**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held January 14, 2021

Commissioners Present:

 Gladys Brown Dutrieuille, Chairman, Statement

 David W. Sweet, Vice Chairman

 John F. Coleman, Jr.

 Ralph V. Yanora

|  |  |  |
| --- | --- | --- |
| Pennsylvania Public Utility Commission,Bureau of Investigation and Enforcement  v.The United Telephone Company ofPennsylvania LLC d/b/a CenturyLink |  | M-2020-3012956 |

**Opinion and Order**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement Agreement or Settlement) filed on July 7, 2020, by the Commission’s Bureau of Investigation and Enforcement (I&E) and The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (CenturyLink or Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties submitted Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy*. Settlement at 14. For the reasons set forth herein, we shall approve the proposed Settlement, consistent with this Opinion and Order.

**History of the Proceeding**

 This matter concerns an alleged failure by CenturyLink to timely install telephone and broadband services. The Commission’s Bureau of Consumer Services (BCS) received complaints regarding CenturyLink’s alleged failure to timely install services in accordance with the Public Utility Code (Code) and the Commission’s Regulations, and the alleged failure to meet Chapter 30 requirements. Over the weekend of April 28, 2018, CenturyLink transitioned to a new dispatch system in Pennsylvania. CenturyLink experienced unforeseeable and unanticipated dispatch delays for telephone and broadband services. BCS received several informal complaints related to installation delays, and some ancillary alleged Chapter 30 violations. Settlement at 5.

 BCS referred the matter to I&E on September 16, 2019. By letter dated September 24, 2019, I&E notified CenturyLink that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Code, 66 Pa. C.S. §§ 331(a), 506, and Section 3.113 of the Commission’s Regulations, 52 Pa. Code § 3.113. I&E further advised CenturyLink that its investigation would focus on CenturyLink’s alleged failure to provide telephone and broadband services in violation of Chapter 30 and the Code and the Commission’s Regulations governing installation of services.

 By letter dated September 24, 2019, I&E submitted informal data requests to CenturyLink. CenturyLink responded to I&E’s data requests on November 14, 2019. CenturyLink met with I&E on January 16, 2020, and provided additional information as requested by I&E. A settlement conference call was convened on April 7, 2020, with additional settlement discussions occurring in May 2020. Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. The results of I&E’s investigation, which included review of the customer complaints, CenturyLink’s responses to data requests, and the additional information provided by CenturyLink, formed the basis for the Settlement Agreement. The Parties filed the instant Settlement on July 7, 2020.

**Background**

 Installation of Services Allegations

 The untimely service installation allegations stem from a total of sixteen customer complaints. Of the total complaints, ten customer complaints involved installation of telephone service, broadband service, or both, thus creating multiple counts per customer. The remaining six customer complaints involved allegations regarding Chapter 30 of the Code. The customer complaints are summarized in Table 1 below. Settlement at 6.

 Table 1 - Summary of Customer Complaints – Telephone and Broadband Service

| Customer | Date Customer Requested Service | CenturyLink Installed Service | Alleged Delay in Working Days Telephone Service | Alleged Delay in Working Days Broadband Service |
| --- | --- | --- | --- | --- |
| A | July 2, 2018 | July 18, 2018 | 7 | 2 |
| B | August 24, 2018 | October 5, 2018 | 24 | 19 |
| C | August 22, 2018 | October 31, 2018 | 44 | 39 |
| D | May 12, 2019 | June 20, 2019 | 23 | 18 |
| E | May 14, 2019 | June 24, 2019 | 23 | 18 |
| F | January 2, 2018 | January 16, 2018 | 5 | N/A |
| G | January 2, 2018 | January 16, 2018 | 5 | N/A |
| H | May 22, 2018 | June 21, 2018 | 16 | N/A |
| I | December 31, 2018 | January 11, 2019 | 3 | N/A |
| J | June 11, 2018 | July 9, 2018 | N/A | 9 |
| Total waiting period past the 5-day time frame prescribed in 52 Pa. Code § 63.58(a) |  | 150 |  |
| Total waiting period past the 10-day time frame prescribed in 66 Pa. C.S. § 3014(b) |  | 105 |

 Under Section 63.58 of the Commission’s Regulations applicable to telephone service, a public utility shall complete installation of primary service orders withing five working days of receipt of an application unless a later date is requested by the applicant or construction is required. Nine customer complaints related to CenturyLink’s alleged failure to install telephone services within five days. The customers claimed a total waiting period of 150 days past the 5-day time frame prescribed in Section 63.58(a). Settlement at 6-7 (citing 52 Pa. Code § 63.58(a)).

 Under Section 3014 of the Code, a local exchange telecommunications company “may amend its network modernization plan to extend the period of time within which broadband service must be made available to a customer to up to ten business days after the customer’s request for broadband service.” 66 Pa. C.S. § 3014(b)(5). In response to I&E’s informal data requests, CenturyLink provided six customer complaints that were related to CenturyLink’s alleged failure to install broadband services within ten days. The customers claimed a total waiting period of 105 days past the 10-day timeframe prescribed in Section 30149b). Settlement at 8-9.

 Section 1501 Allegations

 As detailed in Table 1 above, ten customers alleged that CenturyLink failed to furnish reasonable service as required by Section 1501 of the Code. Settlement at 10.

 Chapter 30 Allegations

 Section 3014(b) of the Code provides that a rural telecommunications carrier that elects to amend its network modernization plan shall remain subject to its network modernization plan through December 31, 2013 and shall commit to accelerate broadband availability to 100% of its total retail access lines in its distribution network by December 31, 2013. 66 Pa. C.S. § 3014(b)(2)(ii)(A).[[1]](#footnote-1) Settlement at 10.

 In response to I&E’s informal data requests, CenturyLink identified four customers who alleged that CenturyLink did not provide broadband services upon request and two customers who alleged that CenturyLink did not provide the minimum speed of 1.544 Mbps in the downstream direction. Settlement at 11.

 As a result of its informal investigation, I&E concluded that there was sufficient data to substantiate allegations of violations of our Regulations. Specifically, I&E was prepared to allege in a formal complaint that the issues associated with the implementation of the new dispatch systems resulted in:

1. the untimely installation of telephone service within five working days. If proven, this would have violated 52 Pa. Code § 63.58 and 66 Pa. C.S. § 1501. (Multiple counts).
2. the untimely installation of broadband service within ten working days. If proven, I&E alleges that such conduct would have violated and 66 Pa. C.S. § 3014 and 66 Pa. C.S. § 1501. (Multiple counts).

Settlement Agreement at 11-12.

Additionally, I&E would have alleged that CenturyLink failed to provide broadband services upon request or failed to provide the minimum broadband speed of 1.544 Mbps. If proven, I&E alleges that such conduct would have violated Chapter 30, 66 Pa. C.S. § 3011, *et seq.* *Id*.

 The proposed Settlement was filed by the Parties in order to resolve all allegations of the failure to timely install services and the alleged failure to meet Chapter 30 requirements. The Parties urge the Commission to approve the Settlement as being in the public interest. Settlement at 14.

 By Order entered October 29, 2020, (*October 2020 Order*), the Commission provided interested parties with the opportunity to file comments. In order to be considered timely, comments were due within twenty days of the date of entry of the *October 2020 Order*. No comments were filed.

**Terms of the Settlement**

 Pursuant to the proposed Settlement, CenturyLink will pay a civil penalty of $32,050, which includes: (1) $28,050 - a civil penalty of $110.00 per day, for each day, for a total of 255 days that CenturyLink allegedly failed to timely install telephone and broadband services; (2) $2,000 – a civil penalty of $200.00 per customer complaint for the alleged Section 1501 violations; and (3) $2,000 – a civil penalty for the alleged Chapter 30 violations. The civil penalty shall not be tax deductible or passed through as an additional charge to CenturyLink’s customers in Pennsylvania. Settlement at 13.

 In response, I&E agrees to forbear from initiating a formal complaint relative to the allegations that are the subject of the proposed Settlement upon Commission approval of the Settlement in its entirety and payment of the civil penalty. I&E Statement of Support at 5.

 The proposed Settlement is conditioned on the Commission’s approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. Settlement at 13 - 14.

**Discussion**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). After a review of the terms of the Settlement, we find that it is in the public interest.

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*. The allegations in this matter involves an administrative or technical error as a result of CenturyLink’s implementation of a new dispatch system. The less egregious nature of the conduct was considered in arriving at the civil penalty amount in the Settlement Agreement. I&E Statement in Support at 6-7.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* There is no indication that the alleged violations resulted in personal injuries or property damage. However, the consequences of the alleged actions may have resulted in customers being without access to telephone or broadband services which could impact the customer’s access to education, medical or emergency services, work, and/or personal communications and interactions. We agree with I&E that access to telephone and broadband services is critical to everyday life and lack of access could have a serious impact, thus the consequences of CenturyLink’s alleged conduct should be deemed serious. I&E Statement in Support at 7.

The third factor pertains to litigated cases only. 52 Pa. Code § 69.1201(c)(3). Because this proceeding was settled, this factor is not applicable to this Settlement.

 The fourth factor is whether CenturyLink made efforts to change its practices and procedures to prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). CenturyLink’s conversion to a new dispatch system in April 2018 yielded unforeseeable and unanticipated technical issues resulting in dispatch delays for the installation of telephone and broadband services. CenturyLink discovered the issues with the new system and immediately took the appropriate steps to fix the technical issues with the dispatch system and utilized additional resources to reduce the installation delays. According to I&E, CenturyLink made efforts to ensure that these issues do not reoccur in the future. I&E Statement in Support at 7-8. CenturyLink provides that once it became aware of the dispatch program issues, CenturyLink management began to address the system’s programming issues. Additionally, CenturyLink notes that its engineers, technicians, and supervisors undertook immediate action to address the backlog of installation orders, including addition of more technicians and other resources before CenturyLink was notified by I&E of the informal investigation. CenturyLink Statement of Support at 5. In consideration of CenturyLink’s efforts to resolve the dispatch system issues, we find that application of the fourth factor is supportive of a lower penalty.

 The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E identified ten (10) customers who filed complaints relating to a delay in the installation of voice and/or broadband services. According to I&E, those customers waited anywhere from 3-44 days past what the Regulations and Code require (5 days for voice service, 10 days for broadband service). The remaining six (6) customers alleged that CenturyLink did not provide broadband service upon request or failed to provide speeds of 1.544 Mbps as required in Chapter 30. I&E provides that it is not aware whether the four (4) customers who alleged that CenturyLink did not provide broadband service were successful in finding service through another company or whether the two (2) customers who alleged slow speeds were ablet to receive the minimum of 1.544 Mbps. I&E provides, that these facts, some of which are disputed by CenturyLink, were considered when calculating the civil penalty. I&E Statement in Support at 8. We find that the number of customers and duration of violations merit the civil penalty.

We may also consider the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). “An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” *Id.*  Here, I&E is not aware of any formal complaint filed against CenturyLink regarding this matter. However, there have been some formal Complaints filed against CenturyLink related to alleged service violations.[[2]](#footnote-2)  While we acknowledge the filing of earlier Complaints, we note that there have been no recent determinations of violations and that the Company’s compliance history poses no barrier to approval of the Settlement between the Parties.  I&E Statement in Support at 8-9.

Another factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, the Company fully cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions. I&E Statement in Support at 9.

In addition, we may consider the amount of the civil penalty necessary to deter future violations as well as past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(8) and (c)(9). I&E contends that a civil penalty amount of $32,050.00, which is not tax deductible, is substantial and sufficient to deter CenturyLink from committing future violations. I&E Statement in Support at 9. We agree and find that the proposed civil penalty is appropriate and presents a fair and reasonable outcome of this proceeding.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). We believe that it is in the public interest to settle this matter so as to avoid the expense of litigation.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, we find that the proposed Settlement Agreement between I&E and CenturyLink is in the public interest and merits approval. We will therefore approve the Settlement consistent with this Opinion and Order; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement filed on July 7, 2020, between the Commission’s Bureau of Investigation and Enforcement and The United Telephone Company LLC d/b/a CenturyLink (CenturyLink), is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within sixty (60) days of the date this Order becomes final, CenturyLink shall pay Thirty-Two Thousand Fifty Dollars ($32,050), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA 17120

3. That the civil penalty shall not be tax deductible or passed-through as an additional charge to CenturyLink’s customers in Pennsylvania.

4. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services, and the Bureau of Technical Utility Services.

5. That, after CenturyLink, remits the civil penalty as set forth in Ordering Paragraph No. 2, the Secretary’s Bureau shall mark this proceeding closed.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: January 14, 2021

ORDER ENTERED: January 14, 2021

1. “Broadband” is defined as a communication channel having a bandwidth equal to or greater than 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction. 66 Pa. C.S. § 3012. Settlement at 11. [↑](#footnote-ref-1)
2. For example, on October 26, 2017, Joe Roberts filed a Complaint at Docket No. C-2017-2632824 with the Commission against CenturyLink alleging that CenturyLink failed to address the Complainant’s intermittent internet service problems.  For relief, Mr. Roberts requested that the Commission direct CenturyLink to address the Complainant’s concerns.  The Complaint was dismissed upon remand as the Complainant did not appear at the hearing. [↑](#footnote-ref-2)