

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenny Journal Communications	:	
	:	
v.	:	C-2020-3016895
	:	
Verizon Pennsylvania, LLC	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s petition seeking permission for leave to withdraw its Complaint. The Complainant’s request to withdraw its complaint is not opposed and is in the public interest.

HISTORY OF THE PROCEEDING

On January 27, 2020, Tenny Journal Communications (Tenny or Complainant), a Competitive Local Exchange Carrier (CLEC) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) alleging that Verizon Pennsylvania, LLC (Verizon or Respondent) has threatened to disconnect or has disconnected a number of Tenny’s payphone service lines. Tenny further averred that Verizon has not been responsive to Tenny’s requests to resolve the matter.

On February 18, 2020, Verizon filed an Answer and New Matter, properly endorsed with a Notice to Plead. Verizon denied any violation of the Public Utility Code (Code)

or the regulations of the Commission. Verizon stated that it has an interconnection agreement (ICA) with Tenny allowing for resale of Verizon services. Verizon contends that the lines at issue were provided for resale under the ICA and applicable tariffs, and that a Tenny's customer used them to provide payphone service. Verizon stated that it is unable to gain access to the facilities necessary to upgrade service from copper to fiber because the payphones in question are located on private property behind a locked gate, and the property owner has not provided access, and that it is Tenny's responsibility to arrange for appropriate access which Tenny has failed to do. While Verizon admits that five of Tenny's payphone lines were disconnected, Verizon states that responsibility for the disconnections rests with Tenny. Verizon contends that it has not ignored Tenny.

In its New Matter, Verizon asserted that as Tenny is not represented by an attorney, that the Complaint should be dismissed. Verizon also averred that the Commission tentatively revoked Tenny's Certificate of Public Convenience (CPC) for failure to report any intrastate revenue. Verizon asserted that if the Commission has cancelled Tenny's CPC, then the Complaint should be dismissed. Verizon argued that if Tenny is using the Complaint to require Verizon to continue to provide service to Tenny's resold payphone lines over copper facilities in locations where Verizon is retiring the copper, then the Complaint should be dismissed. Tenny filed no Answer or responsive pleading to the New Matter.

On April 24, 2020, this matter was referred to the Commission's Mediation Unit by Chief Administrative Law Judge Charles E. Rainey, Jr. Ultimately, the parties did not resolve this dispute.

On June 1, 2020, a letter from the Secretary of the Commission was sent to Tenny citing a Tentative Order of the Commission in *Cancellation of Telecommunication Public Utilities that have reported zero gross intrastate operating revenue and did not file comments in Response to Tentative Order at Docket No. M-2019-3010251*. That letter stated that the operating authority conferred on Tenny through its CPC has been cancelled and may no longer be used to provide public utility service in Pennsylvania.

On June 8, 2020, a hearing Notice was issued setting August 12, 2020, as the date for a hearing in this matter.

On June 11, 2020, Tenny filed a letter with the Secretary of the Commission at Docket No. M-2019-3010251 asking for reconsideration of the cancellation of its CPC. That matter is still pending.

On July 10, 2020, Verizon filed a Motion to Dismiss the Complaint asserting again that as Tenny is not represented by an attorney, that the Complaint should be dismissed.¹ Verizon again asserted that if the Commission has cancelled Tenny's CPC, then the Complaint should be dismissed. Verizon also provided a copy, separately, of the June 1, 2020, letter from the Secretary of the Commission to Tenny citing the Tentative Order of the Commission in *Cancellation of Telecommunication Public Utilities that have reported zero gross intrastate operating revenue and did not file comments in Response to Tentative Order at Docket No. M-2019-3010251*, stating that the operating authority conferred on Tenny through its CPC *has* been cancelled and may no longer be used to provide public utility service in Pennsylvania. Tenny filed no Answer or responsive pleading to the Motion to Dismiss.

On August 3, 2020, Tenny submitted a request by email to withdraw its Complaint so as to focus resources on a related federal court proceeding.

On August 5, 2020, Verizon provided an email stating that it has no objection to the requested withdrawal, but noted that its lack of objection is not an admission that any of the issues in the present Complaint are properly raised in the federal case.

This Decision grants Complainant's Petition to Withdraw the Complaint at this docket.

¹ Both in a prehearing Order and in an exchange of emails with Tenny, the presiding officer communicated to Tenny the requirement that Tenny, as a corporate entity, needs to be represented in this case by counsel, pursuant to the Commission's regulations. 52 Pa. Code § 1.21(b).

FINDINGS OF FACT

1. Tenny Journal Communications is a Competitive Local Exchange Carrier (CLEC) with an address of PMB 101, 650 E Palisade Avenue, Ste 2, Englewood Cliffs, NJ.

2. The Respondent is Verizon Pennsylvania, LLC, an Incumbent Local Exchange Carrier (ILEC) which has an interconnection agreement (ICA) with Tenny allowing for resale of Verizon services.

3. On January 27, 2020, Tenny filed a formal Complaint with the Commission alleging that Verizon had disconnected or had threatened to disconnect Tenny's service and was unresponsive to Tenny's requests to resolve the matter.

4. On February 18, 2020, Verizon filed an Answer and New Matter, properly endorsed with a Notice to Plead in which it denied any violation of the Public Utility Code or the regulations of the Commission.

5. On June 1, 2020, the Secretary of the Commission sent a letter to Tenny stating that the operating authority conferred on Tenny through its CPC has been cancelled and may no longer be used to provide public utility service in Pennsylvania.

6. On June 11, 2020, Tenny filed a letter with the Secretary of the Commission requesting reconsideration of the cancellation of its CPC.

7. On August 3, 2020, Tenny submitted a request by email to withdraw its Complaint so as to focus resources on a related federal court proceeding.

8. On August 5, 2020, Verizon provided an email stating that it has no objection to the requested withdrawal.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a).

Thus, the petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading. *Id.*

Further, although the email request to withdraw the Complaint does not technically comply with the Commission's regulations at 52 Pa. Code § 5.94(a) in that the request was not made through the filing of a Petition with the Commission, I will disregard this error in procedure pursuant to Section 1.2 of the Commission's regulations. Section 1.2 provides that “[t]his subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable”, and that the presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

In its formal Complaint, Tenny asked the Commission to require Verizon to restore service to seven payphone lines that have been disconnected at various times and for various reasons since 2016. Verizon explained in its July 10, 2020 Answer that these lines were

properly disconnected for non-payment or for failure on the part of Tenny to respond to Verizon's fiber migration notices in copper retirement areas and for nonpayment.

With its Motion to Dismiss, Verizon separately provided a copy of a letter from the Secretary of the Commission dated June 1, 2020 to Tenny stating that the operating authority conferred on Tenny through its CPC has been cancelled and may no longer be used to provide public utility service in Pennsylvania. The basis for the cancellation is failure to respond to a Tentative Order of the Commission in *Cancellation of Telecommunication Public Utilities that have reported zero gross intrastate operating revenue and did not file comments in Response to Tentative Order at Docket No. M-2019-3010251*. Verizon contends that the cancellation of the CPC warrants dismissal of the Complaint but does not explain the legal basis for a dismissal on these grounds.

On August 3, 2020, Tenny submitted a request by email to withdraw its Complaint so as to focus resources on a related federal court proceeding.

On August 5, 2020, Verizon provided an email stating that it has no objection to the requested withdrawal, but noted that its lack of objection is not an admission that any issues in the present Complaint are properly raised in the federal case.

It is not necessary at this time to rule on Verizon's Motion to Dismiss as that Motion is moot in light of the withdrawal of the Complaint at this docket. Both parties have alluded to ongoing litigation of the issues before a federal court, so little purpose would be served by insisting on collateral litigation before the Commission. Similarly, while Verizon is correct that under 52 Pa. Code § 1.21(b), Tenny's failure to have an attorney appear in this proceeding is grounds for dismissal, the unobjected to withdrawal of the Complaint moots that issue as well. Finally, even though Tenny's CPC has been cancelled, a CPC is not, in itself, a prerequisite for a corporate entity to file or withdraw a Complaint.

It is in the public interest to allow the withdrawal of Tenny's Complaint, and the Petition to Withdraw is granted.

CONCLUSIONS OF LAW

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

2. The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission.

3. It is in the public interest to allow the withdrawal of the Complaint at Docket No. C-2020-3016895.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the informal Petition for Leave to Withdraw the Complaint made by Tenny Journal Communications at Docket No. C-2020-3016895 is granted.

2. That the formal Complaint filed by Tenny Journal Communications against Verizon Pennsylvania, LLC on January 27, 2020, is hereby withdrawn.

3. That the Secretary of the Commission mark the formal Complaint at Docket No. C-2020-3016895 closed.

Date: August 13, 2020

/s/
Dennis J. Buckley
Administrative Law Judge