" number calls from Complainant's bill incurred prior to March 24, 1992.

4. Section 4 of the Complaint is a request for relief not subject to admission or denial.

NEW MATTER

Pursuant to 52 Pa. Code Section 5.62(b), Respondent Lakewood avers as follows:

5. The averments set forth in Paragraphs 1 through 4, above, are incorporated herein by reference as if set forth at length.

6. Complainant is the billing responsible party of Lakewood residential telephone service account number (717) 467-3262.

7. As of Complainant's June 5, 1992 bill, Complainant had made calls in the amount of \$3,490.03 between March 26, 1992 and April 9, 1992. On July 10, 1992, Lakewood sent Complainant a dispute form and his account was considered in dispute after a customer contact on July 10, 1992.

8. Lakewood has attempted, in good faith, to enter into reasonable payment arrangements with Complainant. Further, Complainant filed an informal complainant against Lakewood with the Commission's Bureau of Consumer Services ("BCS").

9. On August 21, 1992,, the BCS issued the results of its investigation of Complainant's informal complaint and found as follows:

(i) That Complainant was given full adjustment for "900" charges made prior to March 24, 1992 i the amount of \$13,500.

(ii) That on March 24, 1992, Complainant signed a form accepting responsibility for "900" charges as of that date as Complainant desired voice box mail added to his line. This feature cannot be added to the line when a "900" block is on the line.

(iii) The "900" number calls made after March 24, 1992 are to the same "900" numbers as were placed prior to that date.

Thus, the BCS determined that it would not request removal of the "900" charges from Complainant's account and that Lakewood could pursue collection of these charges. (See Attachment C).

10. Lakewood avers that Complainant has failed to make payment of charges incurred subsequent to

March 24, 1992 for "900" services utilized. Further, the amount owed is not in dispute.

11. Lakewood has at all times furnished and maintained adequate, efficient, safe and reasonable service and facilities to Complainant pursuant to 66 Pa. C.S.A. §1501 and has, in all other respects, satisfied the requirements of the Public Utility Code.

WHEREFORE, Lakewood Telephone Company respectfully requests that the instant Complaint be dismissed and that an Order be entered compelling Complainant to tender payment in the amount of \$3,490.03 within thirty (30) days and allowing Lakewood to suspend all services to Complainant, following procedures set forth at 52 Pa. Code § 64.81, in the event the Complainant fails to fully comply with said Order. Alternatively, in the event that Complainant demonstrates that payment arrangements are warranted and that he has the ability and intention to comply with said arrangements, Lakewood requests that an Order be entered setting forth an arrangement at which Complainant is required to pay all amounts owed as they become due together with reasonable monthly amounts toward the satisfaction of Complainant's outstanding charge for "900" services rendered. Lakewood further requests that Complainant be directed to pay all undisputed current charges as they become due pending resolution of this dispute and that a telephonic hearing be scheduled.

In its motion for summary judgement or in the alternative, motion to dismiss, Lakewood averred, in pertinent part, as follows:

1. On September 22, 1992, Complainant filed a Complaint against Lakewood seeking relief for amounts Complainant incurred from use of a "900" telephone number. Complainant seeks relief from charges in the amount of \$3,490.03.

2. Filed concurrently with this Motion is Lakewood's Answer to the aforementioned Complaint.

Lakewood incorporates by reference all averments contained in its Answer.

3. Section 5.102(b) of the Commission's Rules allow for summary judgment if the pleadings show there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Further, Section 5.101 of the Commission's Rules allow for a Motion to Dismiss where the cause of action is without basis. Lakewood contends that summary judgment in Lakewood's favor, or alternatively dismissal, is appropriate under the circumstances because, even if all of Complainant's allegations are taken to be true, Complainant is not entitled to relief.

4. Complainant does not contest his liability for "900" calls made subsequent to March 24, 1992. (See Affidavit to Lakewood's Answer).

5. A "900" number block was placed on Complainant's line on March 24, 1992. On March 26, 1992, the "900" number block was removed to allow addition of a voice mail feature to Complainant's line. At that time, Complainant signed a form agreeing to be liable for any "900" calls incurred by him after March 24, 1992. (See Attachment B to Lakewood's Answer). Even if Complainant's allegations, as contained in his Complaint, are taken to be true, Complainant has clearly agreed to be liable for all "900" number calls incurred subsequent to March 24, 1992.

6. Upon resolution of an informal Complaint filed by Complainant with the Commission's Bureau of Consumer Services, it was found that Complainant was indeed liable for "900" charges incurred after March 24, 1992 (currently \$3,490.03) and that Lakewood was entitled to begin collection procedures. (See Attachment C to Lakewood's Answer).

WHEREFORE, for all the foregoing reasons, Lakewood respectfully requests that its Motion for Summary Judgment or alternatively, its Motion to Dismiss be granted.

Discussion

For the following reasons, I will deny Lakewood's motion for summary judgement or in the alternative, motion to dismiss, and take the unusual step of sustaining this complaint without a hearing.

This case is not a case of first impression before the Commission. In M. Dan Jones v. The Bell Telephone Company of Pennsylvania Docket No. C-924261, 1991 Pa. PUC LEXIS 181 (Order entered October 7, 1991), the Commission held that because "900" companies are not public utilities, the tariff and billing provisions of the Public Utility Code, 66 Pa. C.S. §§1303, 1304, that apply to public utilities, do not apply to "900" services. The Commission ruled that the appropriate remedy in a case like this is to remove the charges from the complainant's bill. The Commission noted that this remedy does not solve a complainant's problem altogether, because the information provider may pursue other collection efforts. The Commission noted that those further collection efforts are beyond its jurisdiction to regulate. It is my conclusion that this case is governed by the Commission's ruling in Jones. Whether one accepts Kaczmarczyk's version of the facts or Lakewood's version is irrelevant. The Commission in Jones ruled that a telephone utility is not authorized to use utility collection remedies such as suspension

or termination of service to collect charges for "900" services.¹

Because there is no factual issue that is pertinent to the ultimate resolution of this proceeding, it is not necessary to hold a hearing. 66 Pa. C.S. §703(a). See also, Lehigh Valley Power Committee v. Pa. Public Utility Commission, 128 Pa. Commonwealth Ct. 276, 563 A.2d 557 (1989); Lehigh Valley Power Committee v. Pa. Public Utility Commission, 128 Pa. Commonwealth Ct. 259, 563 A.2d 548 (1989); S.M.E. Bessemer Cement, Inc. v. Pa. Public Utility Commission, 116 Pa. Commonwealth Ct. 13, 540 A.2d 1006 (1988); White Oak Borough Authority v. Pa. Public Utility Commission, 175 Pa. Superior Ct. 114, 103 A.2d 502 (1954); Joint Petition of Pennsylvania Power & Light Co., Philadelphia Electric Company and UGI Corporation for a Declaratory Order Regarding the Proposed Purchase of Coal from the Florence Mining Company, Docket No. P-920569 (Order adopted May 14, 1992, entered May 19, 1992).

So that the parties in this case do not mistake the meaning of this ruling, I will emphasize here that this decision only precludes Lakewood from invoking utility specific collection efforts, such as suspension or termination of telephone service, to recover the charges for "900" calls attributable to Kaczmarczyk's telephone line. Either the "900" service

¹In light of the Commission's ruling in Jones, I am mystified by BCS' ruling on Kaczmarczyk's informal complaint in this matter.

providers, or Lakewood, if it purchased the receivables of the 900 service providers, may pursue other collection efforts, including, but not limited to, placing an unfavorable credit report about Kaczmarczyk with a credit reporting agency, or filing a lawsuit against Kaczmarczyk to collect the money owed. Marinoff v. The Bell Telephone Company of Pennsylvania, Docket No. C-9135311 (Order adopted October 31, 1991, entered November 4, 1991); Uplinger v. Pennsylvania Power & Light Company, Docket No. C-902900 (Order entered June 24, 1991). Because charges for 900 number calls are not charges for telephone service, the Commission has no jurisdiction to set a payment plan for them, just as the utility cannot use suspension or termination of telephone service to coerce their payment.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and the parties to, this complaint, to the extent that the Lakewood Telephone Company is seeking to collect from Bruce Kaczmarczyk charges for non-utility service (calls to 900 numbers) by its bill for telephone service, and by suspension or termination of telephone service.
2. Calls to 900 numbers are not utility service and a telephone company may not suspend or terminate telephone service for failure to pay 900 number charges.

3. Lakewood should be ordered to remove from Kaczmarczyk's telephone bill charges for calls to 900 numbers.

Order

THEREFORE, IT IS ORDERED:

1. That this complaint is sustained.
2. That Lakewood Telephone Company remove the 900 charges from Bruce Kaczmarczyk's telephone bill.

Dated: December 9, 1992

Michael C. Schnierle
MICHAEL C. SCHNIERLE
Administrative Law Judge

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DEC 9 1992
L. J. A. to 900
Public Utility Commission

DOCKETED

JAN 12 1993

Act 294

AMH

Case Identification:

F-00162260; Bruce Kaczmarczyk
v. Lakewood Telephone Company

Initial Decision By:

ALJ Michael C. Schnierle

Deadline for Return to OSA:

December 29, 1992

This decision has not been reviewed by OSA.

**DOCUMENT
FOLDER**

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JAN 11 1993

Public Utility Commission
SECRETARY'S BUREAU
Information Control Division

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

David W. Rolka/jr
Commissioner

12-24-92
Date

Act 294

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Initial Decision By:

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December 29, 1992

This decision has not been reviewed by OSA.

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RECEIVED

DEC 22 1992

I want full Commission review of this decision.

COMMISSIONER HOLLAND

Commissioner

Date

I do not want full Commission review of this decision.

Kenell F. Holland
Commissioner

12/28/92
Date

Act 294

Case Identification: F-00162260; Bruce Kaczmarczyk
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Initial Decision By: ALJ Michael C. Schnierle

Deadline for Return to OSA: December 29, 1992

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

† Joseph Plucke, Jr.
Commissioner

1/4/93
Date

I do not want full Commission review of this decision.

Commissioner

Date