

Decision 10-12-030 December 16, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Community Hospital of Long Beach,

Complainant,

vs.

Verizon California, Inc. (U1002C),

Defendant.

Case 09-05-010  
(Filed May 11, 2009)

**DECISION RESOLVING COMPLAINT**

**Summary**

The issue in dispute in this complaint is Community Hospital of Long Beach's request for \$27,854.52 in late payment charges related to two claims. This decision finds that the record does not support a finding that Community Hospital of Long Beach could not have reasonably discovered prior to 2007 that Verizon California Inc. had made a billing error under Claim number RAL-02207, and therefore, the three-year statute of limitations under Public Utilities Code Section 736 prohibits an award of late payment charges. For Claim number CAL-031307, we find that Community Hospital of Long Beach did act within the three-year statutory period of time and is therefore entitled to an award of \$1,744.64 in late payment charges pursuant to Verizon's Tariff Rule 10(E).

The proceeding is closed.

## **Background**

On May 11, 2009, Community Hospital of Long Beach (CHLB) filed this complaint, requesting that Verizon California Inc. (Verizon) pay it \$27,854.52 in late payment charges pursuant to Verizon's Tariff Rule 10(E) on the \$84,992.02 that Verizon refunded to it for overcharges CHLB incurred between 2001 and 2007. CHLB states that it had earlier submitted an informal complaint to the Commission in 2008 and been denied.

In its response to the complaint, Verizon asserts that while it initially refused to refund any amounts to complainant it did later provide CHLB three years of reimbursement under Claim number RAL-022207 and the full reimbursement of all charges under Claim number CAL-031307. It considers this as settlement of the entirety of the dispute.

Verizon asserts that an interest penalty is not applicable under its Tariff Rule 10(E) due to the three-year statute of limitations under Public Utilities Code Section 736 and CHLB's failure to exercise reasonable diligence in discovering the billing errors. On July 16, 2009, Verizon filed a motion to dismiss this complaint on the grounds that the facts established in the complaint demonstrate that the relief requested is barred by the statute of limitations.

A prehearing conference (PHC) was held on August 20, 2009. At the PHC, Verizon asserted that due to the length of time that had passed since the events in dispute, it would not be able to bring the key people to an evidentiary hearing and, therefore, it would be best to handle the matter on the written pleadings.

CHLB agreed that evidentiary hearings would not be necessary.<sup>1</sup> Following this discussion, parties agreed to a procedural schedule for additional filings.<sup>2</sup>

On February 24, 2010, the assigned Commissioner and Administrative Law Judge (ALJ) issued a scoping memo that found evidentiary hearings are not necessary. This finding is affirmed here since a preliminary determination that hearings were necessary was made earlier under Rule 7.1(b) of the Commission's Rules of Practice and Procedure. The scoping memo denied Verizon's motion to dismiss, finding that the underlying facts presented in the complaint and the pleadings must first be examined to determine when the cause of action accrued.

Finally, the scoping memo found that the scope of this proceeding is to determine if Verizon should pay CHLB late payment charge interest penalties under its Tariff Rule 10(E) for the following two claims:

Claim number RAL-022207. CHLB requests \$22,109.88 in Late Payment Charges as interest on three years of billed charges refunded by Verizon on December 27, 2007 in the amount of \$81,819.61. Under this claim, CHLB asserts it faxed on July 21, 2001 a disconnect order to Verizon for services at a Long Beach facility that was soon to be closed and vacated. As a result of an audit undertaken in November 2006 by Ariel Link, CHLB discovered the lines had never been disconnected. On February 22, 2007 CHLB submitted a claim to Verizon requesting it stop billing for these lines and refund in full the 6 years of incorrect billing.

---

<sup>1</sup> CHLB was granted the opportunity to submit this declaration in order to address Verizon's assertion that the statements contained in CHLB's August 25, 2009 response to Verizon's motion to dismiss should not be given evidentiary weight as the statements were not submitted under oath within a declaration or affidavit.

<sup>2</sup> Specifically, CHLB was granted permission to late-file responses to Verizon's answer to the complaint and motion to dismiss and Verizon was granted permission to respond to CHLB's response to its motion to dismiss and to file a motion for summary judgment.

Claim number CAL-031307. CHLB requests \$1,744.64 in Late Payment Charges as interest on twenty-seven months of billed charges totaling \$4,555.00; this refund was made in two increments by Verizon on August 2007 and October 2007. Under this claim, CHLB asserts that on March 22, 2004 Verizon disconnected a circuit but failed to stop billing for the associated tie lines that ride over the circuit. Based on an independent audit by Ariel Link, CHLB discovered this error and requested a full refund on March 30, 2007.

In addressing the above claims, the Commission must first determine if the cause of action for either claim is within the three-year period of time required by Public Utilities Code Section 736, and if one or both claims are within the Commission's statute of limitations, we must then determine if Verizon's Tariff Rule 10(E) applies to these billing errors.

On March 19, 2010, Verizon submitted a motion for summary judgment.

In Decision (D.) 10-04-005, issued on April 8, 2010, the Commission extended the statutory deadline in this proceeding until May 11, 2011.

## **Discussion**

We first address Verizon's motion for summary judgment. Verizon seeks this judgment on two grounds: (1) CHLB is not entitled to penalties pursuant to the policy that underlies Verizon's Tariff Rule 10(e), and (2) judicial admissions in CHLB's pleadings establish that it did not exercise reasonable diligence in discovering its cause of action and the statute of limitations has thus run.

The legal standard for granting a motion for summary judgment is that there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. This is the same standard a court would apply in civil practice. See D.94-04-082, *Westcom Long Distance, Inc. v. Pacific Bell*, (54 CPUC2d 244, 249). We find that Verizon's motion does not meet our legal standard because the Commission must look beyond the plain language of the

tariff to the regulatory history in order to interpret the tariff and we would also need to examine the underlying facts of the first claim in order to determine if CHLB exercised due diligence. Therefore, we deny Verizon's motion for summary judgment.

We next turn to examining the underlying facts in the complaint. In the first claim, Claim number RAL-022207, CHLB asserts that it faxed Verizon a disconnect order for several lines on July 21, 2001. Both parties state that the individuals involved with this account in 2001 are not available to provide testimony. CHLB has a copy of the fax but no confirmation from Verizon. CHLB also states that in July 2001 it was working under a great deal of pressure to reopen the hospital as it had been closed since September 2000. The reopening required closing another facility, the one where the subject phone lines were located. Further, CHLB states that between 2001 and 2007, Verizon merged with another carrier, transferred responsibility of CHLB's account between three different contact centers, and churned over 10 account managers assigned to it. CHLB asserts that Verizon's billing practices are cumbersome and complicated, and require highly specialized firms to analyze the bills for compliance with utility contracts, tariffs, and services actually in use.<sup>3</sup>

Verizon asserts that the billing detail it provided each month would have allowed a business that was exercising due diligence in reviewing its bills to determine that the specific telephone lines at issue had not been disconnected. Specifically, Verizon provided CHLB a summary bill and subordinate bills for each billing telephone number it had with Verizon. Further, Verizon cites to the

---

<sup>3</sup> See August 27, 2009 Response to Verizon's Answer to Complaint at 5-6.

fact that CHLB was not a customer that was passively paying its monthly bills in 2001 but rather, due to this portion of the hospital facility being scheduled to close, had assigned two employees dedicated to actively inventorying and reviewing its telecommunications services.<sup>4</sup>

Both parties agree that Public Utilities Code Section 736 (Section 736) is the relevant statute for determining if the statute of limitations prevents CHLB from seeking recovery of overcharges, and any interest and penalties that may be related. Section 736 states in pertinent part:

All complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this state, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after. If claim for the asserted damages has been presented in writing to the public utility concerned within the period of three years, the period shall be extended to include six months from the date notice in writing is given by the public utility to the claimant of the disallowance of the claim, or of any part or parts thereof specified in the notice.

CHLB argues that its cause of action did not begin to accrue until February 2007, the date it discovered through an independent audit that the lines had not been disconnected. In establishing 2007 rather than 2001 as the date of the cause of action, CHLB asserts that the “discovery rule” provides that the accrual date of a cause of action is delayed until the injured party actually knows

---

<sup>4</sup> See March 19, 2010 Motion for Summary Judgment with attached Declaration of Cynthia E. Padgett and the September 3, 2009 Reply of Verizon to CHLB’s Response to Defendant’s Motion to Dismiss at 2.

or could have reasonably discovered through investigation of sources open to it.<sup>5</sup> Verizon argues that the cause of action occurred in 2001, when CHLB would have discovered the billing error if it had exercised due diligence.

The record before us establishes that CHLB faxed its disconnection request in 2001. It is unclear whether Verizon ever received the order or whether Verizon erred in failing to perform the disconnection. While CHLB establishes that its business was in a state of flux in 2001, it nevertheless is a business customer and had employees dedicated to managing this account. Verizon's submission establishes that CHLB received the billing detail necessary to have determined that these lines were not disconnected, although its bills may have been confusing and its customer account personnel difficult to reach. Verizon's settlement of the claim is a reasonable solution for a long-time business customer.

However, the record does not support a finding that the cause of action occurred as late as February 2007, as asserted by CHLB. Therefore, this claim is beyond the three-year statute of limitations established by Section 736 and we cannot consider an award of late payment charges. While CHLB cites to two other cases it considers similar where Verizon did pay late payment charges, these cases do not go back as far as 2001 and the facts specific to the cases are not fully known.<sup>6</sup>

---

<sup>5</sup> See D.94-04-057, *Toward Utility Rate Normalization (TURN) v. Pacific Bell* (54 CPUC2d 122, 126.)

<sup>6</sup> See August 27, 2009 Response to Verizon's Answer to Complaint at 3.

The second claim, Claim number CAL-031307, is for late payment charges of \$1,744.64 for a 27 month period beginning in March 2004 when Verizon disconnected a circuit but failed to stop billing for the associated tie lines that rode over the circuit. CHLB states it does not have a copy of the disconnection request for these services. It relies instead on an e-mail from Verizon that states it has corrected the over billing and “shares some of the responsibility.”<sup>7</sup>

The record establishes that CHLB, through its agent Ariel Link, contacted Verizon on March 30, 2007 regarding this claim. This date is within the three-year statute of limitations provided under Section 736 as CHLB would have first received billing notice in April 2004. The record also shows that CHLB contacted the Commission within six months of Verizon’s resolution letter of October 24, 2007.<sup>8</sup> Therefore, the cause of action for claim CAL-031307 is within our statutory requirements.

Pursuant to Verizon’s Tariff Rule 10(E), CHLB is requesting \$1,744.64 in late payment charges for this claim. In its answer to the complaint, Verizon asserts that Tariff Rule 10(E) is not applicable as the customer waited years to report the billing error and to allow late payment charges to be applied to the entire period would provide a windfall to the customer and be inconsistent with the Commission policy underlying Tariff Rule 10(E) as articulated in D.85-12-017.

In reviewing D.85-12-017, we find that the Commission intended for customers who pay a bill subject to a late payment charge which is in error to

---

<sup>7</sup> March 11, 2010 Declaration of Robert J. Klingseis, Exhibit C.

<sup>8</sup> See March 25, 2008 letter from Ariel Link to the Commission’s Consumer Affairs Branch, included in formal complaint.

receive a comparable 1.5% penalty on the amount in error from the utility. This intention is discussed in the decision and clearly stated in Ordering Paragraph 1 of the decision.<sup>9</sup> Since CHLB asserts that it first knew of the billing error in February 2007 based on an independent audit by Ariel Link,<sup>10</sup> we find it acted promptly in informing Verizon and should be given the late payment charge from the time the error occurred through the time it became a known billing dispute, as provided by Tariff Rule 10(E).

Based on the discussion above, we do not award any late payment charges for Claim number RAL-022207 but do award \$1,744.64 in late payment charges for Claim number CAL-031307.

### **Comments of Proposed Decision**

The proposed decision of ALJ Walwyn in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On December 3, 2010, CHLB timely filed opening comments and on December 10, 2010, Verizon timely filed reply comments. After review and consideration of the comments, no changes are made to the proposed decision.

### **Assignment of Proceeding**

Dian M. Grueneich is the assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

---

<sup>9</sup> See 19 CPUC2d 329.

<sup>10</sup> See August 24, 2009 Response to Motion to Dismiss at 5 and March 11, 2010 Declaration of Robert J. Klingsies at 2.

### **Findings of Fact**

1. CHLB faxed a disconnection order for several phone lines to Verizon on July 21, 2001. Verizon did not disconnect these lines and continued to bill CHLB. On February 22, 2007 CHLB submitted Claim number RAL-022207 to Verizon. In 2008, CHLB submitted an informal complaint to the Commission requesting late payment charges for this claim and, after being denied, filed this complaint on May 11, 2009.

2. The record does not support a finding that CHLB could not have reasonably discovered prior to 2007 that Verizon had made the billing error in Claim number RAL-022207. Therefore, we cannot establish that CHLB acted within the three-year statute of limitations under Section 736 for Claim number RAL-022207.

3. Under Claim number CAL-031307, Verizon disconnected a CHLB circuit on March 22, 2004 but failed to stop billing for the associated tie lines that ride over the circuit. CHLB requested a full refund from Verizon on March 30, 2007 and submitted an informal complaint to the Commission within six months of Verizon's resolution letter.

4. The record establishes that CHLB informed Verizon within one month of discovering the billing error in February 2007 and its actions in seeking a refund for this billing error are within the three-year statute of limitations under Section 736 for Claim number CAL-031307.

### **Conclusions of Law**

1. We affirm the scoping memo's preliminary determination that evidentiary hearings are not necessary.

2. Section 736 requires a complaint for damages to be filed with the Commission within three years from the time the cause of action accrues, and not after. Therefore, we cannot award late payment charges for Claim RAL-022207.

3. The Commission policy underlying Verizon's Tariff Rule 10(E), as articulated in Decision 85-01-024, provides that customers who pay a bill subject to a late payment charge which is in error shall receive a comparable 1.5% penalty on the amount in error from the utility.

4. Under its Tariff Rule 10(E), Verizon should pay CHLB \$1,744.64 in late payment charges under Claim number CAL-031307.

## **O R D E R**

**IT IS ORDERED** that:

1. Verizon California, Inc. shall pay Community Hospital of Long Beach \$1,744.64 under Claim number CAL-031307.
2. Case 09-05-010 is closed.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners