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February 9, 2010

Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

RE: Alan L. Redinger v. Verizon North Inc.; Docket No. C-2009-2104301;
Additional Authority in Support of Verizon North Inc.'s Exceptions

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2010 FEB - 9 PM 3: 52
PA PUC
SECRETARY'S BUREAU

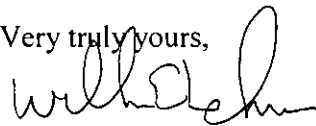
Dear Mr. McNulty:

The purpose of this letter is to bring to the Commission's attention newly-issued Commission precedent in support of Verizon North Inc.'s ("Verizon North") Exceptions filed in the above-captioned case on January 4, 2010, in which Verizon North argued that the Administrative Law Judge had erroneously applied a requirement of perfect performance, which is not supported by the applicable legal standard.

On January 28, 2010, three weeks after Verizon North filed its Exceptions in this matter, the Commission issued the enclosed Decision¹ adopting Administrative Law Judge Robert Meehan's Initial Decision in another service-related complaint case. In that decision the Commission recognized that the obligation to provide "adequate, efficient, safe and reasonable" service under 66 Pa.C.S. § 1501 does not require perfect service and that this standard was satisfied where Verizon responded reasonably to each of the customer's service complaints and undertook reasonable repairs to its facilities to resolve the service complaints. (Scherich ID at 15). Verizon North requests that the Commission consider this case, which was not available at the time Exceptions were filed, in ruling on Verizon North's Exceptions.

Thank you for your attention to this matter. Please feel free to contact me at 717-236-1300 with any questions.

Very truly yours,



William E. Lehman
Counsel for Verizon North Inc.

WEL/bes

Enclosures

cc: Katrina Dunderdale, Administrative Law Judge
Alan L. Redinger

¹ *Eugene Scherich and Bertha Scherick v. Verizon Pennsylvania, Inc.*, Docket Nos. C-2008-2061244 and C-2008-2068818 (Final Opinion and Order issued January 28, 2010).

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 28, 2010

2010 FEB -9 PM 3:52
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SECRETARY'S BUREAU

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Commissioners Present:

- James H. Cawley, Chairman
- Tyrone J. Christy, Vice Chairman
- Kim Pizzingrilli
- Wayne E. Gardner
- Robert F. Powelson

Eugene Scherich	:	C-2008-2061244
	:	
and	:	
	:	
Bertha Scherich	:	C-2008-2068818
	:	
v.	:	
	:	
Verizon Pennsylvania Inc.	:	

ORDER

BY THE COMMISSION:

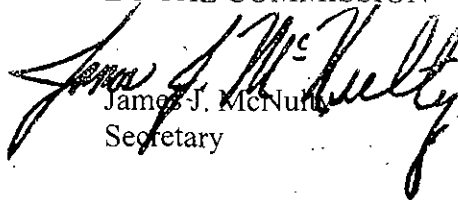
We adopt as our action the Initial Decision of Administrative Law Judge Robert P. Meehan, dated, October 28 2009;

THEREFORE,

IT IS ORDERED:

1. That the complaint of Eugene Scherich against Verizon Pennsylvania Inc., at Docket No. C-2008-2061244, is dismissed for the failure to satisfy the burden of proof.
2. That the complaint of Bertha Scherich against Verizon Pennsylvania Inc., at Docket No. C-2008-2068818, is dismissed for the failure to satisfy the burden of proof.

BY THE COMMISSION


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 28, 2010

ORDER ENTERED; January 28, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Eugene Scherich

C-2008-2061244

and

Bertha Scherich

C-2008-2068818

v.

Verizon Pennsylvania Inc.

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2010 FEB - 9 PM 3: 52
PA PUC
SECRETARY'S BUREAU

INITIAL DECISION

Before

Robert P. Meehan
Administrative Law Judge

This Initial Decision dismisses the complaints filed by Eugene Scherich (Mr. Scherich) at Docket No. C-2008-2061244, and Bertha Scherich (Ms. Scherich) at Docket No. C-2008-2068818, against Verizon Pennsylvania Inc. (Verizon), for the failure to satisfy the burden of proof.

HISTORY OF THE PROCEEDING

Mr. Scherich's complaint, alleging quality, safety and reliability of service issues, was received by the Commission on August 29, 2008. Verizon's answer to Mr. Scherich's complaint was received on September 24, 2008. On October 2, 2008, Chief Administrative Law Judge Smith issued an Interim Order Setting Resolution Conference. Pursuant to that Order, a report was submitted to the Mediation Unit. On November 3, 2008, Verizon filed a motion to consolidate the complaints filed by Mr. and Ms. Scherich for hearing and decision.

Ms. Scherich's complaint, alleging quality, safety and reliability of service issues, was received by the Commission on September 29, 2008. Verizon's answer and new matter was filed on November 3, 2008. Verizon also filed preliminary objections to Ms. Scherich's complaint, and a motion to consolidate the complaints filed by Mr. and Ms. Scherich for hearing and decision. On November 14, 2008, Administrative Law Judge Colwell issued an Interim Order Setting Resolution Conference. Pursuant to that Order, a report was submitted to the Mediation Unit.

By separate notices, each dated March 4, 2009, the Commission informed Mr. Scherich, Ms. Scherich, and Verizon that the hearing on these two complaints would be held by telephone on April 1, 2009. I issued Prehearing Orders in each case on March 5, 2009.

Thereafter, counsel for Mr. and Ms. Scherich filed a motion for a continuance, and Verizon filed a petition for a protective order. The motion for a continuance was granted and the petition for a protective order was denied. The hearing was rescheduled for April 28, 2009.

The hearing, by telephone, commenced on April 28, 2009. However, during the hearing, I determined that it should be continued because of evidentiary issues and that the further hearing to be scheduled would be "in-person." The further hearing was held on May 28, 2009, in Pittsburgh. Eugene Scherich and Bertha Scherich were represented by counsel. Each testified in support of their respective complaints, and submitted a total of nine exhibits. Complainants' Exhibits 1-3 and 5-9 were admitted into the record. Complainants' Exhibit 4, copies of which were distributed after the hearing, was admitted by Order issued July 10, 2009. Verizon, represented by counsel, presented the testimony of one witness and submitted four exhibits, all of which were admitted.

Briefs have not been filed in this case. The record, consisting of the 166-page transcript of the hearings and the 13 total exhibits, was closed by Order issued July 10, 2009.

FINDINGS OF FACT

1. Eugene Scherich is the Complainant at Docket No. C-2008-2061244. His address is 5405 Prosperity Pike, Prosperity, PA 15329. Mr. Scherich is the son of Bertha and Thomas Scherich (Tr. 55, 60).

2. Bertha Scherich is the Complainant at Docket No. C-2008-2068818. Her address is 5515 Prosperity Pike, Prosperity, PA 15329. She and her husband Thomas Scherich have resided at that address for 52 years (Tr. 11-12).

3. Verizon Pennsylvania Inc. is the Respondent in both cases.

4. Ms. Scherich has had problems with her telephone service for many years, whenever there would be heavy rains in her area (Tr. 12).

5. During or after the heavy rains, there would be static on the phone. Sometimes this made it difficult to hear the other person on the phone (Tr. 12).

6. Ms. Scherich estimates that the static on the line following heavy rains would occur about 20 times a year (Tr. 13).

7. There have also been times, approximately ten times per year, when Bertha Scherich could not make any telephone calls (Tr. 13).

8. Ms. Scherich has also had "echo" problems with her telephone service approximately three times per year and clicking noises about three times per year (Tr. 13).

9. Ms. Scherich also has heard "garbled" sounds, making it hard to hear. This could be the voice of the other person or in the background (Tr. 14).

10. At Verizon's request, Ms. Scherich kept a log of her telephone service problems. Most, if not all, of her telephone service problems occur on the telephone in her kitchen. The log begins on June 27, 2008 and ends on March 18, 2009. (Tr. 14-18; Comp. Ex. 1).

11. The dates written on Complainants' Exhibit 1 are the dates when a problem was detected by Ms. Scherich with her telephone service (Tr. 20).

12. Ms. Scherich made written notes each time she experienced a problem with her telephone service, including some of her contacts with representatives of Verizon. (Tr. 22; Comp. Exs. 1 and 2).

13. Complainants' Exhibits 1 and 2 summarize Ms. Scherich's problems with her phone service between June 27, 2008 and March 18, 2009. This experience is similar to the problems experienced in the past (Tr. 25-26).

14. Ms. Scherich began making notes of her telephone problems and contacts with Verizon before she filed her formal complaint. These problems and contacts were later included in Complainants' Exhibits 1 and 2 (Tr. 27-31).

15. Ms. Scherich's notes include the date, the name of the Verizon representative spoken with, except one representative who would not give a name, the telephone problem being experienced and the time the problem was reported to Verizon (Tr. 46-47).

16. On May 1, 2009, Ms. Scherich had a bad "echo" on the line during an incoming long-distance call. She contacted Verizon that day and spoke with a "Marie Wynn," and informed Ms. Wynn of the problem and stated that it occurred during a "hard rain." Ms. Scherich was informed that the problem would be corrected by May 6th by 8:00 p.m. (Tr. 49; Comp. Ex. 4).

17. Most of the telephone problems experienced by Ms. Scherich occur during hard rains. The water goes down to the cable in the "bottom," which is an area of low-lying land

with a creek on one side. It is the bottom of a valley. The creek does not have much of a bank, and during hard rains the creek spills over into the bottom (Tr. 49-52, 61-62).

18. Ms. Scherich has three telephones in her home. The telephone in the TV room is a cordless phone. The telephones in the kitchen and bedroom are regular telephones (Tr. 53-54).

19. The telephone line from Mr. Scherich's house is above ground, crossing over Pa. Route 18 to a pedestal, number 1609/19. Travelling easterly and parallel to Route 18, the telephone cable is underground to another pedestal. From that pedestal the telephone lines are above ground, crossing back over Route 18 to the "light span unit" (Tr. 56-57; Comp. Ex. 5, at 1).

20. Travelling westerly from pedestal 1609/19 and parallel to Route 18, the telephone cable is underground until it reaches pedestal 1609/23. From pedestal 1609/23 the telephone cable is underground to a pole. It is then above ground from the pole, crossing over Route 18 to the home of his parents (Tr. 58-60; Comp. Ex. 5, at 2).

21. From L.R. 62138 and proceeding westerly to pedestal 1609/23, the underground telephone cable is on property owned by his parents. From L.R. 62138 and proceeding easterly to pedestal 1609/19, the underground telephone cable is on property owned by an unidentified individual (Tr. 60-61).

22. If the telephone cable were moved to the northerly side of Route 18, it could be placed on poles between pedestal 1609/19 and 1609/23, and would be entirely on property owned by Mr. Scherich and his parents. According to Mr. Scherich they had previously suggested to Verizon that the telephone cable be put on poles on their properties (Tr. 61).

23. Mr. Scherich has lived at his house or his parents' for approximately 30 years, excluding 10 years when he was away. There have been problems with the telephone service at his house and his parents', for as long as he can remember (Tr. 63-64).

24. Mr. Scherich made notes of telephone problems experienced at his house, similar to the notes his mother made about her telephone problems. His notes include some telephone problems experienced before June 25, 2008. Generally, however, his notes pertain to the period between June 25, 2008 and February 25, 2009 (Tr. 65-68; Comp. Exs. 6-7).

25. On October 31, 2008, Mr. Scherich met with Verizon representative Ted Toth concerning "clicking" noises heard on the telephone. He was told by Mr. Toth that the fence charger, used to electrify the fence to keep the cattle contained, was the source of the clicking noise and that it was Verizon's problem to resolve. The clicking noise is louder when the fence charger is turned on (Tr. 70-72, 93-94; Comp. Ex. 8).

26. On December 4, 2008, a Verizon representative named Jim, informed Mr. Scherich that the line was bad between the light span unit and Old Concord, which is the town about three-fourths of a mile west of his parents' home, and they had "run out of pairs to put on people" (Tr. 72-74).

27. Over the years Verizon responded to his reports of telephone problems by sending a technician to test the line. Sometimes the technicians would stop at Mr. Scherich's house, or he would receive an automated telephone report that the problem had been corrected (Tr. 77).

28. However, the problems kept recurring, randomly, and he had to keep calling Verizon about his telephone service. Sometimes the telephone service would be fine for months. Other times the quality of the telephone service varied week to week (Tr. 77-78).

29. Mr. Scherich took 15 photographs of above-ground telephone facilities which he believes indicates problems in his area that need to be fixed. Complainants' Exhibit 9, photo 4, is the only photograph of Verizon facilities providing telephone service to Mr. and Ms. Scherich (Tr. 82-87, 95-96, 103-109).

30. Mr. Scherich obtained a cost estimate of \$26,120 to install 12 Class 5 poles, 2200 feet of 12 fiber line, and four converter boxes, including interdict wire, pulling, splicing, etc. The estimate was provided to him by someone that does this kind of work (Tr. 88-89).

31. The estimate for an aerial cable Mr. Scherich received included fiber cable, because Verizon has fiber cable to the light span unit. He doesn't necessarily need fiber cable and will take the wire pairs. He thought it made good sense to extend the fiber cable past his house to his parents (Tr. 92).

32. He did not have the qualifications of the person who gave him the estimate for the installation of the aerial cable (Tr. 92).

33. Theodore Michael Toth (Mr. Toth), local field manager for Verizon, testified at the hearing of May 28, 2009 (Tr. 100-163).

34. Mr. Toth has visited the respective Scherich properties about six times. He is the one who directed repairs to their telephone cable, performed personal inspections of the telephone facilities, took photographs of the facilities, and was the main contact person for the Scherichs pertaining to their telephone problems (Tr. 101).

35. Mr. Toth prepared the diagram marked and admitted as Complainants' Exhibit 5. The light span unit shown on Comp. Ex. 5 is a box that is fiber fed and converts the fiber optic light signal to a copper signal that is distributed through the copper pairs to each customer. It is a conversion from light to analog cycle (Tr. 102-103).

36. The facilities shown on Complainants' Exhibit 9, photo 4, depict old and new facilities of Verizon for Mr. Scherich's telephone service. The pole that is leaning carries the former cable that was abandoned when Verizon installed a new light span unit. This pole and the attached aerial cables need to be removed. The upright pole seen in this photo is the new pole that now carries the copper signal across the street to the light span unit. The pedestal at the

base of this pole is no longer in the position shown on the photo. It has been moved to higher ground (Tr. 104-105).

37. Verizon's facilities providing telephone service to the respective Scherich properties consist of a light span unit, a box (1646/14) next to the light span unit from which the copper cable comes out and proceeds up a pole to a splice case. From there it crosses Route 18 (Tr. 112-113; Verizon Ex. 2, photos 1 and 2).

38. The pedestal across from Mr. Scherich's house, number 1609/19 shown on Verizon Exhibit 2, photo 3, was combined with the pedestal visible behind it in the photograph. A newer pedestal was installed in the same area as the previous two pedestals (Tr. 113-114).

39. The copper pairs come off the pedestal, enter a copper "drop," which is then carried up the telephone pole and across the road to Mr. Scherich's house (Tr. 114; Verizon Ex. 2, photo 5).

40. The copper drop at pedestal 1609/19 could not be replaced by a fiber drop, because the signal at the pedestal is a copper analog signal. Fiber carries a digital signal over the optic cable. Mr. Scherich would need "multiplex" equipment to turn that signal back into copper in order for him to use it as a dial tone (Tr. 115).

41. Mr. Scherich's telephone service was connected to the light span unit in September of 2008. Ms. Scherich's telephone service was connected to the light span unit before September of 2008, but the exact date is not known (Tr. 115).

42. Mr. Toth could not provide the number of times that Mr. Scherich called Verizon about a problem with his telephone service. Mr. Toth did note that Mr. Scherich made many calls to Verizon about telephone service problems; such as no dial tone, static, clicking, echoes, etc. (Tr. 119-120).

43. Mr. Toth testified that on many of those occasions, a technician would be dispatched who would test the line to try and determine the nature of the problem, and if the problem matches the complaint, the technician would respond accordingly (Tr. 210).

44. On other occasions, Mr. Scherich's line was tested without dispatching a technician. Sometimes the problem goes away on its own, and sometimes it's found to be related to someone else's telephone service and not that of Mr. Scherich (Tr. 120).

45. According to Mr. Toth, Verizon's records of trouble reports from Mr. Scherich fairly match the logs that Mr. Scherich kept about his telephone problems and contacts with Verizon (Tr. 121; Comp. Exs. 6-8; Verizon Ex. 3).

46. Prior to December of 2008, and depending on the particular problem Mr. Scherich was having, Verizon might have changed pairs within a cable or re-spliced portions of a cable (Tr. 121).

47. After December of 2008, Verizon began its preventive maintenance work on the facilities serving the Scherichs, including re-splicing all of the cables. Some of that work might have caused service-related problems for the Scherichs. However, Verizon fixed the problems it created. Between January of 2009 and the hearing of May 28, 2009, Verizon spent 645 man hours performing preventive maintenance on the facilities providing telephone service to the Scherich properties (Tr. 121-122, 132-133).

48. The one problem that Mr. Scherich has with his telephone service that Verizon cannot repair is the clicking noise associated with the fence charger (Tr. 122).

49. The first time Mr. Toth went to Mr. Scherich's house he was using a "toner probe," a piece of equipment used to trace phone lines. Typically this equipment picks up a tone within six to twelve inches of a telephone line. The clicking noise from the fence charger at Mr. Scherich's house was emanating such a field that the toner probe was picking up the signal from a distance of 15 feet from the telephone line (Tr. 122-123).

50. Verizon has taken the corrective measures available to it to minimize the clicking noise from the fence charger, including bonding and rebonding and grounding the telephone cables at all pedestals (Tr. 122, 128-129).

51. According to Mr. Toth, Mr. Scherich needs to have a specialist or electrician examine the fence and determine what grounding problems are present with the fence that need to be corrected to reduce the clicking noise, but that there are no additional measures Verizon can take (Tr. 123, 129-130).

52. Verizon's customer service complaint records pertaining to Ms. Scherich's telephone service indicate that she has complained about no dial tone, static, clicking, and echoes. Verizon took the same measures in responding to her complaints that were taken in responding to Mr. Scherich's complaints, including testing the line, re-splicing the cable, replacing the pedestal, etc. (Tr. 125-126).

53. Verizon has not replaced the underground cable between the respective Scherich properties. It left that cable in use after testing it to determine if it was good and the test came back fine. All the work performed by Verizon has been on those facilities which are above ground (Tr. 126).

54. According to Mr. Toth, the fence charger at Mr. Scherich's property, which causes the clicking noise on his telephone, causes the same interference on Ms. Scherich's telephone. Weather will make the noise worse because of grounding problems with the fence, and moisture will cause the noise to spread to a larger area, and it will be louder under that condition. Also, cordless phones amplify the noise more than "corded" phones (Tr. 127-128).

55. The underground cable in the "bottom" is made for many conditions, including water and moisture. The cable pairs are plastic wrapped, then sealed in gel, which in turn is wrapped in metal for bonding, and whole cable is then covered by a plastic sheath. It will not be affected by water or moisture (Tr. 128).

56. Mr. Toth performed a "PPM" analysis, which is a comparison of customer trouble reports to a specific cable. If three or more customers are out of service simultaneously, a report is generated. These analyses are performed to determine if preventive maintenance is necessary or if a particular cable should be investigated further (Tr. 134-136).

57. No reports were generated by the PPM analysis for the cable providing telephone service to the Scherich properties (Tr. 135-136).

58. Verizon did not accept Mr. Scherich's suggestion to install aerial facilities from the light span unit to his and his parents' home because the existing underground cable was in good working condition, and the major problem with aerial cable is susceptibility to tree damage, which does not happen to underground cable. In this instance, Verizon determined that the underground cable would provide more reliable service (Tr. 139-140, 145).

59. Since Verizon replaced the light span unit and performed the other preventive maintenance work on the facilities serving the Scherich properties, the trouble reports have dropped off, except for the clicking noise, and the single incident of May 1, 2009. As to the May 1, 2009 report, Verizon could not determine if the echo/static was a problem on the Scherich facilities or those of the person on the other end of the long distance call. There may have been one other service problem, but that affected a lot of customers because of a storm-related power outage (Tr. 142, 146).

60. It is possible, though unlikely, that the underground cable may be deteriorated and developing moisture infiltration, because Verizon's testing of the cable which is thorough, but not perfect, has not detected any problems with the cable. If the cable has deteriorated to the point where it is causing quality of service problems it would have shown up on Verizon's analyses (Tr. 152-153, 158-159).

DISCUSSION

Section 701 of the Public Utility Code (Code), 66 Pa. C.S. §701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. Section 332(a) of the Code, 66 Pa. C.S. §332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof.

In alleging inadequate telephone service, and requesting that Verizon be directed to repair or replace its facilities, it is clear that Ms. Scherich and Mr. Scherich are the parties seeking affirmative relief from the Commission and, therefore, have the burden of proof. This means that they have the duty to establish a fact by a preponderance of the evidence, and must show that the utility is responsible or accountable for the problem described in the complaint. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). Additionally, care must be exercised to insure that the decision of the Commission is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S. §704; *Norfolk & Western Ry. Co. v. PA PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by a Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the customer shifts to the Respondent. If the evidence presented by the Respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Respondent. *Morrissey v. PA Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); and *Burleson v. Pa. P.U.C.*, 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982), aff'd. 501 Pa. 443, 461 A.2d 1234. For example, if one driver claims that an accident occurred on a dry road

on a sunny day, and the other driver claims that the road was wet and it was raining at the time of the accident, neither driver has satisfied the burden of proof. Additional evidence concerning the condition of the road and weather must now be provided by one or the other.

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. PA PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Waldron v. Philadelphia Electric Company*, 54 PA PUC 98 (1980); and *Replogle v. Philadelphia Electric Company*, 54 PA PUC 528 (1980).

Section 1501 of the Code, 66 Pa. C.S. §1501, imposes on public utilities, including Verizon, the statutory obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make such changes, repairs, substitutions, and improvements in or to its service or facilities which are necessary or proper for the accommodation, convenience and safety of its customers, employees and the public. A public utility is not obligated to provide perfect service and facilities 100% of the time. The test to determine the adequacy of a utility's service and facilities is that of reasonableness. This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs, etc., made to its facilities.

The record in this proceeding demonstrates that Ms. Scherich and Mr. Scherich, her son, have made numerous calls to Verizon over the past three to four years complaining of quality of service problems with the telephone service at their respective residences. The complaints have involved incidents of no dial tone, static, clicking, and echoes. The record in this case also demonstrates that these service problems are mostly weather related, *i.e.*, these service problems most often occur during periods of "hard rains."

This record also demonstrates that Verizon responded to each of the service complaints received from either Ms. Scherich or Mr. Scherich. Sometimes the response was in the nature of a remote line test to try to determine if the problem was with Verizon's facilities serving either Scherich residence, or with the facilities serving the person to whom they were

talking. Other times, the response was to send a technician to test the cable serving the respective Scherich residences, or to change the cable pairs through which they receive their telephone services, or to splice or re-splice cable as necessary.

Except for the clicking noise and those few occasions when the particular problem complained of simply went away, Verizon was able to fix the several service complaint problems received from the Scherichs. However, all of the problems continued to recur. The length of time between Verizon's resolution of a specific problem and its recurrence varied from a week to months at a time.

The only complaint made by the Scherichs which Verizon is unable to resolve pertains to the clicking noise on the line. Verizon attributes the clicking noise to the electric fence charger on the property of Mr. Scherich. According to Verizon the interference from the fence charger is so bad that it can be detected by its equipment at a distance of 15 feet from the telephone lines when the normal distance at which the equipment can detect a signal from the telephone lines is between six to twelve inches. Verizon has done those repairs, etc., to its equipment to ensure the proper bonding and grounding of its telephone facilities. It has suggested to Mr. Scherich that he engage a specialist or electrician to ensure the proper grounding of the electric fence.

Additionally, between January of 2009 and the hearing of May 28, 2009, Verizon spent over 600 man-hours performing preventive maintenance on the telephone facilities serving the respective Scherich properties. This included replacing the light span unit, combining pedestal 1609/19 with another pedestal and relocating the new pedestal to higher ground, installing new underground cable between the new pedestal 1609/19 and the telephone pole carrying the copper pairs across Route 18 to Mr. Scherich's residence, and re-splicing all the cables.

Since the preventive maintenance work was performed by Verizon, there has only been one customer service complaint from Ms. Scherich on May 1, 2009, about static and an echo on an incoming long-distance telephone call during a hard rain. Verizon was unable to

determine if the problem was with their facilities or those of the caller. There might also have been a service outage which might have occurred during a storm-related power outage. Other than the clicking noise, which Verizon cannot eliminate as it is caused by customer equipment, there have been no other customer-reported service problems since the preventive maintenance work was completed.

The record here demonstrates that Ms. Scherich and Mr. Scherich are not satisfied with the telephone service they have been receiving from Verizon. However, that is not the standard upon which to determine issues of service adequacy in this case. Clearly, they have had problems with their telephone service. However, in my opinion, the record in this case establishes that Verizon responded reasonably to each of their several service complaints, and that Verizon undertook reasonable repairs, etc., to its facilities to resolve the service complaints of Ms. Scherich and Mr. Scherich. See, e.g., *Jude C. Pohl v. Verizon Pennsylvania Inc.*, Docket No. C-20042319, Initial Decision dated March 15, 2005, Order entered May 17, 2005.

Ms. Scherich and Mr. Scherich believe that the cause of their problems with their telephone service is the cable that is underground through the "bottom," a low-lying area parallel to Route 18, through which there is a creek and which regularly floods during periods of hard rains. There is, however, no evidence that there is anything wrong with the underground telephone cable. In fact the evidence in this record is to the contrary.

Verizon has tested the underground cable, electrically, on several occasions and has never received an indication that there is any failure, compromise, moisture infiltration, etc., in the cable. Had there been any problem with the cable, the various tests would not only have given an indication of a problem, but would also have indicated the approximate location in the cable where the problem existed. Had such an indication been received on any test, Verizon would have excavated the cable in the area indicated by the test for visual inspection and repair as necessary. However, none of the tests ever indicated that there was a problem with the underground cable.

Given the state of the evidence with respect to the underground telephone cable, it is my opinion that this record does not contain substantial evidence that would support an order of the Commission directing Verizon to replace the existing underground telephone cable with either a new underground cable or new aerial telephone cable.

CONCLUSIONS OF LAW

1. The parties to and subject matter of these consolidated telephone service complaint proceedings are properly before the Commission.
2. Ms. Scherich and Mr. Scherich, the parties seeking affirmative relief from the Commission, have the burden of proof.
3. Ms. Scherich and Mr. Scherich have failed to satisfy the burden of proving that Verizon has failed to provide them with adequate and reasonable telephone service.
4. Ms. Scherich and Mr. Scherich have failed to satisfy the burden of proving that Verizon has failed to make reasonable repairs, improvements, etc., to its facilities.
5. The complaints of Ms. Scherich and Mr. Scherich against Verizon should be dismissed for the failure to satisfy the burden of proof.

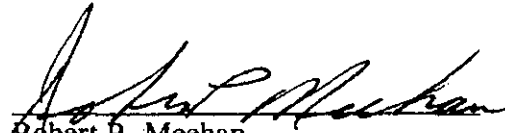
ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Eugene Scherich against Verizon Pennsylvania Inc., at Docket No. C-2008-2061244, is dismissed for the failure to satisfy the burden of proof.

2. That the complaint of Bertha Scherich against Verizon Pennsylvania Inc., at Docket No. C-2008-2068818, is dismissed for the failure to satisfy the burden of proof.


Robert P. Meehan
Administrative Law Judge

Date: October 28, 2009