

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------------|---|----------------|
| Robert Williams | : | |
| | : | |
| v. | : | C-2018-3005368 |
| | : | |
| Verizon Pennsylvania, LLC | : | |

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision sustains a formal complaint filed by a customer of a local telephone company who averred that there have been repeated instances of trees falling on the telephone line that leads to his property causing static on the line and for the service to cut out. Substantial record evidence demonstrates that the company has violated the Public Utility Code in failing to properly maintain its network facilities. As a result, the company is directed to clear the line and a civil penalty is also imposed.

HISTORY OF THE PROCEEDING

On September 26, 2018, Robert Williams filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania, LLC (Verizon), docket number C-2018-3005368. In his complaint, Mr. Williams averred that he is having a reliability, safety or quality problem with his utility service. Mr. Williams added that there have been repeated instances of trees falling on the telephone lines that lead to his property and this causes static on the line and dropped calls. Mr. Williams requested that the Commission

direct Verizon to have the trees on the lines removed and then provide a phone line that is free from static and interruption.

On November 5, 2018, Verizon filed an answer to the complaint. In its answer, Verizon admitted or denied the various averments made in the complaint. In particular, Verizon stated that the company inspected all outside facilities on October 26, 2018 and found no trouble and that a Verizon technician also checked the entire cable for any trees that may be on the facilities and found none.

On April 11, 2019, a hearing notice was issued setting an initial call-in telephonic hearing for this matter for Thursday, May 16, 2019 and assigning me as the presiding officer. A prehearing order was also issued on April 11, 2019 setting forth various procedural rules that would govern the hearing.

The hearing convened on May 16, 2019, as scheduled. Mr. Williams appeared *pro se* and provided oral testimony, as well as five exhibits that were admitted into the record. Susan D. Paiva, Esquire, appeared on behalf of Verizon and presented two witnesses who sponsored two exhibits that were admitted into the record. A transcript of 53 pages was created.

The record in this case closed on June 12, 2019 when the transcript was submitted to the Commission. For the reasons discussed below, Mr. Williams' complaint will be sustained. Verizon will be directed to clear the line that provides Mr. Williams' telephone service and a civil penalty will be imposed.

FINDINGS OF FACT

1. The Complainant in this case is Robert Williams.
2. The Respondent in this case is Verizon Pennsylvania LLC.
3. The service address is 766 West Line Road, Linden, Pa.

4. Mr. Williams experiences static and intermittent local telephone service. Tr. 7.

5. Williams Exhibit Number 1 is a compilation of five photographs of a telephone line running through a wooded area. Williams Exh. No. 1; Tr. 7.

6. Williams Exhibit Number 2 is a compilation of six photographs of a telephone line running through a wooded area. Williams Exh. No. 2; Tr. 6-7.

7. Williams Exhibit Number 3 is a compilation of four photographs of a telephone line running through a wooded area over a stream. Williams Exh. No. 3; Tr. 8.

8. Williams Exhibit Number 4 is a photograph of West Line Road where the telephone line is located showing electric lines owned by PPL that have been removed from Verizon's poles. Williams Exhibit No. 4; Tr. 8-9.

9. Williams Exhibit Number 5 is a photograph of several downed trees on top of a telephone line. Williams Exh. No. 5; Tr. 9-10.

10. There are tree limbs on the line that provides Mr. Williams' telephone service. Tr. 10-11.

11. The service problems Mr. Williams has experienced have affected his business calls. Tr. 11.

12. Trees have been falling on the line that provides Mr. Williams' telephone service since 2016. Tr. 12.

13. The service problems Mr. Williams experiences have affected his internet service. Tr. 13.

14. There was static and interruptions on the call when Mr. Williams was participating in the telephonic hearing. Tr. 10, 12-13, 16, 19, 34.

15. Mr. Williams' home was newly constructed in 1992 when he first moved into it. Tr. 17.

16. Jason Wagner is employed by Verizon as an outside plant engineer responsible for the design of Verizon's outside plant facilities. Tr. 23.

17. The line that provides Mr. Williams' telephone service is 1,200 feet of cable that is in a private easement in a wooded area approximately 40 yards off West Line Road on 25-foot class 7 poles that were built in 1969. Tr. 24-25.

18. The line that provides Mr. Williams' telephone service was installed in 1991. Tr. 25.

19. Nine customers are served by the line that provides Mr. Williams' telephone service. Tr. 25.

20. Mr. Wagner observed the line that provides Mr. Williams' telephone service on April 12, 2019 and noted that the cable was not in bad shape and there were two small trees leaning on the cable that were not damaging the line. Tr. 26.

21. Verizon's cables are designed to withstand trees leaning on them. Tr. 26.

22. It is very common for Verizon to have pole lines running through wooded areas like the line that provides Mr. Williams' telephone service. Tr. 27-28, 41-42.

23. The cost to move the line that provides Mr. Williams' telephone service would be approximately \$15,000. Tr. 28-29.

24. Verizon Exhibit Number 2 is one page from the Verizon tariff and another page from the Verizon product guide regarding construction and attachment charges. Verizon Exh. No. 2; Tr. 30.

25. Verizon Exhibit Number 2 is used to bill customers for customer-initiated relocations at the customer's own expense. Tr. 30.

26. Michael T. Knepper is a local manager of installation and maintenance technicians for Verizon Communications out of the Scranton-Dumore garage. Tr. 33.

27. Mr. Knepper is responsible to supervise the day-to-day operations for installation and repair of phone services. Tr. 33.

28. Trouble on a telephone line can either be cross talk, dropped calls or static. Tr. 34-35.

29. Mr. Knepper tested the line that provides Mr. Williams' telephone service while he was testifying, and the line tested clear up to the network interface device attached to Mr. Williams' home. Tr. 35-36.

30. Verizon Exhibit Number 1 is a list of trouble reports from January 2015 to the present that Verizon has in its system that are related to Mr. Williams' line. Verizon Exh. No. 1; Tr. 37-38.

31. Mr. Williams called Verizon on April 20, 2019 to report a tree falling after a windstorm and the technician reported no hazard and that the line tested okay. Verizon Exh. No. 1; Tr. 39-40.

32. There is no indication that the line serving Mr. Williams is bad or needs to be replaced. Tr. 41.

33. Verizon facilities generally function well even if poles and lines run through wooded areas. Tr. 42.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950) (Se-Ling Hosiery). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Williams averred that there have been reported instances of trees falling on his telephone line that leads to his property that causes static and his service to cut out at times. Mr. Williams requested that the Commission direct Verizon to have the trees on his line removed and then provide a phone line that is free from static and interruption. Mr. Williams, therefore, has the burden of proof in this proceeding.

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 with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlt. 1984).

Also relevant to this proceeding is section 1501 of the Public Utility Code. This section provides, in pertinent part:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees and the public.

66 Pa.C.S. § 1501. The Commission's regulations also provide, with regard to telephone service, that "a public utility system shall be so constructed as to eliminate cross-talk and noise resulting from faulty construction, to the extent that these factors interfere with the satisfactory transmission of messages." 52 Pa.Code § 63.12(a). Similarly, "each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish continuous service, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur." 52 Pa.Code § 63.24(a); *see also*, Eernisse v. Verizon Pennsylvania LLC, Docket No. C-2012-2287023 (Opinion and Order entered Jan. 15, 2014) (Eernisse) (civil penalties imposed for violations of Section 1501 of the Public Utility Code and Sections 63.24, 63.57(b) and 63.57(c) of the Commission's regulations totaling \$20,500).

In this case, record evidence demonstrates that Mr. Williams has satisfied his burden to demonstrate that Verizon has violated the Public Utility Code, a Commission order or

regulation or a Commission-approved tariff of the company with regard to the service provided to him. Therefore, his complaint will be sustained. Verizon will be directed to clear the line that provides service to Mr. Williams and a civil penalty will be imposed on Verizon, as discussed further below.

Position of the Parties

In support of his complaint, Mr. Williams provided five packets of photographs – 17 pictures in total – that depict various images of the line that provides Mr. Williams’ telephone service running through wooded areas. These pictures are summarized as follows:

| Exhibit Number | Picture Number | Description |
|----------------|----------------|------------------------------------------------------------------------------------------------------------------------|
| 1 | 1 | Tree in center of photo on the Verizon line |
| 1 | 2 | Tree limbs next to the pole on the Verizon line |
| 1 | 3 | Another view of tree limbs next to the pole |
| 1 | 4 | Trees in right side of the photo on the Verizon line |
| 1 | 5 | Verizon line lying less than six feet off the ground due to stretching of the line under the weight of the trees |
| 2 | 1 | Tree in the middle of the photo on the Verizon line |
| 2 | 2 | Limbs in the middle of the photo on the Verizon line |
| 2 | 3 | Close up of Williams Exhibit 2, photo 2 |
| 2 | 4 | Tree on Verizon line in the middle of the photo |
| 2 | 5 | “Y” shape tree on the Verizon line in the middle of the photo |
| 2 | 6 | Limb in the left of the photo on the Verizon line |
| 3 | 1 | Tree pulling Verizon line to the ground in center of the photo |
| 3 | 2 | Verizon line down to ground under three different trees that fell together in one location |
| 3 | 3 | Larger expanded view of Williams Exhibit 3, photo 2 |
| 3 | 4 | Tree on Verizon line in the center of the photo |
| 4 | 1 | On the left Verizon line on the poles and on the right PPL poles directly across from the right side of West Line Road |
| 5 | 1 | Photo of multiple trees still laying on the lines |

Williams Exh. Nos. 1-5. With regard to the photographs in Williams Exhibit Number 3, Mr. Williams testified that the lines run over a creek and that the trees along the creek are often

affected by heavy rain and rising water. Tr. 8. Mr. Williams concluded his direct testimony by stating that there are also trees that are not yet touching his line but are tilting toward the line. Tr. 11. Mr. Williams also added that the problem also requires him to constantly reset his modem. Tr. 13.

Verizon did not object to the admission of the pictures into the record or otherwise contest the pictures other than to authenticate that Mr. Williams took the pictures and when they were taken. Tr. 16-17. Mr. Williams was then cross-examined on other issues. Tr. 17-20.

It is also important to note that Mr. Williams was using his landline phone during the hearing and at various times there was static and interruptions on the call. Tr. 10, 12-13, 16, 19, 34.

In response to the evidence presented by Mr. Williams, Verizon presented two witnesses and two exhibits. Mr. Wagner, the outside plant engineer, testified regarding the specific line that Mr. Williams is complaining about, noting that it is 1,200 feet long and installed in 1991 on a private easement and serves nine people. Tr. 24-25. Of note, Mr. Wagner testified that Verizon's cables are designed to withstand trees leaning on them and that he did not expect that the trees leaning on Mr. Williams' line would damage the lines. Tr. 26. Additionally, Mr. Wagner testified that "Verizon facilities generally function well, even if the poles and lines run through a wooded area." Tr. 28. Mr. Wagner concluded by testifying about the process that Verizon follows in order to have facilities moved at a customer's request and that it would cost about \$15,000 to move the line that provides Mr. Williams' telephone service. Tr. 28-30; *see also*, Verizon Exh. No. 1.

Verizon also presented the testimony of Mr. Knepper, who is a local manager for installation and maintenance technicians for Verizon in the area where Mr. Williams lives. Mr. Knepper testified that he believes the problem with Mr. Williams' service is with Mr. Williams' telephone equipment, such as the phone set itself. Tr. 34. Mr. Knepper also testified regarding how he tested Mr. Williams' line at the network interface device (NID), including while he was

speaking on the phone during the hearing. Tr. 35-36. Mr. Knepper said that even though it was hard to hear Mr. Williams at times during the hearing, the phone line tested fine. Tr. 36. Mr. Knepper also testified regarding the trouble history log that Verizon maintains for Mr. Williams' line dating back to 2015. Tr. 37-39. Mr. Knepper concluded his testimony by stating that, based on his experience, there is no indication that the line that serves Mr. Williams is bad, needs to be replaced or needs to be moved. Tr. 41-42.

Disposition

Substantial record evidence demonstrates that Verizon has violated the Public Utility Code with regard to maintenance of the telephone line that provides telephone service to Mr. Williams.

As noted above, Verizon is required by Section 1501 of the Public Utility Code to furnish and maintain adequate, efficient, safe and reasonable service and facilities and shall make all such repairs and improvements to such facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. § 1501. Verizon is also obligated to construct its system so as to eliminate crosstalk and noise resulting from faulty construction and to maintain its system in such a condition as to make it possible to furnish continuous service. 52 Pa. Code §§ 63.12(a) and 63.24(a). Verizon is not required to provide perfect service, Eernisse, *supra*, but the record evidence presented in this proceeding supports a finding that the service Verizon is providing to Mr. Williams violates the Public Utility Code with regard to maintaining the telephone line.

The photographs presented by Mr. Williams show a line that is poorly maintained. Multiple pictures show the telephone line running through or in close proximity to trees. *See e.g.*, Williams Exh. Nos. 1 and 2. Various pictures show multiple instances of the telephone line hanging as low to the ground as six feet or just over a creek. Williams Exh. Nos. 1 and 3. Other pictures show trees leaning on or towards the telephone line. Williams Exh. No. 2. Some pictures show heavy portions of trees, not merely limbs, resting on the telephone line. Williams Exh. No. 3 and 5. These conditions do not demonstrate Verizon making improvements to

maintain adequate, efficient, safe and reasonable service as shall be necessary or proper for the convenience of Verizon's patrons and the public as is required by the Public Utility Code. These pictures show a line that has been neglected and allowed to fall into disrepair in violation of the Public Utility Code.

I recognize that Mr. Williams lives in a densely wooded area, but the evidence presented by Mr. Williams supports a finding that it is unreasonable to leave Verizon's facilities in this condition in light of Verizon's obligations under the Public Utility Code. It is irrelevant whether the conditions depicted in the picture are in fact causing the static and dropped calls on Mr. Williams' service. It is sufficient to show a violation of the Public Utility Code that there are large portions of trees leaning on the line and the line hanging so low, among other things, as depicted in these pictures. Verizon should not wait until a line comes down or is otherwise damaged by a tree in order to make repairs or maintain the line. Verizon should be maintaining its lines to prevent such occurrences. To the extent that proper maintenance of this line to correct the violations shown in Williams Exhibits Number 1-5 improves service to Mr. Williams in particular, then even better.

Verizon's arguments to the contrary are without merit and will be rejected. For example, to the extent that Mr. Williams is receiving adequate service to the NID does not negate the lack of maintenance of the telephone line leading up to the NID. It is commonly accepted that problems in telephone service can be intermittent. As a result, to the extent that the service to the NID is adequate at the time Verizon is testing the line does not mean that there are not problems with the line at other times. This is particularly true given Mr. Williams' testimony in this proceeding that portions of the line hang low over a creek and that his service worsens if the creek rises after a heavy rain. Tr. 8. It may be, for example, that the creek was running low at the time Verizon tested Mr. Williams' line.

Similarly, testimony from Verizon's witnesses that its cables are designed to withstand trees standing on them or that it is common for Verizon to have lines running through wooded areas are also without merit. Tr. 26-28. It is one thing to have lines running through wooded areas or trees leaning on the lines because Pennsylvania has significant rural territory. It

is a completely separate issue to have the line providing service to Mr. Williams have such large portions of trees laying on top of the line or for the line to hang so low. The fact that Verizon's lines are designed to withstand trees leaning on them does not negate Verizon's obligation to otherwise maintain its lines, especially in this case where there is an averment that such a condition is causing poor quality service. Just because Verizon lines can withstand trees leaning on them does not negate Verizon's obligation to properly maintain its network.

In addition, there was discussion during the hearing regarding whether the line should be moved or whether the trees should be removed. This is a distinction without a difference in this proceeding. Regardless of whether the line is moved, or the trees are removed, the line that serves Mr. Williams should not be in such a state of disrepair. Verizon's evidence regarding its policy for moving facilities at customers' expense and the estimation that it would cost \$15,000 to move Mr. Williams's line also does not negate Verizon's obligations under the Public Utility Code. Customers should not have to pay in order for Verizon to meet its statutory obligations.

Finally, Verizon is not required to remove trees or limbs that are on private property that would be more appropriate for a private arborist. Verizon is not required to provide free landscaping services. Such is not the case here, however. Verizon has easements through rights-of-ways in which its telephone lines run. In exchange for those easements, Verizon has the concomitant obligation to maintain those easements and the lines that run through them. The record evidence in this case demonstrates that Verizon has not met that obligation.

Verizon did not effectively rebut the evidence presented by Mr. Williams. The evidence presented by Mr. Williams is more convincing than the evidence presented by Verizon. Se-Ling Hoisery, supra. As such, Mr. Williams has satisfied his burden to demonstrate that Verizon has violated the Public Utility Code. Therefore, Mr. Williams' complaint will be sustained, Verizon will be directed to clear the line that provides Mr. Williams' telephone service and a civil penalty will be imposed. Verizon has not been reasonable in the maintenance of its facility as it relates to the line through which Mr. Williams receives service.

Civil Penalty

Having found that the record evidence demonstrates that Verizon has violated the Public Utility Code in this case, it is necessary to determine the appropriate civil penalty. Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a). These factors and standards 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.
- (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.
- (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.
- (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.

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

(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.

(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.

(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.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000) (“Rosi factors”).

In this case, with regard to factor number 1, whether the conduct was of a serious nature, this factor supports a higher penalty because Verizon's lack of proper maintenance is not an administrative filing or technical error.

With regard to factor number 2, whether the resulting consequences of the conduct were of a serious nature, this factor also supports a higher penalty because loss of telephone service could result in serious consequences. Telephone lines staying in the condition as depicted in Mr. Williams' exhibits could also result in personal injury or property damage.

With regard to factor number 3, whether the conduct was intentional or negligent, this factor also supports a higher penalty because Verizon was given several opportunities to properly maintain the line at issue in this proceeding but did not do so.

With regard to factor number 4, whether Verizon made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future, this factor also supports a higher penalty because the record does not reflect that Verizon has made any modifications that would prevent similar conduct in the future.

With regard to factor number 5, the number of customers affected and the duration, this factor also supports a higher penalty. Although record evidence demonstrates that only nine people are served by the line at issue in this proceeding, the condition has existed for an extended period of time and continues to exist as of the time of the hearing.

With regard to factor number 6, Verizon's compliance history, there is no record evidence on this issue and, therefore, this factor will not be considered.

Similarly, with regard to factor number 7, whether Verizon cooperated with the Commission's investigation, there is no Commission investigation in this proceeding and, therefore, this factor will not be considered.

With regard to the amount of civil penalty necessary to deter future violations, factor number 8, this factor also supports a higher penalty. As noted, it is not uncommon for Verizon to have lines running through wooded areas or to have trees leaning on lines. Therefore, there are likely other instances where lines are being kept by Verizon in the same or similar condition as the line that provides service to Mr. Williams. This civil penalty should incent Verizon to properly maintain all of its lines and deter Verizon from future violations.

With regard to factor 9, past decisions in similar situations, Commission precedent primarily focusses on maintenance of telephone lines as it relates to service outages. *See e.g., Eernisse, supra.* This is in contrast to the extensive statutory, appellate and Commission case law regarding obligations of electric distribution companies regarding vegetation management. *See e.g., West Penn Power Co. v. Pa. Pub. Util. Comm'n, 478 A.2d 947 (Pa. Cmwlth. 1984).* This may explain why record evidence demonstrates in this case that PPL moved its electric poles from the wooded area to the area alongside the road. Williams Exh. No. 4. The civil penalty in this case is being imposed on Verizon as a result of the failure to properly maintain the lines, regardless of whether such maintenance has affected Mr. Williams' actual service. The photographs admitted into the record depict improperly maintained lines. The civil penalty is made based solely on evidence demonstrating Verizon's improper maintenance of its lines and not with regard to any interruption in service. Therefore, Commission precedent regarding service interruptions does not apply.

With regard to factor 10, other relevant factors to consider, there are no other relevant factors to consider.

Therefore, since most of the Rosj factors support a higher civil penalty in this case, a civil penalty of \$1,000 is appropriate for Verizon's violation of Section 1501 of the Public Utility Code pursuant to 66 Pa.C.S. § 3301.¹

¹ A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that violation's continuing offense. 66 Pa.C.S. § 3301

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

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

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. 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 with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlt 23, 480 A.2d 382 (1984).

9. Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees and the public. 66 Pa.C.S. § 1501.

10. A public utility system shall be so constructed as to eliminate crosstalk and noise resulting from faulty construction, to the extent that these factors interfere with the satisfactory transmission of messages. 52 Pa.Code § 63.12(a).

11. Each public utility shall endeavor to maintain its entire system in such condition as to make it possible to furnish continuous service, and shall take reasonable measures to prevent interruptions of service and to restore service with a minimum delay if interruptions occur. 52 Pa.Code § 63.24(a).

12. The Commission's regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201; *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

13. A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that violation's continuing offense. 66 Pa.C.S. § 3301.

14. Mr. Williams has satisfied his burden of demonstrating that Verizon has violated the Public Utility Code with regard to the maintenance of the line that provides him telephone service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Robert Williams against Verizon Pennsylvania, LLC on September 26, 2018 at docket number C-2018-3005368 is hereby sustained.

2. That Verizon Pennsylvania, LLC is directed to clear the lines that provides Mr. Williams' telephone service.

3. That Verizon Pennsylvania, LLC shall pay a civil penalty of \$1,000 due to the violation of Section 1501 of the Public Utility Code.

4. That Verizon Pennsylvania, LLC shall pay a total of \$1,000 by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

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

5. That Verizon Pennsylvania, LLC shall cease and desist from further violations of the Public Utility Code or any regulations of the Public Utility Commission.

6. That this matter be marked closed upon payment by Verizon Pennsylvania LLC of the \$1,000 civil penalty.

Date: July 9, 2019

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge