

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Peggy Robles

PUBLIC MEETING: October 28, 2011
2187832-ALJ*

v.

Docket No. C-2010-2187832

Service Electric Telephone Company, LLC

STATEMENT OF COMMISSIONER JAMES H. CAWLEY
CONCURRING IN RESULT ONLY

Before us for final disposition is the Initial Decision Sustaining Preliminary Objections And Dismissing Complaint (ID) of Administrative Law Judge (ALJ) David A. Salapa. I agree with the result of the recommended disposition in this matter. However, I have certain concerns regarding the application of Pennsylvania's 2008 Voice-Over-Internet Protocol Freedom Act, 73 P.S. § 2251.3 *et seq.*, that has been utilized for dismissing this Complaint.

I agree with ALJ Salapa that the Complaint does not implicate "any of the exceptions set forth in 73 P.S. §2251.6," including "the provision and administration of 911 service." ID at 6. I also agree that Complainant receives retail VoIP service from Service Electric Cablevision (SECV - Service Electric Cable Services in the ID), and that this matter involved a technical issue of incoming telephone calls to the Complainant which has been corrected. ID at 2. However, the "Cablevision Digital Phone Service Agreement" (SECV Agreement) that was included with the legal pleadings filed by the Respondent in this proceeding raises certain concerns of a more generic nature.¹

I will primarily focus on selected provisions of the SECV Agreement that relate to public safety which can potentially implicate this Commission's authority under 73 P.S. § 2251.6(1)(i) as well as the authority of other Pennsylvania State Government agencies such as the Pennsylvania Emergency Management Agency. The SECV Agreement specifically states:

14. LIMITATIONS OF 911/E911

- a. The Services include 911/E911 functions that may differ from the 911 or E911 function furnished by other providers. As such, it [*sic*] may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. CUSTOMER ACKNOWLEDGES AND ACCEPTS ANY LIMITATIONS OF 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY PLACE CALLS OVER THE SERVICES. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT SECV.

* * *

- c. The Services use the electrical power in [*sic*] at Customer's property. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in the associated MTA [Multimedia Terminal Adapter] is not installed, fails, or is exhausted after several hours. *Furthermore, calls, including calls to 911/E911,*

¹ Docket No. C-2010-2187832, Service Electric Telephone Company, Supplement to Respondent's Preliminary Objections, Attachment 1, Attachment 1, Service Electric Cablevision, Inc. Digital Phone Service Agreement Effective December 1, 2008 (SECV Agreement).

may not complete if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

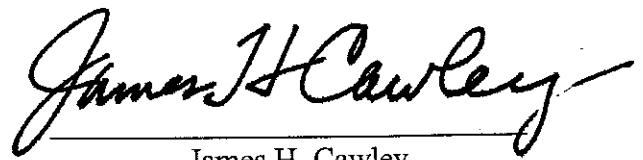
- d. **LIABILITY:** CUSTOMER ACKNOWLEDGES AND AGREES THAT SECV WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICES PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SECV AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.
15. Customer understands and acknowledges that Customer will not be able to use the Services, including 911/E911, under certain circumstances, including but not limited to the following: (a) if SECV's network or facilities are not operating; or (b) if normal electrical power to the MTA is interrupted and the MTA does not have a functioning battery backup. Customer also understands and acknowledges that the performance of the battery backup is not guaranteed.

SECV Agreement, at 6-7 (emphasis in italics added).

Although this is not a litigated issue in this proceeding, I cannot readily discern whether the terms of the SECV Agreement regarding the provision of 911/E911 services and functionalities and the related limitation of liability are fully consistent with the letter and the spirit of Pennsylvania's VoIP Freedom Act. This Commission possesses the appropriate scope of statutory jurisdiction so that end-user consumers of ordinary telecommunications services have access to emergency 911/E911 calling services that enable life-saving assistance from a variety of public safety agencies. The potential failure of one or more 911/E911 calls from one or more SECV retail VoIP end-user customers may test the limits of this Commission's jurisdiction over 911/E911 matters under the VoIP Freedom Act. Perhaps, this issue may become the subject of a future generic inquiry.

For these reasons I shall concur only in the result in the final disposition of the present Complaint.

DATED: October 28, 2011



James H. Cawley
Commissioner