

ANDREW J. KATSOCK, III

Attorney at Law

15 Sunrise Drive
Wilkes-Barre, PA 18705

Telephone: (570) 829-5884
Facsimile: (570) 970-3730

January 22, 2014

Via Overnight Delivery

RECEIVED

Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

JAN 22 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: BRIAN D. SLUZEVICH ("Complainant")
VS: FRONTIER COMMUNICATIONS
COMMONWEALTH TELEPHONE COMPANY ("Respondent")
DOCKET NO.: C-2013-2357224

Dear Sir/Madam:

Enclosed herein kindly find an original and two (2) copies of the Exceptions of Frontier Communications Commonwealth Telephone Company, along with a Certificate of Service attached thereto, for filing in the above-captioned matter. Please file the originals of record and return the time-stamped copies to my office in the enclosed self-addressed stamped envelope provided for your convenience. Copies of said Exceptions have been served as indicated on the enclosed Certificate of Service.

If you should have any questions, please do not hesitate to call me. Your anticipated cooperation in this matter is appreciated.

Very truly yours,



ANDREW J. KATSOCK, III

AJK/cml

Enclosures

cc: Administrative Law Judge Elizabeth H. Barnes
Brian D. Sluzevich
Frontier Communications Commonwealth Telephone Company
Attn: Joseph J. Starsick, Jr.
Associate General Counsel

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

Brian D. Sluzevich

vs.

Frontier Communications Commonwealth
Telephone Company

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C-2013-2357224

JAN 22 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXCEPTIONS
OF FRONTIER COMMUNICATIONS COMMONWEALTH TELEPHONE COMPANY

Andrew J. Katsock, III
Attorney for Respondent
PA Attorney I.D. # 59011
E-mail: ajkesq@epix.net

15 Sunrise Drive
Wilkes-Barre, PA 18705
(570) 829-5884
(570) 970-3730 (fax)

Dated: January 22, 2014

I. INTRODUCTION

Frontier Communications Commonwealth Telephone Company (“Frontier or Respondent”) submits these Exceptions in response to the Initial Decision of Administrative Law Judge Elizabeth H. Barnes (“ALJ”) issued on November 15, 2013, in the above-captioned matter.

The Complainant, Brian D. Sluzevich, filed a formal Complaint with the Pennsylvania Public Utility Commission against Frontier on March 28, 2013. The Complainant requested that the Commission direct Frontier to “fix” his phone lines and credit his account an unspecified amount for interruptive “static” on his voice telephone calls and for slow internet DSL service.¹

On September 10, 2013, a hearing was held at which two (2) witnesses testified, the Complainant and Russell Johnson, Frontier’s General Manager “for the entire business operation of the northern tier”, which includes the Complainant’s residence in Unityville. (Tr. p. 21, l. 8-20).

After the hearing on November 15, 2013, the ALJ issued an Initial Decision (“ID”) sustaining the complaint of Brian D. Sluzevich and, *inter alia*, making certain Findings of Fact and Conclusions of Law.

II. SUMMARY OF EXCEPTIONS

While the Complainant describes static on his line, Frontier, despite a total of thirty (30) visits to his residence, has never been able to confirm this problem. On each visit, testing has established that quality is completely within industry standards. There has never been any trouble found. Chasing this phantom, Frontier has undertaken numerous changes to its

¹ Any references to Internet service are disregarded herein as not jurisdiction to the Commission. ID at 5-6.

facilities servicing the customer; including switching out the loop, replacing the NID and other efforts for which it has never charged the customer. In addition, Frontier has provided numerous courtesy credits on the customer's bill.

If there is indeed static as Mr. Sluzevich complains, then it likely is caused by the facilities on his side of the network (terminal equipment or inside wire). Mr. Sluzevich has connected a facsimile machine and a voice phone to his side of the demarcation point, and the line is used as well for Internet access (DSL). Frontier repeatedly advised Mr. Sluzevich that the fax machine is likely the cause of the problem and asked that he investigate this as the cause of static, including disconnection. This suggestion was disregarded by the Complainant. Every time Frontier personnel performed a site visit the fax machine was still connected.

Frontier has diligently worked with the customer, but the problem is not on its network. Nevertheless, the Initial Decision determines to hold Frontier completely accountable for the fact that the static issue continued. The line of thought seems to be that if the static trouble continued, then it must be Frontier's fault. The customer is completely absolved from any responsibility to test his own inside wire or ensure that his equipment is compatible and not the cause of the issue. This inappropriately creates a standard of strict liability that would require telephone companies to fix any and all problems including those caused by facilities that it does not own, has not installed and over which it has no control.

Under these circumstances:

- ...The Administrative Law Judge erred in finding that the Complainant's voice phone line suffers significantly from static. Initial Decision, Findings of Fact, Nos. 6 and 7.

- ...The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent has rendered inadequate service in violation of 66 Pa.C.S. § 1501. Initial Decision, Conclusion of Law No. 11.
- ...The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent is responsible to determine if the Complainant is due a further refund for “poor service” during the time period of March, 2011 through March, 2013, when it was the Complainant’s burden of proof to prove any damages and credits to which he might be entitled. Initial Decision, Conclusion of Law No. 12.
- ...The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent should pay a civil penalty of \$1,000.00 after entry of a final order in this matter. Initial Decision, Conclusion of Law No. 13.

III. EXCEPTIONS

Exception No. 1 - The Administrative Law Judge erred in finding that the Complainant’s voice phone line suffers significantly from static. Initial Decision, Findings of Fact, Nos. 6 and 7.

The Complainant testified of static on his voice phone line every other day for over two (2) years. Mr. Sluzevich also testified that he had experienced clicking sounds on his phone line that “just started within the past week or two” of the September 10, 2013 hearing. (Tr. p. 11, l. 24-25; p. 12, l. 1-2).

Frontier presented the result of a test and expert investigation establishing that no static at all was detected by Frontier in any of its many visits and tests. (Tr. p. 23, l. 2-7). Frontier also established, through a second test, that the Complainant’s neighbor was unaffected by the

problems of which Mr. Sluzevich complained when using the exact same line and facilities. (Tr. p. 23, l. 9, 20-23).

Although Frontier cannot find any problem of static on Mr. Sluzevich's telephone line, it is also clear that Mr. Sluzevich's particular use of the single telephone voice line, combined with a fax machine, in the unique situs of his trailer directly and proximately causes and/or contributes to the problems he claims he is having.

Mr. Johnson testified that, since March, 2011, when the Complaints began, Frontier has made thirty (30) service calls to the Complainant's home; seven (7) in 2011, thirteen in 2012 and ten (10) different times up to the hearing date in 2013. (Tr. p. 22, l. 21-25; p. 23, l. 1). Mr. Johnson testified that "We've had five (5) different technicians out to see him and investigate this problem. We've had our Tech Support Group and our Engineering Group involved in trying to help us resolve this, and we are using industry standard tests that we use on all our subscribers to try and isolate these problems." (Tr. p. 23, l. 2-7).

Mr. Johnson offered that : "[w]e even took Mr. Sluzevich's line and swapped it with his neighbor[']s line to see if the neighbor was having the complaints, and the neighbor never called in a complaint on the same facilities that Mr. Sluzevich was using." (Tr. p. 23, l. 9, 20-23). Mr. Johnson verified the fact that Frontier has also issued \$863.00 in monetary credits to Mr. Sluzevich's account; and that the Complainant was never charged for any service calls or repairs. (Tr. p. 23, l. 9, 24-25; p. 24, l. 1-10).

Assuming, *arguendo*, that the Complainant was accurate in testifying to the presence of intermittent static, Frontier believes the evidence clearly establishes that any interruptive static (and clicking sounds) on the Complainant's voice telephone line are caused by the Complainant's installation of a telefax machine on the same line.

According to Russell Johnson, the Complainant's addition of a fax machine on the same telephone line into his trailer as used by his telephone likely caused a "loop", which is a problem unique to the Complainant.

As explained by General Manager Johnson:

"In doing our test with the fax machine plugged in, it appeared to be what we call bridge trapped. It was appearing to the line—it was impacting the electrical characteristics of the line. It was actually adding another 12,000 to that loop, which would certainly put that loop beyond the serviceable line of that internet service.

The technician had asked him to unplug that line, leave it unplugged—and, as Mr. Sluzevich indicated, Sheryl Hite was there—and then approximately a week later Mr. Sluzevich called Sheryl and said that he didn't feel that it had made a difference, and that he was *plugging the fax machine back in.*" (Tr. p. 25, l. 9-22).

Exception No. 2 - The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent has rendered inadequate service in violation of 66 Pa.C.S. § 1501. Initial Decision, Conclusion of Law No. 11.

Frontier suggests that, by failing to address the potential causes of the reported troubles on his side of the network, the Complainant cannot logically demonstrate that Frontier was the cause of the troubles. And, if he did present enough evidence to support a *prima facie* case of static; when the evidence presented by both parties is viewed together, it is clear that the Commission should conclude that Mr. Sluzevich did not meet the required burden of proof.

The Administrative Law Judge, in exercising the scope of review, erred in not factoring in Complainant's addition of a fax machine and further erred by failing to fully consider Frontier's testimony that no service issues could be found on the company's side of the network.

The network interface device ("NID") is located on the outside of the trailer in which Complainant resides.

As a result of deregulation of the telephone system, there was a need to delineate the portion of the network which was owned by the customer and the portion owned by the telephone company. A NID is essentially a specialized set of wiring terminals. It takes the form of a small, gray plastic weather-proof box, mounted on the outside of the building. The NID is the demarcation point between the customer and the telephone company. Notably, here, Frontier replaced the NID as part of its efforts to ensure that the customer's trouble is not caused by this device. (Tr. p. 23, l. 2-19).

The FCC established a demarcation point to mark the end of the carrier network and the beginning of customer-controlled wiring.² Under Section 68.213, the demarcation point is "located on the subscriber's side of the telephone company's protector, or the equivalent thereof ...".

At that point responsibility for service quality shifts to the customer. The FCC's regulations allow the customer to connect terminal equipment³ to the network;⁴ provided, however, that the telephone company is not liable for service failures associated with either terminal equipment⁵ or the inside wiring.⁶

² In the mid-1980s, all telephone companies were ordered to transfer ownership and maintenance of inside wiring and phones (all connected equipment, including fax machines) to customers. This allows non-telephone company sources to connect wire and equipment to the telephone network (i.e., adding jacks, etc.).

³ 47 CFR § 68.3 ("Terminal equipment. As used in this part, communications equipment located on customer premises at the end of a communications link, used to permit the stations involved to accomplish the provision of telecommunications or information services.").

⁴ 47 CFR § 68.100 ("General. In accordance with the rules and regulations in this part, terminal equipment may be directly connected to the public switched telephone network, including private line services provided over wireline facilities that are owned by providers of wireline telecommunications.").

⁵ 47 CFR § 68.3 ("Responsible party. The party or parties responsible for the compliance of terminal equipment or protective circuitry intended for connection directly to the public switched telephone network with the applicable rules and regulations in this part and with the technical criteria published by the Administrative Council for Terminal Attachments.") and 47 CFR § 68.7 ("Technical criteria for terminal equipment. (a) Terminal equipment shall not cause harm, as defined in § 68.3, to the public switched telephone network.")

⁶ 47 CFR § 68.213(b) ("The provider of wireline telecommunications is not responsible ... for installation and maintenance of wiring on the subscriber's side of the demarcation point, including any wire or jacks that may have been installed by the carrier.").

Having presented evidence that Complainant's service issues were caused by the equipment on the Complainant's side of the demarcation point, Frontier's proof shifted the burden of persuasion back to the Complainant, who never proffered a response. Thus, it was a clear err of law to find that Mr. Sluzevich had maintained the burden to prove his complaint.

Exception No. 3 - The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent is responsible to determine if the Complainant is due a further refund for "poor service" during the time period of March, 2011 through March, 2013, when it was the Complainant's burden of proof to prove any damages and credits to which he might be entitled. Initial Decision, Conclusion of Law No. 12.

If Frontier were to accept the Administrative Law Judge's Findings of Facts and Conclusions of Law, as applied above, this principle would enable a utility customer complaining of overbilling or bad service to prevail merely by presenting enough evidence to support a prima facie case. To then shift the burden of calculating the Complainant's damages to Frontier, and require Frontier to determine what amount of refund is due to the Complainant, is improper, especially when Frontier's tests and testimony indicate that no problem exists which would entitle the Complainant to any refund. The Administrative Law Judge's conclusion ignores the fact that there is a clear distinction between the weight of evidence required to support a prima facie case and the weight necessary to meet a Complainant's burden of proof. Frontier cannot disregard this distinction and takes exception thereto.

Exception No. 4 - The Administrative Law Judge erred in concluding, as a matter of law, that the Respondent should pay a civil penalty of \$1,000.00 after entry of a final order in this matter. Initial Decision, Conclusion of Law No. 13.

The ALJ proposes that Frontier be fined in the amount of \$1,000. In doing so, the Initial Decision recognizes that the Commission has published specific factors and standards to be used in evaluating litigated and settled cases involving violations of the Public Utility Code (52 Pa. Code § 69.1201).

Frontier believes that the Initial Decision misapplies these criteria to the facts of record and, as a result, ends up fining Frontier simply because it could find no troubles on its side of the network. Such an action is tantamount to making the telephone company responsible for the customer's inside wire and premise equipment; facilities which it does not own and over which it has no control.⁷ Further, the fines accrue despite the clear uncontroverted evidence that Frontier consistently bent over backwards to find the cause of the troubles reported by the customer.

The factors and standards set forth in the regulations as addressed by the ALJ are as follows:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

Here, the ALJ found “no evidence that Frontier’s conduct constitutes willful fraud or misrepresentation. The evidence indicates that Frontier was operating in the normal course of business. Frontier attempted to mitigate harm...” (ID at 9). Nevertheless, a fine is necessary, because “these repairs were not a permanent fix to the Complainant’s service interruptions and violated the Commission’s Regulations with respect to service.”

⁷ 47 C.F.R. § 68.213 and *Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420 (1968).

Frontier does not believe that an inability to find a trouble, where such may clearly be on the customer's side of the network, is grounds for a fine. The record here clearly demonstrates Frontier's many consistent attempts to fix the problem.

Russell Johnson, General Manager for Frontier with service responsibility for the Complainant's residence for the last six (6) years testified that he was familiar with the Complainant's account and his complaints. (Tr. p. 21, l. 8-25; p. 22, l. 1-8).

On cross-examination, Mr. Sluzevich agreed that Frontier personnel had been to his home, responding to his service calls thirty (30) different times in the years 2011, 2012 and 2013. (Tr. p. 16, l. 3-23). The Complainant further admitted that Frontier had issued nine (9) different credits on his telephone bill, totaling \$863.00 in the years 2012 and 2013. (Tr. p. 16, l. 24-25; p. 17, l. 1-12).

On the question of the whether Frontier violated the Commission's service quality regulations, the Initial Decision cites 52 Pa. Code §63.63(a).⁸ This is incorrect for several reasons. First, the ALJ relies upon the "clicking problem" which was only reported to have commenced two (2) weeks before the hearing was held. Recognizing Frontier's numerous attempts to rectify the static issue, the ALD dismisses these because there was no trouble found on the telephone company's side of the network.⁹ Failure to find a problem where there has been diligent attempts to do so is not sanctionable. The fact that Frontier and the Complainant agree that Frontier has been out to Mr. Sluzevich's home over thirty (30) times on service calls,

⁸ ID at 6 citing 52 Pa.Code § 63.63(a) ("A public utility shall furnish, operate, and maintain facilities adequate to provide acceptable transmission of communications. Transmission shall be at adequate volume levels and free of excessive distortion, noise, and cross talk.").

⁹ ID at 6 ("I am persuaded by Complainant's testimony that these repair attempts were only temporary fixes and that more could have been done to remedy the situation.").

attempting to satisfy the customer and issuing him over \$850.00 in credits towards his bill, is ignored by the ALJ in error in imposing the penalty against Frontier.

- (2) *Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.*

Frontier agrees with the ALJ's conclusion that "the resulting consequences of the conduct were not serious ..." ¹⁰

- (3) *Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.*

Although concluding that "there is nothing in the record to show Frontier left trouble tickets open for an excessive time period[.]" the ALJ found that "the fixes to Complainant's service just did not last very long." ¹¹ Again, the failure to find a remedy despite diligent efforts to cure the trouble is no grounds whatsoever to impose a fine.

¹⁰ ID at 9.

¹¹ ID at 9.

- (4) *Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.*

The Initial Decision finds this test proved, again, because the Complainant's service problems continue.¹²

- (5) *The number of customers affected and the duration of the violation.*

The ALJ does not find that any other customers were affected.¹³

- (6) *The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.*

Frontier agrees with the ALJ that “[t]here was no evidence presented at hearing to suggest this is more than an isolated incident.”¹⁴

- (7) *Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.*

Frontier also agrees with the ALJ that this criterion is moot as there was no “Commission investigation.”¹⁵

¹² ID at 10 (“Based on the amount of time it is taking Frontier to remedy the problem, combined with the fact that the repairs were temporary fixes, I believe this factor warrants a higher civil penalty.”).

¹³ ID at 10; See also analysis of Factor 6.

¹⁴ ID at 10.

¹⁵ ID at 10.

(8) *The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.*

The ALJ found that a \$1,000 penalty should be imposed.¹⁶ The ALJ erred in failing to specify the reasons for a \$500 penalty for violating 52 Pa.Code § 63.63(a) and a separate \$500 for penalty for violating 66 Pa.C.S. § 1501 “over the past two years.”). The ALJ further erred in not providing reasoning for dividing the penalties at these time frames.

(9) *Past Commission decisions in similar situations.*

The ALJ cites to the \$1,250 fine in *Wolfe*¹⁷ as precedent for the proposed fine here. However, the facts in *Wolfe* are inapposite. There, four (no dial tone) outages were experienced in less than eighteen months and, on two of those occasions, the telephone comp[any failed to dispatch a service technician within twenty-four hours of receiving the Complainant’s call as required under Commission regulations. Moreover, the problems found in that case were caused by power surges on the telephone company’s network, which it finally remedied.¹⁸

Here, the facts are nowhere near as serious or in need of penalty. Frontier has missed no service metric. Indeed, Frontier has repeatedly (and timely) investigated and attempted to repair the trouble. No service outage occurred here. Moreover, the evidence of record points to the trouble as being on the customer’s side of the network.

¹⁶ ID at 10 (“The penalty may be broken down into \$500 for violations from March, 2011 through March, 2012 and \$500 for violations from March, 2012 through March, 2013. Thus, the penalty consists of: (1) \$500 for violating 52 Pa.Code § 63.63(a); and (2) \$500 for violating 66 Pa.C.S. § 1501 over the past two years.”).

¹⁷ *Larry L. Wolfe v. Verizon North LLP*, Docket No. C-2011-2266224 (Order entered December 20, 2012) (“*Wolfe*”).

¹⁸ *Wolfe* at 9.

(10) Other relevant factors.


On the final test, the ALJ finally recognizes a portion of the many remedies attempted by Frontier; specifically the “efforts to make some repairs including replacing a NID and replacing wiring on the house.”¹⁹

Frontier believes that there is no reason to impose a sanction for failure to remedy a trouble report of static where none could be found despite numerous testing and repairs. A fine serves no purpose. The Initial Decision finds no breach of rules or industry standards by Frontier. Frontier’s case concedes that it has not been able to solve the trouble, but this is not a basis for imposing liability and sanctions upon it, particularly where the evidence points to the customer’s equipment. The line serving the Complainant works fine when used by a neighbor. (Tr. p. 23, l. 9, 20-23).

IV. CONCLUSION

For the reasons stated herein, Frontier Communications Commonwealth Telephone Company respectfully requests that the Pennsylvania Public Utility Commission modify the Initial Decision of the presiding Administrative Law Judge Elizabeth H. Barnes, by granting these Exceptions.

Respectfully submitted,



ANDREW J. KATSOCK, III, ESQUIRE
Attorney for Respondent
15 Sunrise Drive
Wilkes-Barre, PA 18705
(570) 829-5884

Dated: January 22, 2014

¹⁹ ID at 11.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brian D. Sluzevich :
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 vs. :
 : C-2013-2357224
 Frontier Communications Commonwealth :
 Telephone Company :
 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing Exceptions dated January 22, 2014, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

Dated this 22nd day of January, 2014.

Honorable Elizabeth H. Barnes
Administrative Law Judge
P.O. Box 3265
Harrisburg, PA 17105-3265

RECEIVED

JAN 22 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Brian D. Sluzevich
55 Cripple Hollow Lane
Unityville, PA 17774

By: 

Andrew J. Katsöck, III, Esquire
PA Attorney I.D. #59011
Attorney for Respondent
Frontier Communications Commonwealth Telephone Company
15 Sunrise Drive
Wilkes-Barre, PA 18705
Telephone: (570) 829-5884
Facsimile: (570) 970-3730

