

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Istvan Csoke,

Complainant,

vs.

Verizon Wireless,

Defendant.

(ECP)
Case 05-06-038
(Filed June 21, 2005)

Istvan Csoke, for Complainant.
Rynae Benson, for Defendant.

OPINION DENYING RELIEF

Istvan Csoke (complainant) seeks a refund of \$150 per month since 1999 for overcharges by Verizon Wireless (defendant). Defendant denies the allegations. Public hearing was held August 29, 2005.

Complainant testified that his business partner, Laszlo Volgyi, initially activated mobile telephone service with defendant in 1996. Defendant's records show that the service was for mobile number (310) 738-3873 on a contract that included 500 weekend minutes. On February 1, 1997 this number was changed to (310) 738-0235. On December 12, 1997, (310) 738-5483 was added to the account on a pricing plan that included 500 free weekend minutes but did not include any free nighttime minutes. On October 10, 1999, a third line of service (310) 351-3295 was added to the account, on a plan which included 500 nights

and weekends minutes with nights being defined as 7:00 p.m. to 7:00 a.m. The addition of this number did not affect the contract or pricing plan of the other two lines of service already on Volgyi's account. On February 11, 2001, Volgyi renewed all three lines of service on their existing pricing plans. No further pricing plan changes were made until November 3, 2003. The new pricing plans of November 3, 2003 for all three lines included unlimited nights and weekend minutes with nights being defined as 9:01 p.m. to 5:59 a.m. A new service agreement was signed at this time.

Complainant testified that since 1999 defendant provided him and his partner with nighttime minutes starting at 7:00 p.m. and ending at 7:00 a.m. When it was time to renew their contract, a Verizon representative would call soliciting another year of service. They had always specified that they would continue service with Verizon only if their night time minutes remained the same, *i.e.*, starting at 7:00 p.m. and extending to 7:00 a.m. Complainant and his partner were aware that the offers of 7:00 p.m. to 7:00 a.m. nighttime minutes were no longer available to new customers. However, since they were an existing customer with this provision already in their contract, they were assured by Verizon that this condition would be extended to their new contract. These agreements were done over the phone. When they realized their bills were getting higher and higher, they realized that they were being charged "peak-time charges" for calls made between 7:00 p.m. and 9:00 p.m., which should not have been charged because such calls were made during the period when their nighttime minutes should have been in effect.

What seems not to be in dispute is that in 1999 complainant had three mobile lines, only one of which had nighttime minutes, with nighttime defined as 7:00 p.m. to 7:00 a.m. In November 2003 the pricing plan of all three lines was

changed to include unlimited nights and weekend minutes. What is in dispute is whether in November 2003 the definition of “nighttime” changed from 7:00 p.m. - 7:00 a.m. to 9:01 p.m. - 5:59 a.m.

Defendant’s evidence is persuasive that the definition of “nighttime” did change in November 2003. Defendant relied on its business records, its billing records for complainant, and its pricing plans in effect at the time in question.

Complainant presented no evidence supporting his assertions that he was given a special deal by defendant, an oral contract, to keep the definition of “nighttime” between 7:00 p.m. and 7:00 a.m. Complainant has not sustained his burden of proof.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested in the complaint is denied.
2. The \$878.82 complainant deposited with the Commission shall be disbursed to defendant.
3. Case 05-06-038 is closed.

This order is effective today.

Dated _____, at San Francisco, California.