PAMELA SCOTT ARNOLD, ACE 166 LESTER RD. EQUINUNK PA (570) 224-0318 PSCOTTA@AOL.COM

October 23, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265Harrisburg, PA 17105-3265
900 Race Street, 6th Floor Philadelphia, PA 19107

Re: Pamela Arnold v. Verizon North LLC;
Docket No. **C-2019-3014304; EXCEPTIONS OF VERIZON NORTH LLC**

Dear Secretary Chiavetta:

Enclosed please find my corrected exceptions to the exceptions of Verizon North LLC.

Thank you,

Pamela S. Arnold

Pamela Arnold

Via Email
cc: Honorable Dennis J. Buckley
Susan D. Paiva

CERTIFICATE OF SERVICE

I, Pamela Arnold, hereby certify that I have this day served a copy of the Exceptions of Verizon North LLC, upon the participants listed below.

Dated at Equinunk, Pennsylvania, this 23rd day of October, 2020.

VIA EMAIL

Honorable Dennis J. Buckley
Administrative Law Judge
Pennsylvania Public Utility Commission
Email: debuckley@pa.gov

Susan D. Paiva
Counsel for Verizon North LLC
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Analyst-Government Relations Verizon North LLC
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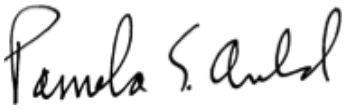
cc: Commission's Office of Special Assistants (OSA)
Email: ra-OSA@pa.gov



Pamela Arnold
166 Lester Rd.
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October 23, 2020

Rosemary Chiavetta
Secretary, Pennsylvania Public Utility Commission

Honorable Dennis J. Buckley

Susan D. Paiva
Counsel for Verizon North LLC

Re: Pamela Arnold v. Verizon Pennsylvania LLC
Docket no. C-2019-3014304; EXCEPTIONS OF VERIZON NORTH LLC

Dear Secretary Chiavetta:

I wish to take exception to Verizon's exception.

The crux of Verizon North's argument seems to be that the monetary penalties recommended are excessive, and due to a finding of "intentional or egregious" conduct, which Verizon denies:

"Ms. Arnold spoke with a number of Verizon representatives who attempted to fix the problem and informed her of the order writing error."

"But the record evidence shows, at most, that these events were the result of negligent violations of the reasonable service obligations of 66 Pa. C.S. § 1501. There was no evidence that any Verizon employee intentionally wished to delay or disrupt Ms. Arnold's order. To the contrary, her testimony shows that two employees, "Eric" and "Yinkah" spent considerable time getting to the bottom of the issue and getting her second move order completed. Tr. at 16."

This is not true. Some of the repair people I spoke to initially did try to fix the problem, but as far as I can tell, no customer service representative did until I was connected to Yinkah towards the very end (thanks to her) of my ordeal.

These are the conditions my husband and I were under due to the failure of Verizon to correct the initial problem. I do not have transcripts from the hearing, so I present this from my initial complaint:

"The day came and the service didn't change. I called Verizon at 6pm and was told something was wrong and a technician was on the way…

No one showed up. I waited until 7pm, called Verizon again, and was told no one was coming. Meanwhile, we had moved that day from 166 to 148, where we had no service. Our cell (Sprint) only works with an assist from the internet, so "no service" means absolutely no way to communicate with

anyone for any reason, including an emergency, except by going back to 166. Even that possibility was cut off when, after about 5 calls (from 166) over the course of 3 days (May 25-27), Verizon cut off service at 166 and failed to turn it on at 148. We were without service of any kind for approximately 9 days, at which point our DSL was briefly restored. That is 9 days during which, had there been an emergency, our lives may have been endangered because there was no way to call 911 or anyone else-no phone, no internet, no cell service.

In order to continue to communicate with Verizon for those 9 days, we had a 15 minute drive to a local restaurant where I was able to use their internet to get a signal on my cell phone. I had no way for Verizon to call us back because, without internet, my cell phone didn't work, and I couldn't hang out in the restaurant parking lot all day.

We were eventually told a technician would arrive on Friday, May 31. We waited and no one showed up. We drove back to the diner, called Verizon, and were told there was no record that an appointment was ever scheduled."

Did the person who told us a technician was coming lie, or was it yet another mistake? I don't know, but I do know that at least three or four of the more than a dozen Verizon employees I spoke to before I was, by sheer luck, connected to Yinkah, did lie.

Each of these Verizon customer service representatives told me that they were extremely sorry that I was having these issues and that they would make it their personal business to get to the bottom of it and call me back.

Not one did.

After wasting time waitng for their calls, I had to repeatedly call Verizon back, endure long wait times, explain the entire problem again, since apparently none of the story was in the record that they supposedly had in front of them.

Eventually, towards the end of the second phase of my ordeal (the move back to 166), Eric from the repair team took over the task of calling customer service, only connecting me when he had reached them.

His first attempt to call customer service resulted in him calling me back to say that he had to give up after an hour of waiting. I will point out that, while it was better than waiting on the phone myself, I still had to wait by the phone for Eric's call.

Again, it was sheer luck that we were eventually connected to Yinkah, who did begin to solve the problem.

I would claim that Verizon's insistance that Eric and Yinkah's help showed that no Verizon employee intentionally wished to delay or disrupt my order, in fact, suggests the opposite. If Eric and Yinkah's behaviour was demonstrative of the way Verizon employees are supposed to act, then clearly the failure of the other ten or so employees to act in this manner could be evidence that the majority of Verizon employees do behave egregiously and with intent to delay and disrupt.

If lying to a customer and continually not fixing the problem is not intentional and egregious conduct, I don't know what is.

If lying to a customer and continually not fixing the problem is not an intentional wish to delay and disrupt my order, then what is it?

Why did I have to go through eleven or twelve employees before finally getting to one who did what the first employee should have done immediately?

Please note that at one point in my testimony, either Ms. Paiva or her witness made reference to my claim of being lied to, at which point Judge Buckley interjected something along the lines of 'which you have not refuted'.

In other words, Verizon offered no evidence of any kind to refute my testimony of my ill treatment by Verizon, which included being lied to.

In fact, the entire basis of my complaint was NOT the falling out of the order, or "human error", as Verizon keeps insisting and has used to fight my claim all along.

The basis of my complaint is their reaction TO the falling out of the order and the initial "human error". Verizon makes it nearly impossible to contact them, and when I was able to, often as not I was lied to and, more importantly, the problem remained unfixed. If not for my own persistance, which, as a retiree I had time for, I would not have phone service to this day.

Everyone makes mistakes, and if Verizon had simply fixed it, or at least kept in touch with me to apprise me of their progress in attempting to fix it, there would have been no complaint.

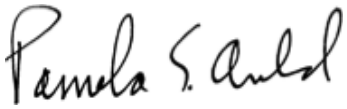
They did no such thing. In fact, it wasn't until Yinkah got involved months later that they even figured out what the problem was.

I am not a lawyer, and I cannot parse the intricacies of Public Utility law, but if a judge has discretion to award penalties for behavior and for the severity of harm caused by lack of service, then the penalty here is more than justified. Further, if the purpose of these penalties is to prevent Verizon from continuing their "egregious and intentional" behavior, then the penalty, in my opinion, should be much higher, not lower.

The very fact that Verizon has claimed these exceptions is evidence to me that they still have no idea what their employees did wrong, much less any exhibited any remorse about it.

Without proper penalties, and, frankly even with the small amounts the commission is able to levy, Verizon has no incentive to discontinue its, I believe, quite obviously egregious behavior toward its customers.

Thank you,



Pamela Arnold

Suzan DeBusk Paiva
Associate General Counsel

verizon

900 Race Street, 6th Floor
Philadelphia, PA 19107

October 15, 2020

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pamela Arnold v. Verizon North LLC;
Docket No. **C-2019-3014304; EXCEPTIONS OF VERIZON NORTH LLC**

Dear Secretary Chiavetta:

Enclosed please find the Exceptions of Verizon North LLC's in connection with the above-referenced case, which was electronically filed today.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

Suzan D. Paiva/sau

Suzan D. Paiva
Counsel for Verizon North LLC

SDP/sau
Enclosures

Via Email & U.S First Class Mail
cc: Honorable Dennis J. Buckley
Pamela Arnold

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Exceptions of Verizon North LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 15th day of October, 2020.

VIA EMAIL & USPS FIRST CLASS MAIL

Honorable Dennis J. Buckley
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pa. 17105-3265
Email: debuckley@pa.gov

Pamela Arnold
66 Lester Road
Equinunk, PA 18417
Email: Pscotta@aol.com

Suzan D. Paiva
Verizon North LLC
900 Race Street, 6th Floor
Philadelphia, PA 19107

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pamela Arnold,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3014304
	:	
Verizon North LLC,	:	
Respondent.	:	

EXCEPTIONS OF VERIZON NORTH LLC

Pursuant to 52 Pa. Code § 5.533, Verizon North LLC ("Verizon") excepts, in part, to the September 25, 2020, Initial Decision ("ID") of Administrative Law Judge Dennis J. Buckley. Verizon is not contesting an unreasonable service finding in this instance. Verizon excepts, however, to the amount of the penalty recommended by the ID because a civil penalty of $34,500 is excessive based on the facts, the law, the Commission's guidelines, and the treatment of similar cases.

BACKGROUND

The facts of this case occurred from late May to early October of 2019. Complainant Pamela Arnold contacted Verizon to move her telephone and DSL service temporarily to another location, while a new house was constructed at her property on 166 Lester Road. She wished to move the service away from 166 Lester Road to a mobile home on a neighboring property at 148 Lester Road that she also owned, and then move it back and connect it at the new structure at 166 Lester Road once the construction was finished.

Ms. Arnold contacted Verizon to place the order to move the service from 166 to 148 Lester Road and the date of May 24, 2019 was set for the move. Tr. at 7. The order was not fulfilled on May 24 and the service remained working at 166 Lester Road and was not moved. *Id*. It was determined that the reason the order did not flow to fulfillment was a human error by

the representative who took the original order and entered it into Verizon's electronic ordering systems. The representative erroneously put both the "to" and the "from" address as 166 Lester Road, an impossibility that caused the order to fall out of automatic processing. Tr. at 11 and 33. Ms. Arnold spoke with a number of Verizon representatives who attempted to fix the problem and informed her of the order writing error. Tr. at 11. The service at 166 Lester Road was disconnected on May 26 as part of the effort to resolve the issue,[1] but a Verizon representative was only able to fix the error in the ordering systems and get the service working at 148 Lester Road on June 7. Tr. at 35; FOF 15.

The service then worked without issue at 148 Lester Road for almost four months while construction proceeded at 166 Lester Road. In August of 2019 Ms. Arnold contacted Verizon again to start arrangements to move the service back to the newly constructed building at 166 Lester Road in mid-September. Tr. at 12. In the course of those conversations she was told that the electronic records showed that there was working service at 166 Lester Road, which would prevent an order from being issued to install service there until this records issue was cleared up, and that it needed to be corrected before an order could be placed. Tr. at 12-13. Ms. Arnold was frustrated by the number of calls she had to make to ensure that the records issue was resolved, but she explained that two Verizon employees, "Eric" and "Yinka" helped to clear up the service records so the order to move service back could be placed. Tr. at 14-16. The move back to 166 Lester Road was a more complicated order than the first one because it was a new building so a new service wire and network interface needed to be placed. Tr. at 12. The records issue was corrected and an order was placed, with an appointment made for September 24, 2019 between 8

[1] The ID incorrectly found that service stopped working at 166 Lester Road on May 24 (FOF 12 and 13), but Ms. Arnold testified that service stopped working at that address on May 26. Tr. at 8-9.

am and 12 pm to install service at the new building at 166 Lester Road. Tr. at 16-17. The technician arrived for the appointment on schedule at 8:30 am on September 24 and performed some of the necessary work, but he was not able to complete the job to get the voice service fully working because there was no dial tone coming from the switch. Tr. at 17. This needed to be resolved remotely before the job could be completed. Another technician was dispatched after this remote issue was resolved and was able to finish the job and connect the service on October 2. Tr. at 17-18 and 36.[2]

EXCEPTIONS

Verizon Exception 1: The IDs Excessive Fine Recommendation Is Not Supported By The Facts Or The Law And Should Be Reduced.

The ID found that Verizon provided unreasonable service to Ms. Arnold in violation of 66 Pa. C.S. §1501. Section 1501 requires public utilities to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities," and to provide services that are "reasonably continuous and without unreasonable interruptions or delay" and "in conformity with the regulations and orders of the commission." 66 Pa. C.S. §1501. However, the Commission has made clear that this standard requires "reasonable and adequate" service but does not require "perfect" service.[3] Verizon does not except to the conclusion that the above facts could support a finding of unreasonable service, particularly with regard to the time it took for Verizon's

[2] The Complainant testified that after service was restored there were lingering issues making sure the correct DSL package was on the account. The ID found that "Complainant did not provide sufficient evidence to prove that Verizon had provided inadequate or unreasonable service" in regard to her DSL service and "therefore, this part of her Complaint will be dismissed." ID at 10 and COL 7. Verizon does not except to this portion of the ID. It is well-settled that "this Commission does not have jurisdiction over the provision of retail Internet services." *A. Moses, Inc. v. Verizon Pennsylvania Inc.,* Docket No. C-2010-2205259 (Opinion and Order entered November 4, 2011); *see also Daskalakis v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered March 17, 2011).

[3] *A-Rize-N Management Co., LLC v. Pennsylvania American Water Co.*, Docket No. C-2009-2119162 (Order entered August 5, 2010, adopting decision of ALJ Salapa dated June 15, 2010). *See also Manuel A. Biason v. Metropolitan Edison Company*, PUC Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

representatives to correct the consequences of the human error on the original order entry and get the service moved in May/June of 2019. However, Verizon excepts to the ID's recommended penalty because it is excessive in light of the facts and the law.

Section 3301 of the Public Utility Code empowers this Commission to impose a civil penalty in "a sum not exceeding $1,000" for a violation of the Public Utility Code or a Commission order or regulation. 66 Pa. C.S. § 3301. This statute has been interpreted to allow a penalty of up to $1,000 per day for continuing violations, which "are proscribed activities that are of an ongoing nature and cannot be feasibly segregated into discrete violations so as to impose separate penalties."[4]

The ID makes clear that it deliberately calculated the absolute maximum penalty possible under Section 3301, a penalty that would only be appropriate in the most egregious case under the Commission's standards. According to the ID, "[t]he calculation of a monetary sanction is $1,000 per day, per incident," and "I view each day that service problems existed as an 'incident,' because the quality of service problem could have been (and should have been) corrected on any one of those days." ID at 13. The ID concluded that the violation continued for 23 days[5] and multiplied that by $1,000 per day to calculate a $23,000 penalty (and then added an improper $11,500 penalty on top of that, which is addressed in Exception 3, below).

Verizon is not disputing that Ms. Arnold experienced unreasonable service due to the delays and difficulties associated with her temporary move of services from one address to a

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[4] *Newcomer Trucking, Inc. v. Pennsylvania Public Utility Com.*, 109 Pa. Commw. 341, 345, 531 A.2d 85, 87 (Pa. Commw. Ct. 1987). Section 3301(b) provides that that "[e]ach and every day's continuance in the violation of any regulation or final direction, requirement, determination, or order of the commission" is a separate or distinct offense, but it does not refer to violations of the Public Utility Code itself as being continuing offenses.

[5] The ID commenced its 23 day period on May 24, based on a finding that service stopped working at 166 Lester Road on May 24 (FOF 12 and 13), but Ms. Arnold testified that service stopped working at that address on May 26. Tr. at 8-9. Therefore, under the ID's reasoning it should have been 21 days.

neighboring property and back again, and accepts that some civil penalty could be assessed. But the record evidence shows, at most, that these events were the result of negligent violations of the reasonable service obligations of 66 Pa. C.S. § 1501. There was no evidence that any Verizon employee intentionally wished to delay or disrupt Ms. Arnold's order. To the contrary, her testimony shows that two employees, "Eric" and "Yinkah" spent considerable time getting to the bottom of the issue and getting her second move order completed. Tr. at 16.

The case that served as the model for the Commission's policy statement at 52 Pa. Code § 69.1201 was *Joseph A. Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Opinion and Order entered March 16, 2000). In *Rosi*, the Commission reviewed a civil penalty of $1,000 per day for multiple days recommended against Sprint Communications Company, LP, for slamming. The Commission determined that $1,000 per day was an excessive penalty in the absence of evidence of intentional or egregious conduct and reduced it to $250 per day. The Commission explained that "Section 3301(a), (b) of the Code, 66 Pa. C.S. § 3301(a), (b), authorizes the Commission to impose a maximum civil penalty of $ 1,000.00 per day for violations of the statute, regulations and orders. Since § 3301 states clearly that this is a maximum amount, presumably a penalty of $ 1,000.00 per day should be imposed only for the most egregious violations." According to the Commission in *Rosi*, "[i]f the violation is negligent, the Commission should start with the presumption that the penalty will be in the range of zero dollars to $ 500.00 per day. The precise penalty amount per day will be arrived at by applying" the standards that ultimately became 52 Pa. Code § 69.1201, "while recognizing that the Commission retains broad discretion in determining a total civil penalty amount that is reasonable on an individual case basis." [6]

[6] "In the case of 'negligent' violations the presumption is that the penalty will range from $ 0 to $ 500 per day." Only if the violation is intentional would the Commission "start with the presumption that the penalty will be

There is no basis in this case to find that the conduct was intentional or egregious, and in fact the ID did not make such a finding. To the contrary, in applying 52 Pa. Code § 69.1201(c)(3) ("[w]hether the conduct at issue was deemed intentional or negligent"), the ID found that "[t]he conduct complained of was negligent." ID at 12. Therefore, the ID erred by applying the maximum penalty that is only appropriate for egregious and intentional conduct, and not starting with the required presumption that the penalty will range from $0 to $500 per day, given that there was no evidence of intentional conduct and the ID itself found the conduct to be negligent.

Additionally, the proposed penalty of $34,500 is disproportionate to the civil penalties imposed in other cases of negligent violations of the reasonable service standards of Section 1501. Both the United States and Pennsylvania Constitutions prohibit excessive fines and require that any punitive action such as civil penalties must be proportional to those imposed in other similar cases.[7] This proposed penalty is disproportionately large as compared to similar customer complaint cases and should be reduced.

For example, in another recent case involving an employee's human error in entering an address, resulting in a loss of electric service for five months, the Commission imposed a civil penalty of $5,000 on PECO. In *Wade De Loe v. PECO Energy Company*, Docket No. F-2016-2581905, 2018 Pa. PUC LEXIS 320 (Opinion and Order entered August 23, 2018), "[t]he record evidence indicates that the reason PECO failed to send the termination notices to the proper

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in the range of $ 500.00 to $ 1,000.00 per day." *Ronald A. Meder v. Peoples Natural Gas Co.*, Docket No.F-01620640 (Order entered August 21, 2006) at 8.

[7] *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) ("The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish."); *HIKO Energy, LLC v. Pa. PUC*, 209 A.3d 246, 258 (Pa. 2019) ("courts should conduct a proportionality test by comparing the magnitude of the fine to the gravity of the offense and to the treatment of offenders"); USCS Const. Amend. 8, Part 1 of 4; Pa. Const. Art. I, § 13.

address was because PECO's customer service representative had, in the process of closing out the Complainant's gas account with PECO on October 1, 2015, mistakenly listed the Service Address as the mailing address on Complainant's electric account. . . . As a result, despite the Complainant's clear request on September 25, 2014, that all correspondence pertaining to his electric account be sent to the New York Address, it was PECO's error that caused subsequent correspondences related to the Complainant's electric account to be sent to the Service Address rather than the New York Address." As a result of this addressing error, "the Complainant's electric service had been disconnected for five months because of PECO's mistake. And despite the Complainant's plea with PECO that he never received the termination notices, PECO refused to reconnect his service for five months during the winter heating season because the Complainant was unable to afford the $260 reconnection that PECO required," and "we conclude that PECO's actions in this matter constitutes inadequate and unreasonable service, especially since the Complainant's electric service never should have been disconnected." The Commission concluded that this was a negligent violation of Section 1501 and imposed a $5,000 civil penalty.

The civil penalties in other cases of negligent violations of Section 1501 have been in a range similar or less than the civil penalty in the *De Loe* case, and much less than the penalty recommended here. See, e.g., *Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984, 2020 PA. PUC LEXIS 317 (Opinion and Order entered July 16, 2020) ($2,000 civil penalty for negligent violation of Section 1501 by failing to follow up on meter reclamation activity for eight years, resulting in large balance); *Michael Morales v. Philadelphia Gas Works*, Docket No. C-2018-3002466, 2020 PA. PUC LEXIS 305 (Opinion and Order entered May 21, 2020) ($2,000 civil penalty for negligent violation of Section 1501 by failing to timely address meter tampering); *Ultimate Sports Company, Inc. v. PPL Electric Utilities Corporation*, Docket

No. C-2017-2633651, 2019 PA. PUC LEXIS 259 (Opinion and Order entered August 29, 2019) ($2,000 civil penalty for disclosure of password-protected small business customer account information to another commercial tenant without informing or seeking authorization from the account holder customer); *Jack Bleiman v. PECO Energy Company*, Docket No. F-2012-2284038, 2013 Pa. PUC LEXIS 1059 (Opinion and Order entered June 13, 2013)($3,680 civil penalty, calculated as $20 per day for each of the 184 days that PECO was in violation of the Code, for a negligent violation of Section 1501 by billing an incorrect residential heating rate).

Even in a more egregious case with intentional violations the Commission's civil penalty has not approached the magnitude of the penalty recommended here. *William Towne v. Great American Power,* LLC, Docket No. C-2012-2307991, 2013 Pa. PUC LEXIS 617 (Opinion and Order entered September 26, 2013) ($10,000 civil penalty where independent electric supplier contacted the Complainant fourteen times over a twenty-six day period despite repeated requests by the Complainant to stop calling and subjected other customers in the Duquesne Light service territory to numerous phone calls by aggressive sales representatives using potentially misleading statements).[8]

Therefore, Verizon respectfully requests that, if the Commission determines that a civil penalty is appropriate in this case, the Commission reduce the civil penalty in keeping with its own guidance that the penalty in a case of negligence will be in the range of zero dollars to $ 500.00 per day and proportional to the civil penalties in other cases.

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[8] The Commission has also rejected at least two recent ALJ recommendations of civil penalties of the same magnitude as recommended here. *See Stacey Weaver v. PPL Electric Utilities Corporation,* Docket No. C-2018-3005382, 2020 PA. PUC LEXIS 471 (Opinion and Order entered September 17, 2020) (rejecting $32,000 civil penalty recommendation from ALJ Buckley and imposing no civil penalty); *John Snow v. Equitable Gas Company*, LLC, Docket No. C-2012-2315572, 2013 Pa. PUC LEXIS 893 (Opinion and Order entered July 16, 2013) (rejecting $30,000 civil penalty recommendation from ALJ Dunderdale and imposing no civil penalty).

<u>Verizon Exception 2</u>:The ID's Findings Regarding Verizon's Electronic Order Processing System Are Not Supported By The Record And Should Be Rejected.

The ID draws erroneous conclusions about Verizon's electronic order processing system (Optix)[9] that are not supported by the record – and are in fact directly contrary to the testimony – and then relies on these faulty assumptions to enhance the recommended civil penalty. The Commission should reject the ID's conclusions and reasoning regarding the Optix system and reject any penalties that rely on them.

In the context of describing what happened to Ms. Arnold's order in this case, Verizon's witness testified about what would happen in a normal case with a move order, if there had not been an human error writing the original order. She explained that Verizon maintains an electronic order processing system known as "Optix" that allows the representative who takes the customer's call to input an order and have it flow through seamlessly to all the other necessary systems required to complete the order, ending with automatic fulfillment or a technician dispatch, depending on the nature of the order. Once the customer service employee submits the order in Optix, in a normal case, "it will flow through to the necessary systems, again depending on what service they ordered would go through different systems. Once it flows through all the necessary systems, it then ends where our order will complete automatically, maybe not needing a technician depending what it's for or it will flow through to our dispatch system where we would then schedule a technician for somebody to go out there." Tr. at 32-22. She explained that, by design, this is an automated process that does not require a person to move the order along. *Id.* Only if an order falls out of the automatic flow, then manual intervention is required to get it to flow through. Tr. at 34. She testified that in 2019

[9] The Transcript misspells the system as "Optics" and this misspelling is picked up in the ID. Verizon is using the correct name in these Exceptions for clarity of the record.

approximately 96 percent of the Verizon North orders flowed through the system automatically without any need for human intervention, and "[o]nly 4 percent fell out for various reasons – not all necessarily errors in writing the order but only – 4 percent fell out." *Id.* In this case, Ms. Arnold's move order fell out because of a human error by the representative who originally entered the order and put the "to" and "from" addresses both to be 166 Lester Rd. Verizon's witness testified that this was a unique, isolated human error and not "any systemic issue that is likely to reoccur." Tr. at 35.

The Judge later asked Verizon's witness, "[s]o when the service rep inputs [an order], is that reviewed by anyone before it goes to the technician who actually has to complete the order?" The witness responded: "Not on a normal basis. The system is designed that it would automatically flow through the necessary system depending on the service, ultimately reaching completion status whether it be an auto completion or if a technician is required." Tr. 41-42. In short, if the order flows through the system, then that means the computer systems have determined that there are no errors and it can proceed automatically to the next step. The system is designed specifically to avoid the need for cumbersome and time consuming human review for the vast majority of orders. If the order falls out, then the automated system has found an error or other issue as it was designed to do, in which case intervention by a human may be needed to fix the error, as happened here. Having an automated system that is able to process the vast majority of orders efficiently without human intervention is good for Verizon and for its customers because it speeds up handling time and reduces costs. There was no testimony about the optimal design of an automated system or what percentage of orders could reasonably be expected to fall out. However, it is certainly more efficient and better for the customers that 96

percent of the orders flow through automatically, rather than what the ID unreasonably suggests, that 100 percent of orders should be subject to unneeded human review.

The ID completely misconstrues this testimony and draws conclusions about Verizon's automatic systems that are not supported by the record. It then goes on to increase the recommended civil penalty substantially based on these incorrect and unsupported views. These unsubstantiated findings about Verizon's Optix system improperly color the ID's analysis of many of the Commission's review factors under 52 Pa. Code § 69.1201. Initially, the ID finds Verizon's "testimony in mitigation" to be "unpersuasive" because the ID makes the unsubstantiated finding that "[c]learly there is a systemic problem if problems occur at a four percent annual rate," and "[t]he fact that there is no review of an entered order until it 'drops out' of the system is also, 'a systemic issue,' the consequences of which are reflected in this case." ID at 10. As discussed above, those finding are incorrect and are not supported by the evidence. The ID further finds in applying 52 Pa. Code § 69.1201(c)(1) (whether the conduct is of a serious nature) that "Verizon's conduct was of a serious nature in that it was not a technical error but was a human error compounded by the fact that once a Verizon service representative inputs an order into the order system, it is assumed to be correct and is not checked by further human intervention unless a problem occurs." ID at 12. The ID finds in applying 52 Pa. Code § 69.1201(c)(3) (whether the conduct was negligent or intentional) that "[t]he conduct complained of was negligent, not only with respect to the incorrect data input but also because the order system Verizon uses assumes that the data input is correct and is not reviewed until a problem actually occurs." ID at 12-13. Applying 52 Pa. Code § 69.1201(c)(4) (corrective measures) the

ID finds "Verizon made no commitment at hearing to examine or to address this systemic issue." ID at 13. *See also* Finding of Fact 35.[10]

All of the above findings contradict the witness's testimony. She explained that the system is specifically designed to *avoid* the need for human intervention and if the order flows through then by definition there is no error and no need for human review. The system identifies and kicks out only the erroneous orders and only those small subset of orders that fall out of automatic processing require some human review and action to get them back on track. There is no evidence to support the ID's contrary findings regarding a systemic problem. The issue was not the design of the system; it was the original order writing error that caused the order to fall out to begin with, compounded by the fact that the representatives who initially reviewed the order on or after May 24, after it fell out, did not properly fix the problem and get the order back on track as should have happened. This delay was not the result of faulty design of Optix or any other systemic error. Another representative was able to get the order to flow. As Verizon's witness explained, "[i]t does look like after several calls there was some intervention manual by a representative and a repair ticket closed out . . . on June 7th and that provided the services." Tr. at 35. Verizon does not deny that the failure to identify and fix the order the earlier in the review process was unreasonable service, nor does it seek to avoid all civil penalties for this incident, but the issue clearly resulted from human errors in the attempt to perform the manual intervention and not in any systemic errors or design flaws with Optix or Verizon's other

[10] In the context of applying 52 Pa. Code § 69.1201(c)(4) (corrective measures), the ID also seems to fault Verizon for not providing a written apology to the Complainant before the complaint was filed (Verizon provided an apology in its answer to the complaint and at the hearing). According to the ID "Verizon's belated apologies were not acceptable to the Complainant." Id at13, n.7. But Ms. Arnold stated at the hearing that "I'm not looking for an apology, it's fine. Ms. Paiva has apologized now and I appreciate that and I accept it." Tr. at 51. Therefore, to the extent the ID increased the recommended civil penalty based on the issue of an apology that reasoning should be rejected.

automated computer systems, which work to the benefit of the vast majority of customers by processing orders efficiently and at lower cost.

Therefore, the Commission should reject all of the ID's conclusions about the design of Optix and any recommended penalties based on those conclusions.

Verizon Exception 3*: The ID's Arbitrary Addition of $11,500 Above The Maximum Daily Fine Is Not Supported By 52 Pa. Code § 69.1201(c)(10) And Violates 66 Pa. C.S. § 3301

After the ID determined that Verizon should be fined the maximum civil penalty permitted under Section 3301 of $1,000 per day (erroneously, as discussed in Exception 1), it found that 52 Pa. Code § 69.1201(c)(10), which considers "other relevant factors," permitted it to increase the maximum fine by 50%. According to the ID, "[w]ith respect to other relevant factors, Complainant alleged and testified with respect to what she termed as the, 'incompetency' of Verizon employees in responding to her concerns and the sheer logistical difficulty of contacting Verizon. . . . While Complainant's testimony in this respect was lacking in precise details, it was detailed enough to warrant an increase in the civil penalty by an additional $11,500 (or half of the already calculated $23,000 imposed for failure to provide the actual telephone service) which results in a total penalty of $34,500 dollars." ID at 15.

This arbitrary recommendation of an additional $11,500 civil penalty based on testimony "lacking in precise detail" and no specific finding of a violation of a statute, rule or order is erroneous and should be rejected. The "other relevant factors" provision of 52 Pa. Code § 69.1201(c)(10) is not a source of authority to increase the penalty above the maximum authorized by Section 3301. It is simply a catch-all provision to allow the Commission to consider unusual facts "external to the regulatory process" that might inform its decision of

where to place the penalty within the authorized range of $0 to $1,000 per violation.[11] The underlying facts that the ID relied upon to assess this additional penalty are the exact same ones used to justify the original penalty of $1,000 per day for 23 days. For example, in applying 52 Pa. Code § 69.1201(c)(4) to justify the original $1,000 per day penalty the ID specifically relied upon the "Complainant's uncontradicted testimony with respect to the long wait times she experienced while calling Verizon, unreturned calls, missed appointments, and contradictory or incorrect information provided to Complainant by Verizon's employees," which is the exact same "testimony . . . lacking in precise details" that the ID also relies upon for the additional $11,500 civil penalty.[12] Thus, there was no "separate" violation but rather the ID improperly relies on Section 69.1201(c)(10) to attempt to bootstrap a civil penalty beyond the $1,000 per violation, which exceeds the authority provided to the Commission under Section 3301.

Accordingly, the Commission should reject the ID's recommended additional $11,500 civil penalty.

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[11] *Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, Docket Number M-00051875, 2007 Pa. PUC LEXIS 71 (Opinion and Order entered November 30, 2007) (determining to retain this "catch-all" category "to include broad-ranging factors that may be necessary in particular cases to effectively craft a penalty or assess the appropriateness of a settlement that includes a penalty," for example **"**when the Commission encounters factual situations that do not fit into a prescribed mold, such as natural disasters, national or political unrest, macroeconomic conditions, and other events that are external to the regulatory process.")

[12] The only basis for imposing a per-day civil penalty is if the combination of "proscribed activities . . are of an ongoing nature and cannot be feasibly segregated into discrete violations so as to impose separate penalties." *Newcomer Trucking, Inc. v. Pennsylvania Public Utility Com.*, 109 Pa. Commw. 341, 345, 531 A.2d 85, 87 (Pa. Commw. Ct. 1987).

CONCLUSION

For the foregoing reasons the Commission should reject the recommended $34,500 civil penalty. If it finds that a civil penalty is appropriate, then the Commission should calculate a lower penalty in accordance with a proper application of 52 Pa. Code § 69.1201 and 66 Pa. C.S. § 3301 to the facts of this case.

Respectfully submitted,

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