

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Ken Eernisse
v.
Verizon Pennsylvania, LLC**

**Public Meeting December 5, 2013
2287023-OSA
Docket No. C-2012-2287023**

**JOINT MOTION OF VICE CHAIRMAN JOHN F. COLEMAN, JR. AND
COMMISSIONER GLADYS M. BROWN**

Before the Commission for disposition are the exceptions of Verizon Pennsylvania LLC (Verizon) filed to the Initial Decision (ID) sustaining the customer's formal complaint, in part, and denying it, in part. The formal complaint alleged a reliability, safety or quality problem with the customer's telephone service provided by Verizon. The ID determined that Verizon failed to provide adequate and reasonable service under Section 1501 of the Public Utility Code. The ID also determined that Verizon violated Section 63.57 (relating to customer trouble reports) and Section 63.24 (service interruptions) of our regulations on numerous occasions. The ID imposes a total civil penalty of \$23,400.

We agree with the ID that Verizon did not provide reasonable service to Mr. Eernisse under Code Section 1501. Verizon failed to comply with Section 63.57 of our regulations on numerous occasions regarding the customer's trouble reports, which were primarily service outages. Verizon also failed to provide reasonably continuous service, in violation of both Code Section 1501 and Section 63.24 of our regulations.

As to remedies, we agree with the ID to impose the following civil penalties on Verizon relating to the following incidents:

- A \$50 civil penalty for violating Section 63.57(b) of the Commission's regulations for failing to take substantial action within 24 hours to clear a service outage reported on October 9, 2009.
- A \$3,000 civil penalty related to a service outage incident on June 29, 2011, which includes: (i) a \$1,000 civil penalty for violating Section 63.57(a) of the Commission's regulations for failing to take substantial action within 3 hours to clear a service outage of an emergency nature; (ii) a \$1,000 civil penalty for violating Section 63.57(c) of the Commission's regulations for failing to keep a service appointment and (iii) a \$1,000 civil penalty for violating Section 63.24 of our regulations for failing to provide reasonably continuous service. We agree with the ALJ that these penalty amounts are justified, given that the Complainant's child had a life-threatening medical emergency, and the Complainant had no telephone service at his residence to call for help.
- A \$500 civil penalty for missed appointments related to the June 6, June 22, and June 24, 2011 Trouble Reports. Verizon has not contested this penalty amount.

At the same time, we believe it is appropriate to adjust some of the civil penalties imposed on Verizon in this matter, as follows:

Section 63.57(b) and Section 63.24 Violations related to the October 15, 2009 Service Call

We do not believe that Verizon violated Section 63.57(b) or Section 63.24 of our regulations because the Complainant's October 15, 2009 call to Verizon was not a service outage call. As the record shows, the Complainant called Verizon on October 15, 2009 to complain that there was humming and static on the line. F.F. No. 9; ID at 11. Therefore, we do not believe that Sections 63.57(b) and 63.24 of our regulations are applicable and direct the elimination of the \$600 civil penalty for these alleged violations.

Nevertheless, we note that a telephone utility's quality of service obligation is not limited to providing reasonably continuous service. We remind Verizon that it is required under Section 63.63 of our regulations and Code Section 1501 to provide service at adequate volumes that is free from excessive distortion, noise, and cross-talk, which includes service that is free from humming and static on the line.

Section 63.57(b) violations related to the 2011 Service Outage Calls

Upon further review, we direct \$4,500 in civil penalties for Verizon repeatedly violating Section 63.57(b) of our regulations in 2011. In light of the history of repeated Section 63.57(b) violations in 2011, we will impose escalating penalties for the Section 63.57(b) violations, as follows:

- For the January 2011 violations, \$50 per day for a total of \$150 for three days;
- For the first round of June 2011 violations, \$150 per day for a total of \$1,050 for seven days;
- For the second round of June 2011 violations, \$300 per day for a total of \$1,800 for six days;
- For the November-December 2011 violations, \$500 per day to \$1,500 for three days.

Regarding the first June 2011 service outage, Verizon cancelled its scheduled appointment for June 8 because the Complainant was unable to listen to an automated announcement that instructed him to contact Verizon if his telephone service still was not working. In our view, it makes little sense to leave an automated voicemail message for a customer who has been experiencing service outages with a request that he contact Verizon if his telephone service is still not working. Verizon's actions here constitute unreasonable service in violation of Code Section 1501. Therefore, we direct an additional \$500 civil penalty for this specific incident.

Section 63.24 Violations related to the Non-Emergency-Related 2011 Service Outages

It is well-settled that a public utility is not required to provide perfect service. Maldonado v. Pocono Water Company, 1994 Pa. PUC LEXIS 93; Anserphone, Inc. v. Bell Telephone Co. of PA, 1993 Pa. PUC LEXIS 70. Section 63.24 of the Commission's regulations requires Verizon to maintain its system in such condition as to furnish continuous service and to take reasonable measures to prevent interruptions of service, as well as to restore any interruptions of service with minimum delay. Code Section 1501 also requires Verizon to provide reasonably continuous service. Verizon argues that the penalty structure in this case for the Section 63.24 violations is tantamount to a mandate for perfect service. It is not. We see a difference between perfect service, which is always continuous, and continuous service, which may not be perfect but is certainly reasonable. Section 1501 of the Code and our regulations promote the last, not the first.

Based on these considerations and the record evidence, we conclude that Verizon has failed to provide reasonably continuous service on numerous occasions in 2011, in violation of Section 63.24 of the Commission's regulations and Code Section 1501. When considering the Complainant's outage history overall, including in 2010, and, in particular, the extent to which Complainant was without service in 2011, a \$11,500 civil penalty is appropriate for the Section 63.24 violations occurring in June 2011 (excluding June 29) and November 2011. This amount represents \$750 per day for the fourteen days that the Complainant was without service in June 2011 (excluding June 29) and \$1,000 for the one day that the Complainant was without service in November 2011.¹

In sum, we direct that Verizon pay a total civil penalty of \$20,050 for failing to provide reasonable service in this matter. The penalty amounts are summarized as follows:

Incident Date(s)	Violation(s)	Penalty Amount
10/09/09	Section 63.57(b)	\$50
1/2011, 6/2011 (excluding 6/29), and 11/11	Section 63.57(b)	\$4,500
6/06, 6/22, and 6/24/11	Section 63.57(c)	\$500
6/08/11	Code Section 1501	\$500
6/29/11	Sections 63.57(a), (c) Section 63.24	\$3,000
6/2011 (excluding 6/29) & 11/2011	Section 63.24/Code Section 1501	\$11,500
		\$20,050

¹ It appears that the ID penalized Verizon twice for the same Section 63.24 violation related to the June 29 service outage; once for \$1,000 and once for \$750. We direct imposing one civil penalty for the Section 63.24 violation related to the June 29 service outage in the amount of \$1,000, as previously discussed.

THEREFORE, WE MOVE THAT:

1. The Initial Decision be modified, consistent with this Joint Motion.
2. The Commission's Office of Special Assistants draft an appropriate Order consistent with this Joint Motion.

Date: December 5, 2013



JOHN F. COLEMAN, JR.
VICE CHAIRMAN



GLADYS M. BROWN
COMMISSIONER