

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Paul Kettlewell

v.

Verizon Pennsylvania LLC

:
:
:
:
:

C-2018-3003059

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint against Verizon Pennsylvania LLC (Verizon) where the Complainant alleged that Verizon failed to provide adequate, efficient, and reasonable service and facilities. The Complainant failed to show by a preponderance of the evidence that Verizon violated any provision of the Public Utility Code or the rules and regulations of the Pennsylvania Public Utility Commission (Commission).

HISTORY OF THE PROCEEDING

On June 18, 2018, Paul Kettlewell filed a formal Complaint with the Commission against Verizon, alleging that Verizon, a telecommunications provider, had failed to provide adequate, efficient, and reasonable service and facilities.

On July 18, 2018, Verizon filed an Answer to the Complaint admitting in part and denying in part the assertions therein. Verizon requested that the matter be mediated. This

matter was referred to mediation by order of the Chief Administrative Law Judge on July 28, 2018. Ultimately, the Complaint was not settled.

On November 4, 2019, the undersigned was designated as the presiding officer in this matter. A telephonic hearing was scheduled for December 13, 2019, at 10:00 a.m.

On November 18, 2019, a Prehearing Order was issued which stated various procedures that would be applicable to the hearing.

On December 5, 2019, Complainant filed a letter dated December 4, 2019, making additional allegations with respect to his complaint and expanding his requests for relief.

By Order dated December 9, 2019, I continued the hearing scheduled for December 13, 2019, to afford Verizon an opportunity to file a responsive pleading to the amended Complaint. That Order also clarified the jurisdiction of the Commission with respect to the wireless service as referred to in the Complaint. The parties were specifically advised of the following:

1. The Commission has no jurisdiction over wireless/cell phone service or internet service, and no testimony or argument with respect to those services will be received.
2. The Commission is not a super board of directors for the public utility companies of the State and it has no right of management of them. Its sole power is to see that in the matter of rates, service and facilities, their treatment of the public is fair. *Pennsylvania Tele. Corp. v. Pa. P.U.C.*, 33 A.2d 765 (Pa. Super. 1943), citing *Bell Tel. Co. of Pa. v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941).
3. The Commission may consider an issue with respect to outages of land-line service. The Commission may consider an issue with respect to how a customer has been treated by a utility's employees. The Commission may consider billing issues related to land-line service.
4. Complainant does not have the standing or the legal authority to represent other ratepayers or to make statements purportedly on their behalf.

With respect to Complainant's request for relief, the Complainant made two requests in his original Complaint:

1. Request that Verizon put their lines underground - at the same time as PPL which would save money for them and lead to better and more reliable service for those living in this 2 mile section of Pine Swamp Road in Danville area.
2. Verizon to improve/replace lines with fiber optic lines, so it would be better quality and I wouldn't be required to purchase a land line that I don't want or need in order to get Wi Fi from Verizon. No other options for Wi Fi line is available (Service Electric doesn't come to this area).

The parties were advised that these requests are beyond the authority of the Commission to grant/direct.

On January 10, 2020, Verizon filed an answer to the amended complaint. The answer addressed Complainant's allegations with respect to cell phone reception, alleged service outages, a request to put service lines underground, a request for rate adjustment, and a request for special rates, in each instance citing lack of Commission jurisdiction to grant Complainant's requested relief.

On March 6, 2020, a Rescheduled Hearing Notice was issued setting April 21, 2020, as the date for a telephonic hearing in this case.

The hearing convened as scheduled on April 21, 2020. Mr. Kettlewell appeared and presented testimony. Suzan D. Paiva, Esquire, represented Verizon and presented the testimony of Michael Cumbo, a Local Operations Manager for Verizon, and Verizon Exhibit No. 1, Site Test Results of April 14, 2020. A hearing transcript of 52 pages was compiled and filed by the court reporter with the Secretary of the Commission on May 1, 2020 and the record closed on this date.

For the reasons set forth, below, the Complaint will be dismissed because Complainant failed to show by a preponderance of the evidence that Verizon violated any provision of the Code or the rules and regulations of the Commission.

FINDINGS OF FACT

1. Complainant in this case is Paul Kettlewell, whose service address is, 332 Pine Swamp Road, Danville, Pennsylvania.
2. Respondent in this case is Verizon Pennsylvania, LLC, a telecommunication utility which provides service to Complainant.
3. Complainant has been a Verizon customer at the service address, which is a rural location, for twelve years. Tr. at 5.
4. Complainant has had sporadic, unscheduled losses of service. Tr. at 5.
5. Complainant has asked that Verizon relocate his landline service from aerial to underground. Tr. at 6.
6. Complainant has had difficulty reaching Verizon representatives, experiencing waiting periods of fifteen minutes during multiple attempts to contact Verizon. Tr. at 6-7.
7. Since the Complaint was filed in June 2018, Verizon has done some upgrades to service and Complainant acknowledges that the land line service has improved, though Complainant continues to be concerned that past adjustments to his bills were not made efficiently. Tr. at 7, 11, 13.
8. The primary reason Complainant has a land line is so that he can have internet service. Tr. at 8.

9. Complainant is a psychologist employed at the Geisinger Medical Center in Danville, Pennsylvania, where he supervises fifteen other pediatric psychologists. Tr. at 8.

10. Due to the onset of the COVID-19 Pandemic, since approximately March 2020, Complainant has been conducting, “virtual appointments,” with patients, working remotely and using electronic medical records. Tr. at 9.

11. Because his Verizon land line also provides internet connection, Complainant wants improved reliability in his land line service. Tr. at 10.

12. If Verizon were to bury the service line as opposed to its present aerial configuration, there would be no improvement in service because Verizon would be burying the same lines. Tr. at 19.

13. A remote terminal is the electronics that a customer’s cable pair comes through and, in part, provides bandwidth. Tr. at 20.

14. There have been no outages since July 2019 that were related to problems either in Verizon’s lines, network or with Complainant’s remote terminal. Tr. at 24.

15. A line test conducted April 14, 2020, showed that the condition of Complainant’s copper wire line is within specifications. Tr. at 26-29; Verizon Exhibit 1.

DISCUSSION

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

Section 332(a) of Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). The burden of proof for actions before the Commission is the, "preponderance of the evidence" standard. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); see also *North American Coal Corp. v. Air Pollution Comm'n*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. See *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015, adopted by Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. See *Moore*. While the burden of production may shift back and forth during a

proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. In determining whether a complainant has met the burden of persuasion, the ultimate fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. See *Moore*, citing *Suber*.

In this case, the Complainant alleged that Verizon failed to provide adequate and reasonable service as required by the Code at 66 Pa. C.S. § 1501, which states in pertinent part:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

66 Pa. C.S. § 1501.

Pursuant to 66 Pa. C.S. § 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co.*, 372 A.2d 1203 (Pa. Super. 1977), *aff'd*, 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Code nor the Commission's regulations require public utilities to provide constantly flawless service. The 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).

At the heart of the Complaint in this case is Mr. Kettlewell's concern about his Digital Subscriber Line (DSL) service. That concern is understandable given the present circumstances which require him to work from home using virtual appointments to treat troubled children and to supervise others providing the same service. The quality of DSL service is not within the jurisdiction of the Commission to determine. The Commission's jurisdiction is over the copper wire land line that runs to Complainant's residence. Complainant conceded at several points that his service in this respect has improved and is adequate. Verizon tested the line and found its performance within specifications. Thus, there is no controversy here for the Commission to resolve. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

Complainant's contention with respect to call waiting times when trying to contact Verizon and the frequency that calls are needed to get Verizon to act are understandable and within the jurisdiction of the Commission to address under Section 1501. The problem, here, is one of proof. While I accept Complainant's uncontradicted testimony with respect to this issue, and recognize that he is not an attorney, Complainant provided no objective evidence to establish how many of these instances occurred, the duration of the calls, and over how long a period of time this went on. Again, I find the Complainant to be a credible witness, but without any objective evidence to assess (and which Verizon could respond to), Complainant has not met his burden of proof.

With respect to the issue of billing, at hearing Complainant clarified that he believes that Verizon puts "minimal effort in adjusting the bills, and frankly, make it burdensome to adjust the bills for service outages." Tr. at 45. Complainant finds this to be fundamentally unfair and thinks that some corrections to that process are needed. Complainant stated that over the past four years, or perhaps twelve to sixteen years, he has experienced service outages for which he has not been compensated. Tr. at 45. Setting aside the fact that this Complaint referred only to the twelve years that Complainant has been at his current service address, the problem here is, again, one of proof. Again, I find Complainant to be a credible witness, but he provided

no dates of outages, the duration of outages, any causal circumstances related to the outages, or any relevant bills and specific amounts that should have been reimbursed. Without such evidence, the Commission has no objective evidence that Verizon has violated the Code or the regulations of the Commission.

Finally, Complainant's contention that Verizon failed to provide reasonable service by not burying its cable to improve the quality of that service is not supported by any evidence. In fact, Verizon's witness, Mr. Cumbo, testified that burying the line would not improve the quality of service given that there is no history of damage to the line. Tr. 18-19. I find his testimony credible.

In sum, the service that Verizon provides to the Complainant and over which the Commission has jurisdiction has not been shown by a preponderance of the evidence to be inadequate, inefficient, unsafe or unreasonable. The Complainant has not established that Verizon has violated any provision of the Public Utility Code or any regulation of the Commission. The Complaint must, therefore, be dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding, by a preponderance of the evidence, is on the Complainant.

3. The Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co.*, 372 A.2d 1203 (Pa. Super. 1977), *aff'd*, 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co.*, 243 A.2d 346 (Pa. 1968).

4. As a general proposition, neither the Code nor the Commission's regulations require public utilities to provide constantly flawless service. 66 Pa. C.S. § 1501.

