

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Optatus Chailla	:	
	:	
v.	:	C-2019-3008691
	:	
Verizon Pennsylvania, LLC	:	

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

A customer filed a complaint against his telephone utility regarding telephone and internet service. This decision denies the complaint as the customer has failed to demonstrate that the telephone utility has violated the Public Utility Code, a Commission order, regulation or Commission-approved tariff or otherwise failed to provide reasonable or adequate service.

**HISTORY OF THE PROCEEDING**

On March 15, 2019, Optatus Chailla (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania, LLC (Respondent or Verizon) at Docket Number C-2019-3008691. In this complaint, Complainant raised several allegations which included incorrect charges on his bill, loss of connectivity with his telephone and internet service and invasion of privacy. Complainant requested among other things that the Commission order Verizon to remove folders from his home computer, provide an explanation for his telephone bill and for charges relating to the installation of a jack inside his home that he believes should have been covered by a protection plan, ensure that the addition of

a voicemail service to his telephone is for regional calling, provide him with a payment arrangement for his March 2019 bill and provide information on billing plans for senior citizens.

On April 8, 2019, Respondent filed an answer to the complaint. In its answer, Respondent either admitted or denied the various averments of the complaint. Respondent acknowledged that it had investigated the Complainant's concerns when he had raised them and made repairs as necessary to ensure telephone and internet service. However, Respondent alleged that it was unable to address other concerns raised by the Complainant and was unsuccessful in reaching the Complainant despite leaving messages and direct contact information.

On May 2, 2019, the Commission issued a telephonic hearing notice scheduling this matter for hearing on June 13, 2019. A prehearing order was issued on May 3, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

The hearing was conducted as scheduled on June 13, 2019. The Complainant appeared *pro se* and presented one witness, his wife, Florence Chailla. The Complainant did not sponsor any exhibits at the time of hearing. Attorney Susan Paiva represented the Respondent which presented two witnesses who sponsored two exhibits that were admitted into the record. The initial hearing resulted in a transcript of 90 pages.

The record closed on June 13, 2019 at the conclusion of the initial hearing. For the reasons set forth below, the complaint will be denied.

#### FINDINGS OF FACT

1. The Complainant is Optatus Chailla.
2. The Respondent is Verizon Pennsylvania, LLC.

3. The Complainant resides at 25 Garden Street, Stroudsburg, Pennsylvania (service address). N.T. 4.

4. In February of 2019, the Complainant began Digital Subscriber Line (DSL) service with the Respondent. N.T. 52.

5. On February 15, 2019, the Complainant reported miscellaneous troubles with his service to the Respondent and was referred to the Respondent's business office to address those issues. N.T. 53, Verizon Ex. 1.

6. On March 11, 2019, the Complainant reported that he was experiencing static and buzzing on his phone line and that 911 had been dispatched to his home despite the Complainant not placing a call to 911. N.T. 53.

7. A technician was dispatched and a repair was made to the first part of the cable and a cautionary change was made to the second or F2 portion of the cable to the Complainant's home. N.T. 54.

8. The cable repair made by the technician was to correct a short in the cable. N.T. 54.

9. On March 22, 2019, the Complainant called the Respondent and indicated that he could not place calls from his landline phone. N.T. 54.

10. On March 26, 2019, a technician was dispatched to the Complainant's home. N.T. 54.

11. The technician found that the Complainant's telephone had a good dial tone at the network interface device (NID) outside Complainant's home. N.T. 54-55.

12. The technician found that telephone service to the Complainant's home was good as far as the NID but could not go inside the home to test the service inside because Complainant was not at home. N.T. 54-55.

13. The Respondent's technicians are required to make telephone contact with customers prior to their arrival for a service call and this call is recorded by the Respondent's databases. N.T. 55.

14. The technicians are also required to leave their phone number for the customer during this call so the customer can return the technician's call. N.T. 55.

15. The Respondent did not receive any additional calls from the Complainant reporting service trouble or requesting a service call after March 22, 2019. N.T. 56.

16. On May 23, 2019, the Respondent's local manager became aware of the Complainant's complaint with the Commission and his allegation of ongoing service issues. N.T. 56.

17. In response, this manager initiated a ticket to dispatch a technician to the Complainant's home to conduct testing and address the Complainant's issues. N.T. 56.

18. The Complainant cancelled this service call via text message on that same day. N.T. 56-57.

19. The Complainant's cancellation message indicated that he was not available that day, Friday or Monday and that he would call the Respondent back. N.T. 57.

20. The Complainant did not call back to reschedule the technician for a service call. N.T. 57.

21. When the Respondent had not heard back from the Complainant by May 31, 2019, Respondent's manager sent a technician to the Complainant's home late in the afternoon that day. N.T. 57.

22. The technician was being sent to check the NID and confirm whether any issues the Complainant was encountering were at his home or outside. N.T. 58.

23. This technician determined there was an issue outside the Complainant's home but he could not make the type of repair needed. N.T. 58.

24. A splicer technician was sent to the Complainant's home on June 3, 2019 to make the repair. N.T. 58.

25. This technician repaired another short found in the Respondent's cable. N.T. 58-59.

26. A technician's ability to detect a short in the Respondent's cable is affected by several variables including the weather and whether the cable is wet. N.T. 60.

27. A short in the cable affected by water and the weather could cause a dial tone not to work but still allow DSL service to function. N.T. 60.

28. Once the weather changed or the cable was again dry, the short could disappear and both services would work correctly. N.T. 60.

29. During this same period of time the Respondent also had a senior analyst look into and attempt to address the Complainant's issues. N.T. 75.

30. This senior analyst attempted to call the Complainant on April 1, April 4 and April 5, 2019 and left messages at both the Complainant's main telephone number and the cell phone number which the Complainant had provided. N.T. 75-76.

31. Complainant's wife returned these calls on April 9, 2019 and left a message. N.T. 76.

32. The Respondent's senior analyst returned her call that same day and again left a message. N.T. 76.

33. The Respondent never heard back from the Complainant. N.T. 76.

34. On April 9, 2019, an email was sent to the Complainant asking for him to provide dates he would be available for a technician to come to his home and perform troubleshooting and repairs to his telephone and internet service. N.T. 78, Verizon Ex. 2.

35. The April 9, 2019 email told the Complainant that once any repairs had been made, the Respondent would credit the Complainant's account for time out of service. N.T. 78-79.

36. The April 9, 2019 email also provided answers to questions the Complainant had previously raised with respect to his April 3, 2019 bill and an explanation of the charges which appeared on it. N.T. 80-81.

37. The April 9, 2019 email also indicated that the Respondent would investigate a \$75 payment which the Complainant had alleged was not credited to his account and asked that the Complainant provide information about how the payment was made as well as a cancelled check or transaction tracking number. N.T. 81.

38. The Complainant never responded to the April 9, 2019 email and did not provide dates of availability for a technician to visit the Respondent. N.T. 78.

39. The Complainant never contacted the Respondent about the April 9, 2019 email to ask additional questions about his bill or the explanation of charges the Respondent had outlined in the email. N.T. 81.

40. The Complainant never provided the Respondent with payment information, a cancelled check or other transaction tracking information so the Respondent could investigate the Complainant's alleged missing \$75 payment. N.T. 81-82.

### DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet his burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

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.Cmwlth.1984).

The Complainant's witness began her testimony by enumerating five issues raised as the basis of the complaint in this matter – bill cramming, the right to broadband service within 10 business days of purchase, consumer protection rights under the TechSure Plus insurance coverage, invasion of privacy and damages.<sup>1</sup> N.T. 8. In response to these allegations, Respondent's counsel raised several objections - namely, that the Commission lacked jurisdiction over 1) the TechSure Plus plan which was an inside wire maintenance plan and an

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<sup>1</sup> The witness also raised several procedural issues which will be addressed below.

unregulated service, 2) allegations relating to an invasion of privacy by a shared computer drive and 3) any award of damages. N.T. 18.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa.Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa.Cmwlt. 1992) alloc. denied 637 A.2d 293 (Pa. 1993).

The Respondent is correct that the Commission lacks jurisdiction over these three issues. The TechSure Plus plan is a wire maintenance plan which maintains the jacks and wiring located inside the customer's home. N.T. 79. A dispute relating to consumer protection rights under the terms and conditions of a private maintenance or warranty contract is not something the Commission is empowered to address. Likewise, whether the Complainant believes a shared computer drive on his personal home computer presents an invasion of his privacy is also outside any jurisdiction afforded to the Commission. In addition, to the extent that the Complainant raised an issue with respect to damages, it has long been held that the Commission has no authority to award damages. Elkin v. Bell, 491 Pa. 123, 420 A.2d 371 (Pa. 1980); Feingold v. Bell of PA, 383 A.2d 791 (Pa. 1977). These issues are therefore outside the Commission's jurisdiction and cannot be considered as part of the complaint or requested relief in this matter.

The Complainant raised two other issues which he seeks to have the Commission address – bill cramming and the right to broadband service within 10 business days of purchase – that the Commission does have jurisdiction to hear. N.T. 8. Both will be addressed.

The Commission's regulation at 52 Pa. Code § 64.2 defines cramming.

§ 64.2. Definitions.

*Cramming*—The submission or inclusion of unauthorized, misleading or deceptive charges for products or services on an end-user customer's local telephone bill.

52 Pa. Code § 64.2.

The Complainant's witness testified that the Complainant had been the subject of 14 instances of cramming. N.T. 25. In describing those instances, the witness explained there was a charge of \$69.99 for a landline that was not working. N.T. 25-26. The DSL service had been "degraded", there was a \$193.99 charge for a router that Complainant was allegedly told would only be \$99 when he purchased it, an unexplained charge of \$94.99 and \$31.85 in fees and other charges which were not broken down. N.T. 26. The witness generally asserted that the Complainant was being charged for a service plan that was more costly than the plan he believed he had agreed to purchase.

The Respondent's witness testified that in response to billing issues raised by the Complainant he had attempted to contact Complainant by both landline and cellular telephone on multiple occasions between April 1 and April 5, 2019, but was unsuccessful. N.T. 75-76. Each time an attempt was made, a voicemail message was left on each telephone. N.T. 76. The Complainant's wife left a message returning the calls on April 9, 2019, but when Respondent's witness again attempted contact, he was unsuccessful. N.T. 76. The Complainant never contacted Respondent's witness thereafter; therefore, Respondent's witness was unable to provide information to the Complainant by telephone regarding the billing questions which had been raised. N.T. 76-77.

In an additional attempt to provide that billing information to the Complainant, Respondent's witness sent an email on April 29, 2019. N.T. 77, Verizon Ex. 2. This email explained each of the charges which the Complainant had received on his bill. The email also asked that the Complainant provide dates of availability so the Respondent could dispatch a

technician to the Complainant's home to perform troubleshooting and make any repairs. N.T. 78. The email also told the Complainant that once the repairs were completed the Respondent would work on a credit to the Complainant's account for any time out of service. There is no record evidence that the Complainant ever replied to this email or provided dates of availability so the Respondent could dispatch a technician to address the Complainant's issues. N.T. 78-79.

It should be noted that the testimony of the Complainant's own witness indicates that the Complainant received this email and that it provided an explanation of the charges on the Complainant's bill. However, the Complainant argued that Respondent's witness had not taken into consideration the time that the landline was out of service. N.T. 27. The Complainant's witness, however, did not indicate how such a consideration related to an explanation of the charges which had appeared on the Complainant's bill - or otherwise failed to provide the Complainant with a full explanation of those charges.

The burden is on the Complainant to show that the Respondent engaged in cramming on his telephone bill. Once the Complainant raises this issue with the Respondent, the Respondent is required to act as described under 52 Pa. Code § 64.23. Section 64.23 provides in pertinent part:

§ 64.23. Standardizing LEC responses to customer contacts alleging unauthorized charges added to the customer's bill (cramming) and unauthorized changes to the customer's long distance carrier (slamming).

(a) *Cramming*. Upon contact from a customer alleging that cramming has occurred on the bill rendered to the customer by the LEC, the LEC shall do the following:

(1) Identify the charges, and clarify that the customer's complaint is that the customer did not authorize the charges or order or use the services or products associated with the charges.

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52 Pa. Code § 64.23.

The testimony of both the Respondent's and Complainant's witnesses indicates that once the Complainant raised an issue about charges on his bill, the Respondent identified the charges and provided an explanation to the Complainant. At no point after this explanation was provided did the Complainant contact the Respondent regarding the charges or indicate that he was unsatisfied with the explanation he had received. Had he remained unsatisfied, it stands to reason that the Complainant would have made contact and could easily have communicated this to the Respondent by telephone or email. The Complainant has failed to provide any evidence that the Respondent has engaged in cramming and has failed to meet his burden.

The second allegation raised by the Complainant was that the Respondent had not provided broadband internet service to him within 10 days of purchase as required under the law. The Public Utility Code does provide certain criteria relating to broadband internet services. Relevant to the Complainant's allegations is Section 3014(b)(5) of the Public Utility Code. This section provides in relevant part:

§ 3014. Network modernization plans

**(b) Options for amendment of network modernization plan.** -- Local exchange telecommunications companies shall have the following options:

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(5) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) may amend its network modernization plan to extend the period of time within which broadband service must be made available to a customer to up to ten business days after the customer's request for broadband service.

66 Pa.C.S. § 3014(b)(5).

With respect to this allegation the Complainant has again failed to meet his burden. In February of 2019, the Complainant began DSL service with the Respondent. N.T. 52. On February 15, 2019, the Complainant reported miscellaneous troubles with his service to the Respondent and was referred to the Respondent's business office to address those issues. N.T. 53. On March 11, 2019, the Complainant reported that he was experiencing static and

buzzing on his phone line and that 911 had been dispatched to his home despite the Complainant not placing such a call. N.T. 53. A technician was dispatched and a repair was made to the first part of the cable and a cautionary change was made to the second or F2 portion of the cable to the Complainant's home. N.T. 54. On March 22, 2019, the Complainant called the Respondent and indicated that he could not place calls from his phone. N.T. 54.

Even assuming that the Complainant experienced an on-going disruption of his DSL service, this does not in and of itself mean that the Complainant did not receive the DSL service within 10 days of his request. It simply means that - after establishing that service - the Complainant experienced alleged disruptions. The credible testimony and evidence presented by the Respondent indicates that after this DSL service was requested by the Complainant in February 2019, the only issues which the Complainant raised with the Respondent between the request and March 22, 2019 related to the telephone portion of his service.<sup>2</sup> The Complainant has failed to provide any evidence to show that the Respondent did not provide the Complainant broadband service within 10 days of his request as contemplated under Section 3014(b)(5) described above. The Complainant has failed to meet his burden.

The statute at 66 Pa. C.S. § 1501 governs allegations of unreasonable or inadequate service. Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977) aff'd 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); Emerald Art Glass v. Duquesne Light Co., Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co., 80 Pa. PUC 662 (1993).

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<sup>2</sup> On March 11, 2019, the Complainant contacted the Respondent and alleged that he was experiencing static and buzzing on his phone line and that 911 had been dispatched to his home despite not placing such a call. On March 22, 2019, the Complainant contacted the Respondent and alleged that he could not place calls from his phone. Neither contact indicated an issue with DSL service.

Viewing the complaint in a broad sense, it could be said that the Complainant has generally raised the allegation that the Respondent has failed to provide reasonable and adequate telephone and DSL services. As with the other issues raised, the burden is on the Complainant to show that the Respondent failed to provide reasonable and adequate service.

The Complainant's witness testified that the landline telephone service did not work from February 22, 2019 until June 4, 2019 - a period of 96 days. N.T. 27. The witness indicated that the telephone service did not work at all during this time period. N.T. 28. In addition, the witness testified that the DSL service was to be installed on February 28, 2019 but did not work until April 22, 2019. N.T. 32.

With respect to the landline telephone service, the testimony presented by the Complainant's witness that this service never worked at all for a period of 96 days between February 22, 2019 and June 4, 2019 is not corroborated by any additional evidence of record in this matter. The Respondent's records indicate that on March 11, 2019, the Complainant reported that he was experiencing static and buzzing on his phone line and that 911 had been dispatched to his home despite the Complainant not placing such a call. N.T. 53. A technician was dispatched and a repair was made. N.T. 54. On March 22, 2019, the Complainant called the Respondent and indicated that he could not place calls from his landline phone. N.T. 54. On March 26, 2019, a technician was dispatched to the Complainant's home and found that the Complainant's telephone had a good dial tone at the network interface device (NID) outside Complainant's home. N.T. 54-55. The Respondent did not receive any additional calls from the Complainant reporting issues with his telephone service after March 22, 2019. N.T. 56. On May 23, 2019, the Respondent's local manager became aware of the Complainant's complaint with the Commission and his allegation of ongoing service issues. N.T. 56. At that point it was this local manager who then attempted to contact the Complainant regarding his complaint.

Given that the Respondent's technician found a good dial tone at the NID on March 26, 2019, that the Respondent did not report service issues thereafter and that the next contact between the parties was initiated by the Respondent's local manager on May 23, 2019, it is not credible that the Complainant had no landline telephone service at all between

February 22, 2019 and June 4, 2019. It is reasonable to conclude that after reporting an issue to the Respondent on March 22, 2019, the Complainant would have continued to report issues with his service thereafter if he had continued to experience them. However, he did not. In fact, the Respondent did not report any issues with his telephone service at all between March 22 and May 23, 2019 – a period of two months. The Complainant’s allegation that he had no telephone service whatsoever between February and June 2019 is not credible.

This same reasoning holds true with respect to the Complainant’s allegation that he did not have DSL service after the installation date of February 28, 2019 through April 22, 2019. N.T. 32. The evidence of record indicates that subsequent to the installation date the Complainant contacted the Respondent on March 11, 2019 to report that he was experiencing static and buzzing on his phone line and again on March 22, 2019 to report that he could not place calls from his phone. N.T. 53-54. These were the only two occasions between the installation date on which the Complainant’s DSL was installed and the date the Complainant alleged his DSL service began working on April 22, 2019 that the Complainant complained of service issues to the Respondent. Neither of these occasions involved any complaints regarding the DSL service. Therefore, the Complainant’s allegation that he was without DSL service until April 22, 2019 is not credible.

The testimony and evidence presented by the Respondent indicates that multiple attempts were made without success to contact the Complainant regarding the service issues he raised. Despite multiple requests for the Complainant to provide dates of availability so a technician could be dispatched to meet with the Complainant, the Complainant either never provided such dates or cancelled appointments the Respondent had made in advance. Each time a technician was dispatched they were required to leave messages for the Complainant that they would be coming and contact information for the Complainant to reach them. The Complainant never met with and never contacted a technician. These technicians attempted to identify and repair issues which they were able to find outside (issues which could appear or disappear depending on the weather) but were not able to identify if there were any issues inside since they could not gain access inside the Complainant’s home because the Complainant was never home.

While the Complainant may have experienced issues with his telephone and DSL service, he has failed to demonstrate that these issues rose to the level of unreasonable or inadequate service. The Complainant has therefore failed to meet his burden to show that the Respondent did not provide reasonable and adequate service to him.

At the time of hearing, Complainant's wife and witness, Florence Chailla, raised several procedural and legal arguments on behalf of the Complainant. When asked whether Ms. Chailla was an attorney, she indicated that she possessed a law degree but was not licensed to practice law in Pennsylvania. N.T. 23-24. Notwithstanding the fact that Ms. Chailla is unable to provide legal representation to the Complainant, in the interests of due process and judicial economy, I will nonetheless address the procedural issues which she raised at the hearing.

Ms. Chailla raised three procedural issues: 1) an objection to the mediation report that was filed with the Commission on April 19, 2019, 2) an objection to the prehearing scheduled for June 13, 2019, and 3) an objection filed on June 3, 2019 and a motion for summary judgment filed on June 11, 2019. N.T. 9.

Whether a party objects to mediation is immaterial to the conduct of a hearing in this matter. At best, the Complainant's objection would be to the requirement that he participate in mediation with the Respondent, which he did not. Should mediation fail, the parties proceed to a hearing. Any objection raised by the Complainant regarding mediation was moot given that the hearing in this matter was already being conducted at the time the Complainant's objection to mediation was being discussed on the record.

The argument that the Complainant objected to a "prehearing" which had been scheduled for June 13, 2019 is misplaced. The proceeding which was scheduled for June 13, 2019 was the initial hearing in this matter – not a prehearing or prehearing conference. Therefore, this objection is moot since no prehearing was conducted; rather, the initial hearing was conducted on June 13, 2019.

Ms. Chailla also argued that the Complainant had filed two motions for summary judgment in this matter, which should have been ruled upon prior to the hearing. The first was filed on June 3, 2019. N.T. 10. The second was filed on June 11, 2019. N.T. 9, 13.

Looking at the documents which were filed with the Commission's Secretary's Bureau, the Complainant and Ms. Chailla filed a document on June 5, 2019 which they titled a motion for summary judgment. This document was followed by another filing on June 10, 2019 which was titled as a "follow up" motion for summary judgement. The Complainant and Ms. Chailla then filed another motion for summary judgment on June 11, 2019. While the Complainant may have filed these motions with the Secretary's Bureau, none of these motions were served upon me as the presiding officer assigned to this matter. The Commission's regulations address the service of documents:

§ 1.54. Service by a party.

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned.

52 Pa. Code § 1.54(a). I was unaware that any such motions had been filed until June 11, 2019 – just two days before the day of hearing – when Respondent served a copy of its response to these motions on me by both email and first-class mail.

In addition, the filings made by the Complainant were defective in that they failed to contain the necessary notices as required under the Commission's regulations.

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(a) Generally. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

52 Pa. Code § 5.102. As explained at the time of hearing, putting the defective filing and procedural issues aside, the Complainant's motions are untimely - in particular the filing made on June 11, 2019, just two days before the scheduled hearing. Section 5.102 above prescribes that such motions are to be filed so that the hearing is not delayed. Filing motions for summary judgment shortly before the scheduled hearing – and just two days before the date of hearing – are not timely. Even if what the Complainant has called motions for summary judgment had been properly filed and properly served in a timely manner, it is clear from the pleadings that there were numerous facts in dispute between the parties that would prevent a motion for summary judgment from prevailing. For all of these reasons, the filings which the Complainant has characterized as motions for summary judgment are dismissed.

Lastly, the record in this matter closed at the conclusion of the hearing on June 13, 2019. On June 21, 2019, the Complainant and Ms. Chailla filed with the Secretary's Bureau what was titled "for the record post-hearing based on new evidence". Section 5.431 of the Commission's regulations provides:

§ 5.431. Close of the record.

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

52 Pa. Code § 5.431. Such evidence submitted by the Complainant after the close of the record at the conclusion of the hearing on June 13, 2019 cannot be relied upon in rendering an initial decision in this matter or accepted into the record because the Complainant has failed to state any reason for - or otherwise identify good cause for - its late submission. It therefore cannot be relied upon or accepted into the record in this matter.

Based on all of the above, Complainant's motions for summary judgment are denied. The evidence submitted by the Complainant subsequent to the close of the record on

June 13, 2019 is excluded from the record. The complaint filed by the Complainant is denied and dismissed.

### CONCLUSIONS OF LAW

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

2. Under 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Opinion and Order entered May 28, 2008).

4. Cramming is the submission or inclusion of unauthorized, misleading or deceptive charges for products or services on an end-user customer's local telephone bill. 52 Pa. Code § 64.2.

5. When a customer alleges that they have been subject to cramming, the utility must identify the charges, and clarify that the customer's complaint is that the customer did not authorize the charges or order or use the services or products associated with the charges. 52 Pa. Code § 64.23.

6. Broadband service must be made available to a customer within 10 business days after the customer's request for broadband service. 66 Pa. C.S. § 3014(b)(5), Elkin v. Bell Telephone Co., 372 A.2d 1203 (Pa. Super. 1977) aff'd 420 A.2d 371 (Pa. 1977); Behrend v. Bell Telephone Co., 243 A.2d 346 (Pa. 1968). Analytical Laboratory Services, Inc. v. Metropolitan Edison Co., Docket No. C-2006608 (Order entered December 21, 2007); Emerald

Art Glass v. Duquesne Light Co., Docket No. C-00015494 (Order entered June 14, 2002); Re: Metropolitan Edison Co., 80 Pa. PUC 662 (1993).

7. Public utilities must provide reasonable and adequate service. 66 Pa. C.S. § 1501.

8. Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned. 52 Pa. Code § 1.54(a).

9. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. 52 Pa. Code § 5.102(a).

10. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion. 52 Pa. Code § 5.102(a).

11. The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission. 52 Pa. Code § 5.431(a).

12. After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. 52 Pa. Code § 5.431(b).

13. The Complainant has failed to meet his burden of proof. 66 Pa. C.S. § 332(a)

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motions for summary judgment filed by the Complainant are denied.
2. That the evidence submitted by the Complainant subsequent to the close of the record on June 13, 2019 is excluded from the record.
3. That the complaint of Optatus Chaila against Verizon Pennsylvania, LLC at Docket No. C-2019-3008691 is hereby denied and dismissed.
4. That the proceeding at Docket No. C-2019-3008691 is marked closed.

Date: August 19, 2019

\_\_\_\_\_/s/  
Benjamin J. Myers  
Administrative Law Judge