

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Courtney Matkovich	:	
	:	
v.	:	C-2020-3022369
	:	
Verizon North LLC	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision sustains Complainant’s formal complaint that Respondent failed to provide reasonable and adequate customer service when Respondent failed to provide Complainant with available and reliable broadband internet and telephone service as required by Chapter 30. A civil penalty is assessed.

HISTORY OF THE PROCEEDING

On October 13, 2020, Courtney Matkovich (Ms. Matkovich or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania LLC¹ (Verizon). Ms. Matkovich alleged reliability, safety or quality problems with her utility service, which she alleged is unreliable, goes out of service multiple times in a day and has been a consistent problem since April 2020. Complainant contends she only has 0.12 to 0.4 megabits per second (mbps) of download speed which is insufficient for her

¹ Respondent averred in its Answer that the correct name of the entity, that provides service to Ms. Matkovich at the service address, is Verizon North LLC.

to complete her work in health care in addition to preventing her from receiving emails and/or telephone calls for her work responsibilities. For relief, Complainant seeks an order from the Commission directing Verizon to provide the high speed internet she pays for or provide at least the 1.5 mbps of download speed Verizon is required to provide her.

On November 2, 2020, Verizon filed the Answer and generally denied the allegations in the formal complaint. Verizon averred the formal complaint concerns Complainant's retail internet service, not her telephone service. Respondent argues its repair records do not corroborate Ms. Matkovich's claim of the number and extent of outages. Verizon averred Complainant subscribes to Digital Subscriber Line (DSL) service on a plan which provides up to 1.1 mbps download speed and it confirmed Ms. Matkovich receives that download speed.

On October 28, 2021, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled a call-in telephone initial hearing for December 14, 2021. On November 1, 2021, the presiding officer issued a Prehearing Order.

On December 14, 2021, the presiding officer convened the parties by telephone and conducted an initial hearing. Ms. Matkovich appeared *pro se* and testified on her own behalf. Respondent was represented by Suzan Paiva, Esquire. Attorney Paiva presented the testimony of one witness and offered two (2) exhibits, which exhibits were admitted into evidence.

On February 3, 2022, the presiding officer closed the hearing record by Interim Order Closing the Hearing Record.

FINDINGS OF FACT

1. Complainant, Courtney Matkovich, resides at 12241 Cole Road, North East, Pennsylvania 16428 (service address) with her husband and three children. (Tr. 14, 15).

2. Respondent, Verizon North LLC, is an incumbent local exchange carrier (ILEC) that currently provides telephone and internet service to Complainant at the service address and through her cellphone. (Tr. 27-30).

3. Complainant entered into a service agreement with Respondent to receive telephone service and 3.0 megabits per second (mbps) of Digital Subscriber Loop (DSL) broadband internet service, in exchange for which Complainant pays Respondent approximately \$60 to \$80 monthly. (Tr. 16, 17, 28, 35, 57).

4. On occasion, Complainant's employer permits her to work remotely from the service address, which is a split-level, single-family, frame house with vinyl siding sitting on top of a concrete block basement. (Tr. 16, 31, 33).

5. Complainant is a nurse practitioner who provides post-acute health care to patients in nine different nursing homes in Erie County and is required by her employer to be "on call" at least nine 24-hour periods each month. (Tr. 17, 22).

6. Complainant has held her current position for six years. (Tr. 23).

7. Starting in April 2020, Complainant began to experience times when her internet service and/or her landline telephone service was unavailable or unreliable. (Tr. 24 - 35).

8. Once or twice in a month, Complainant's employer requires her to conduct tele-medicine visits with patients. (Tr. 18).

9. To receive messages and calls from patients, Complainant's employer requires Complainant to use an application called My Secure Messaging (MSM) in order to be compliant with Health Insurance Portability And Accountability (HIPAA) requirements. (Tr. 18).

10. MSM requires an internet connection through a telephone landline to remain HIPAA compliant. (Tr. 18, 19, 28, 37).

11. Complainant's employer requires Complainant to have internet service to use two other applications (Epic and Quantum eLab) to complete work obligations. (Tr. 37).

12. When the internet or telephone service is not available at the service address, Complainant cannot use MSM, Epic or Quantum eLab. (Tr. 37).

13. On several occasions, Complainant did not receive a work call because her internet service was not working or available. (Tr. 17-35).

14. Complainant was able to use the applications for work prior to April 2020. (Tr. 38).

15. Except for those days when Complainant's employer permits her to work remotely, Complainant uses the internet most frequently between 4:00 p.m. and 8:00 a.m. on workdays. (Tr. 38).

16. At various times in the last year, Respondent did not provide at least 1.5mbps of reliable internet service or telephone service to the service address. (Tr. 17-35).

17. Complainant often runs speed tests on her internet service, using Verizon's speed test available online, which has shown less than 1.5mbps service was available at the service address. (Tr. 17, 44).

18. Complainant runs the speed tests from her desktop, her laptop and her cellphone. (Tr. 44).

19. When Respondent's service is unreliable or unavailable during those times Complainant is on call, the employer's call service must call Complainant's co-workers who must try using different telephone numbers to deliver messages to Complainant. (Tr. 19).

20. On occasion, Complainant stayed at family members' homes while on call so she was able to receive work calls and to retrieve HIPAA-protected patient information because her telephone and internet service was unavailable or unreliable. (Tr. 19).

21. In the two weeks prior to the hearing, Complainant was on call three times and two times out of those three times Complainant experienced problems with her service which prevented her from charting information and receiving messages about patients. (Tr. 20, 21).

22. When Respondent's internet service was unavailable at the service address, Complainant's employer and her co-workers did not receive timely patient information until Complainant was able to move to another location with reliable internet access. (Tr. 21, 22).

23. The service address is located within a rural area. (Tr. 24, 25).

24. Starting in April 2020, Complainant noticed the internet service was slow, frequently disconnected and would only be available for a few minutes before becoming unavailable again. (Tr. 24, 26).

25. When the internet service is poor or unavailable, Complainant's cellphone coverage may be poor, and the landline telephone service may be poor. (Tr. 28-30, 39).

26. At times when the internet service is not working inside the service address, Complainant must set up a desk outside on her lawn before she can speak with patients in telemedicine. (Tr. 31).

27. Complainant experienced long wait times while on the telephone with Respondent's customer service which included multiple hours of waiting to speak with a technician who could see Respondent's own service technician's notes. (Tr. 26-33).

28. When Complainant called Respondent about the internet service, Respondent would put Complainant on hold, transfer Complainant from a technician to representatives and require Complainant to repeatedly restate the reasons for her call. (Tr. 26).

29. Sometimes when internet service is not available at the service address, Complainant's telephone service through the landline has been unavailable. (Tr. 28, 29).

30. Respondent responded to some of Complainant's service complaints by visiting the service address, replacing the modem, checking the line, checking the speed and troubleshooting the problem. (Tr. 27, 32).

31. During the pandemic, the children in Complainant's household were unable to do their schoolwork remotely at times due to service unavailability or unreliability. (Tr. 15, 33, 47).

32. Verizon conducted an analysis of the end-to-end DSL service at the service address, looked at the DSL network, and conducted some remote and onsite testing. (Tr. 59-61).

33. Verizon tested Complainant's modem, the Network Interface Device (NID) outside the service address and the modem from within the residence. (Tr. 60, 61).

34. On the network serving the service address, Verizon previously installed equipment which is configured to provide 3,360 kilobits (or 3.36 megabits) of downstream speed and 768 kilobits of upstream speed. (Tr. 67).

35. Downstream refers to when information comes back to the user, and upstream would be when a user goes to a website. (Tr. 68).

36. On December 3, 2021, Verizon's technician conducted a FAST.com speed test at the service address when Verizon's system sent the maximum amount of data available on

the service line, to see how long it takes for the data to “bounce back” and then used an algorithm to determine its speed. (Tr. 80-82).

37. The technician determined 3.08 megabits were sent from Verizon’s local office to the service address and 3.09 megabits were received at the service address. (Tr. 82).

38. On December 6, 2021, Complainant reported the DSL service was not working on December 5, 2021. (Tr. 85, 97).

39. On December 6, 2021, Verizon’s technician tested the available DSL broadband speed at the service address by connecting to the DSL service line on the outside of the residence and downloading a video to ascertain if the video was accessible and if sufficient service was available. (Tr. 74 – 78; Verizon Exhibit 1).

40. On December 6, 2021, Verizon’s technician determined the service line was providing 2.8 megabits of DSL service, which is close to the 3.3 megabits of service which Complainant paid to receive. (Tr. 74 – 78; Verizon Exhibit 1).

41. On December 6, 2021, when Verizon and its contractor checked the DSL availability on the service line to the service address, the service line was using 100% of the available 3.36 megabits. (Tr. 86; Verizon Exhibit 1).

42. Verizon continued to test the system for available DSL service multiple times on December 8, 2021, but Verizon did not see any congestion or problems on the circuit which serves Complainant’s residence. (Tr. 88, 89; Verizon Exhibit 1).

43. In December 2021, Verizon’s service line was capable of transmitting and receiving 3.0 megabits downstream and 64 kilobits upstream. (Tr. 74-82; Verizon Exhibit 1).

44. At times, Verizon’s DSL service would buffer or fail to connect if Complainant and her household attempted to use more than 3 megabits. (Tr. 93).

45. Verizon lacks the capability to review historical data when a customer complains about unavailability and/or unreliability of the DSL service. (Tr. 98).

46. When Complainant called on December 6, 2021 to complain her DSL service was unavailable on December 5, 2021, Verizon was unable to review historical data to verify whether the network was available or if service was poor (below 1.5 mbps). (Tr. 98).

47. On December 6, 2021, Verizon tested the availability of the DSL service within the residence and found it functioned appropriately. (Tr. 100).

48. The availability of DSL service at the service address could be affected adversely by usage of DSL service in the same network by a neighbor but is designed not to become unavailable due to simultaneous congestion on the same network. (Tr. 101-103).

49. Verizon cannot explain the problems Complainant experienced with unavailable DSL service at the service address or provide a recommended solution. (Tr. 98-106, 127).

50. The fiber line that Verizon uses to provide service through the network is approximately 11,000 feet from the service address. (Tr. 118).

51. The DSL service available at the service address would improve, be more reliable and be available at higher speeds if Verizon used an all-fiber network but only if Verizon made a business decision to expand the type of service delivery in the area around the service address. (Tr. 118).

DISCUSSION

Complainant challenges the reasonableness and adequacy of the service Respondent provides her and she asks the Commission to require Respondent to provide her with

the minimum Chapter 30² requirements of 1.5 mbps for reliable and available broadband and telephone services.

A. Legal Standard

Any person, having an interest in the subject matter, may file a complaint with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation of any law, which the Commission has jurisdiction to administer. 66 Pa.C.S.A. § 701. Section 1501 of the Public Utility Code (“Code”) imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities. 66 Pa.C.S.A. § 1501. This provision of the Code specifies that every public utility:

[S]hall furnish and maintain adequate, efficient and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service or 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.³

The term “service” is “used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under [the Public Utility Code.]” 66 Pa.C.S.A. § 102.

Whenever the Commission, after reasonable notice and hearing upon complaint, finds the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or otherwise in violation of the Code, the Commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed,

² 66 Pa.C.S.A. § 3011 *et seq.*

³ 66 Pa.C.S.A. § 1501.

furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public. 66 Pa.C.S.A. § 1505(a).

B. Burden of Proof

The Pennsylvania Supreme Court has defined the term “burden of proof” to mean a duty to establish a fact by a preponderance of the evidence.⁴ The term “preponderance of the evidence” means one party must present evidence which is more convincing by even the smallest amount than the evidence presented by the other party.⁵ Accordingly, one must review the record in this case to determine whether Complainant has satisfied his burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of “co-equal” value or weight to refute Complainant’s evidence. If this has occurred, the burden of proof has not been satisfied, unless the party bearing the burden of proof presents additional evidence.⁶

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record.⁷ The Pennsylvania appellate courts have defined the term “substantial evidence” to mean such relevant evidence that a reasonable mind may 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.⁸ The Commission has held that a

⁴ *Se-Ling Hosiery v. Marquilies*, 70 A.2d 854 (Pa. 1954) (*Se-Ling Hosiery*); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976) (*Feinstein*).

⁵ *Se-Ling Hosiery*; *Feinstein*.

⁶ *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); and *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

⁷ *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa.C.S.A. § 704; *Yellow Cab Co. v. Pa. Pub. Util. Comm’n*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

⁸ *Norfolk & Western 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. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint.⁹

Complainant asserts Verizon's customer service – in failing to provide her with available and reliable internet service – is unreasonable and inadequate to meet her needs and fails to comply with Chapter 30 requirements. Complainant blames Verizon for the problems she experienced with her service which resulted in adverse effects for her work performance. She contends the facilities Verizon uses to provide these services should be repaired or replaced, and Verizon should be ordered to provide her with reliable service. By asserting Verizon failed to provide her with reliable residential telephone service that is free of the problems she describes, Ms. Matkovich alleges Verizon provides inadequate or unreasonable service in violation of the Code, specifically 66 Pa.C.S.A. §§ 1501 and 3011 *et seq.* As the proponent of this allegation seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S.A. § 332(a).

C. Responsibility of Public Utilities Offering Internet Service

Verizon did not contest whether Complainant experienced problems with accessing her internet services, as described in the foregoing section of this decision. Respondent's records and testing could neither confirm nor deny the problems occurred, starting in April 2020. These problems occurred at various times during the day and night, and the problems occurred intermittently. Complainant typically contacted Verizon when she recognized a problem with the service. Ms. Matkovich's contacts with Respondent are well documented.

Pursuant to Chapter 30 provisions, at 66 Pa.C.S.A. § 3014(b):

(b) Options for amendment of network modernization plan.--Local exchange telecommunications companies shall have the following options:

⁹ *Feinstein.*

(1) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2008. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The rural telecommunications carrier shall commit to accelerate 100% broadband availability by December 31, 2008, in its amended network modernization plan. Any rural telecommunications carrier electing this option shall not be required to offer a bona fide retail request program or a business attraction or retention program.

(2) (i) A rural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to the carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, through December 31, 2013, or December 31, 2015, as applicable. Prior to implementation of such election, the rural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The rural telecommunications carrier shall commit:

(A) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2013; or

(B) to accelerate broadband availability to at least 80% of its total retail access lines in its distribution network by December 31, 2010, and 100% of its total retail access lines in its distribution network by December 31, 2015; and

(C) to offer a bona fide retail request program and a business attraction or retention program pursuant to subsections (c) and (d). Under no circumstances may the rural telecommunications carrier reduce its existing broadband availability commitment.

(3) (i) A nonrural telecommunications carrier that elects to amend its network modernization plan pursuant to this subsection shall remain subject to such carrier's network modernization plan in effect as of December 31, 2003, as amended pursuant to this subsection, including meeting its 100% broadband availability commitment. Prior to

implementation of such election, the nonrural telecommunications carrier shall comply with the notification requirements of subsection (e).

(ii) The nonrural telecommunications carrier shall commit:

(A) to provide broadband availability to 100% of its total retail access lines in its distribution network by December 31, 2013, or December 31, 2015; and

(B) to offer a bona fide retail request program and a business attraction or retention program pursuant to subsections (c) and (d). Under no circumstances may such nonrural telecommunications carrier reduce its existing broadband availability commitment.

(4) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) shall also commit to universal broadband deployment in or adjacent to public rights-of-way abutting all public schools, including the administration offices supporting public schools, industrial parks and health care facilities in its service territory on or before December 31, 2005, except that a local exchange telecommunications company serving more than ten exchanges in this Commonwealth may elect to extend this commitment from December 31, 2005, to December 31, 2006, for any exchange with less than 4,000 access lines.

(5) A local exchange telecommunications company that elects under paragraph (1), (2) or (3) 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.

(6) A local exchange telecommunications company operating under an amended network modernization plan may subsequently petition the commission for approval of further modification of its amended network modernization plan, which the commission may grant upon good cause shown.

(7) A rural telecommunications carrier serving less than 50,000 access lines in this Commonwealth making an election pursuant to paragraph (1) and filing its amended network modernization plan with the commission pursuant to subsection (e) shall be granted by the commission a suspension of section 251(c)(2), (3), (4), (5) and (6) obligations under the Telecommunications Act of 1996. 1 This suspension of obligations shall expire

December 31, 2008, unless extended by the commission. Should the commission, following a hearing, determine that the rural telecommunications carrier has failed to timely meet its commitments pursuant to this paragraph, the suspension of obligations shall expire upon entry of the commission order making such determination. Expiration of the suspension of obligations shall not impact the rural telephone company exemption of the rural telecommunications carrier under section 251(f)(1) of the Telecommunications Act of 1996.

(8) A local exchange telecommunications company may accelerate its broadband availability commitment by electing an additional option pursuant to paragraph (1), (2) or (3), as applicable, at a later date. The local exchange telecommunications company shall be subject to the applicable modified inflation offset in its price stability mechanism as set forth in section 3015(a)(1) (relating to alternative forms of regulation) effective upon the filing of an amended network modernization plan under subsection (e).

D. Complainant's Position

Complainant alleged Verizon fails to comply with its obligation to provide her with reliable retail broadband access services. She pointed out this obligation is required under the statutory directives set forth in the Commission's Chapter 30 provisions¹⁰. Under the Chapter 30 statutory provisions, Verizon has a statutory obligation, and the Commission has concomitant jurisdiction to determine, whether Verizon ensured the provision and availability of retail broadband access services.¹¹ Ms. Matkovich contended Verizon established DSL service at the service address in Complainant's name and agreed to provide 3.3 mbps of download speed. As a broadband provider, she argued Verizon must provide her with at least 1.544 megabits per second (mbps) download speed,¹² which it failed to do on numerous occasions.

¹⁰ 66 Pa.C.S.A. §§ 3011 to 3019; *White v. Verizon North LLC*, Docket No. C-2016-2532236 (Order entered November 2, 2016) (*White v. Verizon North*).

¹¹ 66 Pa.C.S.A. §§ 3011 - 3019.

¹² 66 Pa.C.S.A. § 3014(c)(2)(i).

Ms. Matkovich argued she has not had reliable internet service since April of 2020. She contended Verizon's screenshots (testing) in December 2021 did not reflect accurately the situation she deals with regularly at the service address, and the tests fail to prove reliability in any manner. Complainant pointed out the text messaging application she uses for work simply provides text and does not contain video or pictures, and Verizon is wrong to argue she is using too much bandwidth. She noted there are times when one user cannot stream video without buffering, or send a text message, or pull up a webpage, even when only one user is using the internet service at the service address.

E. Respondent's Position

Verizon did not dispute Complainant has experienced times when her internet service is unreliable and/or unavailable, but averred it was unable to confirm the problem exists. Respondent did not dispute the accuracy of Complainant's statements about unavailability of service on December 5, 2021 but indicated it was unable to replicate the problem when it tested the veracity of her claims on December 6, 2021.¹³ Verizon contended it cannot retroactively determine when service was unavailable or affected by congestion on the network. Verizon cannot explain the cause for the problems Complainant experienced and, as a result, Verizon cannot provide suggestions for how to resolve the problems Complainant continues to experience.¹⁴

Verizon's only suggestion was that, when Complainant was on call for work and must be able to receive notices from her employer, Complainant should power off all devices within the household which are programmed to connect automatically to the broadband service at the service address.¹⁵ Verizon acknowledged that it would not know how to fix the problems experienced at the service address, if the Commission ordered it to do so, other than to perform more diagnostic tests, troubleshoot again, re-inspect the service address itself and replace

¹³ See Tr. 100.

¹⁴ See Tr. 104-108, 127.

¹⁵ See Tr. 104-110.

wiring.¹⁶ Currently, Verizon denies having an ability to run a diagnostic test that would test the service retroactively or to run a test that lasts more than 30 to 45 minutes at a time.¹⁷

Verizon argued the Commission only has jurisdiction to review its compliance with Chapter 30 and does not have jurisdiction over internet service. Respondent contends Chapter 30 requires it to provide at least 1.5 mbps of broadband or DSL service. Verizon insisted it provides Complainant with 3.3 mbps, which is what Complainant contracted to receive from Verizon. Verizon argues it tested the DSL line, the signal going into the service address, the signal within the service address and did not find any congestion on the network or an insufficient DSL signal. Verizon contends it has done all it can to isolate and find the problems which Complainant experiences and it cannot verify that those problems exist.

F. Analysis

The Commission has appropriate statutory jurisdiction to inquire into matters involving the availability and provisioning of retail broadband access services by incumbent local exchange carrier (ILEC) telephone companies with Chapter 30 broadband deployment commitments and obligations.¹⁸ Verizon is one such ILEC and it provides retail broadband and telephone services to the service address.

In *Roberts v. United Telephone Co. of Pennsylvania LLC, d/b/a CenturyLink*, Docket No. C-2017-2632824 (Order entered June 28, 2018), the Commission determined a presiding officer erred to conclude the Commission lacks general jurisdiction over internet service. The Commission determined its jurisdiction originated under Section 3014(b) of Chapter 30, 66 Pa.C.S.A. § 3014(b), which requires an ILEC (operating under a Chapter 30 alternative regulation and network modernization plan) to provide broadband availability to

¹⁶ See Tr. 113-116.

¹⁷ See Tr. 116, 117.

¹⁸ *White v. Verizon North*.

100% of its total retail access lines at the Chapter 30 minimum standard of 1.544 mbps downstream and 0.128 mbps upstream.

Verizon is an ILEC, and as such, it is required to supply retail broadband access services “using any technology”¹⁹ at a minimum standard of 1.544 mbps download and 0.128 mbps upload speeds as set forth in the Commission’s Chapter 30 provisions. The availability of broadband access service provided by carriers’ subject to, and defined by, Chapter 30, remains within the Commission's jurisdiction.²⁰ The Commission has appropriate statutory jurisdiction to inquire into matters involving the availability and provisioning of retail broadband access services by ILECs with Chapter 30 broadband deployment commitments and obligations.²¹ Verizon, as an ILEC, is required to supply retail broadband access services in accordance with the statutory standards. Thus, the Commission has the necessary jurisdiction to determine whether Verizon provided retail broadband access service to Complainant consistent with the applicable Chapter 30 statutory standards.

G. Final Disposition

Complainant testified credibly about the problems she experiences when attempting to connect to the internet or remaining connected to the internet. Respondent did not contend Complainant was lying but asserted it could not prove the existence or non-existence of the problems. Accordingly, Complainant’s uncontroverted testimony about the existence of service issues was not sufficiently rebutted by Verizon.

Complainant has trouble being able to access the internet at or exceeding the speed mandated by Chapter 30.²² Her job and her job performance have been adversely affected

¹⁹ Pursuant to 66 Pa.C.S.A. § 3012, "Broadband" is defined as “a communication channel using any technology and 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.”

²⁰ *White v. Verizon North.*

²¹ *White v. Verizon North.*

²² 66 Pa.C.S.A. § 3012

by the limited service. Most importantly to her employment, Complainant cannot predict when internet service may become unavailable and has had to resort to staying somewhere else that has reliable internet service when she is on call for her employer.

In response, Verizon indicates it has done everything it can think to do. It does not argue Ms. Matkovich is lying but it can find no flaw in its service or facilities, or in the equipment within the service address. Verizon has been unable to verify that the interruptions occurred, but it has been unable to prove the interruptions did not occur and has indicated it is not accusing Complainant of lying. In contrast, Complainant's testimony was accepted as credible and proved these intermittent interruptions occurred.

This decision is difficult because both parties engaged with each other in attempting to find the cause and solution to Complainant's problem. Respondent took Complainant's complaints seriously. Verizon did try to find the problem and took steps to investigate its facilities as well as the equipment inside and at the service address. Verizon insisted it could not perform retroactive tests and was limited to trying to recreate the circumstances that existed when Complainant noticed a problem. For her part, Complainant contacted Verizon frequently and cooperated with Verizon in testing the conditions at her residence.

Both parties acted in a responsible manner to resolve the problem. However, of the two parties, Verizon is the only one that is mandated by the provisions of Chapter 30 to provide a minimum of 1.5 mbps of download speed. Complainant proved Verizon did not provide that on various occasions starting in April of 2020. For all these reasons, the complaint will be granted.

Unfortunately, Verizon offered no solutions, no suggested solutions or even recommendations of actions Complainant can take that would improve her access to reliable internet service. For that reason, it will be recommended in the Ordering Paragraphs below that a copy of this decision should be provided to the Commission Bureau of Technical Utility

Services, which may be able to provide insight and/or guidance into what Respondent can do moving forward to improve reliability on Complainant's network.

H. Civil Penalty

As discussed above, Respondent's failure to provide reliable and adequate internet service violates Section 1501 of the Public Utility Code. 66 Pa.C.S.A. § 1501. For each such violation of the Code, the Commission may impose upon a public utility a civil penalty not to exceed \$1,000.00. 66 Pa.C.S.A. § 3301. The Commission has adopted certain standards that are to be applied in determining the amount of civil penalties when violations are admitted or determined to have occurred.

There are ten standards which the Commission first articulated in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Co.*, Docket No. C-00992409 (Opinion and Order adopted February 10, 2000) (*Rosi*) and which are now published at 52 Pa.Code § 69.1201(c) in the Commission's Policy Statements and Guidelines. In any case in which a civil penalty is assessed, these ten factors must be considered when calculating the amount of the penalty. The factors are meant to ascertain, in general, how serious was the conduct and intention of the utility, how the individual consumer was affected and how the utility's conduct may bode for similar future situations.

The first criterion to consider is whether the violation was of a serious nature or whether it was less egregious, such as an administrative or technical error. 52 Pa.Code § 69.1201(c)(1). Complainant's employment requires her to have internet service at her residence and that internet service must be reasonably adequate and reliable. Starting in April 2020, Respondent's internet service has become intermittent and unable to support Complainant's need for consistent service for those days each month when she is required to be on call for her employer. The lack of available service has resulted in Complainant failing to receive messages concerning health care patients, required her coworkers to expend time and energy to deliver messages to her and forced her to spend her on call shifts at the homes of family who have reliable

internet service. This set of facts constitutes a serious violation. Thus, I conclude this violation is serious in nature and warrants a higher penalty.

The second criterion is whether the resulting consequences of the conduct was of a serious nature, such as personal injury or property damage. 52 Pa.Code § 69.1201(c)(2). Complainant was not injured, and her property was not damaged. Further, there is no evidence presented that Complainant suffered any pecuniary damage from her employer. However, Complainant has been forced to stay outside her residence on occasion to ensure she receives messages from or about her patients in a timely manner. Due to the serious nature of Complainant's employment working in the health care field and the need for patients to receive timely support from Complainant, I conclude the consequence is of a serious nature and warrants a higher penalty.

The third criterion is whether the conduct at issue was deemed intentional or negligent. 52 Pa.Code § 69.1201(c)(3). I conclude the conduct was negligent but was not intentional. No evidence was presented that Verizon or its contractors acted with intent to harm Complainant, her employer or her patients. Further, no evidence was presented that Verizon intentionally installed a dysfunctional internet service. Verizon expended time and resources to investigate the problems Complainant has experienced. Thus, I conclude the conduct would justify mitigating against a higher penalty.

The fourth criterion is whether the utility made efforts to modify internal practices and procedures to address the conduct and prevent similar conduct and the amount of time it took for the implementation of these measures. 52 Pa.Code § 69.1201(c)(4). There is ample evidence Verizon recognized or accepted Complainant was experiencing trouble with her internet service. Thus, I conclude this criterion would justify mitigating against a higher penalty.

The fifth criterion is the number of customers affected. 52 Pa.Code § 69.1201(c)(5). Complainant alluded to neighbors who allegedly experienced the same or similar reliability issues with the internet service but, according to the record evidence, only Complainant was impacted. This criterion would justify mitigating against a higher penalty.

The sixth criterion is a consideration of Respondent's compliance history. No evidence was presented that Verizon has a poor compliance record for recognizing when customers experience internet service availability and reliability. In fact, the record evidence shows Respondent made attempts to locate and diagnose the problems at the service address, though without success. 52 Pa.Code § 69.1201(c)(6). Therefore, I conclude this criterion would justify mitigating against a higher penalty.

The seventh criterion is whether the regulated entity cooperated with the Commission's investigation. 52 Pa.Code § 69.1201(c)(7). There was no investigation by the Commission, and therefore this criterion works neither to mitigate nor to aggravate the penalty to be imposed.

The eighth criterion is the amount of the civil penalty or fine necessary to deter future violations, with consideration of the size of the utility. 52 Pa.Code § 69.1201(c)(8). Complainant proved a problem exists in the reliability and availability of internet service at the download speed required by Chapter 30. Respondent proved it made attempts to diagnose the problem and the location of the problem. However Respondent must do it, Verizon is required to provide at least 1.5 mbps of download speed. Of the two parties involved – Verizon and Ms. Matkovich – Verizon is the party best situated to find the cause of the problem. Therefore, in consideration of all relevant factors, I conclude a penalty of \$1,000 is sufficient to deter future violations.

The ninth criterion is past Commission decisions. 52 Pa.Code § 69.1201(c)(9). No party cited to any prior Commission decisions involving Verizon failing to provide the minimum download speed pursuant to Chapter 30. Therefore, I conclude this criterion would justify mitigating against a higher penalty.

The tenth criterion is other relevant factors, and none have been suggested or considered other than those factors previously discussed. 52 Pa.Code § 69.1201(c)(10).

In this proceeding, Verizon's actions – the failure to provide the download speed required under Chapter 30, to locate the source of the problem and to ascertain the steps Complainant must take to improve the conditions at the service address – were serious and warrant a penalty. The resulting consequences were of a serious nature and warrant a penalty. A civil penalty is necessary to deter similar future violations, especially due to the consequences to Complainant, her employer and her patients. Because the evidence presented and taken proves a civil penalty is necessary, I am assessing a One Thousand Dollar (\$1,000) civil penalty against Respondent. Accordingly, Verizon will be ordered to pay a civil penalty in the ordering paragraphs below.

CONCLUSIONS OF LAW

1. Any person with an interest in the subject matter may complain in writing to the Commission about any act or thing done by a public utility which the person claims violates any Commission statute, regulation or order. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.

2. The public utility must provide and maintain adequate, efficient, safe, and reasonable service and facilities, making all such repairs, changes, alterations, as needed or proper for the accommodation, convenience, and safety of its patrons. 66 Pa.C.S.A. § 1501.

3. The proponent of a rule or order has the burden of proof and, to satisfy his burden of proof, Complainant must demonstrate by a preponderance of the evidence Respondent violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. §§ 332(a) and 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. The evidence standard requires proof by a greater weight of the evidence which standard is satisfied by presenting evidence that makes the existence of a contested fact more likely than its nonexistence. *Brown v. Commonwealth*, 940 A.2d 610 (Pa. Cmwlth. 2008); *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999).

5. Complainant met her burden of proving Respondent did not provide the download speed required by Chapter 30. 66 Pa.C.S.A. §§ 332 and 3011 *et seq.*

6. The Commission may impose a civil penalty, when appropriate due to violations of its statutes, regulations and orders by a public utility, and has adopted certain standards to be applied to determine the amount of civil penalty. 66 Pa.C.S.A. § 3301(a) and (b); and 52 Pa.Code § 69.1201(c)(10).

7. The failure of Verizon North LLC to provide reasonable service pursuant to 66 Pa.C.S.A. § 1501 and Chapter 30 warrants the imposition of a civil penalty. 52 Pa.Code §69.1201(c) and 66 Pa.C.S.A. § 3011 *et seq.*

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Courtney Matkovich v. Verizon North LLC, docketed at No. C-2020-3022369, is hereby granted in that Courtney Matkovich did prove Verizon North LLC failed to provide reasonable and adequate customer service when it did not provide her with at least 1.5 megabits per second download speed.

2. That Verizon North LLC is hereby assessed the penalty of One Thousand Dollars (\$1,000) because Respondent failed to provide reasonable and adequate customer service.

3. That Verizon North LLC, within thirty (30) days of the Commission's Final Order in this case, shall pay a civil penalty in the amount of One Thousand Dollars

