

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sharon Wenrich	:	
	:	
v.	:	C-2021-3025797
	:	
Frontier Communications of Pennsylvania	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint (Complaint) of Sharon Wenrich (Ms. Wenrich or Complainant) against Frontier Communications of Pennsylvania (Frontier or Respondent) upon finding that the Complainant did not carry her burden of proving that Frontier failed to provide her with safe, adequate, and reasonable service.

HISTORY OF THE PROCEEDING

On April 16, 2021, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Frontier. In the Complaint, Ms. Wenrich alleges that Frontier failed to provide her with reasonable service during November-December 2020 when addressing connection issues she was having with her telephone service.

On June 18, 2021¹, the Respondent filed an Answer to the Complaint denying all material allegations of fact. In its Answer, Frontier stated that in response to the Complainant's telephone issues, it dispatched technicians on November 10, 2020, December 8, 2020, and December 14, 2020. Frontier also stated that it dispatched a line crew on December 31, 2020, which repaired the cable line that was impacting the Complainant's service. Frontier further stated that the telephone issue has been resolved. Finally, Frontier stated that it issued the Complainant a credit of \$49.07, which was posted to the Complainant's December 2020 statement and another credit of \$87.20, which was posted to the Complainant's January 2021 statement. Frontier requests that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated August 10, 2021, a telephonic hearing was scheduled for September 30, 2021, and the matter was assigned to me.

On September 22, 2021, I issued an Order granting the Respondent's September 15, 2021, request for a continuance due to a scheduling conflict.

By Telephonic Hearing Cancellation/Reschedule Notice dated September 22, 2021, a telephonic hearing was rescheduled for October 27, 2021, at 10:00 am.

On October 27, 2021, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Complainant also presented the testimony of her daughter, Nicole Watmuff. Frontier was represented by Thomas Niesen, Esquire. Frontier presented the testimony of Timothy Allen, Global Manager of Operations at Frontier. No exhibits were offered for admission into the record.

The record closed on November 8, 2021, upon submission of the transcript to the Commission.

¹ On May 28, 2021, the Secretary issued a letter granting Frontier's May 27, 2021, request for an extension of time to file an Answer to the Complaint.

FINDINGS OF FACT

1. The Complainant is Sharon Wenrich. Tr. 4.
2. The Respondent is Frontier Communications of Pennsylvania. Tr. 5.
3. The Service Address is 147 Aspen Lane, Leesport, Pennsylvania. Tr. 5.
4. The Complainant receives telephone service at the Service Address from Frontier. Tr. 5, 28.
5. On November 5, 2020, the Complainant contacted Frontier to complain about static and crackling on her telephone line. Tr. 7-8, 29.
6. On November 10, 2020, Frontier sent a technician to the Service Address to correct the issue. Tr. 8-9, 30.
7. When the technician left after the November 10th service call, both the technician and Ms. Wenrich believed the issue was fixed. Tr. 9, 31-32.
8. On November 11, 2020, the issues with static and crackling returned. Tr. 9.
9. The Complainant made several more calls to Frontier about issues with her telephone between approximately December 2, 2020, and December 15, 2020. Tr. 11-14.
10. Frontier dispatched a technician to the Service Address on December 8, 2020, and December 14, 2020. Tr. 30.
11. During the December 14, 2020 visit, the technician determined that a separate line crew would be required to fix the problem. Tr. 34.

12. On December 31, 2020, Frontier sent a line crew to replace the cable and resolve the problem. Tr. 30, 34-35.

13. The Complainant's telephone service is currently working correctly. Tr. 15, 36.

14. Frontier's efforts to resolve the Complainant's telephone issues were hampered by COVID-19 staffing issues and winter storms during this period. Tr. 37.

15. Frontier credited the Complainant's account for the period of time (*i.e.* November 2020 – December 2020) that her telephone service was not working. Tr. 15-16, 37.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (Opinion and Order entered February 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (Opinion and Order entered October 6, 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). Complainant can meet that burden if she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a

suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

The Complainant argues that the Respondent violated the provisions of 66 Pa.C.S. § 1501 when fixing her telephone service in November-December 2020. 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.

Interpreting this provision in *W. 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. (footnote omitted).

478 A.2d at 949. The statutory definition of “service” is to be broadly construed.² *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

In determining whether Frontier violated the provisions of 66 Pa.C.S. § 1501, it must be understood that “[n]either the Public Utility Code nor the Commission's regulations require that public utilities provide flawless service.” *Pa. Pub. Util. Comm’n, Bur. of Investigation and Enforcement v. Verizon Pa. LLC*, Docket No. M-2020-3003591 (Opinion and Order entered July 15, 2021). Section 1501 only requires public utilities “to provide reasonable and adequate, not perfect, service.” *A-Rize-N Mgmt. Co., LLC v. Pa. Am. Water Co.*, Docket No. C-2009-2119162 (Order entered August 5, 2010, adopting decision of ALJ Salapa dated June 15, 2010); *see also Biason v. Metro. Edison Co.*, Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

In this case, the Complainant contacted Frontier on November 5, 2020, complaining about static, and crackling on her telephone line. In response, Frontier dispatched a technician on November 10, 2020, to correct the issue. The technician repaired a shorted pair³ and after testing, both the technician and Ms. Wenrich believed the issue was fixed. Ms. Wenrich testified that the issues with static and crackling returned the next day, and she made an appointment with Frontier to return on November 12, 2020, but they never showed up.

² “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.

³ A shorted pair is typically identified as two bare cables touching one another either by direct contact or two bare cables submerged in a conductant such as water. Tr. 30-31.

The Complainant next contacted Frontier on December 2, 2020.⁴ In response, Frontier dispatched a technician on December 8, 2020, who repaired corrosion⁵, tested the telephone line, and left believing the issue was resolved. However, Ms. Wenrich contacted Frontier thereafter still complaining about static. Once again, Frontier dispatched a technician on December 14, 2020, to try and resolve the issue. During the December 14, 2020, visit, the technician determined that a separate line crew would be required to fix the problem. On December 31, 2020, Frontier sent a line crew to replace the cable and resolve the problem. Timothy Allen, Global Manager of Operations for Frontier, explained that December 31, 2020, was the earliest available date because the line crew is a construction crew that already has prescheduled work, and any new jobs must be added to the schedule. Tr. 35. The replacement of the cable line fixed the problem and the Complainant's telephone service is currently working correctly. In addition, Frontier credited the Complainant's account for the period of time (*i.e.* November 2020 – December 2020) that her telephone service was not working.

Here, Frontier dispatched technicians on multiple occasions, each believing that they had resolved the problem before they left. Mr. Allen explained that the cause of telephone static can be hard to diagnose and correct for numerous reasons. One reason can be the intermittent nature of static. This is corroborated by the belief that technicians had resolved the issue during the November 10th and December 8th visits. Another impediment to correcting static issues is there can be several causes such as bare wires touching or bare wires submerged in a conduit such as water, wires being corroded, and/or moisture infiltration to name a few. Tr. 29, 32-33. In this case, Frontier was unable to correct the issue initially, but they did not simply walk away. Ultimately, they replaced the cable line, which did fix the problem. Meanwhile, all of this was happening during COVID-19 staffing issues and winter storms. Finally, the Complainant was credited for the period of time her telephone was not working properly.

⁴ Unfortunately, between November 12, 2020, and December 2, 2020, Ms. Wenrich's husband was hospitalized and passed away and her attention was understandably elsewhere.

⁵ Corrosion occurs when a bare wire is exposed to a liquid substance which can affect the integrity of the wire. Tr. 32-33.

Based on the foregoing, I find the service provided to the Complainant by Frontier to be safe, adequate, and reasonable. Thus, the Complainant failed to carry her burden of proving that Frontier violated the Code, a Commission Regulation or Order, or a violation of a Commission-approved tariff. Accordingly, the Complaint shall be dismissed.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

4. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission’s Regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a

complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dept't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities," and to "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. 66 Pa.C.S. § 1501.

10. Under 66 Pa.C.S. § 1501, a public utility is not required to provide flawless or perfect service, but rather, only reasonable, and adequate service. *See Pa. Pub. Util. Comm'n, Bur. of Investigation and Enforcement v. Verizon Pa. LLC*, Docket No. M-2020-3003591 (Opinion and Order entered July 15, 2021); *A-Rize-NMgmt. Co., LLC v. Pa. Am. Water Co.*, Docket No. C-2009-2119162 (Order entered August 5, 2010, adopting decision of ALJ Salapa dated June 15, 2010); *see also Biason v. Metro. Edison Co.*, Docket No. C-00004450 (Opinion and Order entered December 19, 2001).

11. Absent proof by a preponderance of the evidence that the Respondent violated the provisions of 66 Pa.C.S. § 1501, the Commission has no authority to require any action by Respondent. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

