

JAMAL SHEHADEH,

Claimant,

Vs.

CONSOLIDATED COMMUNICATIONS
PUBLIC SERVICES, INC.,

Respondent.

ILLINOIS COMMERCE
COMMISSION

Case No. 11-0685

2012 MAR 26 10 40

CHIEF CLERK'S OFFICE

CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS

NOW COMES the Claimant, JAMAL SHEHADEH pro se, and for his Response to Respondent's Motion to Dismiss, filed by Respondent CONSOLIDATED COMMUNICATIONS PUBLIC SERVICES, INC. on or about the 9th of February, 2012, states the following:

RESPONDENT'S CONTRACT WITH THE STATE OF ILLINOIS FOR
SERVICE OF THE ILLINOIS DEPARTMENT OF CORRECTIONS' OFFENDER
TELEPHONE SYSTEM HAS THE FORCE AND EFFECT OF THE LAW

The Public Utilities Act, 220 ILCS 5/1, et seq., at § 13-501(a) states in relevant part that "... a tariff...filed with the Commission ...describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange..." and at § 13-501(b) that "...the tariff shall remain in full force and effect until a compliance tariff, or superseding tariff, is filed by the telecommunications carrier..."

Respondent's tariff governing service to correctional centers on file with the Commission, Consolidated Communications Public Services, Inc. I.C.C. Tariff No. 3 ("Tariff"), incorporates Respondent's contract with the State of Illinois for service of the Illinois

Ex. A

Department of Corrections' ("IDOC") offender telephone system, Department of Central Management Services ("CMS") contract No. TCVS 0302 ("Contract"), into the Tariff by reference at § 2.1 which states in ¶ 2 that "The Company installs, operates, and maintains the communications services provided herein...pursuant to contracts with the correctional institutions" and at § 2.12 which states that "Services to inmates in Correctional Institutions are provided pursuant to contract between the Company and the Correctional Institution. Services offered will be provided pursuant to such contracts."

Utility tariffs filed with the Commission have the force and effect of law. Sheffler v. Commonwealth Edison Co., No. 110166, 2011 WL 2410366 (Ill. June 16, 2011). Since the Respondent made the Contract part of its Tariff, Tariff @ §§ 2.1 and 2.12, the Contract has the force and effect of law. A tariff is a public document setting forth services being offered, rates and charges with respect to services, and governing rules, regulations, and practices relating to those services. North River Ins. Co. v. Jones, App. 1 Dist.1995, 211 Ill.Dec. 604. Although the Contract may have been intended only as an agreement between the Respondent and the State of Illinois setting forth the responsibilities of each party as they relate to the offender telephone system services, it is by definition a tariff over which the Commission has enforcement authority.

**CLAIMANT IS A CUSTOMER AS DEFINED BY THE TARIFF, AN
END USER AS DEFINED BY § 13-217 OF THE PUBLIC UTILITIES
ACT, AND THEREFORE HAS STANDING TO BRING THIS CLAIM**

Respondent's statement in ¶ A of the Argument in the Motion to Dismiss that telephone calls made by inmates of the IDOC are collect calls is misleading. The type of service available to Claimant

is the Prepaid Institutional Calling Services as defined in §§ 3.6 and 3.6(A) of the Tariff. Offenders are assigned an account and a PIN number in accordance with § 4.3.1.1 of the Contract, Complaint Exhibit D. Claimant is able to make prepaid calls to persons on his approved telephone contact list with funds he provides to his mother for credit to his account. Once the funds are credited to Claimant's account the party crediting the funds, in this case Claimant's mother, loses control of said funds and only Claimant can determine when and to which approved telephone contacts calls are placed.

The Tariff defines Customer at § 1.0 ¶ 7 as "The person, firm or corporation, or other entity which orders, cancels, amends, or uses services or is responsible for the payment of charges and/or compliance with tariff regulations." By this definition both the inmate and the called party are customers. In at least two other sections the Tariff refers to inmates as customers and specifies that service is for use by inmates. § 2.2.4 states that "Services provided by the Company are available to inmates of confinement facilities..." and § 2.7.7 states that "Service provided to Correctional Institutions for use by Inmates may be otherwise limited by the administration of the institution at its discretion." It is important to note that the Tariff defines the IDOC and CMS as subscribers, § 1.0 ¶ 11, and not Customers.

According to the Public Utilities Act at § 13-230 prepaid calling service is defined as "...telecommunications service that must be paid for in advance by an end user, enables the end user to originate calls using an access number or authorization code, whether manually or electronically dialed, and is sold in predetermined units of dollars

of which the number declines with use in a known amount. A prepaid calling service call is a call made by an end user using a prepaid calling service." § 13-217 defines an End User as "...any person, corporation, partnership, firm, municipality, cooperative, organization, governmental agency, building owner, or other entity provided with a telecommunications service for its own consumption and not for resale."

Claimant's status as an Inmate as defined in § 1.0 ¶ 9 of the Tariff does not negate the fact that both the language of the Tariff, including the Contract and several sections therein, and the Public Utilities Act recognize any person, including inmates, who make or receive telephone calls as customers. The Public Utilities Act at § 3-115 makes clear that service is "...not only the use or accommodation afforded customers or patrons, but also any product or commodity furnished by any public utility and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, any product or commodity and devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public."

CLAIMANT'S COMPLAINT IS NOT ABOUT DENIAL OF ACCESS TO TELEPHONES BY THE IDOC BUT RATHER THE INABILITY OF CLAIMANT TO ENJOY WHAT ACCESS HE IS GIVEN DUE TO RESPONDENT'S FAILURE TO COMPLY WITH ITS TARIFF

Claimant agrees completely with Respondent's position in the second paragraph of section A of the argument in the Motion to Dismiss. Offenders do not have a right to unlimited telephone access or uninterrupted service; however, when correctional facilities do allow inmates telephone access in accordance with institutional procedures and that access is interrupted as a result of the telecommunications

service provider's failure to properly service and maintain its infrastructure, said interruption cannot be justified as an interruption necessary to maintain the safety and security of the prison or other correctional facility or to otherwise advance penological interests by the telecommunications service provider.

As provided for in § 2.7.7 of the Tariff the IDOC and the Logan Correctional Center have imposed restrictions on the 24/7 access to telephones that the Contract allows for. See excerpts from the Logan Correctional Center offender Handbook, sections of 20 Ill. Ad. Code governing offender telephone privileges, and IDOC administrative policies governing offender telephone access attached hereto as Exhibits 1, 2, and 3. At all times mentioned in the Complaint, the Claimant was enjoying his telephone privileges in accordance with IDOC and Logan Correctional Center rules.

The Complaint alleges at ¶¶ 7, 12, 17, 18, 22, 24, 26 and 28 separate occasions when Claimant had to terminate his call prematurely and/or forego his telephone access privileges afforded by the IDOC due to Respondent's equipment malfunctioning. If the premature terminations of Claimant's call alleged in ¶¶ 7, 22, 24, 26 and 28 were caused by the IDOC intentionally disconnecting access for penological reasons, as is done from time to time during prison emergencies and every evening at 9:00 PM immediately before lockup and count, all telephones in all housing units would have been simultaneously and immediately disconnected without the Claimant or other offenders having the ability to hang up and redial. This was not the case here. In the Complaint Claimant states that the reception became so poor that he or his called party had to end the

call. This resulted in Claimant being debited the connection fee without the benefit of completing his conversations and then needing to redial on a different telephone and be debited the connection fee again simply to finish the conversation.

In Flornoy v. Ameritech, App. 3 Dist.2004, 286 Ill.Dec. 597 an IDOC inmate filed suit in circuit court over a similar issue as that contained in the Complaint. The Defendant, Ameritech, the telecommunications service provider for the offender telephone system at Joliet Correctional Center, was intentionally prematurely terminating telephone calls to increase revenue from the initial connect fees. In Flournoy the Plaintiff alleged intentional fraud which differs from this case in that Claimant is alleging negligence in the maintenance of Respondent's equipment. Defendant's argument in Flournoy that Plaintiff's status as an inmate prohibited his bringing an action over prison telephone service because inmates are not entitled to unlimited or uninterrupted telephone access failed as should Respondent's in this matter.

**THERE IS NO NEED TO DEFER TO THE COLES COUNTY
MATTER SINCE THE COMPLAINT SEEKING REPARATIONS
IN THAT CASE HAS BEEN DISMISSED WITH PREJUDICE**

On March 20, 2012 the Honorable Judge Brien O'Brien dismissed with prejudice Claimant's Amended Complaint seeking enforcement of Respondent's Contract and reimbursement for his dropped calls in the Circuit Court for Coles County matter, No. 2011-SC-558. Claimant has been granted leave to file a second amended complaint in the Coles County case but is barred from proceeding on the same theory of liability under the terms of the Contract or from seeking the relief he now seeks from the Commission. Claimant intends to file

a second amended complaint in Coles County pursuant to the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, for fraud but may only seek civil damages.

"A claim is for reparations when the essence of the claim is that a utility has charged too much for service." "In contrast, a claim is for ordinary civil damages when the essence of the claim is not that the utility has excessively charged, but rather that the utility has done something else to wrong the plaintiff." Flournoy citing Village of Evergreen Park v. Commonwealth Edison Company, 296 Ill.App.3d 810, 231 Ill.Dec 220. Even if the Coles County action were to proceed as a claim for reparations, which it cannot, the doctrine of primary jurisdiction suggests that the Cole County case should be delayed pending resolution of the matter before the Commission since the purpose of that doctrine is to allow an agency with specialized expertise, like the Commission, to examine a controversy first. Metropolitan Sanitary District of Greater Chicago v. United States Steel Corp., 30 Ill.App.3d 360, 367.

**CLAIMANT HAS PLEAD SUFFICIENT FACTS TO INFORM
THE RESPONDENT OF THE VIOLATIONS ALLEDGED AND
THEREFORE HIS COMPLAINT SHOULD NOT BE DISMISSED**

In ¶ 34 of the Complaint Claimant alleges that the Respondent violated several sections of the Tariff. Note 2 on page 4 of the Respondent's Motion to Dismiss makes reference to some of the sections listed in ¶ 34 of the Complaint and states that none of those sections are "...really even possible for Consolidated to 'violate' ..." (Motion to Dismiss p. 4). § 2.1 of the Tariff has been cited because Respondent has violated ¶2 of that section by not furnishing services in accordance with the terms of the Contract. Respondent

has violated Tariff § 2.2.4 by not making reliable services available in accordance with facility-authorized programs. Respondent is in violation of § 2.12 for the same reason as Claimant alleges Respondent violated § 2.1, failure to comply with the Contract. Respondent has violated ¶ 1 of Tariff § 3.1 by not offering operator assisted calling services. Respondent has violated Tariff § 3.3.2 by debiting Claimant's account for those calls that were prematurely terminated.

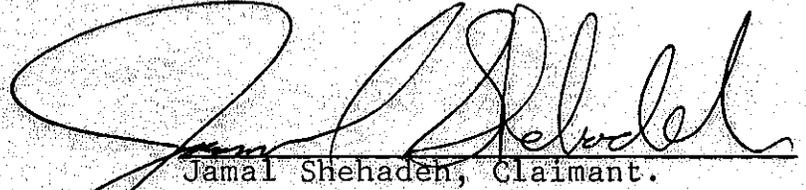
The sections of the Contract that Respondent has violated, listed in Complaint ¶ 35, are easy to understand and need not be explained in detail in this response as they are contained in the Contract which is attached to the Complaint as Exhibit D. If the Commission requires, Claimant will amend his Complaint to include a detailed explanation of how the Respondent is in violation of each of the listed sections of the Contract and Tariff.

CONCLUSION

The problems Claimant has experienced are not isolated. Tens of thousands of offenders and their families and friends are impacted by Respondent's non-compliance with its Tariff. Respondent admits on page 6 ¶ 2 of the Motion to Dismiss that the infrastructure of Logan Correctional Center is old and that there have been interruptions to telephone service. The Tariff at § 2.4.1 gives the Respondent the authority to fix its infrastructure. To say that the Respondent cannot comply because the State of Illinois won't allow them to make repairs is a violation of Tariff § 2.6 which provides for disconnections of service if the State of Illinois "...neglect[s] or refuse[s] to provide reasonable access to the Company for the purpose of inspection and maintenance of equipment owned by the Company."

WHEREFORE for the foregoing reasons Claimant requests that this Commission deny Respondent's Motion to Dismiss.

Respectfully Submitted,



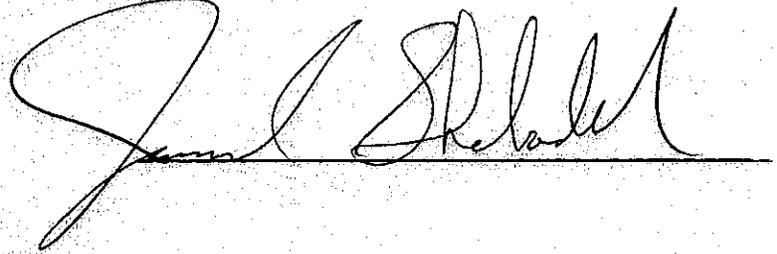
Jamal Shehadeh, Claimant.

Proof of Service

I Jamal Shehadeh do hereby swear and affirm under penalties of perjury that the foregoing was served on the Respondent by placing a copy of same in the U.S. Mail addressed to:

Ms. Lisa Natter
Schiff Hardin, LLP
233 S. Wacker Dr. Ste. 6600
Chicago, IL 60606

with postage prepaid on this the 24th day of March, 2012.



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