



Agenda Date: 7/30/08
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MAUREEN A. HOWLEY, Ph.D.,
Petitioner,

v.

VERIZON NEW JERSEY INC.,
Respondent.

) ORDER ADOPTING INITIAL
) DECISION
)
)
)
) BPU DOCKET NO. TC07120986U
) OAL DOCKET NO. PUC 03376-08

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed on December 27, 2007, Maureen A. Howley, Ph.D. (Petitioner) alleged that Verizon New Jersey Inc. (Respondent) had improperly denied AT&T access to her local telephone line for a period in excess of thirty days. After receipt of Verizon's answer, this matter was transmitted to the Office of Administrative Law for hearing as a contested matter on February 28, 2008.

On June 24, 2008, Administrative Law Judge (ALJ) Carol I. Cohen submitted her Initial Decision in this matter to the Board. A copy of the Initial Decision is attached hereto and made a part hereof. No exceptions to the Initial Decision have been filed with the Board.

The procedural history of this matter and the ALJ's legal analysis are set forth in the Initial Decision and need not be restated herein. After review and consideration of the record, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them.

Therefore, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of Maureen A. Howley, Ph.D. be HEREBY DISMISSED.

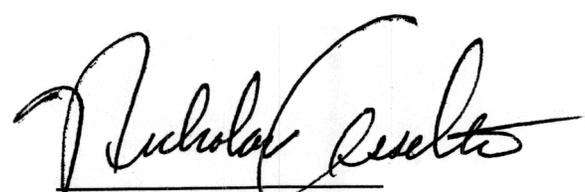
DATED: 8/1/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

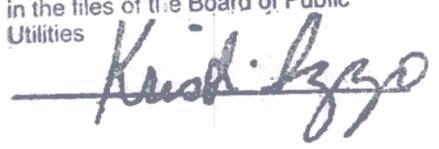

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



MAUREEN A. HOWLEY, Ph.D.

v.

VERIZON NEW JERSEY INC.

BPU DOCKET NO. TC07120986U

OAL DOCKET NO. PUC 03376-08

SERVICE LIST

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CMS
BISLOW
RPA
MILLER, C.
~~FOR WILKINS~~
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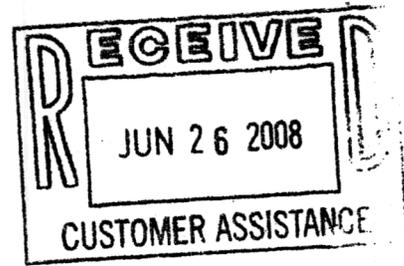
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
CASE MANAGEMENT
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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

INITIAL DECISION

OAL DKT. NO. PUC 03376-08
AGENCY DKT. NO. TC07120986U

MAUREEN A. HOWLEY, Ph.D.,
Petitioner,
v.
VERIZON NEW JERSEY, INC.,
Respondent.



Maureen A. Howley, Ph.D., pro se

Ralph V. Lee, Esq., for respondent

Record Closed: May 23, 2008

Decided: June 24, 2008

BEFORE **CAROL I. COHEN, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Maureen A. Howley filed a Petition for a Formal Hearing pursuant to N.J.A.C. 14:1-1 et seq. The Petition was received by the Board of Public Utilities on or about October 15, 2007. Petitioner contends that respondent Verizon New Jersey illegally denied AT&T access to her local telephone line for over thirty days. As a result Ms. Howley was unable to switch over her internet access service (DSL). The petitioner asked for Verizon to pay her the amount of \$457.61, the previous balance on her

account, to compensate her for her being denied internet access. She also asked that she be allowed to disconnect her Verizon Wireless service without paying the \$175 (\$525 total) penalty for early termination on three cell phones.¹ Verizon filed an Answer to the Petition, which was received by the Board on or about February 26, 2008.

The Board transmitted the matter for a formal hearing to the Office of Administrative Law, where it was filed on March 10, 2008. A hearing was held on April 15, 2008. At the conclusion of the hearing, the respondent made three motions: to dismiss Ms. Howley's petition based on lack of jurisdiction; to dismiss the petition for failure to state a claim on which relief could be granted; and for summary decision, based on the fact that there were no material facts in dispute. The respondent filed a posthearing brief on April 22, 2008. On that date I sent a follow-up letter via fax to the respondent's attorney reminding him of his representation that he would provide citations on the issue of lack of jurisdiction over internet services and consequential damages. The respondent responded to my fax on May 6, 2008. The petitioner filed her responsive brief on May 23, 2008, and the record was closed on that date.

ISSUES

1. Did the petitioner prove by a preponderance of the credible evidence that the respondent illegally denied AT&T access to her local telephone line for over thirty days?
2. Is the petitioner entitled to money damages and, if so, in what amount?

FINDINGS OF FACT

Based on the testimony presented, the exhibits admitted into evidence and the arguments of the parties, make the following **FINDINGS OF FACT**:

¹ The petitioner abandoned this claim at the hearing, acknowledging that the BPU and therefore the OAL did not have jurisdiction over wireless service.

1. On August 22, 2007, the petitioner became involved in a dispute with Verizon, New Jersey. As a result of that dispute Ms. Howley decided to disconnect all service that she had with Verizon.
2. She was told by a Verizon representative that she should keep her landline service with Verizon until the next carrier could take over her home telephone number. She used the landline until it was taken over by AT&T. There was no interruption in service.
3. Ms. Howley had her dial-up internet service, which had been provided by Verizon, disconnected on August 24, 2007. After that date, she was unable to sign on through Verizon, since she was no longer a Verizon internet customer.
4. On or about August 24, 2007, Ms. Howley contacted AT&T to sign up for landline and dial-up internet service.
5. The petitioner contacted AT&T more than seven times during the thirty-day period following August 24, 2007, and was told by AT&T that Verizon was blocking her telephone line with a digital (DSL) signal and, therefore, AT&T could not take over her telephone line.
6. Ms. Howley filed a formal complaint with the Federal Communications Commission (FCC) on September 12, 2007.
7. Ms. Howley paid the balance of the Verizon bill in the amount of \$457.61 sometime at the end of September or the beginning of October 2007.
8. Ms. Howley is a teacher at Mt. St. Mary's Academy. She uses the internet to do her work online and to grade papers. Her daughter uses her personal computer to do homework for school.
9. On September 12, 2007, Ms. Howley sent a letter to Ivan Seidenburg, CEO of Verizon in New York. In the letter she stated, "Verizon is still blocking my

home phone line with a DSL connection. I have not had internet service for over 3 weeks. I spoke with the following Verizon employees. These employees told me the disconnect was complete and there was nothing further they would do for me.”

10. Following this letter, Ms. Howley was contacted by Peter Barone, a Verizon representative. Through his assistance, the changeover was made to AT&T service.

11. AT&T advised Ms. Howley that Verizon could not switch over her telephone service until there was a three-way conversation between Verizon, AT&T and her in which she authorized Verizon to switch over the service to AT&T. This conversation occurred on October 3, 2007, and was recorded by Verizon.

12. AT&T became Ms. Howley’s provider on or about October 3, 2007.

13. Ms. Howley did not know the cost of internet service for August 2007 or the cost after the switchover in October 2007. However, she estimated the cost to be less than \$75.

ANALYSIS

On the respondent’s motion to dismiss, Verizon argued that the claim for lack of access to the internet is not within the jurisdiction of the Board of Public Utilities. Therefore, the OAL does not have jurisdiction to hear issues relating to internet service. It argued that the BPU has jurisdiction over the landline, cable, water and energy, but the internet is a separate service. Since the internet cannot be regulated by a state, it follows that the OAL cannot hear a matter relating to the internet.

Verizon’s second argument is that, since the petitioner is not disputing a particular bill (the petitioner was unable to testify as to the exact amount of any bill, other than it was under \$75 per month), the BPU does not have jurisdiction, since it only

deals with billing disputes. Therefore it would follow that the OAL did not have jurisdiction.

Finally, Verizon argued that the matter was ripe for summary decision, since, based on the petitioner's case, there were no facts in dispute. AT&T advised Ms. Howley that a three-way conversation was needed to transfer her service from the old carrier to the new carrier. Once that happened on October 3, 2007, the service was switched over within two days. Verizon explained that the landline is owned by Verizon, but leased to various providers. That is why the telephone conference is required. The delay of thirty-five days occurred because of the actions of AT&T and the petitioner and not because of any action or inaction on the part of Verizon. In order to discontinue service Verizon was required, through a process, to get permission from the customer to transfer service. This process is routinely carried out through either a three-way recorded telephone conference call or a fully documented card submitted by the customer. In its brief, Verizon referred to N.J.A.C. 14:10-11.6, which sets forth the process by which a three-way conference call may be used to authorize a switch in service. The customer has its prospective service provider establish a three-way conference call with the current service provider, and the necessary authorizations to make the switch are done verbally and are often recorded. The reason for following this procedure is to protect New Jersey residents from having their providers switched without their authorization.

Ms. Howley argued that she was forced to keep Verizon as her service provider and prevented from choosing another service because Verizon would not unblock her dial-up line for thirty-five days. It was her position that Verizon does not own the landline; rather, it is public domain. Verizon blocked access to that public domain by putting a block on the DSL digital signal, and therefore did not allow AT&T to take over the service. She also claimed that AT&T told her that it could not take part in a three-way conversation until the line was opened, because she was not an AT&T customer. Therefore, until Verizon unblocked the line, through the assistance of Mr. Barone, a three-way conversation could not take place. In her brief, Ms. Howley also argued that the FCC ruling in In re Telephone Number Portability, FCC Dkt. No. 95-116, states that "This Act requires all [local exchange carriers] to provide, to the extent technically

feasible, number portability in accordance with requirements prescribed by the Commission,” where portability means the “ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” She asserted that Verizon had failed to live up to the criteria outlined in the ruling regarding portability.

New Jersey P.L. 2007, c. 195, section 4, clearly states that the internet is not to be regulated by either the State or any department within the State. This means that the Board of Public Utilities does not have the authority to regulate the businesses that service the internet. Based on the statute it is clear that the BPU and therefore the OAL do not have jurisdiction to hear matters involving the internet. Therefore, I **CONCLUDE** that the portion of Ms. Howley’s petition dealing with the internet must be dismissed because of lack of jurisdiction.

As for the issue of money damages, Ms. Howley has failed to connect the amount sought in her petition to any outstanding bill that was in dispute. Ms. Howley acknowledged that her claim for expenses associated with the early termination of her Verizon Wireless service was not cognizable in this court. That left the amount that she claimed was outstanding on her telephone bill at the time that the Verizon service was disconnected. However, the petitioner could not tie this amount to the costs incurred in the interruption of internet service allegedly caused by Verizon.² Therefore, the amount that she was seeking could only be characterized as consequential damages. In Slowinski v. Public Service Electric and Gas, OAL Dkt. No. PUC 305-92, BPU (May 21, 1993), the Board held that “absent an express grant, administrative agencies such as the Board do not have the power to exercise or perform a judicial function and may not determine damages or award a personal money judgment.” Citing Slowinski, the Board in Rosenblatt v. New Jersey Natural Gas Co., OAL Dkt. No. PUC 6592-03, BPU (August 1, 2005), also stated that the Board usually does not exercise jurisdiction as to damages. Based on the fact that this matter clearly goes beyond a mere billing dispute

² The petitioner testified that her monthly telephone bill was approximately \$75.

and that the amount sought is for consequential damages, I **CONCLUDE** that the OAL does not have jurisdiction to decide this issue.

Finally, while I understand Ms. Howley's frustration in dealing with Verizon on this issue, it appears that her problem was caused in large part by AT&T's failure to communicate to her the way that she needed to proceed in order to change over her service. N.J.A.C. 14:10-11.6 was enacted in order to prevent service providers from switching over telephone service without the express consent of the customer. It requires that the new provider set up a three-way conference call with the customer and the prior provider. In this case, due to a breakdown of communication, the three-way call was not established. However, I **CONCLUDE** that the breakdown cannot be laid at the feet of Verizon. Since Verizon was not responsible for the delay in the transfer of service, I further **CONCLUDE** that Verizon did not violate the FCC ruling regarding telephone portability.

ORDER

Based on the foregoing, hereby **ORDER** that Ms. Howley's petition be **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Carol I. Cohen

6/24/08

DATE

CAROL I. COHEN, ALJ

Date Received at Agency:

6/24/08

Floyd Langford

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

lr

WITNESSES

For petitioner:

Maureen Howley

For respondent:

None

EXHIBITS

For petitioner:

Letter from petitioner to CEO Seidenburg dated September 12, 2007

Letter from petitioner to Seidenburg dated October 2, 2007

Letter from petitioner to BPU dated October 15, 2007

For respondent: