

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Optatus Chailla

PUBLIC MEETING: March 12, 2020
3008691-OSA

v.

Verizon Pennsylvania LLC

Docket No. C-2019-3008691

MOTION OF COMMISSIONER ANDREW G. PLACE

Before us for disposition are the Exceptions of Optatus Chailla (Complainant) filed on September 12, 2019, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Benjamin J. Myers that was issued on August 26, 2019. Reply Exceptions were filed by Verizon Pennsylvania LLC (Verizon PA or Company) on September 20, 2019. ALJ Myers' I.D. denies and dismisses the Formal Complaint against Verizon PA in its entirety. I believe that the evidence in this case demonstrates the presence of substantive and recurring quality of service issues in Verizon PA's outside plant network that materially affected the services provided to the Complainant for a rather lengthy time period. Consequently, the Exceptions to the I.D. should be sustained in part. Furthermore, the disposition of certain issues in the Formal Complaint must be addressed consistent with existing Commission jurisdiction.

A. Overall Conduct of the Proceeding

Formal consumer complaints that involve the quality of telecommunications services and the availability of retail broadband access services under Chapter 30 of the Public Utility Code can be technically and legally complex matters for *pro se* complainants. However, *pro se* complainants have the burden to prove the allegations in a Complaint, and the Commission must reach a reasoned disposition that is based on record evidence. The presiding ALJs on occasion may need to guide the *pro se* complainants through the evidentiary hearing process while creating an appropriate record and impartially safeguarding the due process rights of the involved adversarial parties. In the instant proceeding, the creation of an appropriately complete evidentiary record may have been hampered by a lack of understanding on the part of the *pro se* Complainant and his witness¹ of how the evidentiary hearing process actually works, how necessary and proper documentation was needed to sustain the Complainant's burden of proof, and how such documentation should have been introduced as evidence during the in-person telephonic hearing before the presiding ALJ.² However, I believe that the existing evidentiary record does provide sufficient information for the final disposition of this matter.

B. Quality of Service Issues and Billing Credit Parameters

The evidentiary record in this proceeding discloses that Complainant suffered telephone service outages in the February 15 to March 11, 2019 and March 26 to June 3, 2019, time periods. During the same time periods Complainant experienced parallel total outages or intermittent use of the digital subscriber line (xDSL) retail broadband access service provided by Verizon PA to Complainant's premises. Complainant has broadly alleged in various pleadings submitted to the Commission a total of 96 days without telephone service and 54 days without xDSL service.³ Ms. Florence Chailla, Complainant's witness, also testified during the evidentiary hearing that the "telephone landline did not

¹ Ms. Florence Chailla, wife of the Complainant.

² Tr. 9-13.

³ Complainant's "Motion for Summary Judgment," Docket No. C-2019-3008691, filed June 11, 2020, p. 5.

work from approximately February 22 until June the 4th [2019]" and that is "96 days,"⁴ and reiterated Complainant's position of "having to endure 96 days of no telephone service and 54 days of no DSL."⁵ Ms. Chailla also testified that the "DSL service from February 28th until April 22, for 54 days it did not work," clarifying however that it "worked maybe the 15th, 16th and 17th of April [2019] intermittently," and "then it just didn't work at all until April the 22nd [2019] consistently."⁶ Ms. Chailla also referenced that the Stroudsburg Regional Police had dispatched a unit to Complainant's residence on March 10, 2019, because somehow a 911/E911 dropped call had been triggered but not actually made from Complainant's landline telephone line which was not in working order that particular day.⁷

Verizon PA's witness Mr. Matthew Hand testified about the Company's efforts to correct outage and disruption issues associated with the telephone and xDSL services to Complainant's premises. The Verizon PA testimony indicates that unspecified "miscellaneous troubles" were "called in by the customer" on February 15, 2019, but "not given to a technician to dispatch out." Instead, Complainant was referred to Verizon PA's business office.⁸ However, the Verizon PA trouble history log and Mr. Hand's testimony referenced customer indications of a "critical emergency" with "static online, buzz" on March 11, 2019, and that "911 was dispatched to the home."⁹ Mr. Hand's testimony described the dispatch of a Verizon PA technician, that "the defective cable was changed," and that there was the completion of "a cautionary change on the – what's considered the F2 or the second part of the cable out to the customer's location."¹⁰ The Formal Complaint in this proceeding was filed on March 15, 2019.

Verizon PA's testimony indicates that there was further contact from the Complainant on March 22, 2019, indicating lack of telephone service. On March 26, 2019, a Verizon PA technician was dispatched, tested the line to the customer's network interface device (NID) and reported that the dial tone to the customer's NID functioned normally.¹¹

Following the filing of the Formal Complaint, Verizon PA personnel engaged in a more concerted effort to deal with the underlying service issues, including the testing of the inside wiring in Complainant's premises.¹² The initial Verizon PA technician visit on May 23, 2019 was cancelled by Complainant by text message because of Complainant's unavailability.¹³ However, Mr. Hand was able to dispatch a technician sometime in May 23-31, 2019, in order "to verify from the network interface device at that point whether or not the trouble looked like it was either inside the customer's location or outside."¹⁴ The technician located the problem in Verizon PA's outside plant cable network facilities on May 31, 2019,¹⁵ but was unable to deal with the problem because the technician dispatched "was not a person who could repair the problem."¹⁶ A Company splicer technician was dispatched on June 3, 2019, and repaired a "short" or a "conductive issue" on the line that connects Complainant's premises with Verizon PA's central office.¹⁷ In response to a direct examination

⁴ Tr. 27.

⁵ Tr. 35, 45.

⁶ Tr. 33.

⁷ Tr. 30. *See also* Complainant's "Motion for Reconsideration of Interim Order Based on New Evidence – Follow Up," Docket No. C-2019-3008691, filed May 2, 2019, p. 7, Exh. 1 (pp. 9-15).

⁸ Tr. 53, Verizon PA Exh. 1.

⁹ Tr. 53, Verizon PA Exh. 1. Per Ms. Chailla's testimony, the 911 dispatch took place on March 10, 2019. Tr. 30.

¹⁰ Tr. 53-54, Verizon PA Exh. 1.

¹¹ Tr. 54, Verizon PA Exh. 1.

¹² Tr. 56.

¹³ Tr. 56-57, Verizon PA Exh. 1.

¹⁴ Tr. 57-58.

¹⁵ Tr. 60.

¹⁶ Tr. 58.

¹⁷ Tr. 58-59, Verizon PA Exh. 1.

question by Verizon PA's counsel on why the March 26, 2019, dispatched technician could not locate the short, Mr. Hand replied:

There – it – the – it's all dependent on the weather, and what – it's possibly exposed. If something is wet, that could actually cause a capacitive issue on the line, which would cause dial tone to not work, but yet the DSL will work. And *once it dries up or stops raining*, it will actually cause it to – to work again. So it may be something that – that was that scenario.

Tr. 60 (emphasis added).

In response to a cross-examination question from the Complainant whether “it is Verizon’s responsibility to make sure that their equipment doesn’t get wet,” Mr. Hand stated that:

It is the responsibility of Verizon to make sure that we maintain the plant. We are unable to be everywhere at once, unless it is brought to our attention.

Tr. 61.

Considering the testimony offered by Complainant’s witness Ms. Chailla and that of Mr. Hand of Verizon, it is reasonable to conclude that Verizon PA provided inadequate, unreliable, and unreasonable telephone service to Complainant for a period of 18 days during the February 22 – March 11, 2019 time period, and for 39 days during the March 26 – June 3, 2019 time period, for a total of 57 days. However, even without such a conclusion, the record evidence shows that the Complainant met his burden of proof that, at a minimum, he experienced intermittent telephone service problems over a three to four-month period in 2019 that rise to the level of inadequate and unreasonable service in violation of Section 1501 of the Public Utility Code (Code), 66 Pa. C.S. § 1501. Because Verizon PA’s telephone service during that period did not meet the statutory standards of Section 1501 of the Code, Complainant’s Exceptions should be partially sustained and Verizon should issue an appropriate bill credit to the Complainant.¹⁸ Such credit shall be issued even if the telephone services provided by Verizon PA to the Complainant are deemed to be a bundled package of services which may include “nontariffed, competitive, noncompetitive or protected services,... in combinations and at a single price selected by the company” under Section 3016(e)(3) of the Public Utility Code, 66 Pa. C.S. § 3016(e)(3).

¹⁸ The testimony contains multiple references to Complainant’s efforts to contact Verizon PA or otherwise document his service issues. During cross-examination by Complainant, Verizon PA witness Hand testified that Verizon PA was able to fix the problem the first time without entering Complainant’s home; however, sometime between March 26 and May 23, “the trouble became apparent again[.]” Tr. 68. Ms. Chailla testified that she communicated with Verizon PA by both text and email in addition to returning calls. Tr. 44, 56-57. Complainant objected to the admission of Verizon PA Exhibit 1 partly on the basis that “[t]here are certain entries that are not there[.]” Tr. 73. Verizon PA witness Tibbs referenced Ms. Chailla’s return message on April 9, 2019. Tr. 76. And, finally, Complainant’s witness testified to multiple pleadings with exhibits that were filed by Complainant with the Commission’s Secretary’s Bureau, served on Verizon PA, and which Verizon PA witness Tibbs acknowledged receiving. Tr. 82. This indicates that Verizon PA had knowledge of Complainant’s continued service issues. With respect to Complainant’s filed documents, the ALJ noted that Complainant had not served the documents on him, and for that reason he did not consider them exhibits intended for the hearing. As previously stated, however, Complainant was anticipating proceeding with a prehearing on June 13, 2019, not a hearing, and appeared otherwise unaware that the filed documents needed to be moved into evidence to be considered as such. We do not consider the contents of those pleadings as part of the evidentiary record, since they were never moved into evidence. We take notice of their filing, however, since according to Ms. Chailla’s testimony, these pleadings were intended to further document Complainant’s service issues from April through June 2019, and, as stated, Verizon PA’s witness acknowledged their receipt. Tr. 8-24, 82. See also 52 Pa. Code §§ 5.406, 5.408.

Although the Commission does not regulate the rates and charges for the xDSL retail broadband Internet access service provided by Verizon PA to the Complainant, the Commission retains appropriate jurisdiction over the availability of xDSL. Verizon PA did not raise any objections during the course of the evidentiary hearing to Ms. Chailla's testimony regarding the service and network outages that completely or intermittently affected the availability of the xDSL service. Furthermore, Mr. Hand also testified on the reasons why inclement weather may impede dial tone and ordinary telephone service (e.g., presence of a short in the outside line), but permit xDSL to still function. The Verizon PA outright network facilities outages and Complainant's intermittent access to xDSL service from the time the service was installed in February 2019¹⁹ bring into question whether this retail broadband access service was truly "available" for purposes of Section 3014(b) of the Code. 66 Pa. C.S. § 3014(b). The Commission has observed the following:

Although the Commission as part of an individual case adjudication has yet to further define what constitutes "availability" under Chapter 30, the Initial Decision also overlooks Commission precedent recognizing that the availability of broadband access service provided by carriers' subject to, and defined by, Chapter 30, remains within the Commission's jurisdiction. *See, e.g., White v. Verizon North LLC*, Docket No. C-2016-2532236 (Order entered November 2, 2016) (*White*). In *White*, we confirmed that the Commission has appropriate statutory jurisdiction to inquire into matters involving the availability and provisioning of retail broadband access services by ILECs [incumbent local exchange carriers] with Chapter 30 broadband deployment commitments and obligations. CenturyLink is an ILEC that has completed its Chapter 30 broadband deployment and is required to supply retail broadband access services in accordance with the aforementioned statutory standards. Thus, consistent with our holding in *White*, the Commission has the necessary jurisdiction to determine whether CenturyLink is providing retail broadband access service to the Complainant consistent with the applicable Chapter 30 statutory standards.

Joe Roberts v. The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink, Docket No. C-2017-2632824 (Order entered June 28, 2018) at 8-9.

Verizon PA is also an ILEC that is subject to the obligations of Chapter 30 in the Public Utility Code.

Based on the testimony offered by the Complainant and Verizon PA, the record evidence demonstrates that the xDSL service was not adequately and reliably available for a time period of at least 32 days after the service was installed. Consequently, Complainant's Exceptions should be partially sustained and Verizon should issue an appropriate bill credit to the Complainant for the xDSL service component. I wish to note that this determination does not intrude into the space of regulation for the rates, terms and conditions for the provision of xDSL retail broadband Internet access services. Rather, this finding is made in order to determine a billing credit for a service that was not provisioned in accordance with Section 3014(b) of the Code.

C. Invasion of Privacy Issue

Complainant alleged an invasion of privacy issue and requested the removal of a Verizon drive ("verizondrive") that was installed and "shared" on Complainant's computer.²⁰ Verizon PA's counsel objected to any testimony regarding this invasion of privacy allegation on the basis that the Commission lacked jurisdiction "over Internet service or the contents of their [Complainant's]

¹⁹ Tr. 32.

²⁰ Formal Complaint, Docket No. C-2019-3008691, pp. 3, 4 and Attachment A.

computer.”²¹ Ms. Chailla testified that this particular “shared” drive on the Complainant’s computer was installed by Verizon and was removed by Verizon on or about May 14, 2019. Ms. Chailla further stated that “there was no opportunity to open the shared Verizon drive or to find out what it captured, what it collected, and what it took away when it was removed by Verizon on or about May 14th [2019],...”²² The Verizon PA testimony of record has denied that the Company had created the “Verizon drive” on Complainant’s computer.²³ The I.D. ruled that “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.”²⁴

Although I agree with the ultimate result on this issue, it should be noted that the Commission exercises appropriate regulatory oversight over the privacy of telecommunications services that are provided under its jurisdiction within the Commonwealth.²⁵ The Commission also has its own Confidentiality of Customer Communications and Information regulations.²⁶ Complainant’s assertions about an alleged invasion of privacy because of the temporary presence of the “Verizon drive” in Complainant’s personal computer lacks specificity and does not invoke the Commission’s relevant regulations. Therefore, I believe that the Commission does not need to reach a conclusion whether it lacks jurisdiction under the factual circumstances of the present adjudication because the Complainant’s personal computer is used to gain access to the Internet.

D. Lack of Cooperation by Complainant

I agree that Verizon testified at the hearing about its ongoing efforts to resolve the allegations in the Complaint. I also acknowledge that it may have benefitted the Complainant to be more responsive to Verizon PA when it contacted him on multiple occasions about his service problems.²⁷ However, I do not agree with the premise that Complainant exhibited a lack of cooperation in attempting to resolve the service outage and interruption issues that are present in the instant adjudication. The Complainant may not have engaged in informal contacts in the frequency and degree desired by Verizon PA. However, this conduct does not manifest a lack of cooperation as the Complainant did utilize formal written communications – in the form of legal pleadings filed with the Commission and served on Verizon PA – that contained Complainant’s service outage and interruption concerns as well as requests for clarifying information. The fact that the Complainant, after first contacting Verizon PA, chose the Commission route to address his service problems does not make him uncooperative. Therefore, I believe that the Complainant’s Exceptions in this regard should be sustained.

E. Civil Penalty

Based on the evidentiary record in this case, I believe that Verizon PA provided inadequate and unreasonable telephone service to the Complainant over a three to four-month period in 2019 in violation of Section 1501 of the Code. Under the standards that we typically use to evaluate penalty amounts,²⁸ I support a \$2,000 civil penalty for this violation. I believe this penalty amount properly

²¹ Tr. 18. *See also* Response of Verizon Pennsylvania LLC to Motions for Summary Judgment, Docket No. C-2019-3008691, filed June 11, 2019, pp. 1-2.

²² Tr. 39.

²³ Verizon PA Exh. 2.

²⁴ I.D. at 8.

²⁵ *See, e.g.*, 66 Pa. C.S. § 3019(b)(2).

²⁶ 52 Pa. Code §§ 63.131 to 63.137.

²⁷ Tr. at 75-79.

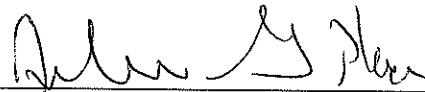
²⁸ The Commission has adopted standards for evaluating civil penalty amounts. Those standards are set forth in *Joseph A. Rosi v. Bell Atlantic Pennsylvania, Inc. and Sprint Communications Co., L.P.*, Docket No. C-00992409 (Order entered

reflects both the nature and duration of the service problems as well as Verizon PA's attempts to address those problems. Although I recognize that Verizon PA became more proactive in locating and correcting the technical problem in its network facilities after the Formal Complaint was filed, the provision of inadequate and unreasonable service for a prolonged period of time merits a civil penalty here.

THEREFORE, I move that:

1. The Complainant's Exceptions relating to quality of service issues and appropriate billing credits be sustained in part consistent with this Motion.
2. The Initial Decision of Administrative Law Judge Benjamin J. Meyers be modified regarding the disposition of the alleged invasion of privacy issue in accordance with this Motion.
3. The Complainant's Exceptions regarding the Initial Decision findings about lack of cooperation be sustained consistent with this Motion.
4. That a civil penalty of \$2,000 be imposed on Verizon Pennsylvania LLC consistent with this Motion.
5. The Initial Decision be affirmed in all other respects consistent with this Motion.
6. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.
7. The entered Order in this proceeding be served upon the parties to the proceeding, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Commission's Bureau of Investigation and Enforcement.
8. Verizon Pennsylvania LLC file with the Commission a letter communication at this Docket stating the timing and the amount of billed credit that was issued to the Complainant.
9. Upon receipt of the Verizon Pennsylvania LLC letter communication on the timing and the amount of the billed credit to the Complainant, this Docket be marked closed.

DATE: March 12, 2020



**Andrew G. Place
Commissioner**