

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Michael Steven Sherman, P.C.

v.

Verizon Pennsylvania LLC

Public Meeting January 17, 2019

3004072-ALJ

Docket No. C-2018-3004072

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

The above-captioned Formal Complaint alleges a reliability problem with the Complainant's telephone service and alleges there are incorrect charges on the Complainant's bill. The Complainant is a law office and a business customer of Verizon Pennsylvania, LLC (Verizon).¹ The primary allegation in the Complaint is that the telephones provided by Verizon do not work.

In response, Verizon filed an Answer and New Matter alleging that it provides the Complainant with Voice over Internet Protocol or VoIP service, which Verizon contends is outside the Commission's jurisdiction. Verizon also filed Preliminary Objections reiterating that the Commission lacks jurisdiction over the VoIP service provided here and requesting that the Commission dismiss the Complaint. The Complainant did not respond to either of Verizon's pleadings. An Initial Decision (ID) was issued dismissing the Complaint for lack of jurisdiction under Pennsylvania's VoIP Freedom Act.² No exceptions were filed to the ID.

The ID properly recognizes the Commission's limited jurisdiction over VoIP service under the VoIP Freedom Act. Specifically, the ID at page 6 references the general prohibition of regulation over VoIP service but acknowledges the five areas under the Act in which the Commission retains authority over VoIP service.³ The ID then concludes that the facts alleged in the complaint do not bring it within any of the five statutory exceptions.

The motion proposes to reverse the ID and remand this matter for mediation. The motion reasons that Verizon has not plead facts sufficient to conclude that the relevant service is non-jurisdictional as a matter of law under the VoIP Freedom Act. The motion also reasons that there are genuine issues of law and fact that remain outstanding, including whether the consumer's service is stand-alone VoIP and whether 911 service was impacted.

¹ The Complaint is signed by Michael Steven Sherman, President.

² Because Verizon sought dismissal of the Complaint based upon assertions in its New Matter, the Presiding Officer treated Verizon's Preliminary Objections as a Motion for Judgment on the Pleading under Section 1.2 of our regulations, 52 Pa. Code § 1.2. This regulation permits a presiding officer or the Commission to disregard an error or defect in procedure which does not affect the substantive rights of a party. Here, the conversion of the Preliminary Objections to a Motion for Judgment on the Pleadings does not affect the Complainant's substantive rights, as the Complainant had timely notice of the jurisdictional issue raised by Verizon and had a meaningful opportunity to respond to both the New Matter and the Preliminary Objections.

³ See 73 P.S. § 2251.6.

In deciding this case, we must follow applicable law, which requires us to decide Verizon's dismissal request based upon the record that is before us, which in this case consists of the pleadings. Applicable law also specifies that granting judgment based on the pleadings should only occur when the case is clear and free from doubt.⁴

I believe it is clear and free from doubt that the facts alleged in the Complaint and deemed admitted in the New Matter do not bring this Complaint within the 911 exception in the VoIP Freedom Act that would allow for Commission jurisdiction over the Complaint.⁵ In short, the Complaint does not specifically mention 911 service, and I do not believe the Complaint can be reasonably interpreted to raise a 911 service issue either.

The provision of 911 service is an important issue that may be within our subject matter jurisdiction even when VoIP service is involved. In fact, I co-authored the joint motion in *Eileen Floyd v. Verizon Pennsylvania, Inc.*⁶ in which the Commission found that a complaint alleging loss of VoIP service, including 911, during Super Storm Sandy was found to be squarely within our jurisdiction over 911 service under the VoIP Freedom Act. However, in that case, Ms. Floyd in her Complaint specifically raised the issue of being unable to make emergency calls. In this case, the Complainant did not.

Nevertheless, I do not believe the existing record is adequate to determine whether our jurisdiction is implicated under another provision of the VoIP Freedom Act under which the Commission retains authority over protected services provided under Commission-approved tariffs.⁷ In this case, Verizon's pleadings establish that the Complainant is a Business Digital Voice customer. However, Verizon's pleadings do not define the service and do not contain the necessary factual details about the service, including whether it is a stand-alone, tariffed service, (i.e., is a protected service) or whether it is a bundled service that is not tariffed (i.e., is not a protected service). Thus, based on the pleadings as they exist now, I do not believe it is clear and free from doubt that Verizon's digital voice service provided to the Complainant is not a protected service and, hence, is not Commission-jurisdictional.

For these reasons, I agree with the proposed outcome in the motion to reverse the ID and remand the proceeding for mediation. However, because I do not agree with the rationale in the motion, I will be concurring in result only.

DATE: January 17, 2019


JOHN F. COLEMAN, JR.
COMMISSIONER

⁴ *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985).

⁵ The Commission retains authority over "the provision and administration of 911 service." 73 P.S. § 2251.6(i).

⁶ *Eileen Floyd v. Verizon Pennsylvania, Inc.*, Docket No. C-2012-2333157 (Order entered April 30, 2013).

⁷ The Commission retains authority over "the rates, terms, or conditions of protected services provided under tariffs subject to approval by the Commission." 73 P.S. § 2251.6(v).