

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Hill	:	
	:	C-2021-3030086
v.	:	C-2021-3028645
	:	C-2021-3027358
Verizon Pennsylvania LLC	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complaints of James Hill against Verizon Pennsylvania LLC at Docket Nos. C-2021-3027358 and C-2021-3030086 because he failed to carry his burden of proving, by a preponderance of the evidence, that the utility failed to provide him with reliable, safe, and adequate telephone service. This Initial Decision also denies the Complaint of James Hill against Verizon Pennsylvania LLC at Docket No. C-2021-3028645 because the Commission lacks jurisdiction to adjudicate quality of service issues with regard to internet service.

**HISTORY OF THE PROCEEDING**

On June 28, 2021, James Hill filed a formal Complaint (Complaint) with the Public Utility Commission (Commission) against Verizon Pennsylvania LLC (Verizon, Verizon PA, Respondent, or the Company) alleging that, in December of 2019, he reduced his phone service at his Pennsylvania residence to a level capable of handling any 1-800 calls from his security system. He returned from Florida on June 16, 2021, and requested that Verizon restore

his “previous level of full service.” Despite his various communications with Verizon employees and officials, Mr. Hill’s long-distance service was not restored as of the date of the Complaint. As relief, the Complainant requests that the Commission order Verizon to restore his long-distance service and “fine Verizon for its action in this case.” Complaint ¶ 5.<sup>1</sup> This Complaint was assigned Docket No. C-2021-3027358 (June 28, 2021 Complaint).

On August 11, 2021, Verizon filed an Answer denying the material allegations of fact in the June 28, 2021 Complaint. In its Answer, Verizon requested that the Commission place this matter in mediation. By Interim Order issued on August 18, 2021, Chief Administrative Law Judge (CALJ) Charles E. Rainey, Jr. set this matter for mediation. Mediation occurred but did not lead to a resolution of this case.

On August 23, 2021, Mr. Hill filed a second Complaint against Verizon Pennsylvania LLC, this time alleging that Verizon internet service failed mid-day on July 14, 2021. The Complainant alleges that he made at least five phone calls to Verizon but failed to have the issue resolved. As relief, Mr. Hill requests that the Commission punish Verizon for its failure to provide reliable internet service as well as its failure “to provide access to Verizon personnel who could initiate intelligent response in light of failed critical Verizon service.” Complaint ¶ 5.<sup>2</sup> This Complaint was assigned Docket No. C-2021-3028645 (August 23, 2021 Complaint).

On October 13, 2021, Verizon filed an Answer denying the material allegations of fact in the August 23, 2021 Complaint. In particular, Respondent averred that, while Verizon provides telephone service to the Complainant, his retail DSL (Digital Subscriber Line) internet service is provided by Verizon’s affiliate Verizon Online. Verizon requested that the Commission place this matter in mediation. By Interim Order issued on October 14, 2021, CALJ

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<sup>1</sup> Mr. Hill’s June 28, 2021 Complaint was served on the Respondent on July 21, 2021, by the Commission’s Secretary’s Bureau.

<sup>2</sup> Mr. Hill’s August 23, 2021 Complaint was served on Respondent on September 22, 2021, by the Commission’s Secretary’s Bureau.

Charles E. Rainey, Jr. set this matter for mediation. Mediation occurred but did not lead to a resolution of this case.

On December 13, 2021, Mr. Hill filed a third Complaint against Verizon Pennsylvania LLC alleging that the Verizon phone service in his area has not worked for many weeks, even though Verizon has identified its problem. As relief, the Complainant requests that the Commission hold Verizon accountable for its failures, and order Verizon to issue refunds for his monthly charges. This Complaint was assigned Docket No. C-2021-3030086 (December 13, 2021, Complaint).

On January 7, 2022, Verizon filed an Answer denying the material allegations of fact in the December 13, 2021 Complaint. In its Answer, Verizon requested that this matter be placed in mediation along with the other two Complaints.

By Initial Call-In Telephonic Hearing Notice dated February 22, 2022, a telephonic hearing was scheduled for March 30, 2022, at 10:00 a.m., and the matters were assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing and warned them that they may lose the cases if they do not take part in the hearing and present evidence on the issues raised.

By letter dated March 3, 2022, counsel for Verizon requested a continuance of the scheduled hearing due to counsel's unavailability on the hearing date. The Complainant did not respond to Verizon's request for continuance. By email dated March 15, 2022, I informed the parties that Verizon's request for a continuance of the Initial Hearing was granted.

A Hearing Cancellation/Reschedule Notice, dated March 15, 2022, informed the parties that the initial telephonic hearing was rescheduled for April 11, 2022, at 10:00 a.m. The Hearing Cancellation/Reschedule Notice advised the parties of the date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised. The Hearing Cancellation/Reschedule Notice was served on the Complainant via regular first-class mail.

A Prehearing Order was issued on April 5, 2022, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on April 11, 2022. James Hill appeared *pro se*. Suzan D. Paiva, Esq., appeared on behalf of the Respondent and was accompanied by three potential witnesses for the Company. At the beginning of the hearing, Mr. Hill indicated that he was experiencing technical difficulties caused by the poor quality of Verizon's telephone service. He was encouraged to use a mobile phone for the duration of the proceeding, which he declined. Mr. Hill was also offered the option of attending a rescheduled hearing in person in the Commission's Philadelphia or Harrisburg offices. Again, he declined, citing his old age as reason for his inability to drive to either of these locations. Instead, Mr. Hill requested to have the written statements included in his three Complaints constitute his testimony in these matters. Tr. 11-12. Verizon's counsel did not object to Mr. Hill's request but requested that it too be allowed to submit testimony in writing. Tr. 13. I agreed to allow both parties to proceed through written testimony but set the case for a further telephonic hearing for the purpose of conducting cross-examination of opposing witnesses.

On April 15, 2022, Verizon submitted its written testimony of Mayra Cevallos, Mario Deiudonne, and Joshua Cheesman.

Also on April 15, 2022, Verizon filed a Motion to Dismiss James Hill's Complaint at Docket No. C-2021-3028645 pursuant to 52 Pa. Code § 5.103 because the Commission lacks subject matter jurisdiction over claims relating to retail internet services, including internet outages.

Mr. Hill did not file a response to Verizon's Motion to Dismiss.<sup>3</sup>

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<sup>3</sup> Complainant's answer to Respondent's Motion to Dismiss was due no later than May 9, 2022. 52 Pa. Code §§ 5.103(c), 1.12(a), 1.56(a)(1) and (b).

A Call-In Telephonic Hearing Notice, dated May 9, 2022, informed the parties that the further telephonic hearing was scheduled for June 21, 2022, at 10:00 a.m. The Further Hearing Notice advised the parties of the date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised. The Further Hearing Notice was served on the Complainant via regular first-class mail as well as electronic mail.

The further hearing convened as scheduled. Counsel for the Respondent called in with three witness available to testify. The Complainant failed to call-in. The Complainant was given an additional ten minutes to call-in but failed to do so. By failing to attend the further hearing, the Complainant not only waived his right to cross-examination, but also deprived the Respondent of its right to cross-examine him. Despite this, Verizon PA agreed to proceed with the further hearing and made available for cross-examination its witnesses: Mayra Cevallo – who is an Executive Relations Senior Analyst for Verizon PA, responsible for handling customer complaints; Mario Deiudonne – who is a Local Manager with Verizon PA, responsible for managing field technicians and assisting technicians and customers with challenges in the field relating to repairs and maintenance; and Joshua Cheesman – who is a Supervisor of Network Operations for Verizon PA, responsible for the group of technicians that operate and maintain the switching equipment in central offices and remote switches.

The following written testimony was admitted into the record:

Complainant Statement No. 1 -- (Complainant's Statement in C-2021-3027358);  
Complainant Statement No. 2 -- (Complainant's Statement in C-2021-3030086);  
Complainant Statement No. 3 -- (Complainant's Statement in C-2021-3028645);  
Verizon PA Statement No. 1.0 -- (Reply Testimony of Mayra Cevallos with Exhibit 1);  
Verizon PA Statement No. 2.0 -- (Reply Testimony of Mario Deiudonne);  
Verizon PA Statement No. 3.0 -- (Reply Testimony of Joshua Cheesman).

The record in this matter closed upon receipt of the further hearing transcript on July 1, 2022.

## FINDINGS OF FACT

1. Complainant is James Hill, who resides at 387 Autumn Leaves Rd., Starlight, PA 18461 (Service Address).

2. Respondent is Verizon Pennsylvania LLC, a jurisdictional entity providing telephone utility service within the Commonwealth of Pennsylvania.

### **June 28, 2021, Complaint at Docket No. C-2021-3027358**

3. Prior to leaving for Florida in December of 2019, Mr. Hill reduced his telephone service at the Service Address to a level capable of handling any 1-800 calls from his security system. Complainant Statement No. 1.

4. Mr. Hill returned from Florida on June 16, 2021 and requested that Verizon restore his long-distance telephone service. Complainant Statement No. 1.

5. The Federal Communications Commission (FCC) requires third-party verification before a local telephone company such as Verizon PA can submit a preferred carrier change order for a long-distance service change on the line. Verizon PA Statement No. 1.0, at 2, citing 47 C.F.R. 64.1120(c)(3).

6. The purpose of third-party verification is to prevent the unauthorized change of someone's long distance service also known as "slamming." Verizon PA Statement No. 1.0, at 2.

7. A Verizon PA representative must drop off the line while the customer continues the carrier change process with the third-party verifier, who is an independent entity not affiliated with Verizon PA. Verizon PA Statement No. 1.0, at 2.

8. When the customer begins the process with the third-party verifier the order to change long-distance service cannot go through until and unless the process is completed in full. Verizon PA Statement No. 1.0, at 3.

9. Mr. Hill failed to complete the third-party verification process in full. Verizon PA Statement No. 1.0, at 3.

10. Because Mr. Hill failed to complete the third-party verification process Verizon PA was unable to add to the account the long-distance service provided by its affiliate Verizon Long Distance. Verizon PA Statement No. 1.0, at 3.

11. On June 24, 2021, Mr. Hill wrote a letter to Hans Vestberg, Chairman and CEO of Verizon Communications, informing him of his issues with Verizon's long-distance service. Complainant Statement No. 1.

12. Mr. Hill's long-distance service was restored soon after Mr. Hill's letter to Mr. Vestberg. Verizon PA Statement No. 1.0, at 2.

13. Mr. Hill's long-distance service was restored before the Complaint was served upon the Respondent on July 21, 2021. Verizon PA Statement No. 1.0, at 2.

14. Ms. Cevallos confirmed the restoration on a call with Mr. Hill on July 28, 2021. Verizon PA Statement No. 1.0, at 4; Verizon PA Exhibit 1.

**August 23, 2021, Complaint at Docket No. C-2021-3028645**

15. Mr. Hill's internet service failed mid-day on July 14, 2021. Complainant Statement No. 3; Verizon PA Statement No. 2.0, at 2.

16. The Complainant made at least five phone calls to Verizon regarding his internet service but failed to have the issue resolved. Complainant Statement No. 3.

17. Respondent determined that the internet failure on July 14, 2021, was due to a loss of power to certain electronic equipment at a remote terminal that affected a group of customers, including Mr. Hill. Verizon PA Statement No. 2.0, at 2.

18. A technician was dispatched to restart the equipment (a rectifier) and service was restored on July 15, 2021. Verizon PA Statement No. 2.0, at 2.

19. Mr. Hill experienced another internet service failure on August 15, 2021. Verizon PA Statement No. 2.0, at 2.

20. On August 15, 2021, Mr. Hill contacted the Respondent and requested to speak with Verizon representatives located in the U.S. Verizon PA Statement No. 2.0, at 2.

21. Testing that was done on August 16, 2021, indicated that there was a synchronization issue with Mr. Hill's modem, meaning that the modem had no internet connectivity. Verizon PA Statement No. 2.0, at 2.

22. Lack of internet connectivity can occur due to a loss of power either because the router at the home is unplugged or if there was a power surge in the area. Verizon PA Statement No. 2.0, at 2.

23. When electricity is restored, the modem normally will power cycle and come back up. Verizon PA Statement No. 2.0, at 2.

24. If the modem does not reset automatically when electricity is restored, it may need a hard reset. Verizon PA Statement No. 2.0, at 2.

25. Other issues can occur where the power surge/outage damages the equipment causing a loss of power. Verizon PA Statement No. 2.0, at 2.

26. Mr. Hill's internet service was restored on August 16, 2021. Verizon PA Statement No. 2.0, at 2-3.

27. The internet failures that Mr. Hill experienced on July 14, 2021, and August 15, 2021, are the only instances of failures recorded during the period January 2021 to June 21, 2022. Verizon PA Statement No. 2.0, at 3.

**December 13, 2021, Complaint at Docket No C-2021-3030086**

28. Mr. Hill is served by Verizon PA's Lake Como remote switch. Verizon PA Statement No. 3.0, at 2.

29. On or about November 26, 2021, Verizon PA was upgrading the equipment that connects the Lake Como remote switch to the Carbondale host switch. Verizon PA Statements No. 2.0 at 3 and 3.0, at 2.

30. The equipment upgrade was intended to improve service in the area. Verizon PA Statement No. 3.0, at 2.

31. After the new equipment was turned on, Verizon PA began to receive reports from customers in the area experiencing interference, dropped calls and cross talk. Verizon PA Statement No. 3.0, at 2; see also Complainant Statement No. 2.

32. Respondent immediately began troubleshooting its system and determined that the issue was related to the equipment upgrade. Verizon PA Statement No. 3.0, at 2.

33. In order to find the source of the intermittent interference, Respondent reverted to the original equipment and began to search for the malfunctioning equipment through a process of elimination. Verizon PA Statement No. 3.0, at 2.

34. Respondent found that certain circuit boards in the Carbondale office had started malfunctioning during the upgrade process. Verizon PA Statements No. 2.0 at 3 and 3.0, at 2.

35. Verizon PA replaced the malfunctioning circuit boards and the telephone service issues that Mr. Hill was experiencing were resolved on December 6, 2021. Verizon PA Statements No. 2.0 at 3 and 3.0, at 2; see also Complainant Statement No. 2.

### DISCUSSION

As a preliminary matter, James Hill's three Complaints against Verizon Pennsylvania LLC at Docket Nos. C-2021-3030086, C-2021-3028645, and C-2021-3027358 will be consolidated for adjudication purposes. The Commission regulation pertaining to consolidation appears at 52 Pa. Code §5.81, and states, in relevant part:

#### **§5.81. Consolidation.**

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

The question of consolidation is clearly left to the sound discretion of the Commission or presiding officer.<sup>4</sup> Upon review of the record created in these three proceedings, I find that consolidation of these matters would be advantageous to the proceedings and in the public interest. Each of the above-captioned Complaints involves the same Complainant, James Hill, and the same Respondent, Verizon Pennsylvania LLC. They also involve similar questions of law and fact in the form of quality-of-service issues related to the telephone and internet services provided by the Respondent. In all three Complaints, Mr. Hill requests a resolution of

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<sup>4</sup> See, Application of Middletown Taxi Company, 1976 WL 41682 (Pa.P.U.C. September 8, 1976) (consolidated for adjudication); City of York v. York Telephone and Telegraph Co., 1970 WL 26363 (Pa.P.U.C. December 21, 1970) (consolidated for hearing); Dopp v. Williamsburg Borough Dept. of Water and Sewer, 59 Pa. PUC 25 (1984) (consolidated for all purposes).

the issues raised. Consolidation of the above-captioned Complaints serves juridical efficiency while avoiding unnecessary costs and delays to the parties and to the Commission.

### **Legal Standard and Burden of Proof**

As the proponent of a rule or order, James Hill bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, he must demonstrate that the Respondent was responsible for the problems alleged in the complaint through a violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the 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 Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion 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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

**June 28, 2021, Complaint at Docket No. C-2021-3027358**

In his June 28, 2021, Complaint and testimony, James Hill stated that in December of 2019, he reduced his phone service at his Pennsylvania residence to a level capable of handling any 1-800 calls from his security system. He returned from Florida on June 16, 2021 and requested that Verizon restore his “previous level of full service.” Mr. Hill stated that, despite having gone through Verizon’s outside agency verification of his choice of long-distance service, he still had no long-distance service on June 17, 2022. He added that on June 17, 2022, a Verizon PA employee informed him that his long-distance service would not be restored until June 21, 2022, when a Verizon PA technician was scheduled to visit the Service Address. Next, Mr. Hill averred that he spoke to another Verizon employee who assured the Complainant that he would take care of the issue and would call him back within 15 minutes to an hour. Despite these assurances, Mr. Hill’s long-distance service was not restored. On June 24, 2021, Mr. Hill wrote a letter to Hans Vestberg, Chairman and CEO of Verizon Communications, informing him of his issues with Verizon’s long-distance service. Complainant Statement No. 1.

In response to Mr. Hill’s written testimony, Verizon PA’s witness, Mayra Cevallos explained that the Federal Communications Commission (FCC) requires third-party verification before a local telephone company such as Verizon PA can submit a preferred carrier change order for a long-distance service change on the line. 47 C.F.R. 64.1120(c)(3). The purpose of this requirement is to prevent “slamming,” i.e., the unauthorized change of someone’s long distance service. According to Ms. Cevallos, the rules have detailed requirements including that the Verizon PA representative must drop off the line while the customer continues the process with the third-party verifier, who is an independent entity not affiliated with Verizon. Verizon PA Statement No. 1.0, at 2. Ms. Cevallos emphasized that when the customer begins the process with the third-party verifier the order to change long-distance service cannot go through until and unless the process is completed in full. Ms. Cevallos explained that in Mr. Hill’s case the third-party verification was not marked complete and needed to be completed before Verizon PA could add to the account long distance service provided by its affiliate Verizon Long Distance. Verizon PA Statement No. 1.0, at 3.

Ms. Cevallos further testified that the long-distance service was restored to the Service Address soon after Mr. Hill's letter to Mr. Vestberg. Verizon PA Statement No. 1.0, at 2. While she did not provide the exact date when the service was restored, she testified that it was restored before July 21, 2021, the date when the Complaint was served upon the Respondent, and that she had confirmed the restoration on a call with Mr. Hill on July 28, 2021. Verizon PA Statement No. 1.0, at 4; Verizon PA Exhibit 1.

After careful consideration of the written testimony provided by the parties in this matter, I find that the Respondent has successfully rebutted Mr. Hill's claim that he completed the third-party verification process necessary to restore long-distance service at the Service Address. Complainant's failure to attend the further hearing prevented him from challenging Verizon's PA testimony and from providing additional evidence favorable to his claim.

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501. In the present case, the Complainant failed to show by a preponderance of the evidence that Verizon PA failed in this duty when it declined to provide long-distance service to the Service Address until Mr. Hill completed the third-party verification. Mr. Hill failed to carry his burden of proving by a preponderance of the evidence that Verizon PA violated the provisions of 66 Pa.C.S. § 1501 or any other Commission statute, regulation, or order.

In view of the above, James Hill's Complaint against Verizon Pennsylvania LLC at Docket No. C-2021-3027358 is dismissed in its entirety.

**August 23, 2021, Complaint at Docket No. C-2021-3028645**

In his August 23, 2021, Complaint and testimony, Mr. Hill stated that his internet service failed mid-day on July 14, 2021. The Complainant alleges that he made at least five phone calls to Verizon but failed to have the issue resolved. Complainant Statement No. 3.

In response to Mr. Hill's written testimony, Verizon PA's witness, Mario Deiudonne, explained that Respondent's records indicate there was a trouble reported at the Service Address on July 14, 2021. According to Mr. Deiudonne, this was the first trouble report for 2021. It was determined to be due to a loss of power to certain electronic equipment at a remote terminal that affected a group of customers, including Complainant. Mr. Deiudonne testified that a technician was dispatched to restart the equipment (a rectifier) and that restored service on July 15, 2021. Mr. Deiudonne further testified that Respondent's records contain a second report of an internet issue affecting the Service Address on August 15, 2021. On that occasion, it was noted that the customer wanted to speak with someone in the U.S. According to Mr. Deiudonne, testing that was done on August 16, 2021, indicated that there was a synchronization issue with the customer's modem, meaning that the modem had no internet connectivity. He explained that lack of internet connectivity can occur due to a loss of power either because the router at the home is unplugged or if there was a power surge in the area. Mr. Deiudonne added that, when electricity is restored, the modem normally will power cycle and come back up. If it does not reset automatically, it may need a hard reset. Other issues can occur where the power surge/outage damages the equipment causing a loss of power. Verizon PA Statement No. 2.0, at 2.

In its Motion to Dismiss, Verizon PA sought to dismiss the August 23, 2021, Complaint on the grounds that the Commission lacks subject matter jurisdiction over claims relating to retail internet services, including internet outages.

As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code (the "Code"). 66 Pa.C.S. §§101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny Cnty. Port Auth. v. Pa. Pub. Util. Comm'n*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Dep't of Highways v. Pa. Pub. Util. Comm'n*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Elec. Co.*, 383 A.2d 575 (Pa. Cmwlth. 1978). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 449 A.2d 621 (Pa. Super. 1982), nor can jurisdiction be obtained by waiver or estoppel, *In Re Borough Of Valley-Hi*, 420 A.2d 15 (Pa. Cmwlth. 1980). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf., Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

Chapter 30 of the Code contains the alternative regulation of "local exchange telecommunications companies," including broadband deployment obligations under network modernization plans, that originated in 1993 in Pennsylvania under the original Chapter 30, Act 67 of 1993 at 66 Pa.C.S. §§ 3001-3009. Act 67 was subject to sunset and was ultimately repealed and replaced with Act 183 of 2004 at 66 Pa.C.S. §§ 3011-3019. Under the current provisions of Chapter 30, a local exchange telecommunications company is defined as an "incumbent" rural and nonrural carrier authorized by the Commission to provide local exchange service. 66 Pa.C.S. § 3012 (Definitions). In other words, the broadband obligations imposed under Chapter 30 attach to Commission-certificated incumbent local exchange carriers (ILECs). Thus, the Commission's jurisdiction over the internet derives from Chapter 30 of the Code.

While internet service is generally subject to federal review of interstate tariffs under the purview of the Federal Communications Commission (FCC), in Chapter 30 the General Assembly has invested the Commission with jurisdiction over regulated ILECs to assure broadband is deployed to 100% of their retail customers by December 31, 2015, at speeds no less than 1.544/0.128 Mbps, upon ten business days of their customer's requests. *Matkovich v. Verizon N. LLC*, Docket No. C-2020-3022369 (Opinion and Order entered Aug. 25, 2022) (*Matkovich*).

In *White v. Verizon North LLC*, Docket No. C-2016-2532236 (Opinion and Order entered November 2, 2016) (*White*), the Commission confirmed that it 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.

The Commission reiterated its assertion of jurisdiction over broadband internet access services in *Roberts v. United Telephone Co. of Pennsylvania LLC, d/b/a CenturyLink*, Docket No. C-2017-2632824 (Opinion and Order entered June 28, 2018) (*Roberts*), a case in which the complainant raised allegations concerning intermittent internet service. In *Roberts* the Commission acknowledged that, as part of an individual case adjudication, it has yet to define what constitutes “availability” under Chapter 30 but reaffirmed that the availability of broadband access service provided by carriers subject to, and defined by, Chapter 30, remains within the Commission’s jurisdiction.

In its most recent ruling on this topic, the Commission succinctly explained that “we derive our jurisdiction under Chapter 30 of the Code, which explicitly provides jurisdiction over speed and availability. Pricing and service quality standards, however, are generally left to jurisdiction of the FCC.” *Matkovich*, at 27. As to whether the complainant’s internet service in *Matkovich* was so intermittent as to potentially be considered unavailable, the Commission found that insufficient evidence did not allow it to reach a conclusion on the matter. See *Matkovich*, at 27, n.10.

In the present case, Verizon PA’s witness, Mario Deiudonne, testified credibly that in the year 2021 and until June of 2022, there were only two trouble reports recorded as affecting the internet service at the Service Address: one on July 14, 2021, and another on August 15, 2021. In both instances, the issue was resolved within the next day. I find that two instances of service interruption within a period of approximately 18 months do not constitute internet service so intermittent as to potentially be considered unavailable. In addition, Mr. Hill does not dispute the broadband speed provided by the Respondent. Instead, he raises quality of service issues, which as discussed above are outside the purview of the Commission’s jurisdiction and within that of FCC.

In view of the above, Verizon PA’s Motion to Dismiss the August 23, 2021, Complaint will be granted to the extent it challenges the Commission’s jurisdiction over quality-of-service standards related to internet service. Mr. Hill’s August 23, 2021, Complaint will be

dismissed in its entirety because it only raises quality of service issues related to the internet service provided by the Respondent, which the Commission has no jurisdiction to adjudicate.

**December 13, 2021, Complaint at Docket No C-2021-3030086**

With regard to the December 13, 2021, Complaint, Mr. Hill testified that, prior to the filing of his Complaint, the telephone service in his area did not work for many weeks, even though Verizon had identified the problem. He explained that outgoing phone calls often did not ring at the number called. Mr. Hill described how when one made a call, the caller would be patched into another conversation going on between other persons. In addition, incoming calls showed the caller's name on caller ID, but when the answer button was pressed, there was no one there. He explained that purchasing new phones did not resolve the issue and he sought technical assistance from Verizon PA. After several attempts, Mr. Hill was able to reach Respondent's technical service where an employee tested his line and informed him that the problem was not on his line but laid with Verizon PA. According to Mr. Hill, the Respondent's employee informed him that Verizon's local fiber optic system required repair, and that it was not an easy job that any technician could do. He stated that Verizon PA never contacted him about the outage and did not inform him of its planned resolution. Complainant Statement No. 2.

In response to Mr. Hill's claims, Verizon PA's witness, Joshua Cheesman, testified that Mr. Hill is served by Verizon PA's Lake Como remote switch. Mr. Cheesman explained that on or about November 26, 2021, Verizon PA was upgrading the equipment that connects the Lake Como remote switch to the Carbondale host switch, a job that was intended to improve service in the area. After the new equipment was turned on, Verizon PA began to receive reports from customers in the area experiencing interference, dropped calls and cross talk, similar to what Mr. Hill reports in his Complaint. Mr. Cheesman testified that Respondent immediately began troubleshooting its system to find the cause of this unforeseen problem and determined that the issue was related to the equipment upgrade. According to him, it was not easy to find the source of the intermittent interference. Mr. Cheesman explained that Respondent reverted to the original equipment and began to search for the malfunctioning equipment through a process of elimination. Ultimately, Respondent determined that certain circuit boards in the

Carbondale office unexpectedly had started malfunctioning during the upgrade process. Mr. Cheesman testified that Verizon PA replaced the malfunctioning circuit boards, and the problem was resolved on December 6, 2021. Verizon PA Statement No. 3.0, at 2; see also Verizon PA Statement No. 2.0 at 3.

As mentioned above, it is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501. This requirement, however, does not guarantee uninterrupted service. The Respondent has successfully rebutted Mr. Hill's claim that Verizon PA provided him with inadequate and unreasonable telephone service during the period November 26, 2021, to December 6, 2021. Through the testimony of Mr. Cheesman, the Respondent showed that it took the necessary steps to identify the source of the problem and restore the quality of service. While the process lasted approximately ten days, there is no indication that the situation resulted from a willful or negligent action on the part of Verizon PA. There is also no indication that the length of time during which Mr. Hill's telephone service was affected resulted from Verizon PA's inaction or lack of skill. On the contrary, Mr. Cheesman testified credibly that several steps were taken to restore the quality of service in Mr. Hill's area without delay. Complainant's failure to attend the further hearing prevented him from challenging Verizon PA's testimony and from providing additional evidence favorable to his claim. Ultimately, I find that Mr. Hill failed to carry his burden of proving by a preponderance of the evidence that Verizon PA violated the provisions of 66 Pa.C.S. § 1501 or any other Commission statute, regulation, or order.

In view of the above, James Hill's Complaint against Verizon Pennsylvania LLC at Docket No. C-2021-3030086 is dismissed in its entirety.

#### CONCLUSIONS OF LAW

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

2. The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay. 52 Pa. Code §5.81(a).

2. As the proponent of a rule or order, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the Complaint must demonstrate by the preponderance of the evidence that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *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).

5. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

6. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

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

8. Complainant has failed to satisfy his burden of proving, by a preponderance of the evidence, that the utility failed to provide him with reliable, safe, and adequate telephone service.

9. As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§101, *et seq.*

10. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell Tel. of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny Cnty. Port Auth. v. Pa. Pub. Util. Comm'n*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell Tel. of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Dep't of Highways v. Pa. Pub. Util. Comm'n*, 182 A.2d 267 (Pa. Super. 1962); and *City of Erie v. Pa. Elec. Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978).

11. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

12. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

13. Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist, *Commonwealth v. VanBuskirk*, 449 A.2d 621 (Pa. Super. 1982), nor can jurisdiction be obtained by waiver or estoppel, *In Re Borough Of Valley-Hi*, 420 A.2d 15 (Pa. Cmwlt. 1980).

14. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Cf.*, *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

15. In Chapter 30 the General Assembly has invested the Commission with jurisdiction over regulated incumbent local exchange carriers to assure broadband is deployed to 100% of their retail customers by December 31, 2015, at speeds no less than 1.544/0.128 Mbps, upon ten business days of their customer's requests. *Matkovich v. Verizon N. LLC*, Docket No. C-2020-3022369 (Opinion and Order entered Aug. 25, 2022).

16. The Commission derives its jurisdiction over internet service from Chapter 30 of the Code, which explicitly provides jurisdiction over speed and availability. Pricing and service quality standards, however, are generally left to jurisdiction of the Federal Communications Commission. *Matkovich v. Verizon N. LLC*, Docket No. C-2020-3022369 (Opinion and Order entered Aug. 25, 2022).

17. The Commission lacks jurisdiction to adjudicate Complainant's quality of service issues with regard to internet service.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That James Hill's Complaints against Verizon Pennsylvania LLC at Docket Nos. C-2021-3030086, C-2021-302864,5 C-2021-3027358 and C-2021-3027358 are consolidated for adjudication purposes.

2. That the formal Complaint filed by James Hill against Verizon Pennsylvania LLC at Docket No. C-2021-3027358 is dismissed in its entirety.

3. That the formal Complaint filed by James Hill against Verizon Pennsylvania LLC at Docket No. C-2021-3028645 is dismissed in its entirety.

4. That Verizon Pennsylvania LLC's Motion to Dismiss the Complaint of James Hill at Docket No. C-2021-3030086 is granted to the extent it challenges the Commission's jurisdiction over quality-of-service standards related to internet service.

5. That the formal Complaint filed by James Hill against Verizon Pennsylvania LLC at Docket No. C-2021-3030086 is dismissed in its entirety.

6. That the Secretary mark these dockets closed.

Date: September 29, 2022

\_\_\_\_\_/s/  
Eranda Vero  
Administrative Law Judge