

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held April 14, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement, Concurring in result only  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Cynthia Mosco

C-2018-3006579

v.

Verizon Pennsylvania LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions (Exceptions) of Verizon Pennsylvania LLC (Verizon PA or Company) filed on March 30, 2020, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Mary D. Long, which was issued on March 9, 2020, in the above-captioned proceeding. Replies to Exceptions were filed by Cynthia Mosco (Complainant) on April 4, 2020.<sup>1</sup> For the reasons stated below, we shall grant, in part,

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<sup>1</sup> The envelope containing the Complainant's Replies to Exceptions was postmarked by the USPS on 4/3/2020 and the Complainant dated her Reply Exceptions as 4/4/2020. Due to COVID-19 related office closures, the Commission was not able to verify the date it received the Complainant's Reply Exceptions. Therefore, we shall use

the Exceptions of Verizon PA and adopt the ALJ's Initial Decision, as modified, consistent with this Opinion and Order.

### **History of the Proceeding**

On December 17, 2018, the Complainant filed a Formal Complaint (Complaint) with the Commission against Verizon PA. The Complainant alleged she was having reliability, safety or quality problems with her telephone service. Specifically, the Complainant stated that Verizon PA refused to repair her copper lines and insisted that she permit the installation of fiber optics for her telephone service at her residence (Service Location).<sup>2</sup> Complaint at 1-2. For relief, the Complainant requested that the Commission order Verizon PA to repair her existing copper wire telephone service. Complaint at 3, 5.

On January 7, 2018, Verizon PA filed its Answer (Answer) in which it stated that the Complainant lives in an area where it has deployed fiber optic facilities. Verizon PA averred fiber optic is widely recognized as more reliable than copper wire and if issues persist with the Complainant's service, a migration to fiber optic facilities will be necessary for permanent repair. Verizon PA also indicated that when service is migrated to fiber for repair reasons, the customer can continue to receive the same voice services, at the same rates, as previously provided over copper wire. Answer at 1-2.

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4/4/2020, the date written on the Replies to Exceptions and supported by the USPS postmark of 4/3/2020, as the date filed.

<sup>2</sup> Fiber optics or fiber is a technology in which light is used to transport information from one point to another. Fiber consists of thin filaments of glass through which light beams are transmitted over long distance carrying enormous amounts of data. Harry Newton, Newton's Telecom Dictionary, 338 (CPM Books 21st ed. 2005). *See* I.D. at 1, n.1.

The ALJ conducted a hearing on November 25, 2019. The Complainant appeared *pro se* and testified in support of her Complaint. The Complainant did not present any exhibits. Verizon PA was represented by counsel, presented the testimony of two witnesses and sponsored three exhibits, all of which were admitted into the record. Official notice was also taken of three Federal Communications Commission (FCC) documents marked as Verizon PA Exhs. 3, 4, and 6.<sup>3</sup> I.D. at 2-3.

Upon receipt of the transcript, on January 7, 2020, the ALJ issued an interim order closing the record.

On March 9, 2020, the Commission issued the Initial Decision of ALJ Long in which the ALJ sustained the Complaint.

As previously noted, Verizon PA filed Exceptions to the Initial Decision on March 30, 2020. The Complainant filed her Replies to Exceptions on April 4, 2020.

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<sup>3</sup> The three FCC decision were: (1) *In the Matter of Technology Transitions* (GN Docket No. 13-5); *Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers* (RM-11358); *Special Access for Price Cap Local Exchange Carriers* (WC Docket No. 05-25); *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services* (RM-10593); Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking (rel. August 7, 2015) – VZ Exh. #3; (2) *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WC Docket No. 17-84); Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking (rel. November 29, 2017) – VZ Exh. #4; and (3) *In the Matter of Ensuring Continuity of 911 Communications* (PS Docket No. 14-174); Report and Order (rel. August 7, 2015) – VZ Exh. #6. Verizon Exhs. #3 and #4 collectively, *FCC Technology Transition Orders*.

## Discussion

### A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a 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 customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

ALJ Long made sixty-five (65) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 3-10, 26. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate 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).

## **B. ALJ's Recommendation**

As will be discussed more fully below, ALJ Long sustained the Complaint and assessed a civil penalty of \$25,900 on Verizon PA. ALJ Long found that Verizon PA failed to render adequate and reasonable telephone service to the Complainant. Additionally, ALJ Long found that Verizon PA failed to adequately explain the equipment and operation of the fiber optic network to the Complainant but did not assess a civil penalty related to this finding. Finally, ALJ Long concluded that the Commission lacks the authority to direct Verizon PA to continue providing service to the Complainant on its copper network. I.D. at 25-26.

Citing *Altman v. Verizon Pennsylvania, LLC*, Docket No. C-2015-2515583 (Order entered November 18, 2016) (*Altman*)<sup>4</sup>, ALJ Long explained that the Commission cannot prevent Verizon PA from retiring its copper lines. However, the ALJ noted the Commission made clear in *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Order entered July 12, 2018) (*Fox*), that Verizon PA must continue to render reasonable and adequate service to its customers, regardless of the technology used to provide telephone service. Accordingly, the ALJ found the ability to migrate customers on troubled copper networks to the fiber network does not relieve Verizon PA of its duty to provide adequate and reliable service to those customers still served on its copper network. I.D. at 14. The ALJ further noted that, although fiber network service was available to the Complainant which may have remediated some of her service problems, there is nothing in the statute or regulations which mandates that she accept migration before Verizon PA files to retire its copper network with the FCC.<sup>5</sup>

In evaluating the record, the ALJ found the Complainant's telephone service has been neither reliable nor adequate. Noting Verizon PA Exh. #1, which was its repair records for the eighteen-month period preceding the hearing, the ALJ observed that the Complainant reported various problems with her telephone service from May 18, 2018, to October 8, 2019. I.D. at 13 (citing Tr. at 56). Further, the ALJ found Verizon PA was eager to migrate the Complainant to fiber since the copper line serving the Complainant had reached the end of its useful life. I.D. at 14 (citing Tr. at 43). ALJ Long stated that the roll-out of fiber in the service area of the Complainant and the Company's desire to migrate customers to fiber, were factors that did not excuse Verizon PA's failure to comply with the Code and Commission Regulations.

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<sup>4</sup> *Altman* Initial Decision dated July 25, 2016, reviewed by the Commission to make administrative corrections to the civil penalty and adopting the substantive analysis of the Initial Decision.

<sup>5</sup> After the date the instant Complaint was filed, Verizon PA filed a notice of copper retirement for the service area of the Complainant with the FCC in April 2019. See Tr. at 99-101; Verizon PA Exhibit 2.

Referencing Verizon PA Exh. #1, the ALJ concluded that the evidence showed that Verizon PA failed to comply with 52 Pa. Code § 63.57, requiring a public utility to take substantial action when an outage is reported, 52 Pa. Code § 63.63(a) requiring a public utility furnish acceptable transmission of communication free of excessive distortion, 52 Pa. Code § 63.24, for Verizon's failure to offer reasonably continuous service, and 66 Pa. C.S. § 1501, for its failure to maintain its facilities to render reasonably continuous service. In conclusion, the ALJ stated Verizon PA Exh. #1 demonstrated violations of the Code or Commission Regulations at various times within the timeframe of the Complaint and supported the Complainant's allegation that Verizon PA failed to provide her with adequate telephone service. I.D. at 14-15.

Next, the ALJ addressed the imposition of civil penalties based on her findings that Verizon PA failed to render reasonable telephone service to the Complainant. *See* 66 Pa. C.S. § 3301 and 52 Pa. Code § 69.1201(a). The ALJ concluded and so recommended that Verizon PA should be assessed a civil penalty for violations of the Code and Commission Regulations. Based on the foregoing, ALJ Long recommended the imposition of a civil penalty in the total amount of \$25,900, summarized in the table below:

<b>Begin Date</b>	<b>End Date</b>	<b>Days</b>	<b>Complaint</b>	<b>Violation</b>	<b>Penalty</b>	<b>Total Assessment</b>
6/1/2018	6/2/2018	1	outage - emergency noted	§ 63.57(a)	\$1,000	\$1,000
6/1/2018	6/2/2018	1	outage	§ 63.24	\$1,000	\$1,000
2/21/2019	2/22/2019	1	outage	§ 63.24	\$500	\$500
10/8/2019	10/9/2019	1	outage	§ 63.24	\$750	\$750
5/31/2018	5/31/2018	1	no incoming calls	§ 1501	\$250	\$250
7/3/2018	7/7/2018	4	intermittent no dial tone	§ 1501	\$750/day	\$3,000
11/18/2018	11/23/2018	5	no incoming calls	§ 1501	\$250/day	\$1,250
11/24/2018	11/26/2018	2	no incoming calls	§ 1501	\$500/day	\$1,000
12/15/2018	1/2/2019	18	no incoming calls	§ 1501	\$750/day	\$13,500
2/12/2019	2/15/2019	3	static	§ 1501	\$300/day	\$900
8/29/2018	9/5/2018	7	noise on the line	§ 63.63; § 1501	\$250/day plus \$1,000	\$2,750
<b>Total Penalty</b>						<b>\$25,900</b>

I.D. at 25.

The ALJ’s recommendation was based on the record evidence, wherein she noted the Complainant had no telephone service on three occasions during the relevant time period. The ALJ noted that a service outage reported on June 1, 2018, indicated a medical emergency where Verizon PA failed to take substantial action within three-hours of the Complainant reporting the outage.<sup>6</sup> Based on civil penalties assessed in *Eernisse v. Verizon Pennsylvania LLC* (Order entered January 15, 2014) (*Eernisse*), the ALJ assessed a \$1,000 civil penalty for violation of 52 Pa. Code § 63.57(a). Since a medical

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<sup>6</sup> When an emergency is noted, 52 Pa. Code § 63.57(a), requires a utility to take substantial action to clear the problem within a three-hour timeframe.

emergency was noted, the ALJ escalated the civil penalty to \$1,000 for the violation of 52 Pa. Code § 63.24.

The ALJ further noted the Complainant credibly testified that, intermittently, she could not receive incoming calls or there was static on her telephone line. Observing that the Complainant's testimony indicated that these problems had been ongoing for several years, the ALJ concluded the issues constituted a violation of Section 1501 of the Code, 66 Pa. C.S. § 1501. The ALJ noted service complaints on several dates including from December 15, 2018 to January 2, 2019 during which the Complainant could not receive incoming calls. Specifying the December 15, 2018 service call was not resolved for eighteen days, the ALJ imposed a daily penalty of \$750 per day for 18 days, totaling \$13,500. The ALJ next addressed the Complainant's allegation that Verizon PA did not answer her questions regarding the equipment which is used to provide telephone service by fiber optic cable. The ALJ observed there are no Commission Regulations establishing a standard of conduct for public utility customer service representatives. In the absence of specific regulations, the ALJ maintained 66 Pa. C.S. § 1501 governs a public utility's obligation to provide reasonable service to its customers. The ALJ noted the Complainant testified that none of the Verizon PA representatives she talked to could satisfactorily answer her questions about fiber optic telephone service or the equipment necessary to operate it. Based on the foregoing, the ALJ sustained the Complaint alleging that Verizon PA did not adequately explain fiber optic telephone service but did not impose a civil penalty for a violation of 66 Pa. C.S. § 1501. I.D. at 22-23.<sup>7</sup>

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<sup>7</sup> See I.D. at 22-23, discussing: *Gallagher v. Bell Telephone Co. of Pa.*, Docket No. F-8958314 (Order entered September 23, 1992); *Moffa v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2212745 (Final Order entered March 22, 2012); *Haimes v. PPL Electric Utilities Corporation*, Docket No. F-002201447 (Final Order entered April 3, 2008); *Brickner v. PPL Electric Utilities Corporation*, Docket No. C-2009-2105583 (Order entered May 21, 2010); and *Maisch v. PECO Energy Company*, Docket No. C-2009-2118649 (Order entered May 26, 2011).

Lastly, the ALJ addressed the Complainant's request that the Commission order Verizon PA to continue to provide her with telephone service over a copper cable network. The ALJ noted that in 2015 the FCC issued a final rule, commonly referred to as the "Technology Transitions Order," (*2015 Technology Transitions Order*) which addressed a communications carrier's retirement of its copper facilities.<sup>8</sup> Under the FCC's *2015 Technology Transitions Order* regulations, subsequently modified and rescinded (*see* VZ. Exh. #4), a telephone service provider is not required to obtain the FCC's approval of its intended plan to retire its copper lines and to transition to fiber optic lines, but is required to provide timely notice to its customers about its plan to replace its copper wire lines with fiber optic lines. ALJ Long acknowledged that the Commission, as a Commonwealth agency, lacks the power to override a federal regulation. The ALJ noted in *Fox*,<sup>9</sup> the Commission has held that a telephone service provider is not required by Commission statute or regulation to continue to provide service over copper, given the telephone service provider has complied with the FCC's copper retirement rules. I.D. at 23.

The ALJ observed that Verizon PA filed a notice of copper retirement for the area of the Complainant's Service Location with the FCC in April 2019. Verizon PA notified the Complainant in October 2019. As noted, the ALJ concluded that the Commission cannot order Verizon PA to continue to provide telephone service to the Complainant on a copper wire. Therefore, the ALJ concluded that the Complainant must

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<sup>8</sup> *See* VZ Exh. #3 - *In the Matter of: Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 30 FCC Rcd 9372, 9383-84, para. 16 (Rel. August 7, 2015), codified in 47 C.F.R. § 51.332.

<sup>9</sup> *See* I.D., n. 20, citing *Fox*.

switch to Verizon PA's fiber optic network or choose another telephone provider.  
I.D. at 24-25.

### C. Exceptions and Replies

We note at the outset that the Exceptions of Verizon PA are not in strict compliance with Section 5.533(a) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(a), which provides that:

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

In this proceeding, the Initial Decision was issued on March 9, 2020. Therefore, Exceptions were to be filed on or before March 29, 2020. However, Verizon PA filed its Exceptions on March 30, 2020.<sup>10</sup> Nevertheless, we will accept the

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<sup>10</sup> On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued the Proclamation of Disaster Emergency pursuant to Section 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §§ 7101, *et seq.* (*Executive Order*) to address the exigencies created by the COVID-19 global pandemic. On March 20, 2020, the Commission issued the *Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (*Emergency Order*), to furnish guidance on the conduct of Commission proceedings during the pendency of the COVID-19 disaster emergency. Specifically, the *Emergency Order*, in part, encourages parties to proceedings before the Commission to cooperate regarding the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines in connection with the performance of any obligation prescribed by the Public Utility Code or other applicable law. *Emergency Order* at 2, 4. Additionally, in response to the *Executive Order*, the Commission adopted broader electronic filing practices, ceased paper service on and by the Commission for the duration of the emergency, and has encouraged other flexible procedures to allow the Commission to continue to telework and operate through the emergency. *See Emergency Order* at 3.

Exceptions as filed pursuant to Section 1.2(a) of our Regulations, which mandates that our Regulations be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. 52 Pa. Code § 1.2(a).

## **1. Verizon Exceptions**

In its Exception No. 1, Verizon PA submits that the ALJ incorrectly found that it failed to maintain its network, even though Verizon PA had available and deployed fiber optic lines to provide telephone service to the Service Location of the Complainant. Verizon PA avers that the Initial Decision wrongly allows the customer to receive service over copper until the date of full copper retirement. Verizon PA takes the position that it is error and inconsistent with the FCC *Technology Transitions Orders* (VZ Exh. #3 and VZ Exh. #4) to obligate it to maintain and repair its copper network in perfect working condition until that time.

In this first Exception, Verizon PA asserts, in general terms, that the Initial Decision should be reversed due to policy considerations involved in the migration of its network from copper to fiber. Exc. at 3-7. As noted, Verizon PA cites to the FCC *Technology Transition Orders, infra*, and the Commission's decision in *Fox*. In this Exception, Verizon does not discuss Commission decisions issued after the FCC 2017 rescission and modification of the *2015 Technology Transitions Order*.

In Verizon Exception No. 1 at 5, it argues, in pertinent parts:

The ID's holding on the need for fiber migration to repair copper is also directly contrary to federal law. As this Commission recognizes, "the retirement of copper telephone lines is regulated primarily by the FCC." In its 2015 and 2017 Technology Transition Orders the FCC made clear that a provider is authorized to migrate an individual customer's

service to fiber to repair faulty copper service, even if it has not yet filed to retire copper in the customer's location.

Exc. at 5.

Verizon PA argues that the Initial Decision, essentially, recommends that it should be penalized because the customer refused fiber migration even though the copper line was past its useful life and required multiple repairs. Further, Verizon PA contends the Initial Decision assumes that the customer can control the type of facilities it uses to serve the Complainant. Exc. at 3. Verizon PA objects, that it “. . . should not be penalized because the customer refused to allow access to her home to upgrade the service with the best available facilities.” Exc. at 4.

Verizon PA additionally suggests that the Initial Decision improperly intrudes upon its managerial discretion in choosing the facilities used to provide service. Citing *Fox* as precedent, Verizon PA states “an unreasonable service finding in this case would be unwarranted since the Commission lacks the power to intervene with Verizon PA's business decision to transition from copper to fiber.” Verizon PA states that *Fox* specifies that it is allowed to migrate its network from copper to fiber and may suspend telephone service if the customer does not allow access to effectuate the migration. Verizon PA insists the Commission precedent set in *Fox* precludes the Initial Decision from allowing the Complainant to control the type of network facilities it uses. *Id.*

Under *Fox*, Verizon PA continues, the Commission permits it to choose to serve a customer over copper or fiber as long as it is able to “support the provision of adequate, reliable, safe, efficient, reasonable, and reasonably continuous service in accordance with Section 1501 of the Public Utility Code.” *Id.* Moreover, Verizon PA claims *Fox* upholds that the Commission lacks authority to intervene, or find it provided unreasonable service, in its business decision to transition from copper to fiber. Finally,

Verizon PA states *Fox* further holds that “if a customer refuses to allow Verizon PA access to migrate its network serving lines from copper to fiber, then pursuant to Section 64.61(3) of the Commission’s Regulations, 52 Pa. Code § 64.61(3), a telephone company may suspend telephone service for “[un]reasonable refusal to permit access to service connections, equipment and other property of the LEC [Local Exchange Carrier] for maintenance or of the LEC for maintenance or repair”” and then terminate service. Exc. at 4.

In concluding its arguments in Exception No. 1, Verizon PA further avers that the Initial Decision is contrary to federal law. Verizon PA claims the *2015 Technology Transition Order* and the *2017 Technology Transition Order*<sup>11</sup> made clear that a telephone provider is authorized to migrate a customer’s service to fiber in order to correct faulty service over copper, even if the provider has not yet made FCC filings to retire copper at the customer’s location. Exc. at 5-6.

In its Exception No. 2, Verizon PA opines that the Commission should reject the \$25,900 civil penalty recommended in this matter. Verizon PA states the Initial Decision incorrectly found violations of 52 Pa. Code § 63.24(a), 52 Pa. Code § 63.63 and 66 Pa. C.S. § 1501 “for failing to maintain and/or provide continuous service over the copper facilities and failure to take reasonable measures to prevent interruptions of service.” Verizon PA takes the position that it took reasonable measures to maintain its network and provide continuous, uninterrupted service. Verizon PA argues that it “repeatedly attempted to move Ms. Mosco’s service to the upgraded fiber facilities but she refused to grant the access necessary to do so.” Exc. at 8. According to Verizon PA, the Initial Decision’s penalty “is also faulty as a matter of law to the extent it is based on the incorrect assumption that Verizon PA must always maintain parallel copper facilities

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<sup>11</sup> See VZ Exh. #4 - *In the Matter of: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, para. 38 (Rel. November 29, 2017).

when fiber facilities are available.” Verizon PA claims it has the discretion to move the Complainant’s service to fiber as explained in the FCC’s *Technology Transitions Order(s)*. Therefore, Verizon PA claims it should not be subject to a civil penalty for the customer’s refusal to grant access for fiber migration. Exc. at 9.

In its Exception No. 3 Verizon PA disagrees with the Initial Decision’s finding that it failed to adequately explain the fiber migration to the Complainant. Verizon PA claims the Initial Decision concluded that it violated Section 1501 of the Code and provided inadequate customer service because the customer’s questions about fiber migration “were not answered to her satisfaction.” Exc. at 9. Verizon PA counters the conclusion in the Initial Decision, and states that Verizon PA representatives and managers spoke to the Complainant about the fiber migration and were available to answer her questions. Therefore, Verizon PA claims there is no basis to conclude it did not adequately explain the fiber migration. *Id.*

In its Exception No. 4, Verizon PA excepts to the Initial Decision’s failure to set guidance for similarly situated customers in the future. Verizon PA claims that the Commission’s formal complaint process serves as a disincentive for customers like the Complainant to accept facility upgrades. To remedy this situation, Verizon PA asks the Commission to make clear that filing a formal complaint does not stay Verizon PA’s ability to suspend and terminate service to a customer who refuses access for a fiber migration that is permitted under FCC rules for repair or copper retirement, following appropriate notices as discussed in *Fox*. Exc. at 10.<sup>12</sup>

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<sup>12</sup> As of the date of the hearing, the Complainant was still receiving telephone service via copper cable. I.D. at 24.

## 2. Complainant's Replies

The format of the Complainant's Replies to Exceptions does not strictly comply with 52 Pa. Code § 5.535(a) of our Regulations, which require that a reply incorporate by reference relevant passages in previously filed briefs. Also, a reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception. 52 Pa. Code § 5.535(a). We recognize, however, that the Complainant is appearing *pro se* in this proceeding. In our view, it is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard. *See* 52 Pa. Code § 1.2(d)– “These liberal construction provisions apply with particularity in proceedings involving *pro se* litigants.” Therefore, we will consider the merits of the Complainant's Replies to Exceptions.

In her Replies to Exceptions, the Complainant generally agrees with the Initial Decision and believes it should not be modified. The Complainant claims she had forty-one outages starting in June 2016, however Verizon PA only submitted service records for eleven outages from May 31, 2018, through October 8, 2019. Hence, the Complainant avers the \$25,900 civil penalty could have been much more. Additionally, the Complainant states that when Verizon PA refused to repair her copper line in June 2016, she told Verizon PA to give her a termination date for her copper line. R. Exc. 1-3.

### D. Disposition

At the outset, we note that whatever technology Verizon PA uses to provide landline telephone service, it must support the provision of adequate, reliable, safe, efficient, reasonable, and reasonably continuous service.<sup>13</sup> At the same time, the

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<sup>13</sup> *See Fox.*

Complainant cannot control the type of facilities Verizon PA uses to provide her telephone service, and the Commission does not have the authority to require Verizon PA to provide a copper line to the Complainant.<sup>14</sup>

According to Verizon PA in its Exception No. 1, the Initial Decision incorrectly found that Verizon PA failed to maintain its network, even though Verizon PA had available and deployed fiber optic lines to provide telephone service to the Complainant's Service Location. Verizon PA's Exception No. 2 excepts to the almost \$26,000 civil penalty in the Initial Decision on the basis that it incorrectly found violations of certain Commission Regulations and Section 1501 of the Code, 66 Pa. C.S. § 1501.

Upon review of the record, we note that Verizon PA does not dispute that the Complainant had trouble with her telephone service over an extended period of time. Verizon PA's Exh. #1 clearly indicates the Complainant had numerous problems with her telephone service from May 31, 2018 to October 8, 2019. These problems included service outages, with one of the outages involving health and safety concerns. *See* I.D. at 19 discussing service outage of June 1, 2018, which was a medical emergency. Based on the foregoing, we find the record evidence supports the Initial Decision's conclusion that the Complainant's telephone service was not reliable, adequate or reasonably continuous as required by Section 1501 of the Code.

However, we do not find that Verizon PA failed to take substantial action when notified of service problems. Verizon PA offered to deploy a fiber optic line to serve the Complainant which would have remediated her service problems.<sup>15</sup>

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<sup>14</sup> *See Altman.*

<sup>15</sup> As noted in the Initial Decision, fiber network service was available to the Complainant prior to Verizon PA filing its notice of copper retirement with the FCC in April 2019.

Nonetheless, based on the evidentiary record, the Complainant refused Verizon PA's recommendation each time to have her telephone line migrated to fiber. Tr. at 43, 61. Moreover, we do not believe that the record supports a \$25,900 civil penalty. We find the Complainant's refusal to migrate her telephone service from copper to fiber, despite Verizon PA's recommendations, mitigates against such a large penalty. By repeatedly recommending that the Complainant switch her telephone service from copper to fiber, Verizon PA took reasonable steps to provide continuous and uninterrupted service. However, as previously noted, the Complainant refused Verizon PA's recommendation each time to have her telephone line migrated to fiber. Verizon PA should not be penalized in the amount of almost \$26,000 for unreasonable service when it was the customer who refused the permanent fix to her service problems.

Rather, the Commission shall assess a total civil penalty of \$2,000. This penalty amount includes \$1,000 for failure to take substantial action in a timely manner when the Complainant reported a telephone service outage and medical emergency on June 1, 2018 in violation of Section 63.57(a) of the Commission's Regulations, 52 Pa. Code § 63.57(a), and Section 1501 of the Code. We note that this penalty is consistent with our action in *Eernisse v. Verizon Pennsylvania LLC*, Docket No. C-2012-2287023, (Order entered January 15, 2014). The total civil penalty also includes \$1,000 for the eighteen (18) days in late 2018/early 2019 that the Complainant was unable to receive incoming telephone calls in violation of Section 1501 of the Code. This civil penalty amount properly reflects both the nature and duration of the violations and the Complainant's refusal to migrate her service to fiber, which would have allowed her to avoid the chronic service problems that she experienced. Consequently, we shall grant Verizon PA's Exception Nos. 1 and 2, in part.

In its Exception No. 3, Verizon PA excepts to any conclusion that it violated Section 1501 of the Code by failing to explain fiber migration to the Complainant. We agree with Verizon PA that its actions in this regard did not violate

Section 1501 of the Code. As noted by Verizon PA, the Initial Decision itself found that “numerous Verizon representatives” spoke to the Complainant about fiber migration and that “at various times representatives of Verizon visited her home” to explain the issues and answer her questions in person. I.D. at 22. Even though the Complainant was not satisfied with Verizon PA’s explanations about fiber migration, it does not mean Verizon PA’s customer service was unreasonable. Therefore, we shall grant Verizon PA’s Exception No. 3.

Finally, in Verizon PA’s Exception No. 4, the Company excepts to the Initial Decision’s failure to set clear guidance for “similar situations in the future” involving migrations to fiber service. Verizon PA, in the context of this formal complaint, requests that the Commission make clear that the filing of a formal complaint does not stay Verizon PA’s ability to suspend and terminate service to a customer who refuses access for a fiber migration that is permitted under FCC rules for repair or copper retirement. Upon review, we find that adequate guidance already exists in this area via the FCC rules and regulations, the Code and the Commission’s Regulations, and Commission precedent. Therefore, we shall deny Verizon PA’s Exception No. 4.

### **Conclusion**

For the reasons contained in the foregoing discussion, we shall grant, in part, the Exceptions of Verizon PA and adopt the Initial Decision as modified, consistent with the discussions in this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions of Verizon Pennsylvania LLC filed on March 30, 2020, to the Initial Decision of Administrative Law Judge Mary D. Long

issued March 9, 2020, at Docket C-2018-3006579, are granted, in part, consistent with the discussion in this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Mary D. Long, issued on March 9, 2020, in Docket C-2018-3006579, is modified, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Cynthia Mosco, at Docket C-2018-3006579, is sustained, in part, consistent with this Opinion and Order.

4. That within thirty (30) days of entry of the final order of the Commission, Verizon Pennsylvania, LLC shall pay a civil penalty in the amount of \$2,000 in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania to:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building, 2nd Floor  
400 North Street  
Harrisburg, PA 17120

5. That upon payment of the penalty, the proceeding at Docket No. C-2018-3006579 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 14, 2022

ORDER ENTERED: April 27, 2022