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November 21, 2012

Via First Class Mail

Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

RE: Ken Eernisse vs. Verizon Pennsylvania LLC; Docket No C-2012-02287023
REPLY TO EXCEPTIONS TO INITIAL DECISION

Dear Secretary:

Enclosed for filing with the Commission are 10 copies of Reply to Exceptions of Verizon Pennsylvania LLC , filed November 13, 2012 in response to the October 2, 2012 Initial Decision of Administrative Law Judge Mary D. Long in the above captioned proceeding. As indicated on the attached Certificate of Service, a copy of this Reply to Exceptions has been served on William E. Lehman, counsel for Verizon Pennsylvania LLC.

If you have any questions in with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very Truly Yours

Kenneth R. Eernisse

Enclosures
cc: Honorable Mary D. Long

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KEN EERNISSE,
COMPLAINANT
v.
VERIZON PENNSYLVANIA LLC,
RESPONDENT

DOCKET NO C-2012-2287023

REPLY TO EXCEPTIONS TO INITIAL DECISION

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Dated: November 21, 2012

Introduction

Persuant to 52 Pa. Code §5.535 I would like to respond to the exceptions filed by Verizon Pennsylvania LLC to the Initial Decision ("ID") of Administrative Law Judge Mary D. Long, ("ALJ") issued on October 17, 2012. In particular I would ask the Pennsylvania Public Utility Commission ("Commission") to accept the ID's recommended $23,400 civil penalty in its entirety.

In making its exceptions Verizon deliberately ignores many of the main facts in this case. The exception contains so many contradictory and distorted claims that Verizon's exception should be thrown out in its entirety. As will be shown Verizon relies on half truths and speculation in its attempt to make its case.

I have had many dealings with Verizon over the last 20 years. Their representatives have consistently given the impression that they view the Commission's regulations with contempt, as no more than mere suggestions that don't need to be followed. Verizon's representatives have told me on many occasions that they did not need to follow the regulations that they respond to an outage within 24 hours, claiming it would require additional staffing. Indeed, until the ALJ ruled against them in her ID, Verizon claimed it had done nothing wrong. Now they are like a kid caught with his hand in the cookie jar, sorry only that they were caught and seeking an absolute minimum penalty.

Verizon seems to feel that as a multibillion dollar company it has the right to arbitrarily pick and choose which fines it should pay and how much those fines should be. Perhaps we should apply this philosophy to our entire justice system and allow convicted felons to choose their sentence! The ALJ did not err, her decision is based on the facts presented and the law as it applies to this case. The ID is clear, articulate, and more than fair to Verizon. If Verizon wished for a verdict with a lower penalty it should have presented its evidence and reasons at the hearing.

The cornerstone of Verizon's exception is that they provided reliable service. However when one looks at the history of this case, at the repeated outages, the repeated lack of investigation of the outages, the repeated failure to make necessary repairs, the repeated failure to make repair commitments within the timeframe specified by PUC regulations, and the repeated failure to keep commitments, one easily sees that the ALJ was correct in her findings and penalties.

Page 4 of Verizon's exceptions states they are willing to accept a reasonable penalty. Verizon goes on to claim that due to legal errors and reasonable application of the law that "the penalty *should not exceed* $1,900". (Emphasis added) However, on page 24 of the exceptions Verizon admits that even the minimum penalties they are requesting add up to $2,000. Verizon accuses the ALJ of errors and insistencies - yet Verizon's exception doesn't even agree with itself.

The facts of this case stand on their merit. I have zero experience in law and never attended a trial or hearing before this case. I was forced to take on a huge corporation, defended by a law firm employing 11 attorneys, represented at the hearing by 2 expert witnesses and a highly experienced attorney. I would not have had a chance of winning a favorable decision if Verizon had provided anything better than abysmally poor service. The ID is not based on fancy legal footwork by me, but rather by the evidence and Verizon's clear and repeated violations of the Commission's regulations.

I have no motive or reason to be dishonest. Regardless of the PUC decision I receive no compensation for the countless hours I have spent in a 19-year quest to receive reliable phone service. A $23,400 penalty to a company like Verizon is no more than a pinprick to a giant, and certainly reasonable considering the circumstances of the case. Corporations exist for the purpose of giving a return to their investors. Until it becomes more cost effective for Verizon to maintain its system and hire sufficient personnel than to pay fines they will continue to provide poor quality service.

Exception 1

Verizon's exception 1 (and indeed the basis of exception 2) is based solely on what it claims is an erroneous finding by the ALJ in her ID that there is a history of chronic trouble with the phone service at my residence. This claim is absurd in that it ignores the history of the case. As was mentioned in both the hearing and the pre-hearing documents, I have lived at my current address for 19 years and have had experienced service reliability issues since 1992. In 2004 I filed an informal complaint against Verizon with the PUC. The resolution of the complaint was that Verizon would address the reliable issues and replace or repair equipment as necessary to improve reliability. Verizon completely ignores the fact that it had already promised the Commission that it would make necessary repairs, yet failed to do so.

Verizon's exception is incorrect in stating that "The bedrock of the ID's huge penalty recommendation is an escalation of later penalties based on its conclusion from these 4 service calls..." The ALJ did not err, the ALJ considered all the evidence and testimony presented at the hearing. Escalation of penalties for repeated violations is consistent with the Commission's policies. Verizon claims these outages were an aberration, but since the outages continued, Verizon's exception is proven invalid.

Exception 1.A.1 (October 10, 2009 service outage) states that "a commitment of 10/13 was given to the customer. There is no evidence that the customer did not accept this commitment." This is an attempt to deceive the Commission with what is at best a partial truth. Exception 1 fails to mention is that

Verizon uses an automated trouble reporting process. There is no recourse to achieve an earlier commitment because this is an automated system. Verizon's recording clearly states that the commitment given is the earliest available. The system will allow a commitment date to be refused, but the result is invariably a later commitment date, not an earlier date.

Exception 1.A.1 also states that "the ALJ erroneously relies on the Complainant's lay statement that his service goes out". It is simple common sense that the ALJ is justified in this reliance since I am certainly capable of being able to tell the difference between a working and non-working phone. Verizon goes on to claim that "It is the Complainant's burden to prove that any alleged service trouble is caused by Verizon's facilities". Once again, the ALJ is easily justified in her judgment. No one in his right mind would ever go through the trouble of wading through Verizon's service issue reporting process if there was no problem with the phone. The fact that the phone was once again not properly working just 5 days later is sufficient evidence to any reasonable person that problems existed with the phone lines and that the problems had not been fixed.

Exception 1.A.2 (October 15 2009 service outage) Once again Verizon repeats the claim that there is no evidence that I did not agree with the commitment date. Once again Verizon neglects to mention that there is no choice but to accept this commitment date. While Verizon feels that they should not be penalized since the issue was humming and static instead of a lack of dial tone, the ALJ correctly judged that a phone rendered unusable due to humming and static is just as useless as one without a dial tone.

The ALJ is completely justified in her decision that a higher penalty is appropriate for the October 15 outage since it occurred so soon after the October 9 outage. Verizon did not claim to have done any investigation on Oct 10 other than a checking the service after the phone system had a day to dry out. Since the phone system at this point had a 17 year history of reliability issues -including one informal PUC complaint - the ALJ is completely justified in her expectation of a more thorough investigation.

Exception 1.B.1 (October 28, 2010 service outage) Once again Verizon claims that "The complainant provided no evidence that anything was wrong with Verizon's facilities", and once again they failed to do any type of investigation of the cause of the service interruption. Even the most cursory investigation would have noted that multiple trees had fallen on the phone lines along a main highway. This led to the next call on November 16, 2010 – less than 3 weeks later.

Exception 1.B.1 (November 16, 2010 service outage) This was not a problem of a single tree falling on the line. If read closely the exception is contradictory and mixes the singular word "tree" with the clearing of "trees" plural when quoting the hearing. This is significant and an admission of neglect of

maintenance. This was not an "act of nature" as the exception describes it. There were multiple trees on the phone lines, and these trees had been on the lines for an extended period of time. Had a reasonable investigation be performed for the October 28 outage, the November 16 outage may have been prevented.

The exception claims that the ALJ showed bias stating that "these circumstances do not amount to a sufficient violation of the Commission's regulations to merit a civil penalty." Then exception then claims "There was no violation to determine the sufficiency of!". The ALJ was not showing bias –the reference was to the question of providing reliable service, not Verizon's response time.

When discussing the effect of trees on the phone line the exception claims that "It is not reasonable to credit his lay opinion as the only evidence for a highly technical conclusion and is not supported by the facts". The actual facts are simple common sense and indeed are support by the evidence of repeated outages. I AM technical enough to know the difference between trees that are standing upright and trees that are lying on phone lines. As an engineer I am quite capable of understanding the stresses that would be introduced into the phone lines by the tangential force of the trees. I am capable of knowing the difference between a working phone and non-working phone, and I am also capable of observing the weather and making a correlation between rain and phone outages. That this common sense conclusion was backed by the trained, professional conclusion of Verizon's technicians renders Verizon's exception invalid.

Exception No. 2

Once again Verizon claims that the ALJ erred in imposing substantial penalties. The cornerstone of this exception is that Verizon had supplied reliable service before June of 2011. This argument has been debunked by the number of outages and lack of investigation during the outages in 2009 and 2010, and also by the fact that an informal complaint was filed in 2004. There can be no question that Verizon was not providing reliable service and no question that Verizon was aware of that fact.

Verizon begins their exception by describing and attempting to defend a procedure that makes no logical sense whatsoever. On June 6, 2011 I reported a no dial tone outage to Verizon. Verizon gave their best available commitment date of June 8, 2011. This in itself is in violation of the Commission's regulations of substantial action within 24 hours. Verizon then proceeded to conduct a "scrubber test" on the line on June 6. When this did not disclose the nature of the problem an automated system was to contact me phone and explain that *if I still had a problem I could contact Verizon. Defying all logic* and common sense, Verizon's procedure is to call the non-working phone to deliver this message.

Needless to say, my non-working phone did not receive the message from Verizon. This resulted in my staying at the house on June 8 (the original commitment date) to meet a Verizon technician that was never dispatched. The ALJ was certainly correct in imposing substantial penalties. Not only was there a repetitive history of outages, but also Verizon's procedure is so flawed that it attempts to contact a customer via a phone that has been reported as non-working.

On page 11 of Verizon's exception, Verizon admits to being 4 hours late on an emergency call. Note that this was after refusing to give a 3 hour commitment as required by the Commission. After refusing to make a 3 hour commitment, and then not keeping the commitment they did make, Verizon's defense is pure speculation and should be discounted. Verizon states that "Verizon might have arrived earlier but there is no evidence to support this". Verizon would have time cards and trouble reports completed by the technician, so would indeed have the evidence if they actually did respond sooner. In any case, substantial action as required by the Commission was not taken so the point is irrelevant.

At this point in time the phone had been out of service for 16 days that month. Since the problem had been ongoing so long and had nearly resulted in the death of a child, the ALJ is entirely justified in her decision to apply the maximum penalty.

Exception 2.A Verizon makes the claim that the penalty calculation is internally inconsistent. A phone service outage was reported on June 6. After failing to fix the problem on the June 8 commitment date, phone service was not restored until June 13. Another outage was reported on June 22, this outage continued until June 29. Verizon's exception is asking that they be penalized for only June 6, 8, and 22. It would make no sense to only penalize for the first day of an outage, and to never apply additional penalties regardless how long the outage lasted. The ALJ is simply referring to the date the outage began and is entirely consistent in applying a penalty for each day.

On page 12 Verizon begins a completely irrelevant narrative on whether a dispatch is required. Verizon has never provided any evidence, nor even made any claims, other than June 6, 2011, that they attempted to repair phone service via a means other than dispatching a technician. On June 6, 2011 Verizon supposedly called my non-working phone to notify me to call Verizon if the phone wasn't working.

On page 14 Verizon claims that the ALJ erred and issued excessive per day violation penalties because it was working to replace the DSLAM. However, at the hearing Verizon was unable to produce any evidence or testimony that they were working to replace the DSLAM at this time. The DSLAM was not replaced until several months later on a date that Verizon was either unwilling or unable to disclose -

even when directly questioned during the hearing. This invalidates Verizon's defense and the ALJ's decision is correct. Their belief that the penalties should not begin until June 9 is completely unfounded since they did not follow up on the June 6 outage – other than supposedly leaving a message on a non-working phone.

Exception 2.B Verizon makes its defense on a blatant untruth. The exception claims that "the record suggests that the complainant agreed to the commitment". Following footnote 8, "Verizon's records do not indicate that he disagreed with this commitment time". However, Verizon's records also do not indicate that I did agree with the commitment time. Verizon is making the speculation that since their records do not indicate whether or not I agreed with the commitment time, that I must have agreed with it. During the hearing I stated that I did not agree with this time, however it was the soonest commitment time Verizon was willing to give. Not that it mattered since Verizon did not keep the commitment anyway.

Exception 2.C Verizon claims the ALJ was in error in assessing a penalty for not endeavoring to maintain *its system in such condition to furnish continuous service. Verizon further claims that they were* endeavoring to maintain their equipment. This claim falls flat when one looks at the facts of the case. During the month of June my phone was out of service for 16 days! This is on a phone line has had a chronic history of outages. 16 days of outage in a single month does not display an effort to maintain equipment by any definition of the term. Even then service was only restored because there was a medical emergency. Verizon claims that it did replace the DSLAM months later, but is unable to provide the date that it did so, even when asked directly during the hearing. Verizon goes further to claim that the penalty is not justified because Verizon is not required to provide "perfect service." 16 days of outage in a single month is so far from perfect that it's astounding that Verizon would even make this statement. The ALJ was unquestionably correct in her finding that Verizon was not endeavoring to maintain its system.

Exception 3.1 (January 2, 2011 service outage) The ALJ in her ID found that "a higher civil penalty is in *order" for this service call. The ALJ was correct in her finding since by this point in time there is no* conceivable way that Verizon did not know that there were chronic reliability problems with their system. Verizon attempts to give several excuses for the previous outages, all of which have been debunked previously in this reply to Verizon's exceptions.

On page 18 Verizon claims the $600 penalty for violating 63.57(b) is incorrect. Once again Verizon feels that it is not required to follow the Commission's regulations requiring a response within 24 hours.

Once again Verizon's automated trouble reporting system gave a commitment date that I was unable to reject. Because I was unable to reject the commitment date, Verizon once again speculates that I must have agreed to it. Once again the ALJ is correct in issuing a penalty for the violation.

Exception 3.1 (November 29, 2011 service outage) The familiar pattern is repeated again. Once again Verizon feels that it is not required to follow the Commission's regulations requiring a response within 24 hours. Once again Verizon's automated trouble reporting system gave a commitment date that I was unable to reject. Because I was unable to reject the commitment date, Verizon once again speculates that I must have agreed to it. Once again the ALJ is correct in issuing a penalty for the violation.

The enhanced penalties of $1700 are entirely supported by the facts of the case. This was the **SIXTH** time that I had to report a service outage in a single year. It is inconceivable that Verizon would actually attempt to claim that it was providing reasonable service. Verizon claims that there is no evidence that its response was "cursory" and yet provides no evidence of any type of thorough investigation. If there was an error by the ALJ it was in assessing a penalty that was too low in light of the repetitive nature of service outages.

On page 19 Verizon claims it should not be penalized for violation of 63.24(d) for "failing to maintain its entire system in such condition as to make it possible to furnish continuous service". If six service outage calls in a single year don't meet the definition of 63.24(d), then I'd like to hear Verizon's definition of what does qualify as not maintaining its system! Verizon is clearly in repeated violation of the Commission's regulations and the ID is unquestionably correct in the penalties given.

Exception 4

Verizon claims that the ALJ was in error because Verizon did not intentionally violate the Commission's regulations. I once heard an intentional action defined as "if you know something is going to happen, have the ability to change the outcome, but choose allow it to happen anyway, then it's intentional".

Verizon created a catch-22 trouble reporting system that forces customers to accept repair commitments out of compliance with the Commission's regulations. The system informs customers that this commitment date is the soonest available time. Then Verizon goes on to claim that customers agreed to those dates since they weren't able to object.

Verizon is aware that it has insufficient staffing to respond to outage calls in a manner consistent with the Commissions regulations. It has made a conscious business decision that it is more profitable to pay penalties than to follow the Commission's regulations.

Verizon agreed to make necessary repairs after I filed an informal complaint against them in 2004. Verizon chose not to honor its commitment and chose not to make the necessary repairs.

Verizon was well aware of the problems with the phone lines in this area. This problem has been ongoing since 1992, there was an informal complaint filed against them in 2004, and I reported outage after outage. Verizon chose not to make repairs even though there was no possibility that it could not have been aware of the problems.

The ALJ was correct in finding that fines greater than $500 are warranted in the case. This is not a case of simple negligence as Verizon claims. Verizon was aware of repetitive problems and yet refused to address the issue. Verizon was aware that it was violating the Commission's regulations and yet continued to violate the regulations on virtually every outage call. Knowingly and repeatedly violating the Commission's regulations can be defined as nothing but intentional.

Conclusion

In conclusion I ask the members of the Commission - if this were your house, would you be satisfied with the level of service that I have received? Should it take nearly 20 years of service calls and complaints to achieve reliable phone service? If your child nearly died because you were unable to call for help (after the phone had already been out of service for 15 days that month), would you feel Verizon was serious about making repairs in a timely manner and properly maintaining its equipment?

The ALJ did not err in her assessment of penalties for Verizon's violations of the Commission's regulations. The only error she may have possibly made was in giving insufficient weight to the history of service outages prior to 2009. She could have started with much higher penalties. Verizon violated multiple sections of the Commission's regulations over and over again. The ID is clear on which sections of code were violated and applies appropriate, and certainly not excessive, penalties.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 PA code 1.54 (relating to service by a party)

Service Via First Class Mail:

Honorable Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 Fifth Avenue, Suite 220, Piatt Place
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William E. Lehman
Counsel for Verizon Pennsylvania LLC
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Kenneth R Eernisse

Dated this 21st day of November 2012.

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