

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cynthia Mosco

v.

Verizon Pennsylvania LLC

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:

C-2018-3006579

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

The formal complaint of a customer against a telephone utility is sustained. The telephone utility failed to maintain reasonable telephone service to the complainant. A civil penalty is assessed. However, the customer's request for relief cannot be granted, because the Commission cannot prevent the telephone utility from retiring its copper network and migrating customers to fiber-based telephone service.

HISTORY OF THE PROCEEDINGS

On December 17, 2018, Cynthia Mosco (Complainant) filed a formal complaint against Verizon Pennsylvania, LLC (Verizon), alleging that Verizon refused to repair her copper lines and insisted that she permit the installation of fiber optics for her telephone service at her residence (service location). Verizon filed an answer on January 7, 2019. Verizon admitted that the Complainant has had service problems. Verizon averred that her service was restored; however, if her service problems persist, migration to fiber-optic facilities will be necessary for permanent repair.

By hearing notice dated March 5, 2019, this matter was assigned to Administrative Law Judge Emily DeVoe and scheduled for a hearing on April 8, 2019. Judge DeVoe issued a prehearing order on March 7, 2019.

The hearing convened as scheduled. The Complainant appeared and was self-represented. Verizon appeared, represented by Suzan D. Paiva, Esquire.

Prior to the presentation of any evidence, the parties engaged in off-the-record settlement discussions. Once back on the record, the parties agreed to continue the hearing and file a written status report in six months. Verizon also agreed to notify the Complainant if it made any filings with the Federal Communications Commission (FCC) that relate to the service location and Verizon's deployment of fiber-optic lines. Verizon was directed to notify the Complainant in writing within twenty days of the filing, and either attach a copy of the filing or provide the Complainant with instructions on how she may access it or obtain a copy. Judge DeVoe memorialized these agreements in an interim order dated April 8, 2019, which directed the parties to file a status report on or before October 11, 2019.

On April 19, 2019, Judge DeVoe received a letter from Verizon dated April 15, 2019. In its letter, Verizon advised it made a filing with the FCC on April 10, 2019, which starts the FCC's copper retirement process for an area encompassing the service location. Verizon also advised it will continue to monitor the Complainant's service over copper, and that there is nothing the Complainant needs to do at this time.

The parties were unsuccessful in resolving their dispute, and by letter dated October 8, 2019, the Complainant requested a hearing. By notice dated October 18, 2019, a further hearing was scheduled to take place on November 25, 2019.¹

The hearing convened as scheduled. The Complainant was self-represented and testified on her own behalf. Verizon was represented by Suzan D. Paiva, Esquire and presented the testimony of two witnesses, Larry Hixson and Janet Gazlay Martin. Verizon also offered two

¹ This matter was transferred to me on October 22, 2019.

exhibits which were admitted into the record. Official notice was also taken of three FCC documents marked as Verizon Exs. 3, 4, and 6. The hearing resulted in a transcript of 140 pages. The record was closed by order dated January 7, 2020, following the receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Cynthia Mosco who resides at 951 Brintell Street, Pittsburgh, Pennsylvania (service location). (N.T. 24)
2. Verizon Pennsylvania LLC is a jurisdictional public utility.
3. The Complainant currently receives “plain old telephone service” (POTS) from Verizon’s copper-based network. (N.T. 54)
4. The Complainant has suffered intermittent outages of her telephone service as well as other service problems since June 2016. (N.T. 25)
5. The Complainant has made 39 service calls to Verizon in the last two and a half years. (N.T. 26-27)
6. Many times, the Complainant was able to call out, but no calls were coming in. (N.T. 27)
7. On September 16, 2016, the Complainant had no telephone service and was not able to call her home to contact her family when she was calling from the hospital. (N.T. 25)
8. The Complainant had no telephone service on June 1, 2018; August 29, 2018; February 21, 2019; and October 8, 2019. (Verizon Ex. 1)

9. It took seven days for the August 29, 2018 outage to be resolved because the line began working without a Verizon repair. (Verizon Ex. 1)

10. The outages on June 1, 2018, February 21, 2019 and October 8, 2019 were repaired the following day. (Verizon Ex. 1)

11. The Complainant reported that she could not receive in-coming calls or that there was noise or static on the line on May 31, 2018; July 3, 2018; November 18, 2018; November 24, 2018; December 15, 2018 and February 12, 2019. (Verizon Ex. 1)

12. The May 31, 2018 service problem was repaired six and a half hours after the problem was reported. (Verizon Ex. 1)

13. It took more than three days to repair the July 3, 2018 service problem. (Verizon Ex. 1)

14. On November 18, 2018, the Complainant could not receive incoming calls. (Verizon Ex. 1; see N.T. 27, 84)

15. The November 18, 2018 service problem was not repaired until November 23, 2018, five days later. (Verizon Ex. 1)

16. It took two days to repair the November 24, 2018 service problem. (Verizon Ex. 1)

17. It took 18 days to repair the December 15, 2018 service problem. (Verizon Ex. 1)

18. It took three days to repair the February 12, 2019 service problem. (Verizon Ex. 1)

19. Often, it would take more than 24 hours for Verizon to restore Complainant's service after she reported a service problem. (N.T. 27; See Verizon Ex. 1)

20. On June 1, 2018, at 3:09 p.m., Verizon's record notes that the Complainant reported that she could not make or receive calls. (Verizon Ex. 1)

21. The June 1, 2018 record notes a "medical emergency." (Verizon Ex. 1)

22. A technician was not dispatched until June 2, 2018 at 8:55 a.m. (Verizon Ex. 1)

23. Although the service record on July 3, 2018, notes "testing inconclusive" suggesting that Verizon attempted to resolve the outage remotely, the Complainant's service was not restored until July 7, 2019, when a technician was finally dispatched. (Verizon Ex. 1)

24. Verizon provides most of its POTS using fiber optic lines instead of copper line. (N.T. 54)

25. Fiber optic POTS is available in the Complainant's neighborhood. (N.T. 54)

26. Customers in an area are served from a distribution box which serves as a "hub" or "junction" for providing a location to connect wires and provide flexibility to the network. (N.T. 55)

27. The distribution box is capable of serving 600 customers. (N.T. 72)

28. The customers served by area distribution boxes are ultimately served from Verizon's wire center in Sharpsburg. (N.T. 97)

29. Verizon began deploying fiber optic cable to customers served from the Sharpsburg wire center in approximately 2007. (N.T. 86)

30. Only five of the customers served by the distribution box to the Complainant are served by copper wire; the remaining customers are served by fiber optic lines. (N.T. 55, 66)

31. The copper line that serves the Complainant is past its useful life and needs to be replaced. (N.T. 58; 63)

32. The copper line that serves the Complainant comes up a hill and through the woods, so it is in rough shape. (N.T. 63; 67-68)

33. Verizon's plan is to retire its copper network and to replace it with fiber optic lines. (N.T. 59)

34. Verizon chose fiber optic for several reasons: the material is less expensive than copper; fiber optic is less susceptible to weather, especially water, and easier to maintain; and copper is difficult to obtain. (N.T. 59)

35. It can take more than a week to obtain a piece of copper to repair a copper line. (N.T. 59)

36. Fiber transmits light rather than electricity and can operate under water. (N.T. 60)

37. Generally, fiber optic line is more reliable than copper line. (N.T. 60; *see also* N.T. 113)

38. Fiber optic service requires an Optical Network Terminal (ONT).
(N.T. 63)

39. Although the ONT is installed in the customer's home, it is owned by Verizon and Verizon would replace it if it was damaged. (N.T. 63; 126)

40. The ONT is the point of demarcation between Verizon's facilities and the customer's inside wiring. (N.T. 63-64)

41. Although the ONT is typically installed near the current location where the Verizon cable connects to the inside wiring of a customer's home,² the ONT can be located anywhere inside a person's home so long as it is near an existing jack and a power outlet.
(N.T. 106)

42. In a typical fiber optic installation, a Verizon technician would walk through the home with the customer and they would agree on a location for the installation of the ONT. (N.T. 106)

43. If there is no suitable electrical outlet for the ONT in a person's home, Verizon would pay for a licensed electrician to install an outlet. (N.T. 107)

44. The maximum power that the ONT draws is 10.5 watts. (N.T. 107)

45. Once the fiber optic network has been deployed, the copper network cables are removed. (N.T. 69)

46. Verizon does not remove the copper wiring inside a customer's home.
(N.T. 76)

² This location is called the network interface device, or NID. N.T. 105.

47. A customer owns the wiring inside her home and is responsible for maintaining the home's inside wiring. (N.T. 76, 90)

48. The purpose of the ONT is to translate the incoming light signal from the fiber optic cables to an electrical signal that the copper needs so that it can ring the telephone and transmit sound. (N.T. 104)

49. The copper wiring inside a person's home is less susceptible to the elements than copper cable used outside. (N.T. 104)

50. The electricity for copper line telephone service is provided by Verizon. (N.T. 82, 91)

51. The fiber optic lines are powered through a 110 wall outlet in the customer's home. (N.T. 91)

52. Verizon provides a battery back-up for the ONT to provide electricity for a customer's telephone service in the event the electricity service is interrupted. (N.T. 91)

53. The battery back-up unit for the ONT includes a tray for 12 D-cell batteries for reserve power in the event there is a power outage. (N.T. 108)

54. The battery back-up unit is rated for 24 hours of reserve power. (N.T. 109)

55. When Verizon begins the process of retiring its copper network and deploying fiber optic network in a particular area, it first makes a filing with the Federal Communications Commission (FCC), an agency of the federal government, and then gives notice to customers that their telephone service will be migrating from the copper network to the fiber optic network. (N.T. 98)

56. Verizon filed a notice of copper retirement for the Complainant's service address with the FCC in April 2019. (N.T. 99-101; Verizon Ex. 2)

57. According to Verizon's copper retirement plan filed with the FCC, all customers receiving service from copper lines must be removed from the copper network by April 2020. (N.T. 102)

58. A customer is notified by letter that their telephone service will be migrated from copper to fiber optic and is invited to make an appointment for the installation. (N.T. 110)

59. If a customer does not call to make an appointment the customer receives telephone reminder calls from a combination of robocalls and live agents and is mailed a reminder post card. (N.T. 110)

60. If a customer fails to respond, eventually the customer's telephone service is suspended except for calls to Verizon and 9-1-1. (N.T. 110)

61. If the customer does not contact Verizon within two weeks of the suspension of telephone service, the customer's service is terminated. (N.T. 111)

62. Verizon sent the Complainant the initial migration letter in October 2019, requesting that she contact Verizon to make an appointment to transition her service from copper to fiber optic. (N.T. 29, 111, 118)

63. Verizon has suspended its normal process for contacting migration customers for the Complainant while her complaint is pending before the Commission. (N.T. 112, 120)

64. Verizon managers visited the Complainant in her home who attempted to explain the ONT device to the Complainant, but the Complainant's questions were not answered to her satisfaction. (N.T. 32)

65. There is no difference in either the price or the function of POTS offered via copper cable or fiber optic cable. (N.T. 103)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.³

A person seeking affirmative relief from the Commission has the burden of proof.⁴ In this matter, the Complainant is the party asking for relief from the Commission; therefore, she has the burden of proof. This means, that the Complainant must establish facts which support her claims by a preponderance of the evidence.⁵ The term "preponderance of the evidence" means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁶ Relief can only be granted if the Complainant proves facts by a preponderance of the evidence, which show that Verizon violated the Public Utility Code or Commission regulations.

³ 66 Pa.C.S. § 701.

⁴ 66 Pa.C.S. § 332(a).

⁵ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1055-56 (Pa. 2007); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁶ *Popowsky*.

Reliability: Complainant's Copper Cable Service

The Complainant contends that Verizon is not repairing or maintaining the copper cable from which she receives her telephone service. She contends that she got “nasty phone calls” and was told that Verizon would not repair her line.⁷ She also contends that Verizon does not promptly make repairs, and often no technician is dispatched within 24 hours. She has contacted Verizon 39 times in the last two and a half years regarding the quality of her telephone service and has found the situation very stressful and frustrating.⁸

Section 1501 of the Code,⁹ mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. Upon finding that the service or facilities of a public utility are unreasonable, unsafe or inadequate, the Commission may prescribe, by regulation or order, the reasonable, safe and adequate service or facilities that a public utility must furnish or employ.¹⁰

A telephone utility's obligation to render reasonable and continuous service is further defined by the Commission's regulations in Chapter 63. Specifically, Section 63.24(a)¹¹ requires:

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.

⁷ N.T. 26, 93.

⁸ E.g., N.T. 31.

⁹ 66 Pa.C.S. § 1501.

¹⁰ 66 Pa.C.S. § 1505.

¹¹ 52 Pa.Code § 63.24(a).

When a customer reports an outage to a telephone utility, the Commission’s regulations¹² also require the utility to respond within a certain period of time and to honor repair commitments:

(a) A public utility shall respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within 3 hours of the reported outage consistent with the needs of customers and personal safety of utility personnel.

(b) A public utility shall respond to and take substantial action to clear other out-of-service trouble, not requiring unusual repair, within 24 hours of the report, except for isolated weekend outages affecting fewer than 15 customers in an exchange or where the customer agrees to another arrangement.

(c) A public utility shall keep commitments made to its customers and applicants, unless timely notice of unavoidable changes is given to the customer or applicant or a reasonable attempt is made to convey the notice.

The Commission’s regulations do not define what it means to “take substantial action” to meet the requirement of Section 63.57. The determination of whether a utility complies with Section 63.57 is made on a case-by-case basis.¹³ The Commission has held that the regulation does not require the utility to have telephone service repairs completed within 3 hours of an emergency outage report or 24 hours of a non-emergency outage report, but the utility is generally required to at least dispatch a technician or take some other reasonable action and begin to make repairs within that period of time.¹⁴ Remote troubleshooting, in the right circumstances, may be considered “substantial action,” but if the testing does not resolve the problem, the action does not meet the standard of substantial action.¹⁵

¹² 52 Pa.Code § 63.57.

¹³ *Eernisse v. Verizon Pennsylvania LLC*, Docket No. C-2012-2287023 (Opinion and Order entered January 15, 2014); *see also Miller v. Verizon Pennsylvania, Inc.*, Docket No. C-20066923 (Order entered November 12, 2008); *Wolfé v. Verizon North, LLC*, Docket No C-2011-2266224 (Opinion and Order entered December 20, 2012).

¹⁴ *Eernisse*.

¹⁵ *Eernisse*, p. 26

In addition to the duty to provide reasonable service and facilities as set forth in Section 1501 of the Public Utility Code, the Commission also sets transmission standards for telephone service:

A public utility shall furnish, operate and maintain facilities adequate to provide acceptable transmission of communications. Transmission shall be at adequate volume levels and free of excessive distortion, noise and cross talk.^[16]

Verizon does not dispute that the Complainant has had problems with her telephone service. Verizon's trouble report record that was admitted into the record indicates that the Complainant reported various problems with her telephone service nearly eleven times from May 31, 2018 to October 8, 2019.¹⁷ The Complainant credibly testified that she could not reach her family at her home by telephone on September 16, 2018, and has had other intermittent service problems since June 2016. The Complainant testified that Verizon did not always enter a ticket for a service repair call on her line. Verizon's trouble report record also supports the Complainant's testimony that action by Verizon was not taken within 24 hours, and often took multiple days to repair. In the most extreme example, when the Complainant's service call occurred on December 15, 2018, a technician was not dispatched until January 1, 2019. The repair was not made until January 2, 2020, 18 days after the initial service call, when a technician repaired the "F2" cable.¹⁸

Larry Hixon, Verizon's witness, testified that it is very difficult to repair copper cable. It can take a week or more to get new cable to make splices in the service. The F1 line that serves the Complainant runs through the woods and is susceptible to weather. It is old and has reached the end of its useful life. It is for this reason that Verizon is retiring the copper cable that serves the Complainant. He offered no specific testimony about the service calls reported on

¹⁶ 52 Pa.Code § 63.63(a).

¹⁷ Verizon only offered repair records for the eighteen months before the hearing. N.T. 56. There are two repair records for October 8, 2019.

¹⁸ Verizon Ex. 1. See N.T. 65-66, explaining the location F1 and F2 cables.

Verizon Exhibit 1. He did not identify a specific instance where the delay in making repairs was due to Verizon's inability to obtain materials.

As explained more thoroughly in the discussion below, the Commission cannot prevent Verizon from retiring its copper line.¹⁹ However, the Commission has been clear that Verizon must continue to render reasonable and adequate service to its customers, regardless of the technology used to provide landline telephone service.²⁰ The ability to migrate customers on troubled networks to the fiber network does not relieve Verizon of its duty to provide adequate and reliable service to those customers still served on its copper network.²¹ Even if only one customer is served on a particular line, a utility is mandated to maintain its facilities and render reasonable service.²²

Here, the Complainant's telephone service has been neither reliable nor adequate. It is clear from the technician's comments that Verizon is eager to migrate the Complainant to the fiber optic network.²³ At least one technician note states that "fiber is the only fix." Mr. Hixson explained that the copper line serving the Complainant has reached the end of its useful life. However, these factors do not excuse Verizon's failure to comply with Section 63.57, or its failure to render reasonably continuous service, as required by Section 63.24 and Section 1501 of the Code. Commission regulations require Verizon to maintain its facilities to render reasonable service,²⁴ take substantial action when an outage is reported,²⁵ offer reasonably

¹⁹ See *Altman v. Verizon Pennsylvania, LLC*, Docket No. C-2015-2515583 (Initial Decision dated July 25, 2016), reviewed by the Commission to make administrative corrections to the civil penalty and adopting the substantive analysis of the administrative law judge (Opinion and Order entered October 27, 2016).

²⁰ *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576-04 (Opinion and Order entered July 12, 2018), at p. 9.

²¹ *Altman*, Initial Decision at p. 18.

²² *Linn v. Verizon Pennsylvania, LLC*, Docket No. C-2014-2400411 (Final Order entered April 30, 2015), Initial Decision at p. 12.

²³ Counsel for Verizon observed that every time the Complainant made a service call, Verizon offered to migrate the Complainant to the fiber network as a repair option. N.T. 43.

²⁴ 66 Pa.C.S. § 1501.

²⁵ 52 Pa.Code § 63.57.

continuous service,²⁶ and furnish acceptable transmission of communication free of excessive distortion.²⁷ Verizon Exhibit 1 demonstrates violations of all of these provisions at various times and supports the Complainant's allegation that Verizon has failed to provide her with adequate telephone service.

Section 3301 of the Public Utility Code²⁸ permits the Commission to assess a civil penalty for violations of the Public Utility Code or its regulations. To implement this section, the Commission has adopted certain standards that must be applied when imposing a civil penalty for violations of Commission directives and regulations.²⁹ Section 69.1201(a) of the Commission's regulations states:

The Commission will consider specific factors and standards in evaluating litigated ... cases involving violations of 66 Pa.C.S. (relating to the Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate.^[30]

These factors and standards to be considered are enumerated in subsection (c):

- (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.

²⁶ 52 Pa.Code § 63.24.

²⁷ 52 Pa.Code § 63.63.

²⁸ 66 Pa.C.S. § 3301.

²⁹ See 52 Pa.Code § 69.1201; see also, *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00992409 (Order entered February 10, 2000) (*Rosi*).

³⁰ 52 Pa.Code § 69.1201(a).

- (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 decision in similar situations.
- (10) Other relevant factors.^[31]

With these principles in mind, each violation is considered below.

³¹ 52 Pa.Code § 69.1201(c).

Failure to Take Substantial Action

On June 1, 2018, at 3:09 p.m., Verizon’s record notes that the Complainant reported that she could not make or receive calls. The record notes a “medical emergency.” A technician was not dispatched until the next day at 8:55 a.m. When an emergency is noted Section 63.57(a) requires a utility to take substantial action to clear the problem within a three hour timeframe.³²

Verizon failed to comply with this regulation because the technician was not dispatched until the following day. Nor did Verizon take any other reasonable action to clear the problem. Failing to respond to a service outage when a medical emergency is noted is a serious violation.³³ There is no explanation for the delay in taking action or why it took Verizon almost 18 hours to dispatch a technician, which might mitigate the gravity of the violation. The service notes state only that “fiber is the only fix.”

Verizon is certainly aware that the failure to comply with this regulation can result in a substantial civil penalty. In *Eernisse v. Verizon Pennsylvania LLC*, the Commission assessed civil penalties totaling \$5,500 in connection with several violations of Section 63.57(a) and (b). In particular, where Verizon failed to take substantial action within three hours when the complainant reported that he had no telephone service to call for emergency help for his son, the Commission assessed a \$1,000 penalty.³⁴ The same civil penalty will also be assessed here.

The Complainant also argues that Verizon failed to repair her telephone service within 24 hours. Verizon’s records indicate that it failed to dispatch a technician within 24 hours relating to service calls made on July 3, 2018, November 18, 2018, November 24, 2018, December 12, 2018 and February 12, 2019. Verizon’s records indicate that on these dates the Complainant could not receive incoming calls or had static on the line. While these incidents

³² 52 Pa.Code § 63.57(a).

³³ *Eernisse*.

³⁴ *Id.* at 32.

implicate violations of other Commission statutes and regulations, the Commission has held that there is no requirement to dispatch a technician or complete a repair unless the service call relates to a complete outage.³⁵ No civil penalty will be assessed for violating Section 63.57, as it relates to these service calls which do not report an outage.

Quality of Telephone Service

Verizon has also failed to render reasonable telephone service to the Complainant, which violates Section 1501 of the Public Utility Code. The Commission's regulations also establish more specific standards which apply to telephone service, Sections 63.24(a), and 63.63. As explained below, Verizon has violated these regulations as well. It is true that Verizon is not required to render perfect service.³⁶ Periodic outages may happen from time to time and do not necessarily rise to a violation of the Public Utility Code. However, the Complainant has suffered from numerous problems with her telephone service within a relatively short period of time, which renders her service inadequate and far less than perfect.

Section 63.24 of the regulations requires that Verizon maintain its system in such condition as to furnish continuous service and to take reasonable measures to prevent interruptions of service, as well as to restore any interruptions of service with a minimum delay.³⁷ Like Section 63.57, the Commission has interpreted this section to only apply to outages for the purposes of assessing a civil penalty.³⁸

The record establishes that the Complainant had no telephone service on three occasions: June 1, 2018; February 21, 2019; October 8, 2019. Given the scope of the service quality complaints reported by the Complainant, these outages constitute a violation of Section 63.24. The Complainant testified that she had made complaints to Verizon 39 times in the last

³⁵ *Eernisse*, at p. 16.

³⁶ E.g., *Williams v. Verizon Pennsylvania, LLC*, Docket No. C-2018-3005368 (Final Order entered August 23, 2019).

³⁷ *Wolfe*, at p. 9.

³⁸ *Eernisse*, at p. 16.

two and a half years, beginning in 2016. This testimony is supported by Verizon's record which notes a significant number of service calls in the last 18 months. Several of Verizon's service reports note that the Complainant is disabled or noted the medical necessity for repairs. Therefore, these violations are serious in nature. Verizon's records note that repairs were made, but there is no testimony regarding what those repairs were or what efforts were made to stabilize the Complainant's telephone service. Although fiber network service was available to the Complainant which may have remediated some of her service problems, there is nothing in the statute or regulations which mandates that she accept migration before Verizon files to retire its copper network with the FCC. Verizon did not make that filing until April 2019. Until the copper network is retired, Verizon is obligated to maintain and repair its copper network.

The service report notes that the outage reported on June 1, 2018 was a medical emergency, which makes it particularly serious. Therefore, a \$1,000 civil penalty is assessed for this Section 63.24 violation. There is no medical issue identified on the outage report for February 21, 2018; therefore, \$500 is assessed for this violation. A civil penalty of \$750 is appropriate for the outage on October 8, 2018. This penalty is escalated because it is the second outage report in a short period of time.

Some of the Complainant's service calls were made because she had incomplete service. That is, she could call out, but could not receive incoming calls or there was static on her line. In the context of all of the Complainant's problems with her telephone service and her testimony that these types of issues had been ongoing for several years, these complaints constitute a violation of Section 1501. It is clear from Verizon's service notes that it believed that the Complainant should simply migrate to fiber optic service. The Complainant testified that on more than one occasion, she was told by a Verizon employee that Verizon would no longer repair its copper lines. But there is no specific evidence in the record that Verizon deliberately delayed repairs to the Complainant's service in order to incentivize her to migrate her service from the copper network. As with the outage reports, it is noted that Verizon made repairs, but there is no detail regarding these repairs. Verizon has been penalized in the past by the Commission for failing to render reasonable service when a customer suffers from a number

of service complaints in a relatively short period of time.³⁹ The Commission has held that it is appropriate to assess a civil penalty for each day that the Complainant’s service is inadequate.⁴⁰

Verizon will be assessed a civil penalty of \$250 per day for the service complaints on May 31, 2018, and November 18, 2018, for a total of \$1,500. On these occasions the Complainant reported that she could not receive incoming calls. The November 18, 2018 service call was not resolved until five days later, November 23, 2018. The Complainant again reported that she could not receive incoming calls on November 24, 2018 and December 15, 2018. The November 24, 2018, service call was not resolved until November 26, 2018. As the problem was not adequately resolved after the November 18, 2018 call, it is appropriate to escalate the daily penalty for November 24 service all to \$500 per day, for a total of \$1,000. The December 15, 2018 service call, less than a month later, was not resolved for eighteen days. A daily penalty of \$750 per day will be assessed for 18 days, totaling \$13,500.⁴¹ The chart below summarizes these daily penalties and totals.

Begin date	End date	days	Penalty per day	Total
5/31/2018	5/31/2018	1	250	250
11/18/2018	11/23/2018	5	250	1250
11/24/2018	11/26/2018	2	500	1000
12/15/2018	1/2/2019	18	750	13500

On July 3, 2018, the Complainant reported that she intermittently had no dial tone. The record does not note that there was a complete loss of service. However, even though there was not a complete outage, intermittent loss of dial tone is still a serious violation of Section 1501. The service complaint was not resolved for four days. A total penalty of \$3,000 is appropriate for the violation related to the July 3 service call.⁴²

³⁹ *Altman; Linn; Eckroth v. Verizon Pennsylvania, Inc.*, Docket No. C-2011-2279168 (Opinion and Order entered May 17, 2013).

⁴⁰ *Id.*

⁴¹ *Wolfe.*

⁴² *Wolfe; Eernisse.*

Finally, service reports show that the Complainant reported static or noise on her line on August 29, 2018 and February 12, 2019. These service complaints prove a violation of Section 1501 of the Code and Section 63.63 of the regulations.

Verizon did not dispatch a technician at all for the August 29, 2018 static report. The service report notes that the issue resolved on its own on September 5, 2018, seven days later. This failure to address the service complaint for a week is unreasonable customer service in violation of Section 1501 of the Public Utility Code. The report of static is also a violation of Section 63.63, which requires Verizon to render service free of unreasonable noise or interference. Because many of the service complaints made by the Complainant took days to resolve, a civil penalty of \$1,000 is assessed for violating Section 1501 of the Public Utility Code. An additional civil penalty of \$250 per day for seven days is assessed for violating Section 63.63. The total penalty for the August 29, 2018 service complaint is \$2,750.⁴³

Regarding the service complaint initiated on February 12, 2019, Verizon dispatched a technician and the issue was resolved on February 15, 2019. There is no note regarding what repair was made. As this is the second complaint regarding noise on the line, Verizon failed to render service free from unreasonable interference in violation of Section 63.63 of the regulations, and a civil penalty of \$300 per day, for a total of \$900 will be assessed.

Inadequate Customer Service

The Complainant also maintains that Verizon has failed to answer her questions about the equipment which is used to provide telephone service by fiber optic cable, regarding safety, insurance and responsibility. She is concerned that the Optical Network Terminal (ONT) cannot be installed in her basement; that her questions regarding the electricity usage of the ONT have not been answered; and that she will be held responsible for the ONT which is an expensive piece of equipment.

⁴³ Linn; Eckroth.

The Complainant testified that she has many questions about Verizon's fiber optic service and that none of the numerous Verizon representatives to whom she spoke could answer her questions. She did not identify a specific conversation or employee. She did state that at various times representatives of Verizon visited her home to discuss migration to Verizon's fiber optic network. Verizon did not offer customer contact records which would establish a record of the contacts employees had with the Complainant.

There are no Commission regulations establishing a standard of conduct for public utility customer service representatives. In the absence of specific regulations, Section 1501 of the Public Utility Code governs a public utility's obligation to provide reasonable service to its customers. In *Gallagher v. Bell Telephone Co. of Pa.*,⁴⁴ the Commission held that a public utility had violated Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude name and by hanging up on the complainant.⁴⁵ In *Brickner v. PPL Electric Utilities Corporation*,⁴⁶ the Commission assessed a civil penalty where utility employees failed to provide accurate information regarding a rate.⁴⁷

The Complainant's testimony regarding her frustration in her dealings with Verizon is credible. She testified that she had conversations with Verizon technicians and employees who visited her home, but none of these representatives could satisfactorily answer her questions regarding the fiber optic network or the equipment necessary to operate it. Mr. Hixon⁴⁸ and Ms. Gazlay Martin⁴⁹ both offered testimony at the hearing which answered the

⁴⁴ Docket No. F-8958314 (Opinion and Order entered September 23, 1992).

⁴⁵ *Id.*; see also, *Moffa v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2212745 (Final Order entered March 22, 2012); *Haimes v. PPL Electric Utilities Corporation*, Docket No. F-002201447 (Final Order entered April 3, 2008).

⁴⁶ Docket No. C-2009-2105583 (Opinion and Order entered May 21, 2010).

⁴⁷ See also *Maisch v. PECO Energy Company*, Docket No. C-2009-2118649 (Opinion and Order entered May 26, 2011).

⁴⁸ Larry Hixon is the local supervisor for the portion of the Verizon network which serves the Complainant. N.T. 53.

⁴⁹ Janet Gazlay Martin is the Director of Network Transformation of Verizon, responsible for the customer outreach programs to aid customers who are transitioning from copper service to fiber optic service. N.T. 95-86.

questions articulated by the Complainant in her testimony. The Complainant noted at the hearing that their testimony was the first time that some of her questions had been answered.

To the extent the Complainant's questions were not answered, the testimony of Verizon's witnesses remedied any omissions that may have been made by other employees. Therefore, a civil penalty for a violation of Section 1501's reasonable customer service requirement is not warranted.

Migration from Copper to Fiber

The Complainant does not want to transition to Verizon's fiber optic network, but wants the Commission to order Verizon to continue to provide her with telephone service over a copper cable network.

The retirement of copper telephone lines is regulated by the Federal Communications Commission (FCC). In 2015 the FCC issued a final rule, commonly referred to as the *Technology Transitions Order*, addressing a communications utility's retirement of its copper facilities.⁵⁰ Under the FCC's regulation, a telephone service provider is not required to obtain the FCC's approval of its intent or plan to retire its copper lines and to transition to fiber optic lines, but the telephone service provider is required to give timely notice of its plan to customers that it will be replacing its copper wire lines with fiber optic lines. The Commission, as a Commonwealth agency, lacks the power to override a federal regulation. Accordingly, the Commission has held that a telephone service provider is not required by Commission statute or regulation to continue to provide service over copper, provided the telephone service provider has complied with the FCC's copper retirement rules.⁵¹

⁵⁰ See, *Technologies Transitions, Policies Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carrier*, 80 Fed. Reg. 63322 (October 15, 2015) as codified in 47 CFR 51.332.

⁵¹ *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Opinion and Order entered July 12, 2018).

As explained by Verizon's witnesses, the copper cable serving the Complainant has reached the end of its useful life and is scheduled to be replaced with fiber optic lines. Verizon filed a notice of copper retirement for the Complainant's service address with the FCC in April 2019, and began notifying customers, like the Complainant, in October 2019. As of the date of the hearing, the Complainant was still receiving telephone service via copper cable.

As explained above, the Commission cannot order Verizon to provide the Complainant with telephone service by copper cable. Verizon's witnesses explained at length the reasons for Verizon's decision to migrate its customers from copper service to fiber optic service. Specifically, Verizon is able to offer more reliable telephone service with its fiber optic network because the cable itself is more durable in the outdoor environment. In contrast copper cable is damaged by wet outdoor conditions and has become increasingly difficult and expensive to repair. To replace the current copper cable with new copper cable would be significantly more expensive than replacing the copper cable with fiber optic cable. Fiber optic service is offered to customers at the same price as their previous copper line service.

Fiber optic service does require the customer to utilize an Optical Network Terminal (ONT). Although the device is installed in the customer's home, it is owned by Verizon. The purpose of the ONT is to translate the incoming light signal from the fiber optic cables to an electrical signal which can be transmitted to the customer's copper wiring in the home and can ring the telephone and transmit sound. The ONT does require an electrical outlet to operate. It is the customer's responsibility to pay for the electricity used to operate the ONT. In contrast, the electricity which is necessary to power telephone service by copper cable is generated by Verizon. Verizon offers migration customers a battery back-up for the ONT which will power the unit with batteries in the event of a power outage.

Although the transition to fiber optic service requires the customer to accept a device that requires the customer's electricity, the FCC has permitted telephone service providers to retire their copper networks. As explained above, a fiber optic network offers installation and maintenance advantages that permit a telephone service provider to offer enhanced service to customers. The Commission does not have the authority to prevent Verizon from retiring its

copper network. Therefore, the Commission cannot order Verizon to maintain the Complainant’s copper wire telephone service. She must either migrate to Verizon’s fiber optic network or choose another telephone service provider.

Conclusion

Verizon has failed to render reasonable telephone service to the Complainant as set forth above. These counts of the complaint will be sustained, and Verizon shall pay a total civil penalty in the amount of \$25,900, as summarized in the table below:

Begin Date	End Date	Days	Complaint	Violation	Penalty	Total Assessment
6/1/2018	6/2/2018	1	outage	§ 63.24	\$1,000	\$1,000
2/21/2019	2/22/2019	1	outage	§ 63.24	\$500	\$500
10/8/2019	10/9/2019	1	outage	§ 63.24	\$750	\$750
5/31/2018	5/31/2018	1	no incoming calls	§ 1501	\$250	\$250
7/3/2018	7/7/2018	4	intermittent no dial tone	§ 1501	\$750/day	\$3,000
11/18/2018	11/23/2018	5	no incoming calls	§ 1501	\$250/day	\$1,250
11/24/2018	11/26/2018	2	no incoming calls	§ 1501	\$500/day	\$1,000
12/15/2018	1/2/2019	18	no incoming calls	§ 1501	\$750/day	\$13,500
2/12/2019	2/15/2019	3	static	§ 1501	\$300/day	\$900
6/1/2018	6/2/2018	1	outage - emergency noted	§ 63.57(a)	\$1,000	\$1,000
8/29/2018	9/5/2018	7	noise on the line	§ 63.63; § 1501	\$250/day plus \$1,000	\$2,750
Total Penalty						\$25,900

The claim that Verizon failed to adequately explain the equipment and operation of the fiber optic network is also sustained, but no penalty will be assessed.

Finally, the Commission lacks the authority to direct Verizon to continue provide service to the Complainant on its copper network. Verizon has made its filing with the FCC and notified customers that the copper network in the Complainant's area will be retired. The Complainant has the option of retaining her telephone service with Verizon, but on its fiber optic network, or becoming a customer of another telephone service provider.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this complaint. 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. Verizon failed to respond to and take substantial action to clear out-of-service trouble of an emergency nature whenever the outage occurs, within three hours of the reported outage. 52 Pa.Code § 63.57(a).

4. Verizon failed to maintain its entire system in such condition as to make it possible to furnish continuous service, failed to take reasonable measures to prevent interruptions of service and failed to restore service within a minimum delay if interruptions occur. 66 Pa.C.S. § 1501; 52 Pa.Code § 63.24(a).

5. Verizon failed to furnish, operate and maintain facilities adequate to provide acceptable transmission of communications, by maintaining transmission at adequate volume levels and free of excessive distortion, noise and cross talk. 52 Pa.Code § 63.63.

6. Section 3301(a) and (b) of the Public Utility Code authorizes the Commission to impose a maximum civil penalty of \$1,000.00 per day for violations of the statute, regulations and orders. 66 Pa.C.S. § 3301(a) and (b).

