

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

A. Moses, Inc.

v.

Verizon Pennsylvania Inc.

Public Meeting October 14, 2011

2205259-ALJ

Docket No. C-2010-2205259

**JOINT MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR. AND
COMMISSIONER PAMELA A. WITMER**

Before the Commission for disposition is an Initial Decision ("ID") granting the Preliminary Objections of Verizon Pennsylvania Inc. ("Verizon PA" or the "Company") and dismissing the above-captioned Formal Complaint filed by A. Moses, Inc. ("A. Moses").

The Complaint alleges that Verizon PA provided inadequate telephone service by failing to properly migrate A. Moses' telephone lines from its former local service provider to Verizon PA. According to the Complaint, Verizon PA took more than 3 months from May through July 2009 to migrate most of the Complainant's phone lines, with the final three lines not being ported until June 2010. A. Moses also alleges that, during the migration period, it received sporadic or intermittent telephone service on many of its lines. In addition, the Complaint alleges that Verizon PA provided inadequate Internet service that appears to be provided by digital subscriber line (DSL) service. According to the Complaint, Verizon, willfully and without notice, shut down A. Moses' Internet service for a 2-week period in 2010. As its sole request for relief, Complainant requests money damages in excess of \$100,000.

The ID granted Verizon PA's Preliminary Objections to dismiss the Complaint in its entirety. The ID reasoned that: (1) the Commission lacks jurisdiction over the provision of Internet services and (2) the Commission lacks the authority to award money damages. Although we agree with the decision to dismiss these two issues at the pleadings stage, we do not agree with the decision to dismiss the Complaint in its entirety prior to a hearing.

We agree that the Commission lacks the authority to grant Complainant's request for money damages. Pennsylvania appellate courts have repeatedly held that the Commission is without power to award monetary damages to a private litigant. Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977); Morrow v. Bell Telephone Co. of Pennsylvania, 330 Pa.Super. 276, 479 A.2d 548 (1984); West Penn Power Co. v. Pa. Public Utility Comm'n, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); Ostrov v. I.F.T., Inc., 402 Pa.Super. 87, 586 A.2d 409 (1991).

We also agree that the allegations regarding the extended service outage of the Complainant's retail Internet service should be dismissed for lack of subject matter jurisdiction. In general, this Commission does not have jurisdiction over the provision of retail Internet services. Re: LEC Billing of Pay-Per-Call and Similar Information Services, Docket No. M-00940569 (Order entered July 1, 1994); Collins v. United Telephone Company of Pennsylvania, d/b/a Sprint, Docket Nos. C-00970272 and C-00970273 (Order entered July 21, 1997); Benchmark Color Lab, Inc. v. Verizon Pennsylvania Inc., Docket No. C-20042694 (Order entered August 2, 2004); Peluso v. North Pittsburgh Telephone Company, Docket No. C-20054257 (Order entered June 7, 2005).

However, we note that DSL-configured lines are capable of handling both ordinary telecommunications services as well as broadband access to retail Internet services. Previously, the Commission noted that to "the extent that issues of installation, quality, adequacy, reliability, safety and privacy of jurisdictional public utility telecommunications services are implicated — whether these are price regulated or not — and whether the associated facilities of a regulated public utility may be involved for the adequate, safe and reliable provision of such services, the Commission is statutorily obliged to maintain the appropriate degree of interest and regulatory oversight." Daskalakis v. Verizon Pennsylvania Inc., Docket No. C-2010-2172222, Order entered April 11, 2011, at 8-9, citing 66 Pa. C.S. §§ 102 and 3019(b)(2); *see also* Olubanjo v. Verizon Pennsylvania Inc., Docket No. C-2009-2123326, Order entered March 18, 2011, at 16.

Thus, we do not agree with the decision to dismiss the Complaint in its entirety. Upon review, Complainant has raised a jurisdictional "adequacy of service" issue regarding the migration of its telephone lines to Verizon PA. This issue implicates Verizon's "reasonableness of service" obligation under Section 1501 of the Public Utility Code, 66 Pa. C.S. §1501, and the Commission's regulations that address changes in local telephone service providers (LSPs). These Regulations establish general rules, procedures, and standards governing the migration of customers between LSPs, including porting telephone numbers, transitioning service accounts, and coordinating a customer's service during a migration. 52 Pa. Code §§ 63.201, *et seq.* In short, the purpose of these regulations is to ensure that customers can migrate from one LSP to another LSP without confusion, delay, or interruption in service. 52 Pa. Code § 63.191(a).

In addition, it is unclear how many of the migrated access lines were also configured for DSL service that is capable of handling both ordinary telecommunications and broadband access to retail Internet. Verizon PA's allegation that DSL service is provided by Verizon On-Line, allegedly a separate entity,¹ is

¹ We are administratively aware that Verizon On-Line is an affiliate of Verizon PA. *See also* Affiliated Interest Agreement Verizon Services Corp. et al., Docket No. G-00041080, filed September 2, 2004 (Proprietary). We are also aware that Verizon PA dispatches technicians to

immaterial to the present inquiry on the line migration issue because both the prior carrier Line Systems, Inc. and Verizon PA, as local service providers, are responsible for proper access line migration. Therefore, the migration of Complainant's access lines is an appropriate remand issue.

Also, in its Answer, Verizon alleges that any service interruptions for telephone service experienced by A. Moses during the period in question were due solely to the Complainant's failure to pay for services, resulting in properly noticed and justified service suspensions and termination. According to Verizon PA, repeated notices of non-payment and service suspensions were issued to the Complainant, beginning in June 2009, for non-payment of bills. Thus, another jurisdictional issue raised here is whether Verizon's PA's suspension and/or termination of Complainant's telephone service was lawful and appropriate.

To address the service migration and billing/termination issues, this matter is remanded to the Office of Administrative Law Judge for further proceedings.² Due to the passage of time between the allegations in the Complaint and the date of this Motion and the fact that the Commission does not have authority to award money damages as part of any remand, we direct Complainant to notify the Commission, in writing with a copy to counsel for Verizon Pennsylvania, Inc., as to whether it intends to proceed with the remand proceeding. Such notification is to be filed with the Commission's Secretary within 20 days of the entry date of the Order regarding this Motion. If Complainant elects to proceed, the remand proceeding shall be conducted on an expedited basis, with a procedural schedule to be worked out by the parties and the Presiding Officer. As part of the remand, we would also encourage the parties to pursue mediation before the Commission's mediation unit.

THEREFORE, we move that:

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

deal with technical issues involving Verizon On-Line's services. Daskalakis v. Verizon PA, *supra*, at 8 and n. 8; Olubanjo v. Verizon PA, *supra*, at 16.

² Complainant A. Moses is a corporation that, at least initially, was represented by counsel. We remind A. Moses that corporate complainants must be represented by legal counsel at all stages of Commission proceedings once these proceedings become adversarial upon the filing of an answer. Cars R Us c/o Holman Copeland v. Philadelphia Gas Works, Docket No. C-2008-2033437 (Order entered February 4, 2010).

DATE: October 14, 2011



JOHN F. COLEMAN, JR.
VICE CHAIRMAN



PAMELA A. WITMER
COMMISSIONER