

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|--------------------------|---|----------------|
| Robert Serlin | : | |
| | : | |
| v. | : | C-2019-3014818 |
| | : | |
| Verizon Pennsylvania LLC | : | |

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Robert Serlin because he failed to meet his burden of proving that Verizon Pennsylvania LLC’s response time to a service outage at his residence constituted inadequate service in violation of Section 1501 of the Public Utility Code.

HISTORY OF THE PROCEEDING

On December 4, 2019, Robert Serlin (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania LLC (Verizon or Respondent). In an attached letter, the Complainant alleged that he lost all Verizon Fios phone and internet service on November 1, 2019, and that he was forced to wait on hold for several hours on three separate dates while attempting to get Verizon’s help in restoring his service. As relief, the Complainant requested, in pertinent part, the following:

1. To require the Company to staff its phone lines so that customers need not:
 - a. Wade through interminable phone trees (which is done, in part, expressly to drive customer who desire to speak with a human – which costs the Company more – to opt to interact with machines); and
 - b. Wait for days because the Company failed to staff appropriately to allow for unprojected (though not necessarily unanticipatable [sic]) demand levels;
2. To mandate an overseer to verify the Company's compliance with any order imposed on the Company as a result of this Formal Complaint; and
3. To impose a real, meaningful, and painful punishment on Verizon in the event it fails to comply. (“Real, meaningful, and painful” means something its stockholders would notice.).

On December 26, 2019, Verizon filed an Answer and New Matter to the Complaint. In the Answer, Verizon admitted that it provides the Complainant with a double play service bundle consisting of Fios Internet service and Fios Digital Voice. Verizon denied the Complainant's claims of long hold times, explaining that the Complainant's calls were made during a period when Verizon was experiencing increased call volumes and other pressures due to a severe weather event.

As New Matter, Verizon reiterated that the Complainant's telephone service is Fios Digital Voice, which is provided in the Voice over Internet Protocol (VOIP) format. Verizon asserted that the Commission should dismiss the Complaint because it has no subject matter jurisdiction over the issues raised in the Complaint. Verizon endorsed its New Matter with a Notice to Plead advising the Complainant that he had twenty (20) days to file a response to New Matter.¹

Also, on December 26, 2019, Verizon filed Preliminary Objections to the Complaint. According to the Preliminary Objections, the Complaint concerns VOIP services known as Fios Digital Voice. Verizon asserted that the Commission lacks jurisdiction to address the issues relating to the Complainant's service based on the Voice Over Internet Protocol Freedom

¹ 52 Pa.Code § 5.63(a) provides, in pertinent part, that “replies to answer seeking affirmative relief or to new matter shall be filed with the Commission and served within 20 days after date of service of the answer.”

Act.² Verizon endorsed its Preliminary Objections with a Notice to Plead informing the Complainant that he had ten (10) days to file an Answer to the Preliminary Objections.³

The Complainant did not file responses to Verizon's New Matter or Preliminary Objections.

By Motion Judge Assignment Notice dated January 29, 2020, the Commission notified the parties that it had assigned me as Motion Judge.

By Order dated February 28, 2020, I denied Verizon's Preliminary Objections and referred for mediation the sole issue of whether Verizon's response time to the Complainant's outage constituted inadequate service in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

By Interim Order Setting Resolution Procedure dated March 3, 2020, Chief Administrative Law Judge (CALJ) Charles Rainey directed the parties to attempt to resolve the matter, and further directed Verizon to file a short report with Mediator Cynthia Lehman. CALJ Rainey also advised the parties that if they are unable to reach an agreement on their own and do not consent to mediation, they are entitled to the hearing process. Mediation was not successful.

By Corrected Hearing Notice dated July 1, 2020, an initial call-in telephonic hearing was scheduled for July 30, 2020 at 10:00 a.m., and the matter was again assigned to me.

I issued a Prehearing Order on July 1, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

² 73 P.S. § 2251.1(2008) *et seq.*

³ 52 Pa.Code § 5.101(b) provides that "[a] preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection."

The hearing convened as scheduled on July 30, 2020. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Suzan D. Paiva, Esquire, who presented the testimony of Douglas Smith, Verizon's Vice President of State Government Affairs, and Debra Cullen, a Verizon Senior Manager. The Respondent submitted two exhibits, both of which were admitted into the record (Verizon Exhs. 1 & 2).

The record consists of an 80-page transcript and two exhibits. The record closed on September 18, 2020, upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Robert Serlin.
2. The Respondent in this case is Verizon Pennsylvania LLC.
3. The Complainant resides at 18 Penarth Road in Bala Cynwyd, Pennsylvania (service address). Tr. 7.
4. The Complainant subscribes to Verizon Fios, digital voice, and broadband internet services. Tr. 28.

October 31, 2019 Storm

5. A severe storm hit the region on the evening of October 31, 2019, resulting in tornadoes touching down in the area, 126,000 customers losing power, and multiple fiber cuts due to tree damage. Tr. 33, 54.
6. The Complainant discovered an outage of his Verizon Fios telephone service on November 1, 2019. Tr. 8.
7. The Complainant was in Los Angeles when this outage occurred. Tr. 8.

8. The Complainant did not report his service outage online since his internet was out and also because he does not have the Verizon App on his phone. Tr. 24-25.

9. On Saturday, November 2, 2019, at approximately 11:59 p.m., the Complainant first called Verizon regarding this service outage. Tr. 9, 13, 19.

10. The Complainant was on hold until approximately 1:30 a.m. on November 3, 2019, at which point he abandoned the call. Tr. 10, 13.

11. On Sunday, November 3, 2019, at approximately 8:30 a.m., the Complainant called Verizon again regarding this service outage. Tr. 10, 19, 32.

12. The Complainant remained on hold with Verizon for approximately two and a half hours before he abandoned the call. Tr. 10.

13. On November 3, 2019 at approximately 1:10 p.m., the Complainant called Verizon again regarding this service outage. Tr. 32.

14. The Complainant abandoned the call after 59 minutes. Tr. 32.

15. The Complainant called Verizon twice on his cell phone while traveling to Albany, but his wireless service cut out both times. Tr. 11, 13.

16. On November 3, 2019, at approximately 10:40 p.m., the Complainant called Verizon again regarding this service outage. Tr. 12, 13, 32.

17. The Complainant waited on hold for approximately one and a half hours before he abandoned the call. Tr. 12, 32.

18. The Complainant visited an Albany Fios store for assistance restoring his service. Tr. 14.

19. Employees at the Albany Fios store unsuccessfully attempted to call Verizon on the Complainant's behalf. Tr. 14.

20. On November 4, 2019, at approximately 8:30 p.m., the Complainant called Verizon again regarding this service outage. Tr. 14-15.

21. After waiting on hold for approximately one hour, the Complainant spoke with a Verizon representative. Tr. 15.

22. The Verizon representative determined that there was an equipment failure at the service address. Tr. 15.

23. The Verizon representative advised the Complainant that it would take three days for a Verizon technician to be available to fix his equipment. Tr. 15.

24. On November 7, 2019, a Verizon employee visited the service address, repaired the optic network terminal, and restored the Complainant's service. Tr. 16, 62, 68.

25. On the Complainant's bill dated November 21, 2019, Verizon provided the Complainant with an out-of-service credit of \$31.55 for the time his service was out from November 1, 2019 to November 7, 2019. Tr. 63; Verizon Exh. 1.

Impact of October 31, 2019 Storm on Verizon

26. A Verizon fiber solution center, which receives incoming trouble report calls and manages Verizon field technicians, lost power impacting their ability to handle customer calls. Tr. 54-55.

27. Losing power at a fiber solution center causes all systems to reset, which can disrupt customer and technician calls. Tr. 56-57.

28. Verizon experienced a 45% spike in calls following this storm. Tr. 57.

29. Over the three-day period immediately following the storm, 40% of Verizon's customers that called Verizon centers abandoned their calls due to long call hold times. Tr. 57.

30. As a result of the storm and outages, Verizon answered approximately 31% fewer calls than normal. Tr. 57.

31. During the three-day period that the Complainant tried to call Verizon for assistance, Verizon received almost twice as many calls in their support centers than they would receive on a normal day. Tr. 57-58.

32. Verizon call center personnel experienced difficulty getting to work at the centers due to weather-related road closures, causing a shortage in Verizon's call center work force. Tr. 58.

33. Verizon put weather-related messaging in place for customers calling 1-800-VERIZON in impacted areas explaining: that due to the storm, there may be a delay before reaching a representative; that if the caller was experiencing a power outage, that most service issues will be resolved when the power is restored; and that the caller could go to [Verizon.com/outage](https://www.verizon.com/outage) to report any issues. Tr. 58-59.

34. Customers calling 1-800-VERIZON were also advised of the wait time for their call to be answered and were offered the option of either receiving a call back from Verizon based on their place in line on the phone, or of scheduling a call back over the following six days at a date and time that may be convenient for them. Tr. 59-60, 70.

35. The October 31, 2019 storm affected other states in addition to Pennsylvania. Tr. 64.

36. Tech Support performance suffered between November 1, 2019 through November 4, 2019. Tr. 54.

37. Verizon call centers from other states can pick up the slack for Pennsylvania if there are storm related issues. Tr. 64.

38. Personnel from neighboring Verizon jurisdictions came to Pennsylvania to assist with service restoration efforts. Tr. 56.

Reporting Verizon Service Issues

39. Verizon stores are limited in purpose to allow customers to pick up, upgrade and return boxes, pay their bill, and order Verizon products and services. Tr. 61.

40. Verizon stores are not intended locations for customers to report service trouble. Tr. 61.

41. Verizon store employees do not have access to customer accounts, nor do they have customer service training that an employee in a call center would have. Tr. 62.

42. The Complainant called 800-922-0204 each time he tried to reach a Verizon representative to report his service outage. Tr. 20.

43. The number 800-922-0204 is the Verizon wireless customer service number. Tr. 52.

44. To reach Verizon wire line services to report service interruptions, Verizon customers should call 1-800-VERIZON (1-800-837-4966). Tr. 52.

45. The last page of each Verizon bill instructs Verizon customers with service issues to either visit Verizon.com/support or to call 1-800-VERIZON. Tr. 53; Verizon Exh. 1.

46. If a landline customer calls the Verizon wireless call center to report a problem with Verizon's fiber-based landline, any representative who answers the call will transfer the caller to the fiber solution center. Tr. 53, 60.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v.*

Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The Complainant raised concerns regarding Verizon's response time to an outage he experienced in November 2019. The Complainant's telephone service was disrupted on or about November 1, 2019, as a result of severe weather. The Complainant was not able to reach a Verizon representative regarding this outage until November 4, 2019, and Verizon was not able to dispatch a technician to restore his service until November 7, 2019. The Complainant has raised a claim of inadequate service.

Regarding operator handled calls, Commission regulations provide, in pertinent part, that "[a] public utility supplying operators shall maintain adequate personnel and equipment to assure an average operator answering performance on a monthly basis as follows . . . [e]ighty-five percent of calls seeking repair service or to the business office during normal working hours shall be answered within 20 seconds." 52 Pa.Code § 63.59(b)(2).

In *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. Verizon Pa., Inc.*, Docket No. M-2008-2077881 (Order entered October 12, 2012), the Commission granted Verizon PA a waiver of 52 Pa.Code § 63.59(b)(2) related to customer calls to the business office. In *Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of all Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services*, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order Entered March 4, 2015), the Commission reiterated this waiver, reasoning as follows:

Overall, we are of the opinion that the market is sufficiently competitive that a customer can obtain service from other providers if Verizon's service quality is unacceptable. In essence,

customers can “vote with their feet,” which we believe provides sufficient incentive for Verizon to provide quality service in most cases. Therefore, we believe many of our quality of service regulations are no longer necessary in competitive wire centers.

Id. at 85. Although the Commission granted this waiver to Verizon, the Commission reminded Verizon of its statutory requirement to provide reasonable service to its customers:

Notwithstanding the ability of customers in competitive wire centers to opt for other service providers if they find Verizon’s service unacceptable, these customers also have the option to complain to the Commission about poor service. Waiving the regulations of Subchapter E does not, in any way, modify Verizon’s statutory obligation under the Code to provide “adequate, efficient, safe, and reasonable service” to customers in competitive wire centers. This point has been confirmed in Verizon PA’s and Verizon North’s Chapter 30 Plans and also in the testimony in this case.

Neither does a waiver of these Regulations impact the Commission’s ability to adjudicate a customer complaint alleging poor service quality. Verizon remains statutorily required to provide reasonable service in competitive areas. Granting Verizon’s waiver requests does not change this or the Commission’s ability to address a quality of service complaint. Thus, we view our Section 1501 jurisdiction and authority as a regulatory back-stop on quality of service.

Id. at 86.

Although the Commission granted Verizon a waiver of the requirements of 52 Pa.Code § 63.59(b)(2), Verizon is still required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant 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.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

Id. at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.⁴ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). In applying the facts to the law, the issue becomes whether Verizon's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

The record reveals that a severe storm hit the region where the Complainant lives on the evening of October 31, 2019, which resulted in tornadoes touching down in the area, 126,000 customers losing power, and multiple fiber cuts due to tree damage. Tr. 33, 54. This severe weather event impacted service throughout the service area which impacted the ability of Verizon call center personnel to report for work. Tr. 58. Moreover, during the three-day period following this severe weather event, Verizon received almost twice as many calls in their support centers than they would receive on a normal day. Tr. 57-58. While the Complainant had to wait several days for

⁴ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa. C.S.A. § 102.

the restoration of his service, the wait was not due to any disregard for the Complainant's issues on Verizon's part. It was due, in large part, to the large-scale impact that this weather event had on Verizon's service territory. The Complainant himself acknowledged that there had been inclement weather and that Verizon was backed up as a result. Tr. 15. The delay was also partly due to the Complainant attempting to report his service outage through Verizon wireless rather than calling the correct Verizon number to report his wire line service issue. Although Verizon wireless ultimately transferred the Complainant's call to the correct number to report his service outage, calling the wrong number likely added to the delay the Complainant experienced in reaching the proper Verizon representative to report his issue.

Section 1501 requires a utility to provide adequate and reasonable service. It does not require perfect service. Under the circumstances presented, the Complainant did not meet his burden of demonstrating that Verizon's actions in responding to his service outage constituted inadequate or unreasonable service. Accordingly, his Complaint is denied.

CONCLUSIONS OF LAW

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

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

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Regarding operator handled calls, Commission regulations provide, in pertinent part, that "[a] public utility supplying operators shall maintain adequate personnel and equipment to assure an average operator answering performance on a monthly basis as follows . . .

. [e]ighty-five percent of calls seeking repair service or to the business office during normal working hours shall be answered within 20 seconds.” 52 Pa.Code § 63.59(b)(2).

5. The Commission granted Verizon PA a waiver of 52 Pa.Code § 63.59(b)(2) related to customer calls to the business office. *Pa. Pub. Util. Comm’n, Law Bureau Prosecutory Staff v. Verizon Pa., Inc.*, Docket No. M-2008-2077881 (Order entered October 12, 2012).

6. Although the Commission granted Verizon PA a waiver of 52 Pa.Code § 63.59(b)(2), Verizon PA still has a statutory requirement pursuant to 66 Pa.C.S. § 1501 to provide reasonable service to its customers. *Joint Petition of Verizon Pa. LLC & Verizon N. LLC for Competitive Classification of all Retail Servs. in Certain Geographic Areas & for a Waiver of Regulations for Competitive Servs.*, Docket Nos. P-2014-2446303 and P-2014-2446304 (Order Entered March 4, 2015).

7. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

8. The Complainant failed to carry his burden of demonstrating that Verizon’s actions constituted a violation of the Public Utility Code, the Commission’s regulations, or Verizon’s own Commission-approved tariff.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Robert Serlin against Verizon Pennsylvania LLC at Docket No. C-2019-3014818 is denied; and

