

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya Turpin	:	
	:	
v.	:	C-2016-2563353
	:	
Comcast Phone of Pennsylvania, LLC	:	

**ORDER**  
**DENYING PRELIMINARY OBJECTION**

On August 5, 2016, Tanya Turpin filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Comcast Phone of Pennsylvania, LLC (Comcast), docket number C-2016-2563353. In her complaint, Ms. Turpin averred that Comcast is threatening to shut off her service or has already shut off her service and that there are incorrect charges on her bill. As discussed further below, Ms. Turpin stated, among other things, that she entered into an agreement for a two year plan at a certain monthly rate but her bill increased during the term of the plan. Ms. Turpin requested that her rate be returned to the original amount. In support of her complaint, Ms. Turpin attached a copy of a recent bill she received from Comcast.

Following two requests for an extension of time to file an answer to Ms. Turpin's complaint, both of which were granted by the Commission's Secretary's Bureau, Comcast filed an answer and new matter in response to Ms. Turpin's complaint on October 12, 2016. In its answer, Comcast stated that it does not provide any retail telecommunications service to end-user consumers and does not provide any telecommunications services to Ms. Turpin. Comcast further stated, however, that Ms. Turpin is a customer of its affiliate, Comcast IP Phone, LLC, an entity that provides voice over internet protocol (VoIP) service. Comcast further provided that, to the extent Ms. Turpin receives services from an affiliate, it denies that Ms. Turpin was overbilled. Comcast added, among other things, that, instead, Ms. Turpin entered into a two-year contract where the rate changes after the first year.

In its new matter, which was accompanied by a notice to plead, Comcast averred, among other things, that Ms. Turpin has failed to state a claim against Comcast upon which relief can be granted. Comcast added that the service provided by its affiliate is not regulated by the Commission and that the Commission lacks jurisdiction to consider the allegations of the complaint or to grant relief to Ms. Turpin. Comcast concluded that Ms. Turpin's complaint should be dismissed with prejudice.

Also on October 12, 2016, Comcast filed a preliminary objection in response to Ms. Turpin's complaint. In its preliminary objection, which was also accompanied by a notice to plead, Comcast argued that, since the services at issue in this complaint are not regulated by the Commission, and since the entity named as respondent has never provided services to Ms. Turpin, and since the Comcast entities providing such services are not regulated public utilities, the Commission lacks jurisdiction to consider the complaint or to grant any of the relief that has been requested.

Ms. Turpin's answer to the preliminary objection filed by Comcast was due no later than October 25, 2016. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Ms. Turpin's answer to Comcast's new matter was due no later than November 4, 2016. 52 Pa.Code §§ 5.63(a), 1.12(a), 1.56(a)(1) and (b). Ms. Turpin did not file an answer to either the new matter or the preliminary objection filed by Comcast.

On December 20, 2016, a motion judge assignment notice was issued informing the parties that I was assigned as the Presiding Officer and responsible to resolve any issues which might arise during the preliminary phase of this proceeding. The preliminary objection filed by Comcast is ready for disposition. For the reasons discussed below, the preliminary objection will be denied and the complaint will proceed to a hearing.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing

of preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable).

Section 5.101(a) provides:

(a) *Grounds*. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in a proceeding.

52 Pa.Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. Turpin and should dismiss the complaint only if it appears that Ms. Turpin would not be entitled to relief under any circumstances as a matter of law. Equitable, *supra*; *see also*, Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

In this case, Ms. Turpin questioned in her complaint why the rate for her service increased even though she was on a two-year contract. Ms. Turpin requested that the rate for her service return to the original amount. In response, Comcast argued in both its new matter and its preliminary objection that the Commission does not have jurisdiction to determine whether the rate charged by Comcast is appropriate. As a result, Comcast argued that Ms. Turpin's complaint should be dismissed. When viewing all well pleaded material facts averred in the complaint in the light most favorable to Ms. Turpin, and accepting as true every reasonable inference from those averments, it is not clear that Ms. Turpin would not be entitled to relief under any circumstances as a matter of law. Therefore, Comcast's preliminary objection must be denied.

To begin, Comcast is correct that, pursuant to the Voice Over Internet Protocol Freedom Act (VoIP Act), the Commission has limited jurisdiction regarding voice over internet protocol (VoIP) services or internet protocol (IP)-enabled services. The VoIP Act provides:

Except as set forth in sections 5 and 6, notwithstanding any other provision of law, no department, agency, commission or political subdivision of the Commonwealth may enact or enforce, either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of regulating, the rates, terms and conditions of VoIP service or IP-enabled service.

73 Pa.C.S. § 2251.4. The VoIP Act, however, articulates several exceptions to this provision. These exceptions include:

Nothing in this act shall be construed to modify any of the following:

- (1) The authority of a Commonwealth department, agency or commission to enforce applicable federal or state statutes or regulations relating to any of the following:
  - (i) The provision and administration of enhanced 911 service and non-discriminatory enhanced 911 fees.

- (ii) Telecommunications relay service fees.
- (iii) Universal service fund fees.
- (iv) Switched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company.
- (v) Rates, terms or conditions of protected services provided under tariffs which are subject to approval by the Pennsylvania Public Utility Commission.

73 Pa.C.S. § 2251.6(1)(i)-(v).

With regard to the retention of the Commission's power and duty regarding the rates, terms or conditions of protected services provided under tariffs which are subject to approval by the Commission, 73 Pa.C.S. § 2251.6(1)(v), *supra*, Chapter 30 of the Public Utility Code defines "protected services" as:

- (1) Service provided to residential consumers or business consumers that is necessary to complete a local exchange call.
- (2) Touch-tone service.
- (3) Switched access service.
- (4) Special access service.
- (5) Ordering, installation, restoration and disconnection of these services.

66 Pa.C.S. § 3012.

Against this legal backdrop, it is clear that Comcast's preliminary objection must be denied because, when viewing all well pleaded material facts averred in the complaint in the light most favorable to Ms. Turpin, and accepting as true every reasonable inference from those

averments, it is not clear that Ms. Turpin would not be entitled to relief under any circumstances as a matter of law.

Ms. Turpin averred in her complaint there are incorrect charges on her bill because “I entered into an agreement for two year plan of \$89 a month and my bill went up to \$157 a month.” Ms. Turpin added that she spoke with a Comcast representative several times about why her bill keeps going up. In addition, Ms. Turpin attached a copy of her bill from Comcast to her complaint. A review of the bill shows that a portion of service includes voice service and that the voice service includes itemized charges, including a “universal connectivity charge.” When viewed in the light most favorable to Ms. Turpin, it is possible that these averments pertain to the “rates, terms or conditions of a protected service” over which the Commission maintains jurisdiction under the VoIP Act. This is particularly true when considering that “protected” services include service provided to residential consumers that are necessary to complete a local exchange call. This is also true when considering that the “universal connectivity charge” found on Ms. Turpin’s bill could, when viewed in the light most favorable to Ms. Turpin, also pertain to “universal service fund fees” which is also a matter over which the Commission retains power and authority under the VoIP Act. Ms. Turpin’s averment in her complaint that she spoke with the company several times about this matter could, again when viewed in the light most favorable to Ms. Turpin, pertain to the ordering of service necessary to complete a local exchange call that is also a protected service under Chapter 30 and, therefore, within the Commission’s jurisdiction under the VoIP Act.

As a result, there are several averments in Ms. Turpin’s complaint that, when viewed in the light most favorable to Ms. Turpin, as is required when disposing of Comcast’s preliminary objection, demonstrate that Ms. Turpin might be entitled to relief as a matter of law. Therefore, a hearing is required and Comcast’s preliminary objection should be denied.

In its preliminary objection, Comcast argued that Ms. Turpin’s complaint should be dismissed because the Commission has previously determined that it does not have jurisdiction over VoIP services pursuant to the VoIP Act. *See, Kimberly and Michael Silvestri v. Comcast Phone of Pennsylvania, LLC*, Docket No. C-2011-2241959 (Initial Decision dated Aug.

26, 2011; Final Order entered Oct. 7, 2011) (Silvestri). As noted in the Initial Decision, in Silvestri, however, the complainants made only the following reference to telephone service in their complaint:

Phone service for one month, no voice mail connected by us, yet upstairs TV states that Caller ID is on. I shut it off, next hour back on. Reminder notices state our phone will be shut off and have no phone with Comcast.

As a result, Silvestri is distinguishable because it does not, for example, pertain to a rate, term or condition of a protected service, or repeated attempts to resolve the matter with a customer service representative, as is the case in Ms. Turpin's complaint. Ms. Turpin's complaint, therefore, will not be dismissed on a preliminary basis based on Silvestri.

Furthermore, it is noted that, in Richard Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock), the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. *Id.* at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority), *citing*, Halpern v. The Bell Telephone Company of Pennsylvania, Docket No. C-00923950 (Order entered October 1992) and William Schleisher v. The Bell Telephone Company of Pennsylvania, Docket No. F-00161252 (Order entered December 17, 1992); *see also*, John M. Gera v. PPL Electric Utilities Corporation, Docket No. C-20054657 (Opinion and Order entered November 2, 2005).<sup>1</sup> As a result, in this case, it may be the case that Ms. Turpin could demonstrate orally that Comcast violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff.

---

<sup>1</sup> The Commission's decision in Carlock was subsequently clarified to allow ALJ's the discretion to dispose of the pleadings in a proceeding provided that the action is neither arbitrary nor capricious, and that it is in accordance with the law. John A. Graham Jr. v. Philadelphia Suburban Water Company and Bell Atlantic-Pennsylvania, Inc., Docket No. C-00957557 (Opinion and Order entered June 12, 1996).

Finally, Comcast has argued that none of the services provided to Ms. Turpin were provided by the respondent but rather were provided by an affiliate of the respondent. This argument is also not sufficient to warrant dismissing Ms. Turpin's complaint on a preliminary basis. Ms. Turpin wrote "Comcast" on the section of her complaint asking for the respondent. The Commission's Secretary's Bureau then served the complaint on the Commission's designated recipient for complaints filed against the company. It is reasonable that a consumer would not fully understand the nuances of Comcast's corporate structure to identify a specific corporate affiliate of Comcast to identify as the respondent on the formal complaint. This is particularly true as the bill Ms. Turpin attached to her complaint simply has "Comcast" identified at the top of each page. To the extent that Comcast believes that the wrong corporate entity was served the complaint, it is directed to identify counsel for that appropriate corporate entity within twenty days of the date of this order.

In conclusion, as noted above, the standard for granting a preliminary objection is very high. Preliminary objections will only be granted when it is clear that the nonmoving party is not entitled to relief under any circumstances as a matter of law and after viewing the complaint, and every reasonable inference from the complaint, in the light most favorable to the complainant. Comcast has failed to satisfy this standard in its preliminary objection. Ms. Turpin should have an opportunity to pursue her complaint in a hearing before an administrative law judge. Ms. Turpin is advised, however, that a hearing on her complaint will require her to prove her allegations by a preponderance of the evidence and with substantial evidence. This is a different standard than the standard used to address the preliminary objections.

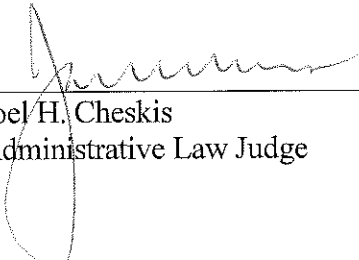
ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection filed by Comcast Phone of Pennsylvania LLC at Docket Number C-2016-2563353 on October 12, 2016 is hereby denied.
2. That the formal complaint filed by Tanya Turpin on August 5, 2016 at Docket Number C-2016-2563353 will be heard in an Initial Hearing before an Administrative Law Judge.

Date: January 3, 2017

  
\_\_\_\_\_  
Joel H. Cheskis  
Administrative Law Judge

C-2016-2563353 - TANYA TURPIN v. COMCAST PHONE OF PENNSYLVANIA LLC

TANYA TURPIN  
4907 WEST GIRARD AVENUE  
PHILADELPHIA PA 19131  
215.879.0837

TUCKER R HULL ATTORNEY  
PEPPER HAMILTON LLP  
100 MARKET STREET  
PO BOX 1181  
HARRISBURG PA 17108  
717.255.1165  
Accepts E-Service