

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Charles Zimmerman

v.

Verizon Pennsylvania Inc.

C-20067044

INTERIM ORDER REVISING
BRIEFING SCHEDULE

DOCUMENT
FOLDER

The briefing schedule established for this case by Administrative Law Judge (ALJ) Melillo, in her Order Establishing a Briefing Schedule issued March 26, 2007, provided for the filing of Main Briefs no later than April 9, 2007, and for the filing of Reply Briefs no later than April 19, 2007. On April 3, 2007, Charles Zimmerman, the Complainant in this proceeding, requested an extension of time, until April 23, 2007, for the filing of his Main Brief. I informed counsel for Verizon of the requested extension, and requested to be advised whether Verizon had any objection to the requested extension, noting that this would also extend the time for the filing of Reply Briefs. Verizon has no objection to the requested extension of time.

THEREFORE,

IT IS ORDERED:

DOCKETED
APR 11 2007

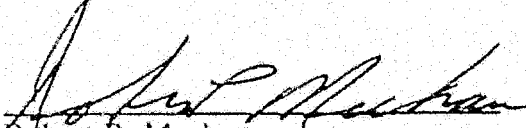
1. That the request of Charles Zimmerman for an extension of time for the filing of Main Briefs in this case is granted, and the briefing schedule established in Paragraph 1 of ALJ Melillo's Order of March 26, 2007, is revised.

2. That Main Briefs must be received by me, each party, and the Secretary of the Commission ("in-hand" receipt) no later than Monday, April 23, 2007.

3. That Reply Briefs, if any, must be received by me, each party, and the Secretary of the Commission ("in-hand" receipt) no later than Thursday, May 3, 2007.

4. That a Reply Brief will not be accepted from any party who or which has not first filed a Main Brief in this case.

5. That the parties shall comply with the remaining provisions of Paragraphs 2-5 of ALJ Melillo's Order of March 26, 2007.


Robert P. Meehan
Administrative Law Judge

Date: April 4, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Charles Zimmerman

v.

Verizon Pennsylvania Inc.

:
:
:
:
:

C-20067044

BRIEF OF
Charles Zimmerman

DOCUMENT
FOLDER

DOCKETED
APR 23 2007

Charles Zimmerman

3683 Calumet Street
Philadelphia Pennsylvania 19129
Phone: (215) 438-3681

Date: April 16, 2007

RECEIVED
APR 18 2007
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

57

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. SUMMARY OF ARGUMENTS.....2

III. ARGUMENTS.....3

 A. Vines grew up the telephone pole and into the box where they interfered with
 phone line connections.....3

 B. Untimely repair of phone outage from 10\20\2006 through 10\23\2006, and phone
 line interference from 01\02\07 through 01\03\07.....4

 C. Other miscellaneous phone service problems.....5

IV. CONCLUSION.....7

I. INTRODUCTION

I am submitting this brief in hopes of ending a long history of unreliable phone service due to neglect of maintaining phone lines and related components, and also unnecessary delays in making adequate repairs which have resulted in extended, and, or repeated outages of my phone service. This history of problems dates back much farther than the three years.

This is the third time I've had to file a complaint with the (PUC) to get proper repairs to my phone service. Hopefully your judgement on this case can convince Verizon Pa to improve their service to an acceptable level.

II. SUMMARY OF ARGUMENTS

As you read through the transcript and the exhibits you'll see numerous outages, and or phone line problems

Also take notice of the timing of necessary repairs occurs after I've filed complaints to the (PUC).

I've grouped my arguments into three parts:

- A. Vines grew up the telephone pole and into the box where they interfered with phone line connections
- B. A phone outage from 10\20\2006 through 10\23\2006, and phone line interference from 01\02\07 through 01\03\07
- C. Miscellaneous phone service problems

III. ARGUMENTS

A. Vines grew up the telephone pole and into the box where they interfered with phone line connections

See page two of Complainant Exhibit No.1 08\04\2003 dial tone was lost. It is noted that vines grew up the telephone into the electrical box. Please note that this was not the first time that these vines had caused an interruption, and/or interference of phone service. Now see Verizon Pa Exhibit No.1 which indicates a service was dispatched on 08\04\2003 through 08\06\2003. See Transcript (page 45 line 23 through page 46 line 7).

The vines that grew up the telephone pole into the electrical box were not cut down or removed from the electrical box during this service call.

Now back to page two of Complainant Exhibit No.1 01\28\04, (a little less five months later) and read: (no dial tone) vine grew up telephone pole into electrical box.

Now see Verizon Pa Exhibit No.2 page 1 acknowledges these vines, "AR EZ BOX ON POLE VINES GOING THR" Also on page two of Verizon Pa Exhibit No.2 acknowledges these vines, "NAR EZ BOX ON POLE VINES GOING THR." See transcript (page 24 lines 21 through 24), (page 47 lines 13 through 25), and (page 59 lines 10 through 25).

Once again the vines that grew up the telephone pole into the electrical box were still not cut down or removed from the electrical box during this service call. Again back to page two of Complainant Exhibit No.1 02\03\2004 through 02\04\2004 No dial tone although the vines are not indicated here, they were still present See Verizon Pa Exhibit No.3 page 1 for evidence of this "VINES GREW INT NID, TERRIB" and "NAR R, VINES GREW INTO NID NETCTRPA".

It was at this time that I filed my second complaint to the (PUC) about this problem.

(PUC) Case # 1582859 as indicated on page two of Complainant Exhibit No.1.

Finally Verizon abandoned the telephone pole that was overcome with vines behind my property line and relocated my phone line to come in from the front of my property they also installed an NIB in my breeze way. See transcript (page 23 lines 17 through 25), (page 49 lines 1 through 25), (page 75 line 1 through page 76 line 2), (page 76 line 16 through page 77 line 15), (page 84 line 24 through page 85 line 11), also note incorrect testimony by George Dutton on page 62 of transcript lines, 10 through 12, refer to page 79 lines 7 through 25, especially line 22 on page 79 of transcript. Mr. Dutton started in 2004 so he can't really testify prior to 2004, other than reading of Verizon exhibits. Other testimony referring to problems caused by these vines are on (page 24 lines 2 through 20), (pages 25 line 1 through page 27 line 3), (pages 60 through 62), (pages 63 line 1 through 64 line 13), (page 74 line 3 through 25), and (pages 80 line 16 through 82 line 18).

B. Untimely repair of phone outage from 10\20\2006 through 10\23\2006, and phone line interference from 01\02\07 through 01\03\07

Refer Complainant Exhibit No.1 page 1, no dial tone from **10\20\06 through 10\23\06** (four days with no phone service) Refer now to Verizon PA Exhibit No.7 page 1. Complaint reported 10\21\2006 12:02PM. Offered commitment of repair 10\21\2006 9:00PM, Now Refer to page 2 of Verizon PA Exhibit No.7 Restore Date\Time 10\23\2006 3:28PM. Review the transcripts and you will find testimony that a phone cable that serves my house was damaged on 10/20/2006. You also will find that Verizon worked on repairing that line Friday October 20th, Saturday October 21st, And Monday October 23rd.

But nowhere in the transcripts or any of the exhibits will you find any testimony or evidence of Verizon working to restore service to me on Sunday October 22nd.

Refer to transcript (pages 65 line 15 through page 70 line 25), and (page 83 lines 1 through 14)

Note that this question of ALJ K. F. Melillo was never really answered refer to (pages 72 lines 23 through page 73 line 3), and (page 73 lines 12 through 16) How many customers were affected when the cable was damaged. Not after Verizon had made some repairs.

Other transcript testimonies referring to this outage are as follows;

(pages 29 lines 16 through page 31 line 16), (pages 33 lines 1 through page 36 line 13),

(page 54 lines 8 through 19), page 55 lines 7 through 15), and (page 71 lines 14 through 18)

After this outage I filed this complaint. My third complaint to the (PUC) about Verizon's poor service and unreliability.

Ten weeks and one day later after that outage, my phone line has trouble again.

from 01\02\2007 to 01\03\2007 Refer to Verizon PA Exhibit No.8 page 1.

Complaint reported 01\02\2007 8:49PM, Trouble type: TRAN/TRANSMISSION-NOISE.

Refer to Verizon PA Exhibit No.8 page two, Restore date/time: 01\03\2007 6:00PM

C. Other miscellaneous phone service problems

Refer to Verizon PA Exhibit No.4. After Verizon relocated my phone service to the front of my house on 02/04/2004 about four months on 06/14/2004 my phone service line was ripped down because the line was hanging too low. To review testimony from the transcripts on this incident see (pages 50 lines 23 through 51 line 7), (page 51 lines 12 through 24)

Refer to Complainant Exhibit No.1 page 2 to see on 05\13\2005 to 05\15\2005

I had no dial tone, whether was nice. Now refer to Verizon PA Exhibit No.5 page 1 and find;

Reported Date/Time 05/13/2005 8:55PM, Trouble Type: no dial tone, Offered commitment
05/16/2005 5:00PM, Verizon PA Exhibit No.5 page 2 Restore date/time: 05/15/2005 9:30AM.

07/01/2005 refer to Complainant Exhibit No.1 page 2 once again my phone
service line was ripped down for the second time because it was hanging too low.

Notice that this exhibit show that this incident was reported at 5:55PM on 07/01/2005.

Now refer to Verizon PA Exhibit No. 6 and find; Reported Date/Time:07/01/2005 5:56PM,
Trouble type: Transmission noise, Restore Time: 07/03/2005 6:05PM. As see there different
stories as to what the problem was. None the less there was a problem with my phone line again.

To review testimony from the transcripts on the 07/01/2005 incident see
(page 52 lines 8 through 25).

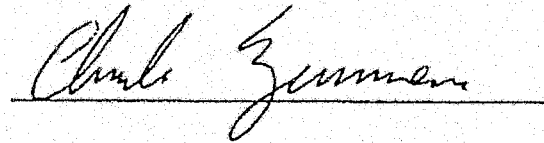
Additional testimony from the transcripts on these three miscellaneous incidents are on
(pages 83 lines 15 through page 84 line 10).

IV. CONCLUSION

As you have read in section "A" of my arguments on February 4th 2004 my phone line was relocated due to over growth of vines. This took three years and five months and two complaints to the Public Utility Commission before Verizon finally relocated my phone line to a place where they could access the utility pole to maintain it. I'm only permitted to show evidence three years prior to my third complaint to the (PUC) which I mailed on October 26th 2006. Eight phone service problems have been documented in three years and four months from August 4th 2003 to January 3rd 2007. Although that is an improvement of my phone service prior to August 4th 2003 it is still far from satisfactory.

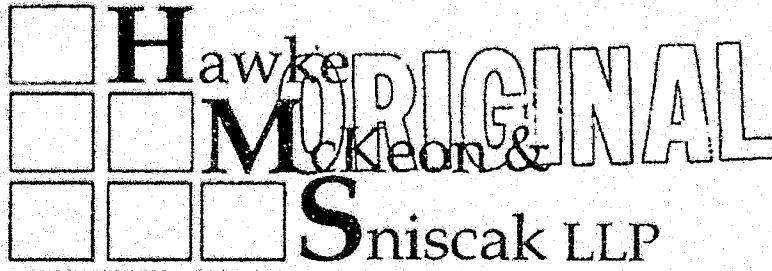
Please find that Verizon has neglected to properly maintain my phone line and related components, and too often they have failed to repair or make corrections to problems in a adequate and timely manner

Respectfully submitted,



Charles Zimmerman

3683 Calumet Street
Philadelphia PA 19129
Phone#:(215) 438-3681



William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

ATTORNEYS AT LAW

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

April 20, 2007

VIA HAND DELIVERY

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

DOCUMENT
FOLDER

RE: Charles Zimmerman v. Verizon Pennsylvania Inc.; Docket No. C-20067044;
MAIN BRIEF OF VERIZON PENNSYLVANIA INC.

Dear Secretary McNulty:

Enclosed with this letter are an original and nine (9) copies of the Main Brief of Verizon Pennsylvania Inc. in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me with the above-listed number with any questions you may have.

Sincerely,

Steven K. Haas
Counsel to Verizon Pennsylvania Inc.

SKH/kml
Enclosures

cc: Honorable Robert P. Meehan
Charles Zimmerman

BTL

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

62

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2007 APR 20 PM 4:21
SECRETARY'S BUREAU

ORIGINAL

CHARLES ZIMMERMAN,

Complainant

v.

VERIZON PENNSYLVANIA INC.

Respondent

Docket No. C-20067044

DOCUMENT
FOLDER

DOCKETED
APR 23 2007

MAIN BRIEF OF
VERIZON PENNSYLVANIA INC.

Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
(717) 236-1300
skhuas@hmslegal.com

Counsel to Verizon Pennsylvania Inc.

DATED: April 20, 2007

TABLE OF CONTENTS

PROCEDURAL HISTORY 1
SUMMARY OF ARGUMENT 2
ARGUMENT 4
CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Morrissey v. Pa. Dept. of Highways, 424 Pa. 87, 225 A.2d 895 (1967)..... 5

Moser v. PECO Energy Co., 2003 WL 22860199 (Pa. PUC) 5

Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980) 4

Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950) 4

Trautman v. Verizon Pennsylvania, Inc., Docket No. C-20065809 (Initial Decision dated April 21, 2006; Final Order entered June 2, 2006) 5

Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) 4

Statutes

52 Pa. Code §63.24 5, 12

66 Pa. C.S §1501..... 5

66 Pa. C.S. §332(a) 4

66 Pa. C.S.A §3314(a) 1

PROCEDURAL HISTORY

On October 6, 2006, the Complainant in this proceeding, Charles Zimmerman ("Complainant" or "Mr. Zimmerman"), filed a Formal Complaint against Verizon Pennsylvania Inc. ("Verizon PA") with the Pennsylvania Public Utility Commission ("Commission"). In his complaint, Mr. Zimmerman alleged that he has experienced chronic service problems and that Verizon PA often takes too long to respond to his service complaints. By way of relief, Mr. Zimmerman requests reliable phone service and faster response times.

Verizon PA filed an Answer to Mr. Zimmerman's complaint on November 27, 2006. In its Answer, Verizon PA acknowledged it received a number of contacts from the Complainant over the past several years about service problems. Verizon PA averred that it responded to each complaint and either made necessary repairs or found no problems with its facilities. Verizon PA further averred that, on two occasions when the Complainant called in with service complaints, it found that outside companies had damaged its facilities in the Complainant's area, which necessitated repairs. Verizon PA also noted that, pursuant to 66 Pa. C.S.A §3314(a), the Complainant may not raise service problems that occurred more than three years prior to the date the complaint was filed as issues in this proceeding.

By Interim Order Setting Settlement Conference dated November 30, 2006, the Commission directed the Parties to discuss the complaint and attempt to resolve the matter. The Parties were unable to settle the case.

By Notice dated January 23, 2007, a telephonic hearing was scheduled for Thursday, March 15, 2007, before Administrative Law Judge Kandace F. Melillo ("ALJ Melillo"). This hearing was held as scheduled. Both Parties appeared and presented evidence in support of their

respective positions. The record in this proceeding consists of a 91 page transcript and 9 exhibits (Complainant Exhibit No. 1, and Verizon PA Exhibit Nos. 1-8).

SUMMARY OF ARGUMENT

Complainant Exhibit No. 1, which was admitted into the record during the telephonic hearing, includes the list of dates on which the Complainant contacted Verizon PA about service problems. A review of this exhibit reveals that the Complainant contacted Verizon PA seven times since the beginning of 2003, during which he complained about various service problems. The dates of these contacts are: August 4, 2003, January 28, 2004, February 3, 2004, May 13, 2004, July 1, 2005, October 21, 2006 and January 2, 2007. These complaints involved conditions of either noise on his line or no dial tone. Mr. Zimmerman testified briefly about each date during the hearing.

Verizon PA Exhibit Nos. 1 through 8, which were also admitted into the record during the hearing, are the company's repair records for Mr. Zimmerman's account for the time period from 2003 to the present. With the exception of Verizon PA Exhibit No. 4, which identifies a service issue on June 14, 2006, the dates identified by the Complainant correspond and agree with the dates identified by Verizon PA in its exhibits.

Verizon PA's exhibits, as well as the testimony of its witness, Mr. George Dutton, demonstrate that on two of the seven dates identified by the Complainant, damage to the company's facilities was caused by outside companies working in the area. In one case, a truck knocked down Verizon PA overhead wires in the area. In the other case, a construction crew that was working in the area cut a buried telephone cable. In both instances, Verizon PA made necessary repairs to restore service to its customers.

In a third situation, as reflected in Verizon PA Exhibit No. 6, Mr. Zimmerman was instructed to check his telephone service at his Network Interface Device in an attempt to identify the location of any existing problem. Mr. Zimmerman did not call the company back after receiving this instruction. Accordingly, this report was closed by the company and no action was taken. On a fourth occasion, a technician was dispatched the day of the call, but found that service was working properly when he arrived. This was confirmed with Mr. Zimmerman at the time of the dispatch. There is no evidence in the record that identifies or suggests a cause or source of the problem for these last two incidences. The problem may have been with facilities or equipment located inside of Mr. Zimmerman's residence.

In addition to the actions just described, Verizon PA's witness testified to only four occasions when the company made repairs to its facilities to correct service issues. Verizon PA acknowledges that it took more than a day to restore service on several occasions. Both Verizon PA's witness and Mr. Zimmerman agreed, however, that full credit was given to Mr. Zimmerman for each of these extended outages.

The evidence shows that there were only four occasions since the beginning of 2003 where Mr. Zimmerman experienced service problems that were caused by problems found with Verizon PA's facilities. These problems were corrected and all appropriate credits were given. The other problems identified by him were either caused by outside companies accidentally damaging Verizon PA's facilities, or had cleared when Verizon PA personnel were dispatched. It is Verizon PA's position that this history of service issues does not demonstrate or constitute inadequate or unreasonable service.

Finally, as explained by Verizon PA's witness, the company replaced a large section of telephone cable that serves Mr. Zimmerman's area. This project was completed in January of 2007. Mr. Zimmerman testified that he has not experienced any service problems since the

January 2, 2007 report. Accordingly, to the extent, if any, that Mr. Zimmerman's problems may have been caused to some degree by a faulty cable, the problem has been completely corrected by the company.

ARGUMENT

- I. **The Complainant has not proven by a preponderance of the evidence that Verizon PA rendered inadequate or unreasonable service with respect to the condition of its facilities or to its responses to his service complaints.**

Section 332(a) of the Pennsylvania Public Utility Code¹ provides that the party seeking affirmative relief from the Commission has the burden of proof. In this proceeding, Mr. Zimmerman raised complaints about Verizon PA's repair efforts in response to his service complaints. Therefore, as the party seeking relief from the Commission, Mr. Zimmerman has the burden of proof.

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party.² If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward may shift from one party to the other, but the burden of proof always remains with the Complainant.³ If the utility submits

¹ 66 Pa. C.S. §332(a)

² *Se-Ling Hosiery v Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

³ *Repogle v Pennsylvania Electric Co.*, 54 Pa. PUC 528 (1980), *Waldron v Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980).

evidence of co-equal weight to refute the Complainant's evidence, the Complainant has not satisfied his/her burden of proof.⁴

The Complainant's burden is not satisfied by merely establishing that there were service interruptions or noise on his line. Rather, the Complainant must demonstrate the Verizon PA violated some provision of the Pennsylvania Public Utility Code, a Commission regulation, or a Commission Order. Neither the Public Utility Code nor the regulations promulgated thereunder require perfect service but, rather, adequate and reasonably continuous service.⁵ Indeed, in applying the spirit of reasoned judgment implicit in the Public Utility Code, the Commission adopted regulations at 52 Pa. Code §63.24, which provide a mechanism for the issuance of credits or billing adjustments to customers who experience extended service outages or interruptions. These provisions reflect that outages happen, despite best efforts, and attempt to balance customer and utility interests and concerns.

As explained above in the Summary of Argument section, the dates identified by both the Complainant and Verizon PA as the occasions on which the Complainant experienced service issues are generally consistent. A brief review of those incidents may be helpful.

August 4, 2003

Complainant's Exhibit No. 1 indicates that Mr. Zimmerman complained of a no dial tone condition. Verizon PA Exhibit No. 1, as well as Mr. Dutton's testimony, is in agreement with this assessment. Mr. Zimmerman testified that he was out of service for one day. (Tr. at 24). Verizon PA Exhibit No. 1, as well as Mr. Dutton's testimony, indicates that the report was closed out on August 6, 2003. (Tr. at 45-46). Mr. Dutton explained that a technician was dispatched

⁴ *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967)

⁵ 66 Pa. C.S. §1501. See also *Moser v. PECO Energy Co.*, 2003 WL 22860199 (Pa. PUC) (copy attached), *Trautman v. Verizon Pennsylvania, Inc.*, Pa. PUC Docket No. C-20065809 (Initial Decision dated April 21, 2006; Adopted as Commission final decision by Order entered June 2, 2006).

and made a repair to a conductor. Mr. Zimmerman was given a two-day credit in the amount of \$1.39, since his service was out for more than one day. (Tr. at 46).

January 28, 2004

Evidence presented by both Mr. Zimmerman (Complainant's Exhibit No. 1; Tr. at 24) and Verizon PA (Verizon PA Exhibit No. 2; Tr. at 46) indicate a no dial tone condition on this date. Mr. Dutton testified that a technician was dispatched the same day and was unable to gain access to the terminal that serves the Complainant. However, at the time the technician was on location, he found that service to Mr. Zimmerman's residence was working properly. The technician confirmed with him that the service was working. (Tr. at 46). This repair report was closed out at 2:07 p.m. on the same day. (Tr. at 46).

February 3, 2004

Mr. Zimmerman indicated he had a no dial tone condition. (Complainant's Exhibit No. 1; Tr. at 23). Verizon PA's evidence indicates that Mr. Zimmerman called in at 6:24 p.m. on February 3rd, and complained about hearing static on his line. (Verizon PA Exhibit No. 3; Tr. at 49). The evidence shows that the Parties arranged for a visit from a technician the next day so that Mr. Zimmerman could provide access to his house. (Tr. at 49). In fact, a Verizon PA technician was dispatched on February 4, 2004, and installed a new Network Interface Device and a new service wire at Mr. Zimmerman's residence. (Verizon PA Exhibit No. 3; Tr. at 49). Mr. Dutton explained that a service wire is the wire that runs from a terminal box on the street to a particular customer's house. (Tr. at 50). The work was completed on February 4th.

June 14, 2004

Neither the Complainant's testimony nor Complainant Exhibit No. 1 reflect a service issue or complaint on this date. Verizon PA's repair records, however, do reflect action being taken on this date. (Verizon PA Exhibit No. 4). The company's records indicate that a truck ran into telephone wires in Mr. Zimmerman's area and pulled them down, thereby causing an outage. The repair report was initiated at 6:45 p.m. Mr. Dutton explained that a technician was dispatched that same night and made necessary repairs to the line. This repair report was closed at 9:50 p.m. It is possible that the repair was completed before Mr. Zimmerman was aware of a problem, thereby explaining why the date was not included in his exhibit. In any event, the problem was corrected promptly and no complaint was received from Mr. Zimmerman on that date.

May 13, 2005

Again, Complainant's and Verizon PA's evidence are generally consistent with respect to this incident. Mr. Zimmerman was experiencing a no dial tone condition. He called in at 8:55 p.m. (Verizon PA Exhibit No. 5; Tr. at 23, 51). A technician was dispatched early in the morning on May 15, 2005, and made a repair to an aerial cross connect. The report was closed at 9:30 a.m. on the 15th. (Verizon PA Exhibit No. 5; Tr. at 51). Mr. Zimmerman was given a two-day service credit on his account, since he was out of service for over one day. (Tr. at 51).

July 1, 2005

The evidence of Mr. Zimmerman and Verizon PA is not consistent with respect to the issue on this date. Mr. Zimmerman indicated that a truck damaged a Verizon PA line on this date. (Complainant's Exhibit No. 1; Tr. at 22). He testified that this damage was repaired by the

company in a timely manner. (Tr. at 22). Verizon PA's records indicate being contacted by the Complainant at 5.56 p.m., with a complaint about hearing noise on his line. (Verizon PA Exhibit No. 6; Tr. at 52). Mr. Dutton testified that the Complainant was instructed to check his telephone service at his Network Interface Device, to try to determine the source or location of any problem that may exist. (Verizon PA Exhibit No. 6; Tr. at 52-53). Mr. Dutton stated that the Complainant did not call the company back after receiving these instructions. Accordingly, the report was closed on July 3rd and no action was taken. (Tr. at 52).

October 21, 2006

The evidence of both Parties indicates a no dial tone condition that was reported by the Complainant at 12.02 a.m. on October 21st. Mr. Zimmerman's service was restored on the afternoon of October 23rd. (Verizon PA Exhibit No. 7; Complainant Exhibit No. 1; Tr. at 54). Mr. Dutton testified that the outage occurred when a company that was working in the area accidentally cut the telephone cable through which service to the Complainant's area is provided. (Tr. at 54). Verizon PA technicians were working to restore service to customers served by this cable since October 20th. Service to the Complainant was ultimately restored on Monday, October 23rd (Tr. at 66-67). Mr. Zimmerman testified that he received full credit on his account from Verizon PA related to this outage. (Tr. at 27-28).

January 2, 2007

The evidence of both Parties indicates that Mr. Zimmerman reported a condition of noise on his line. (Complainant Exhibit No. 1; Verizon PA Exhibit No. 8). Verizon PA's records indicate that the call was received on the 2nd at 8:49 p.m. A technician was dispatched on

January 3rd, and made a repair to the insulation in the underground cable. The report was closed at 6:00 p.m. on January 3rd. (Verizon PA Exhibit No. 8; Tr. at 55).

In addition to the instances described above, when investigative or repair efforts were initiated as a result of contacts from the Complainant, Verizon PA took several additional measures, on its own initiative, to attempt to identify and correct the source or cause of Mr. Zimmerman's problems. First, Mr. Dutton testified that he directed a Verizon PA technician to conduct a 100% inspection of the facilities used to provide service to the Complainant. This inspection was performed on March 14, 2007. (Tr. at 56). The technician inspected all of the telephone facilities from the company's central office to Mr. Zimmerman's residence. No problems were found. (Tr. at 56). Second, Verizon PA completely replaced an approximately 1,800 foot long section of the telephone cable through which service to Mr. Zimmerman's area is provided. This project also involved re-routing the cable to avoid any further problems caused by ongoing construction work near Mr. Zimmerman's residence. (Tr. at 57-58). This project was completed on January 22, 2007. (Tr. at 57).

Mr. Zimmerman testified that he has not experienced any problems with his telephone service since the January 2, 2007 report. (Tr. at 39). Mr. Dutton confirmed this when he testified that Verizon PA has not received any service complaints from Mr. Zimmerman since the January 2, 2007 contact. (Tr. at 55).

The record evidence in this proceeding does not support the Complainant's allegations of having experienced chronic service problems for many years. To the contrary, the evidence shows very few problems with the Verizon PA facilities used to serve the Complainant's area during the time period at issue.

Mr. Zimmerman testified to only seven instances since 2003 when he contacted Verizon PA to complain about service issues. (Complainant Exhibit No. 1). Even if each of these issues resulted from problems or deficiencies with Verizon PA's facilities, which they did not, the fact of only seven problems over a more than four year time period does not necessarily demonstrate or suggest the provision of inadequate service. When the specific causes of the various problems experienced by the Complainant are considered, however, it is clear that his allegations of chronic problems with Verizon PA's facilities are unfounded and not supported by a preponderance of the record evidence.

Of the seven instances described by Mr. Zimmerman, two resulted from damage to the company's facilities caused by outside companies working in the area. (Verizon PA Exhibit Nos. 4 and 7; Tr. at 22, 50-51, 54). Although the Parties do not agree on the date of the incident where overhead wires were struck by a truck, both acknowledged that this was, in fact, the cause of one of the service issues experienced by the Complainant, and that the problem was fixed promptly. (Tr. at 22-23). The evidence also shows that the incident of October 21, 2006 was caused when an outside company accidentally cut a buried telephone cable near the Complainant's residence. (Tr. at 54). The record evidence is clear and undisputed that these problems were not the result of defective Verizon PA facilities.

In a third situation, as reflected in Verizon PA Exhibit No. 6, Mr. Zimmerman complained about hearing noise on his line. He was instructed to check his telephone service at his Network Interface Device in an attempt to identify the location of any existing problem. (Tr. at 52). As explained by Mr. Dutton, if a customer does not experience the problem complained of when he plugs a phone into the Network Interface Device, the problem is likely inside of the customer's residence. (Tr. at 53). Mr. Zimmerman did not call the company back after receiving

this instruction. (Tr. at 52-53) Accordingly, this report was closed by the company and no action was taken.

On a fourth occasion, as reflected in Verizon PA Exhibit No. 2, a technician was dispatched to Mr. Zimmerman's residence the day of the call, but was unable to access the terminal box. While there, the technician tested Mr. Zimmerman's line and determined that the service was working properly at that time. (Verizon PA Exhibit No. 2; Tr. at 46). This was confirmed with Mr. Zimmerman at the time of the dispatch. (Verizon PA Exhibit No. 2; Tr. at 46).

With respect to the two instances reflected in Verizon PA Exhibit Nos. 2 and 6, there is no evidence in the record that identifies or suggests a cause or source of the problems complained of. The problem may have been with facilities or equipment located inside of Mr. Zimmerman's residence. There certainly is no evidence that proves the problems described by the Complainant were the result of deficiencies with Verizon PA's facilities.

On four other occasions, Verizon PA technicians were dispatched to the Complainant's residence and made repairs to company facilities in order to correct the service issues raised by him. On August 6, 2003, a conductor was repaired. (Verizon PA Exhibit No. 1; Tr. at 46). The Complainant was given a two-day service credit, since the initial contact was received on August 4th. (Tr. at 46) On February 4, 2004, Verizon PA installed a new Network Interface Device and a new service wire at the Complainant's residence. (Verizon PA Exhibit No. 3; Tr. at 49). On May 15, 2005, Verizon PA made a repair to an aerial cross connect wire in a terminal box near the Complainant's residence. (Verizon PA Exhibit No. 5; Tr. at 51). Again, the Complainant was given a two-day service credit, since the initial contact was received on May 13th. (Tr. at 51). Finally, on January 2, 2007, a technician was dispatched and made a repair to the insulation in the cable in Mr. Zimmerman's area. (Verizon PA Exhibit No. 8; Tr. at 55).

As described above, the record evidence in this proceeding simply does not support a conclusion or finding that Verizon PA in any way rendered inadequate or unreasonable service. To the contrary, the evidence of both Parties demonstrates that the Complainant experienced very few problems directly attributable to deficiencies with the company's facilities. In those instances where problems with Verizon PA's facilities were found, repairs were made and full credits were given where the outages lasted more than 24 hours.

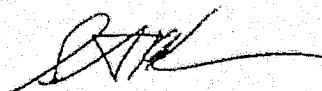
As explained above, the Commission's regulations have provisions that describe the conditions under which refunds are required and the method for calculating those refunds. (52 Pa. Code §63.24). These provisions generally require the issuance of credits equal to 1/30 of the monthly service fee, for outages lasting in excess of 24 hours, for up to the first three days the outage continues. The refund is 2/30 of the monthly fee for outages that last in excess of three days. These regulations recognize that perfect service is likely unattainable. They provide, therefore, for a reasonable accommodation in those instances where service is not restored within 24 hours.

The record evidence in this proceeding, which includes the testimony of both Mr. Zimmerman and Verizon PA's witness, is undisputed that all required credits were issued to Mr. Zimmerman in the instances when an outage lasted more than one day. Accordingly, in the instances when the Complainant did experience service problems that lasted in excess of 24 hours, Verizon PA issued to him all credits required under the Commission's regulations.

CONCLUSION

The record evidence in this proceeding does not support the Complainant's allegations of having experienced chronic service problems for many years, or of poor response efforts by Verizon PA. Further, where service outages did last more than 24 hours, credits required under the Commission's regulations were issued in full. Finally, a long span of the telephone cable that serves Mr. Zimmerman's area was replaced and re-routed. Accordingly, to the extent, if any, the old cable contributed to any of the Complainant's service issues, this problem has been completely corrected. For these and all of the reasons explained above, Verizon Pennsylvania Inc. respectfully requests that the Formal Complaint of Charles Zimmerman be dismissed.

Respectfully Submitted,



Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
(717) 236-1300
skhaas@hmslegal.com

Counsel to Verizon Pennsylvania Inc.

DATED: April 20, 2007

RECEIVED
2007 APR 20 PM 4:21
Page
SECRETARY'S BUREAU

David Moser

v.

PECO Energy Company

Docket No. C-20028472

Pennsylvania Public Utility Commission

September 5, 2003; Entered September 9, 2003

OPINION AND ORDER

Before Fitzpatrick, Chairman, Bloom, Vice Chairman, Wilson, Jr., Thomas, and Pizzingrilli, Commissioners.

BY THE COMMISSION:

Before the Commission for consideration are the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Herbert Smolen, issued in this proceeding on April 30, 2003, and the Exceptions filed with respect thereto. Exceptions were filed by PECO Energy Company (Respondent) on May 19, 2003.

History of the Proceeding

On September 9, 2002, David Moser (Complainant) filed a Complaint against the Respondent which alleged, *inter alia*, that the Respondent provided inadequate utility service in its response to a power outage at the Complainant's home on August 1, 2002. The Complainant also alleged that the Respondent's priorities for power outage response should be changed to provide that customers dependent upon electricity for water should be given a higher priority than other customers for service repair.

The Respondent timely filed an Answer which admitted that the Complainant had lost power on August 1, 2002. However, the Respondent denied that it had provided inadequate service or that its service restoration process was inappropriate or unreasonable.

A hearing was held on March 3, 2003. The Complainant appeared *pro se*, testified on his own behalf and presented two exhibits. The Respondent appeared by counsel, presented one witness and introduced one exhibit at the hearing and two post hearing exhibits.

On April 30, 2003, the ALJ's Initial Decision (I.D.) was issued. The Initial Decision sustained the Complaint to the extent that the ALJ determined that the Respondent failed to provide reasonable information relating to the dispatch of a repair crew for an extended length of time. Based on that determination, the ALJ directed that the Respondent pay a civil penalty of \$500.00. The Complaint was dismissed in all other respects.

On May 19, 2003, the Respondent filed Exceptions to the Initial Decision. No Reply Exceptions were filed.

(Publication page references are not available for this document.)

FN1. This list of allegations is taken from the Initial Decision at page one.

FN2. Service of the Initial Decision on Williams was first attempted by certified United States mail which was returned unclaimed. On March 11, 2003, the Commission served the Initial Decision on Williams by regular mail. Thus, the filing of the Exceptions on March 19, 2003, was timely. 52 Pa. Code § 5.533(a).

Discussion

We note that any Exception or argument that we do not specifically address herein has been duly considered and will be denied without further discussion. See University of Pa. v. Pa. P.U.C., 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984) (holding that the Commission is not required to consider expressly or at great length each and every contention raised by a party).

The Respondent filed three separate Exceptions, all of which focus on the ALJ's determination that the Respondent violated Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501, "in failing to provide reasonable information to Complainant for the extended length of time involved in this proceeding as to approximately when a repair crew would be dispatched to investigate and repair the cause of Complainant's outage." (I.D. 11, Conclusion of Law No. 2). The first Exception asserts error in the ALJ's discussion, arguing that it was not supported by the record. The second Exception argues that the ALJ erred in his Conclusion of Law No. 2. The third Exception argues that the ALJ erred in assessing a civil penalty for a violation of Section 1501 of the Code. For the reasons discussed below, we will grant the Respondent's Exceptions.

This action began when the Complainant experienced a power outage at his home on August 1, 2002, at approximately 6:00 PM. The outage happened a few minutes after a thunderstorm passed through his area. (I.D. 3, Finding of Fact No. 1, Trans. 8). The Complainant contacted the Respondent repeatedly in an effort to determine when the power outage would be fixed. Although the Complainant spoke to a representative of Respondent, that individual was unable to advise the Complainant when a repair crew would be dispatched or when the repair would be completed. A repair crew arrived at approximately 4:35 AM on August 2, 2002. Electric service was restored approximately ten minutes thereafter. (*Id.*, Finding of Fact Nos. 2, 3, 5 and 6).

In ruling that the Respondent failed to provide adequate service in violation of Section 1501 of the Code, the ALJ stated, in pertinent part, the following:

While PECO may not be able to say when repairs will be made, it certainly is in a position to inform its customers subjected to an outage when a repair crew will be dispatched. This lack of communication contravenes the utility's duty to furnish and maintain adequate, efficient, safe and reasonable service and facilities as required under 66 Pa. C.S. § 1501. No information, at least as to an approximate time that a crew will be dispatched, is not reasonable service.

(I.D. 10).

Standing alone, the ALJ's comment quoted above would appear to be a reasonable statement. If this were an isolated outage, we may have agreed with the ALJ's determination here. However, while the Complainant was understandably disturbed by

(Publication page references are not available for this document.)

the Respondent's inability to furnish specific times of repair crew dispatch, we cannot view the Complainant's situation in isolation. Nor does the record reflect that this was an isolated outage.

As set forth in the record, and as argued by the Respondent in its Exceptions, August 1, 2002, presented extreme conditions to the Respondent's system and repair crews. (Exc. 2-3). On that date, there were thirty one thousand (31,000) outages on the Respondent's system. (Tr. at 31). At the hearing, the Respondent described in detail its approach to repairs and its ability to respond to requests for information. (Tr. at 43-44, 53).

In its Exceptions, the Respondent states that "under normal conditions [the Respondent] is generally able to provide dispatch data to a customer. However, under extreme conditions, such as those on August 1, 2002, where there are extensive outages it is neither feasible nor reasonable for PECO to have such information on demand." (Exc. 2). We agree.

While it is well established that public utilities have a duty under Section 1501 of the Code to provide reasonable and adequate service, we have also previously held that that standard does not translate into a duty to provide "perfect" service. *Maldonado v. Pocono Water Company*, 1994 Pa. PUC Lexis 93 (1994); *Answerphone, Inc. v. Bell Telephone Co. of PA*, 1993 Pa. PUC Lexis 70 (1993). It would have been admirable if the Respondent would have been able to advise the Complainant of the time a repair crew would be dispatched when he first contacted the Respondent. Under different circumstances, it is entirely possible that we would find that adequate service would have required the Respondent to provide information regarding the time a repair crew would be dispatched. However, we take the record as we find it.

As noted, this record presents the unusual circumstance of thirty one thousand outages at the time the Complainant contacted the Respondent. The record speaks to the Respondent's repair efforts during that period of time. At the hearing, the Respondent explained why, under those circumstances, it was simply impossible to provide accurate information regarding the time a crew could be dispatched as well as any guess as to the length of time a repair would take. (Tr. at 43-44, 53; Exc. at 2-3). In the actual event, service was restored to the Complainant's premises in less than eleven hours. (Tr. at 11).

Under all of these circumstances, we find that the Complainant has not demonstrated in the record that the Respondent provided inadequate service by failing to advise him of the time a repair crew would be dispatched. Again, adequate service does not require perfect service. *Maldonado, supra*. We certainly do not find that the Respondent's actions rise to a violation of Section 1501 of the Code in this instance so as to warrant the imposition of a civil penalty under Section 3301 of the Code, 66 Pa. C.S. § 3301.

Conclusion

For the foregoing reasons, we will grant the Exceptions of the Respondent and adopt the ALJ's Initial Decision as modified by this Opinion and Order; THEREFORE,

IT IS ORDERED:

(Publication page references are not available for this document.)

1. That the Exceptions of PECO Energy Company are granted.
2. That the Initial Decision of Administrative Law Judge Herbert Smolen, issued on April 30, 2003, is adopted as modified by this Opinion and Order.
3. That the Complaint of David Moser at this docket is dismissed.

END OF DOCUMENT

CERTIFICATE OF SERVICE

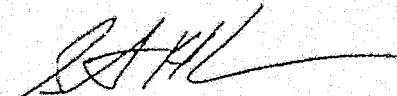
I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons and in the manner listed below, in accordance with the requirements of 52 Pa. code §1.54 (relating to service by a party).

Service via Federal Express

Honorable Robert P. Meehan (One Hard Copy)
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Robert Zimmerman (Two Hard Copies)
3683 Calument Street
Philadelphia, PA 19129

RECEIVED
2007 APR 20 PM 4:21
SECRETARY'S BUREAU



Steven K. Haas

Dated this 20th day of April, 2007.

Hawke
 Mckeon &
 Sniscak LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff

Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull
Katherine E. Lovette
Amy A. Whitney

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

May 2, 2007

ORIGINAL

VIA HAND DELIVERY

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

**DOCUMENT
FOLDER**

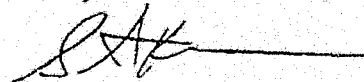
RE: Charles Zimmerman v. Verizon Pennsylvania Inc.; Docket No. C-20067044;
REPLY BRIEF OF VERIZON PENNSYLVANIA INC.

Dear Secretary McNulty:

Enclosed with this letter are an original and nine (9) copies of the Reply Brief of Verizon Pennsylvania Inc. in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. Please contact me at the above-listed number with any questions you may have.

Sincerely,



Steven K. Haas
Counsel to Verizon Pennsylvania Inc.

SKH/kml
Enclosures

cc: Honorable Robert P. Meehan
Charles Zimmerman

2007 MAY -2 PM 4:15
SECRETARY'S BUREAU

BTL

35

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

CHARLES ZIMMERMAN,

Complainant

v.

VERIZON PENNSYLVANIA INC.

Respondent

Docket No. C-20067044

REPLY BRIEF OF
VERIZON PENNSYLVANIA INC.

DOCUMENT
FOLDER

DOCKETED
MAY 04 2007

SECRETARY'S BUREAU

2007 MAY -2 PM 4:15

Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
(717) 236-1300
skhaas@hmslegal.com

Counsel to Verizon Pennsylvania Inc.

DATED: May 2, 2007

I. INTRODUCTION

Pursuant to Administrative Law Judge ("ALJ") Kandace F. Melillo's Order Establishing a Briefing Schedule, dated March 26, 2007, and ALJ Robert P. Meehan's Interim Order Revising Briefing Schedule, dated April 4, 2007, the Parties to this proceeding were required to file Main Briefs with the Pennsylvania Public Utility Commission ("Commission") on or before April 23, 2007. ALJ Meehan's Interim Order required that Reply Briefs, if any, be filed no later than May 3, 2007. The undersigned counsel for Verizon Pennsylvania Inc. ("Verizon PA") received Mr. Zimmerman's Main Brief on April 20, 2007. Verizon PA's Main Brief was filed with the Commission (via hand delivery) and served on Mr. Zimmerman and ALJ Meehan (via Federal Express) on April 20, 2007. This Reply Brief is filed in response to Mr. Zimmerman's Main Brief.

Mr. Zimmerman's brief is organized into three sections: (1) vines growing into a terminal box on a pole outside of his house; (2) untimely repair of service problems; and (3) other miscellaneous service problems. Verizon PA responds to each of these sections of Mr. Zimmerman's brief below.

II. VINES GROWING INTO A TERMINAL BOX

In this section of Mr. Zimmerman's Main Brief, he mentions three dates on which he claims the issue of vines growing into a terminal box was raised. These dates are August 4, 2003, January 28, 2004 and February 3, 2004. A review of the evidence in the record in this proceeding shows that only approximately one week elapsed between the time of the first trouble report from him in which the issue of vines is raised and the time that the telephone line that attaches to his house was re-routed to feed the house from a different location and terminal box.

With respect to the August 4, 2003, incident, neither Mr. Zimmerman's nor Verizon PA's exhibits reflect any issue of vines causing service problems on this date. Complainant's Exhibit No. 1 is a list of the dates on which Mr. Zimmerman claims to have called Verizon PA to report service problems. He provides in this exhibit the dates associated with each incident and a brief description of the problem he complained about. In the entry for August 4, 2003, his exhibit indicates that he had no dial tone. There is no mention in his exhibit about the issue of vines, and there is no indication that he raised this issue when he called Verizon PA.

This is supported and corroborated by Verizon PA's exhibits and witness testimony. Verizon PA Exhibit Nos. 1-8 are the repair records generated by the company in response to Mr. Zimmerman's service complaints. As mentioned in Verizon PA's Main Brief, the Parties' respective exhibits are generally in agreement about the dates on which he called and the problems about which he complained. Verizon PA Exhibit No. 1 is the company's repair record for the August 4, 2003 incident. As is the case with Mr. Zimmerman's exhibit, there is no indication or mention of vines growing into a terminal box in this exhibit. Additionally, Verizon PA's witness, George Dutton, testified about this incident during the hearing. He explained the information contained in Verizon PA Ex. No. 1, including the actions taken by the company in response to the contact. Mr. Dutton did not mention the vine issue in his testimony about this date (Tr at 45-46). In response to this August 4, 2003 contact, Verizon PA dispatched a technician and repaired a conductor in order to restore his service. (Verizon PA Ex. No. 1; Tr. at 46).

There is no record evidence supporting Mr. Zimmerman's contention that the vine issue was brought to the company's attention, or that vines growing into a terminal box were in any way related to the problem he experienced during the August 4th incident. Accordingly, Mr.

Zimmerman's argument in his Main Brief about vines being an issue in the August 4, 2003 incident is not supported by the record evidence.

The next date cited by Mr. Zimmerman concerning the vine issue is January 28, 2004. Although he refers to his own exhibit, there is no mention in his entry for this date about the vine issue. In any event, as Mr. Zimmerman correctly states, Verizon PA Ex. No. 2 does mention vines. Further, Mr. Dutton acknowledged that Mr. Zimmerman mentioned the vine issue when he called the company on the 28th. (Tr. at 46).

The problem complained of during the January 28, 2004 contact was a no dial tone condition. (Complainant Ex. No. 1; Verizon PA Ex. No. 2; Tr. at 46). Mr. Dutton testified that a technician was dispatched the same day and found that Mr. Zimmerman's service was working properly when the technician arrived. The fact that service was working properly at the time of the dispatch was confirmed with Mr. Zimmerman. (Verizon PA Ex. No. 2; Tr. at 46).

Verizon PA's exhibit acknowledges that the vine issue was brought to its attention by Mr. Zimmerman during the January 28, 2004 contact. However, there is no evidence in the record demonstrating that this condition was in any way related to the problem he complained about. In any event, the problem had cleared by the time the technician arrived and, as explained below, the vine issue was completely addressed and bypassed approximately one week later.

The final date identified by Mr. Zimmerman in Section A of his Main Brief is February 3, 2004, less than one week from the January 28, 2004 contact. Verizon PA's exhibit again acknowledges that the vine issue was raised. (Verizon PA Ex. No. 3). In response to this complaint, Verizon PA arranged with Mr. Zimmerman to send a technician to his residence on February 4, 2004. (Tr. at 49). During this visit, the technician installed a new Network Interface Device ("NID") at Mr. Zimmerman's residence, and also installed a new service wire to his house. (Verizon PA Ex. No. 3; Complainant Ex. No. 1; Tr. at 49, 63). Mr. Dutton explained that

a service wire is the wire that runs from a nearby terminal to the customer's house. (Tr. at 50). As part of the project to install a new service wire, Verizon PA re-routed the wire so that it approached his house from a different direction, thereby eliminating the pole and terminal associated with the vine issue from the circuit that serves Mr. Zimmerman's house. (Tr. at 23).

The record evidence shows that the first Verizon PA repair record that reflects being informed about the vine issue by Mr. Zimmerman was on January 28, 2004. As explained above, neither the Complainant nor Verizon PA's exhibits reflect any mention of this issue during the August 4, 2003 contact. Also, there is no evidence proving that the vine issue was in any way related to the service problems complained of by Mr. Zimmerman. The evidence of both Parties does agree, however, that the vine issue was completely eliminated and by-passed on February 4, 2004, approximately one week from the January 28, 2004 contact. (Verizon PA Ex. No. 3; Complainant Ex. No. 1; Tr. at 23).

The record evidence confirms that the vine issue was eliminated by Verizon PA, by the placement and re-routing of new facilities, only one week after the earliest date (January 28, 2004) that the issue was reflected in the company's repair records. There is no evidence demonstrating that this issue was raised prior to January 28, 2004. Accordingly, the Complainant's allegations of ongoing service problems associated with the vine issue are simply not supported by the record evidence. To the contrary, the evidence shows that Verizon PA eliminated this condition within one week after becoming aware of it as an issue.

III. UNTIMELY REPAIR SERVICE

Beginning on page 4 of his Main Brief, Mr. Zimmerman argues that Verizon PA provided untimely responses to his service complaints. As already explained in Verizon PA's Main Brief, the company acknowledged that it took more than 24 hours to correct the problem

complained about in several instances. Full credits were issued to him in each of those instances. Neither the record evidence about these instances, nor the arguments set forth in the Complainant's Main Brief on this issue, however, demonstrate the provision of unreasonable or inadequate service by Verizon PA.

Mr. Zimmerman first discusses in his brief a service complaint from October 20, 2006. He notes that service was not restored until October 23, 2006. Verizon PA acknowledged during the hearing that it took several days to restore service to him during this incident. (Verizon PA Ex. No. 6; Tr. at 54). The company's witness explained that this outage was caused when an outside company working in the area accidentally cut the telephone cable that serves Mr. Zimmerman's area. (Tr. at 54). He further explained that Verizon PA repair crews were working on the problem during the weekend. (Tr. at 66). Mr. Dutton testified that the repair efforts were complicated somewhat by the fact that, due to excavation work being performed by a company working in the area, Verizon PA was not able to get its trucks to the site of the damaged cable. (Tr. at 66).

As mentioned above, Verizon PA acknowledged that it took several days to restore the Complainant's service during this incident. Verizon PA explained in its Main Brief that all credits required under the Commission's regulations related to this outage were issued to him. This was acknowledged by Mr. Zimmerman during the hearing. (Tr. at 27-28).

The second and only other incident identified by the Complainant in his brief on the issue of untimely service is January 2, 2007. As explained during the hearing and in Verizon PA's Main Brief, this contact involved a condition of noise on the Complainant's telephone line. (Verizon PA Ex. No. 8; Complainant Ex. No. 1; Tr. at 14-15, 55). Mr. Dutton testified that this call was received from Mr. Zimmerman at 8:49 p.m. on the January 2nd. (Tr. at 55). A

technician was dispatched and the problem was corrected by 6:00 p.m. on January 3rd, when the technician made repairs to the insulation in the lines that serve the Complainant. (Tr. at 55).

These two instances are the only ones cited by the Complainant in his brief in support of his contention that the company was untimely in its responses to his service complaints. In fact, of these two instances, only the October 2006 incident actually involved an extended outage. The January 2007 incident, which did not even involve an outage, was corrected by the company within 24 hours. It is Verizon PA's position that these two instances do not demonstrate the rendition of unreasonable or inadequate service by Verizon PA. As explained in Verizon PA's Main Brief, utilities are neither expected nor required to render perfect service. *Maldonado v. Pocono Water Co.*, 1994 Pa. Lexis 93 (1994); *Anserphone, Inc. v. Bell Telephone Co. of Pa.*, 1993 Pa. Lexis 70 (1993). The instances described in the record in this proceeding, and especially those described in the Complainant's brief, certainly do not rise to the level of unreasonable service. This is particularly true, given the fact that all credits due to the Complainant for extended outages were issued in full at the time of the service issues.

IV. MISCELLANEOUS SERVICE PROBLEMS

The first date mentioned in this section of the Complainant's brief is June 14, 2004. Mr. Zimmerman alleges that the service line to his house was torn down by a truck because it was hanging down too low. First, Verizon PA notes that this incident is not reflected in the Complainant's exhibit. The only evidence in the record about this is from Verizon PA's exhibits and the testimony of its witness. (Verizon PA Ex. No. 4; Tr. at 50-51). This repair record, which was initiated at approximately 6:45 p.m. on June 14th, indicates that a truck pulled wires down. The record also indicates, at the last line of Verizon PA Ex. No. 4, that the wire was

replaced and that the customer was extra pleased. The report was completed and closed out at approximately 9:50 p.m. on the 14th, only three hours after the initial call came in to Verizon PA.

The narrative portion of Verizon PA Ex. No. 4 reflects the report that was provided to the company by the Complainant when he called in to report the problem. It merely reflects that he indicated a truck pulled the wire down. There is no evidence in the record about the actual condition or height of the line that was damaged. There is also no evidence about the type of truck that caused the damage. As Mr. Zimmerman states on page 5 of his brief, the line was damaged four months after it was placed in that location on February 4, 2004. The height of the wire obviously was not a problem for that four month time period. The damage may have been caused by a truck with an abnormally high profile, such as, for example, a dump truck with its back section fully raised. This is not an unlikely possibility, given the construction and excavation work being performed in the area. Other than this speculation, the record is devoid of any proof that the damaged wire was the result of deficiencies with Verizon PA's facilities or their placement.

Mr. Zimmerman next points to a service issue from May of 2005. This incident is reflected in both Complainant Ex. No. 1 and Verizon PA Ex. No. 5. As explained by Mr. Dutton, this call, which involved a no dial tone condition, was received by Verizon PA at 8:55 p.m. on May 13, 2005. A technician was dispatched and made a repair to a cross connect wire. The repair was completed and the repair report was closed out by the company by 9:30 a.m. on May 15th. (Verizon PA Ex. No. 5; Tr. at 51). Verizon PA issued a credit to Mr. Zimmerman for two days worth of service, since the outage lasted more than 24 hours. (Tr. at 51).

Finally, the Complainant points to a service issue from July 1, 2005. He states that his service line was again torn down because it was hanging too low. Although Verizon PA's evidence does reflect a service issue on this date, it does not reflect that a line was torn down.

Verizon AP Ex. No. 6 is the repair record that reflects the service issue on this date. As explained by Mr. Dutton, the condition complained of was noise on the line. (Tr. at 52). Mr. Dutton testified that Mr. Zimmerman was instructed to check his service at his NID to see if he still experienced the noise. (Tr. at 52). If he did not experience a problem when he plugged a phone into his NID, the problem was likely located inside of his residence. (Tr. at 53). Mr. Dutton stated that Mr. Zimmerman did not call the company back after the initial call and, as a result, the report was closed on July 3, 2005. The company did not undertake any repair activity related to this report. (Tr. at 52).

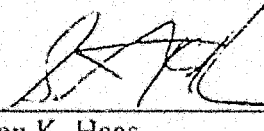
The evidence presented by Verizon PA about the July 1, 2005 incident simply does not contain any information or indication that would support Mr. Zimmerman's contention that his line was torn down by a truck. The fact that no repair work was completed by Verizon PA further calls into question the accuracy of his recollection of this date. Repair work would have been required if, in fact, a wire had been torn down.

As explained above, as well as in Verizon PA's Main Brief, the various service incidents cited by the Complainant in his exhibit and during the hearing, even if all true, simply do not demonstrate the rendition of inadequate or unreasonable service. Further, his citation to certain service incidents in his Main Brief in support of the contentions raised by him calls into question the accuracy of his recollection of those incidents. For example, his recollection of the service incident on July 1, 2005, is completely different from the information contained in Verizon PA Ex. No. 6, as well as the testimony of Mr. Dutton, neither of which reflect damage to his line or any repair work being performed. By way of additional example, he refers to the June 14, 2004 incident in his Main Brief. Verizon PA's records reflect that a wire was damaged by a truck and that it was repaired within approximately four hours. This incident was not even included in Complainant Ex. No. 1. There is no indication in his exhibit of any problem at all on that date.

V. CONCLUSION

For all of the reason described above, as well as in its Main Brief, Verizon PA respectfully requests that the Formal Complaint of Charles Zimmerman be dismissed in its entirety.

Respectfully Submitted,



Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
(717) 236-1300
skhaas@hmslegal.com

Counsel to Verizon Pennsylvania Inc.

DATED: May 2, 2007

CERTIFICATE OF SERVICE

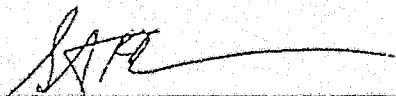
I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons and in the manner listed below, in accordance with the requirements of 52 Pa. code §1.54 (relating to service by a party).

Service via Federal Express

Honorable Robert P. Meehan (One Hard Copy)
1193 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Robert Zimmerman (Two Hard Copies)
3683 Calumet Street
Philadelphia, PA 19129

2007 MAY -2 PM 4:15
SECRETARY'S BUREAU



Steven K. Haas

Dated this 2nd day of May, 2007.