

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronnie Cropper	:	
	:	
v.	:	C-2021-3026601
	:	
Verizon Pennsylvania LLC	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Respondent’s Motion for Judgement on the Pleadings and dismisses the formal Complaint of Ronnie Cropper against Verizon Pennsylvania, LLC because there are no disputed issues of material fact upon which relief may be granted.

HISTORY OF THE PROCEEDING

On May 13, 2021, Ronnie Cropper (Mr. Cropper or Complainant) filed a formal Complaint (Complaint) against Verizon Pennsylvania, LLC (Verizon or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Cropper alleged: on March 3, 2021 he filed an informal complaint with the Commission alleging that Verizon failed to restore his telephone service; Verizon repaired his existing copper lines on March 19, 2021; the Commission closed the informal complaint without a decision because service had been restored; and the Commission informed Mr. Cropper that it does not have jurisdiction over a public utility’s decision to upgrade customers from copper facilities to fiber optic facilities. Mr. Cropper stated that he was aware the switch from copper to fiber optics would occur. The relief requested by Mr. Cropper was for the Commission to issue an Order prohibiting Verizon from

“deny[ing] repair and/or services to an existing [copper facilities] user for refusing to switch to fiber.”

On July 7, 2021, Verizon filed an Answer with New Matter. Verizon averred *inter alia* that: in March of 2021, Mr. Cropper experienced a service issue and refused to allow Verizon to repair service by migrating to fiber-optics; Verizon made repairs and *the service is currently working on copper*¹; Complainant lives in Verizon’s Trinity wire center in Philadelphia, where Verizon has deployed fiber optic facilities and has made the required filings with the Federal Communications Commission (FCC) to retire copper and provide all services over fiber; copper retirement has become final in this location under the FCC rules; Verizon is in the process of migrating all customer services off of copper in the Trinity wire center; and Verizon advised Mr. Cropper that fiber-optic facilities are now available in his area and if issues persist a migration to fiber-optic facilities will be necessary for permanent repair.

Also on July 7, 2021, Verizon filed a Motion for Judgment on the Pleadings (Motion) along with a Notice to Plead. The Motion reiterated the same facts and arguments set forth in Verizon’s Answer and New Matter.

On July 20, 2021, the Complainant filed a Reply to Verizon’s Answer and New Matter as well as an Answer to Verizon’s Motion for Judgment on the Pleadings. In both his Reply and Answer, the Complainant does not dispute that his telephone service is currently working on copper.

By Judge Assignment Notice dated August 12, 2021, Verizon’s Motion for Judgment on the Pleadings was assigned to me.

On August 24, 2021, Verizon filed a Reply to the Complainant’s Answer to Verizon’s Motion for Judgment on the Pleadings to clarify an issue of law raised for the first time in the Complainant’s Answer to Verizon’s Motion for Judgment on the Pleadings. For the

¹ Emphasis added.

reasons set forth below, the alleged issue of law is not germane to this decision and therefore will not be addressed.

FINDINGS OF FACT

1. The Complainant is Ronnie Cropper.
2. The Respondent is Verizon Pennsylvania, LLC.
3. The Complainant currently receives telephone service from Verizon at 5615 W. Diamond St., Philadelphia, Pennsylvania (Service Address).
4. The Complainant seeks a Commission Order prohibiting Verizon from “deny[ing] repair and/or services to an existing user for refusing to switch [from copper] to fiber.” Formal Complaint at ¶ 5.
5. The Complainant’s telephone service is currently working and provided over copper facilities. Formal Complaint at ¶ 4.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.102 govern motions for judgment on the pleadings. Generally, the moving party bears a heavy burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law.

The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortg. Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa.Cmwlt. 1978). It must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. *Weik v. Estate of Brown*, 794 A.2d 907 (Pa. Super. 2002). All doubts as to the existence of a genuine issue of material fact

must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

The Commission will grant a motion for judgment on the pleadings if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Serv. Empss. Int'l Union, Local 69, AFL-CIO v. Peoples Nat. Gas Co.*, Docket No. C-20028539 (Opinion and Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985).

In addition, Section 703 of the Public Utility Code, 66 Pa.C.S. § 703(b), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

In this case, a hearing is not needed. There is no dispute that the Complainant is currently receiving working telephone service from the Respondent over copper facilities. Likewise, there is no dispute that the Respondent has the right to migrate the Complainant's copper facilities to fiber-optic facilities. Both of these facts are admitted by the Complainant in his Complaint, Reply to Verizon's Answer and New Matter, and Answer to Verizon's Motion for Judgment on the Pleadings. The relief requested by Mr. Cropper was for the Commission to issue an Order prohibiting Verizon from "deny[ing] repair and/or services to an existing user for refusing to switch to fiber." However, that act has not occurred here. Instead, Mr. Cropper wants the Commission to issue a prospective order in case his telephone service stops working before it is replaced with fiber optic facilities. Thus, there is no current dispute for the Commission to resolve.

A formal complaint must allege an act done or omitted to be done. 55 Pa. Code § 5.21(a). The Commission does not hold hearings on possible future acts that may or may not occur. Therefore, Verizon is entitled to judgment as a matter of law. The Motion for Judgment on the Pleadings is granted, and the instant complaint is dismissed.

CONCLUSIONS OF LAW

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

2. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Serv. Emps. Int'l Union, Local 69, AFL-CIO v. Peoples Nat. Gas Co.*, Docket No. C-20028539 (Opinion and Order entered December 19, 2003).

3. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

4. A formal complaint must allege an act done or omitted to be done. 52 Pa. Code § 5.21(a).

5. In this matter, no material facts are in dispute and Verizon Pennsylvania, LLC is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Verizon Energy Company for judgment on the pleadings at Docket No. C-2021-3026601 is granted;

2. That the Complaint of Ronnie Cropper against Verizon Pennsylvania, LLC at Docket No. C-2021-3026601 is dismissed; and

