

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen C. Babyak	:	
	:	
v.	:	C-2021-3024569
	:	
Full Service Network, LP	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This decision sustains in part the Formal Complaint of Kathleen Babyak against Full Service Network, LP and assesses a civil penalty because of the failure of Full Service Network, LP to provide adequate and reasonable service regarding the auto pay, suspension notice and customer services issues raised in this decision. This initial decision denies the remainder of the claims set forth in the Formal Complaint for failure to meet Complainant’s burden of proof.

HISTORY OF THE PROCEEDING

On February 3, 2021, Kathleen C. Babyak (Complainant) filed a Formal Complaint (Complaint) against Full Service Network, LP (FSN, Full Service or Respondent) with the Pennsylvania Public Utility Commission (PUC or Commission).

On May 3, 2021, Respondent filed an Answer with New Matter and Preliminary Objections.

On June 7, 2021, a Motion Judge Assignment Notice was issued.

On June 11, 2021, an interim order was entered denying Respondent's Preliminary Objections.

On August 25, 2021, a Hearing Notice was issued scheduling a telephonic hearing for October 5, 2021. On September 30, 2021, the undersigned presiding officer received an email correspondence with a request from the Respondent to continue the hearing. Respondent stated that the Complainant did not oppose the continuance request. On October 1, 2021, an Interim Order was entered continuing the hearing scheduled for October 5, 2021.

On December 8, 2021, a Hearing Notice was issued scheduling a telephonic hearing for January 11, 2022, and requiring the parties to submit their proposed exhibits at least five business days in advance of the hearing.

On December 10, 2021, counsel for Respondent filed a Motion for Continuance of the January 11, 2022, hearing averring counsel for Respondent had a conflict with her schedule. A copy of the Motion was served on Complainant and no objection to the Motion for Continuance was received from Complainant. On December 21, 2021, an Interim Order was entered continuing the hearing scheduled for January 11, 2022.

By hearing notice dated August 11, 2022, the telephonic hearing was rescheduled for September 29, 2022, at 10:00 a.m., with a deadline to submit hearing exhibits at least five business days in advance of the hearing or by September 22, 2022.

On September 15, 2022, Respondent filed a Motion for Continuance, averring that Respondent's witness was scheduled to travel out of the country in late September through early October and would be unavailable for the hearing on September 29, 2022. Respondent averred that Respondent's witness had knowledge of the issues in this proceeding and that Respondent did not have another witness available to provide the necessary information. No objection to the

Motion for Continuance was received from Complainant. On September 21, 2022, an interim order was entered granting the motion for a continuance filed by Full Service.

The evidentiary hearing was rescheduled for January 3, 2023, and was convened as scheduled. The undersigned presiding officer subsequently received the hearing transcript and an Order closing the record was entered on February 21, 2023.

FINDINGS OF FACT

1. Complainant is Kathleen Babyak, an 80-year-old individual, who resides at 149 Oak Ridge Road, Acme, Pennsylvania (service location or service address). Tr.11, 21.
2. Respondent is Full Service Network, LP, a wholesale customer of Verizon Pennsylvania and Verizon North. Tr. 36.
3. Respondent is a certified competitive local exchange carrier, that is authorized by the Commission to provide local exchange telecommunications services to customers within the Verizon service areas in Pennsylvania. Tr.30.
4. Respondent purchases competitive services from Verizon at a wholesale discount and then resells those services to Respondent's retail customers. Tr. 36.
5. Verizon owns the utility poles, wires and other infrastructure and is responsible for responding to customer's services outages. Tr. 36.
6. When a customer of FSN, such as Complainant, contacts FSN regarding an outage, FSN reports the service outage to Verizon, and Verizon is responsible to take the necessary action to make repairs and to restore service. Tr. 36.
7. FSN does not have access or permission to address a problem with Verizon's poles or their wires. Tr. 36.

8. Complainant is a FSN customer and receives landline telephone service at the service address and is billed by Respondent. Tr. 22-24.

9. Complainant was a customer of Verizon approximately 15 years ago, and subsequently received a call from Full Service, offering her a discount of approximately twenty dollars each month, if Complainant would become a Full Service customer. Tr. 22-23.

10. Complainant has been a customer of Respondent since approximately September of 2014, and the service provided by Respondent included the auto pay option, and Complainant was enrolled in the FSN national plan. There has never been an issue with Complainant having sufficient funds in her account to pay her bill with Respondent through the auto pay feature. Tr. 19, 30, 35.

11. Complainant first experienced service outages in approximately the late summer of 2020; Complainant notified FSN, and FSN notified Verizon of the issues. Tr. 35, 37.

12. In approximately late July and August of 2020, Complainant reported service issues to FSN, and FSN notified Verizon of the issues. Tr. 37.

13. Verizon took approximately ten days to fix the telephone wire and address the problem in July or August of 2020. Tr. 37.

14. Verizon ultimately attempted to address ongoing service problems on December 20, 2020, by replacing equipment at or near the service address. Tr. 14, 37.

15. Complainant experienced numerous service outages from late summer to December of 2020, and she spoke with Brooke Moran, a supervisor at Full Service on a number of occasions. Tr. 13.

16. Complainant asked Brooke Moran to talk with her peers at Verizon to solve her service outage problem, however Ms. Moran said she could not do that and suggested that Complainant simply switch her carrier to Verizon. Tr. 17

17. On December 12, 2020, Complainant called and spoke with Ms. Moran after realizing she had a previous balance with Respondent even though she had the auto pay option. Complainant asked who requested that her auto pay be dropped, and Ms. Moran responded it was upper management. Tr. 18-19.

18. Complainant asked Ms. Moran to find out who in upper management had the authority to drop her auto pay feature, why the feature was terminated on Complainant's account and why she was not notified in advance. Complainant never received a response or a return call regarding Complainant's questions and concerns. Tr. 19-20.

19. Complainant called and spoke with Ms. Moran on December 14, 2020, with questions regarding the termination of her calling plan, and was advised that Ms. Moran would call her back by December 17, 2020. As of the hearing date, Complainant did not receive a return call. Tr. 17-18.

20. On numerous occasions, Complainant called Respondent between the business hours of 9:30 a.m. to 3:30 p.m., and no one was available to answer the calls, requiring Complainant to leave messages for Ms. Moran to call her back; however, other than calls regarding service outages, Complainant never received a return call. Tr. 21-22.

21. Complainant received a suspension notice from Respondent dated December 2, 2020, based upon a balance of approximately \$26.25, resulting from Respondent's termination of her auto pay feature. The notice advised Complainant her service would be suspended on December 9, 2020. Tr. 20-21.

22. Complainant also spoke with Chris Honeywell, executive Vice President of FSN, after the filing of the Complaint. Mr. Honeywell contradicted the information provided

to Complainant by Ms. Moran, regarding service outages and advised Complainant that her situation was elevated. Tr. 13.

23. Complainant asked Mr. Honeywell if the situation was elevated within Full Service or Verizon, and she received a very curt response that it was none of her business. Tr. 13-14.

24. When a service issue arises, FSN reports the issue to Verizon through a computer system portal, which includes an option to escalate the complaint, which can be accepted or rejected by Verizon. Tr. 37-38.

25. Once a service issue is reported to Verizon by FSN, Verizon addresses the issue or service outage. Tr. 38.

26. FSN reported a service problem to Verizon regarding Complainant's service on August 26, 2021, and an escalation request was made by FSN to Verizon and denied by Verizon. Tr. 39; Respondent Exhibit 6.

27. In response to Complainant's service issues, FSN reported the issues to Verizon and gave Complainant a credit for the days when Complainant was without service. Tr. 42; Respondent Exhibit 7.

28. Complainant received generous credits from FSN for all her days in which she experienced a service outage. Tr. 14.

29. Complainant was initially enrolled in Respondent's national plan at a cost of \$36.99 per month for basic telephone services. At the hearing, Complainant did not assert a complaint that she was improperly dropped from that national plan. Tr. 17, 42.

30. Respondent discontinued the national plan in January of 2021. Tr. 43.

31. The most comparable plan now available from Respondent is the nationwide calling plan, at a cost of \$59.99 a month, which includes call waiting and caller ID services. Tr. 43.

32. The nationwide calling plan rate in effect from 2015 to 2021 was part of a FSN tariff. Tr. 43; Respondent Exhibit 2.

33. The plan in which Complainant was enrolled was changed effective January 24, 2021. Tr. 43; Respondent Exhibit 2.

34. FSN provided notice to Complainant that her calling plan was being discontinued and that she would be placed on the nationwide calling plan at \$59.95 per month beginning with the February 2021 invoice. Tr. 44.

35. Complainant could eliminate her plan with FSN and receive her service directly from Verizon. Tr. 44.

36. At the hearing, Respondent's witness, Mr. Honeywell explained Respondent inadvertently failed to process Complainant's automatic payment for her bill that was due on November 24, 2020, resulting in a past due letter or suspension notice being sent to Complainant. Tr. 45.

37. Past due letters or suspension notices are automatically generated and sent to customers when a customer misses a payment. Tr. 45.

38. After Complainant notified Respondent that the suspension notice was sent even though Complainant had the auto-pay feature, Respondent did not charge Complainant any late fees or suspend her services. Tr. 45-46.

39. The auto pay error that occurred on one occasion with Complainant, was corrected by Respondent and did not happen again. Tr. 49

40. At the hearing, Respondent recommended that Ms. Babyak switch from Respondent to Verizon. Tr. 44-45.

41. Respondent's explanation as to why Respondent did not process Complainant's auto pay feature was "It was simply missed." "It was a bill processing error and while she alerted it to us – to it, we corrected it." Tr. 47.

42. No explanation was provided regarding any investigation to determine how the auto pay feature in place for approximately eight years, was simply missed. Tr. 46-48.

43. The national plan is no longer offered under Respondent's Commission approved tariff. Tr. 49.

44. Complainant testified she called customer service of Respondent during work hours and received a recorded message, and her calls were not returned. Tr. 7.

45. Respondent explained at the hearing that, during the COVID-19 pandemic in 2020 and 2021, Respondent occasionally used a system of addressing customer calls where the customer leaves a message, and the Respondent would return the calls primarily when employees were on their lunch breaks or when Respondent was experiencing staffing issues. Tr. 47-48.

46. Although Verizon maintenance issues are outside of the control of FSN, FSN did communicate Complainant's issues to Verizon. Tr. 49.

47. Respondent recommended that Complainant switch from Respondent to Verizon in order for Complainant to deal with Verizon directly in order to resolve service-related issues. Tr. 49-50.

48. Complainant objected to the customer service she received from Respondent, as Respondent would not identify who authorized the termination of her auto pay option and why. Tr. 18-19.

49. Respondent returned Complainant to auto pay status and adjusted the late payment charges that were applied to her account. Tr. 19.

50. Complainant testified that she made numerous requests for a customer service representative to call her back with no response. Tr. 22.

51. Complainant objected to the suspension notice that she received dated December 2, 2020, as she did not miss a payment nor did she receive a payment reminder notice. Tr. 20-21.

52. Complainant objected to the training Respondent provides to its customer services representatives, their attitude, that they do not return telephone calls and demonstrate no respect for their customers. Tr. 22-23,25.

DISCUSSION

On February 3, 2021, Complainant filed a Formal Complaint against Respondent. On May 30, 2021, Respondent, through counsel, requested a thirty-day extension to file a responsive pleading to the Formal Complaint. On March 31, 2021, a Secretarial Letter was issued extending the deadline to file a responsive pleading to the Formal Complaint until May 1, 2021.

On May 3, 2021, Full Service Network, LP filed an Answer and New Matter as well as Preliminary Objections to the Complaint filed by Kathleen C. Babyak requesting dismissal of the Complaint and filed its Answer and New Matter to the Complaint. On June 7, 2021, a motion judge assignment notice was entered, assigning this matter to the undersigned presiding officer.

In paragraph four of her Formal Complaint, Complainant avers:¹

1. Reliability problems with her utility service including repeated service outages from late summer 2020 to December 2020;
2. Harassment because she insisted that her repeated outages be investigated;
3. Dropping Complainant from the National Plan at a cost of \$36.99 a month and being forced to take a Nationwide Calling Plan at a cost of \$59.95 a month, despite no change in her calling area but being forced to take caller ID and call waiting and pay \$22.96 more each month;
4. Questioning why upper management ordered the dropping of auto pay on her account and why it was dropped without notifying Complainant;
5. Questioning why Complainant received a suspension notice after 15 years of perfect credit and the application of late fees; and
6. Allegations of poor customer service and employee attitudes, including failure to call back customer as promised, receiving a recording advising to call back in the middle of the workday, questioning late charges on bill and requesting an explanation regarding what it means, and identifying an “I don’t care attitude” of employees.

In its Answer and New Matter, Respondent responded to the factual averments regarding the service outages, as follows:²

FSN is a certificated Competitive Local Exchange Carrier, authorized by the ... Commission to provide local exchange telecommunications services to customers within the Verizon service areas in Pennsylvania. FSN is also a wholesale customer of Verizon and purchases the competitive services set forth in Verizon’s Price List and Product Guide at a wholesale discount and then resells them to FSN’s retail customers. FSN resells the competitive services *provided by Verizon* to the subject premises. As such, Verizon as the actual provider of Ms. Babyak’s telecommunication services, owns the utility poles and wires, and

¹ Paragraph number 4 of Complainant’s Complaint has been adopted in substantially the same wording and format with slight non-substantive modifications.

² Paragraph number 4 of the Respondent’s answer is excerpted in relevant part (footnotes omitted) (emphasis original).

Verizon is responsible for responding to service outages. FSN does not have access or permission to address a problem pertaining to Verizon's telephone poles or wires.

Based upon the evidence presented at the hearing, the issues related to service outages, calling plans, auto pay, suspension notice, and customer service will be addressed separately.

Service Outages

In her Complaint, Complainant alleged the existence of reliability problems with her utility service including repeated service outages from late summer 2020 to December 2020. At the hearing, Complainant testified that she first experienced service outages in approximately the late summer of 2020. In approximately late July and August of 2020, Complainant reported service issues to FSN.

Evidence at the hearing established that Respondent notified Verizon of the complaints and that it took Verizon approximately ten days to fix the telephone wire and address the initial problem. In addition, Verizon ultimately attempted to address ongoing problems on December 20, 2020, by replacing equipment at or near the service location.³

When a service issue arises, FSN reports the issue to Verizon through a computer system portal, which includes an option to escalate the complaint, that can be accepted or rejected by Verizon. Once a service issue is reported to Verizon by FSN, Verizon addresses the issue or service outage.⁴

³ Tr. 36-37.

⁴ Tr. 36-38.

According to Respondent, when Complainant reported service issues to FSN, Respondent notified Verizon of Ms. Babyak's reported concerns. In addition, FSN gave Ms. Babyak credit for the days she was out of service.⁵

Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the service outage described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The Complainant must establish her case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950)

Overall, the Complainant's testimony was organized, and Complainant was a credible witness. Generally, the Complainant alleges inadequate service due to service outages although the cause of the outages was not clearly established, and Complainant raised no claims against Verizon.

The burden of going forward with evidence may shift from one party to another during a proceeding, however the "burden of proof" never shifts. It always remains on the Complainant. *Replogle v. Pa. Elec. Co.*, 54 Pa. P.U.C. 528 (1980).

Complainant did not present any evidence challenging the adequacy of Respondent's notification of the service outages to Verizon or complaints regarding the adequacy of the response by Verizon.

Chris Honeywell, Executive Vice President of Full Service, testified there is no direct contact with Verizon that Full Service can use to expedite service responses. Once Respondent reports a service issue to Verizon, how Verizon addresses the issue is out of

⁵ Tr. 37-39.

Respondent's control.⁶ Although it is difficult to understand, no evidence was presented to rebut this position.

I conclude that the Complainant has failed to prove by a preponderance of the evidence that Respondent failed to provide adequate or reasonable service to Complainant related to the service outages experienced by Complainant.

The statute at 66 Pa.C.S. §1501 governs any allegations of unreasonable or inadequate service. Pursuant to 66 Pa.C.S. §1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co.*, 372 A.2d 1203 (Pa. Super. 1977); *Behrend v. Bell Tel. Co.*, 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. §1501 requires public utilities to provide reasonable and adequate, not perfect service.

No evidence was presented that established that Respondent was unreasonable in the reporting of the outages to Verizon or in the timeliness or manner in which the cause of the problems was determined or rectified by Verizon, or that the delays in responding to the outages were preventable. In addition, there was no evidence presented to establish that Respondent was responsible for investigating or correcting the cause of the outages once the issues were reported to Verizon.

Although Complainant experienced a number of outages, no complaints were raised relative to the service provided by Verizon or that Respondent was required to take further action regarding the outages once they were reported to Respondent or by Respondent to Verizon. Similarly, the Respondent provided testimony that it could not take additional measures to address service outages reported to Verizon unless an additional complaint is raised by the customer. I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent provided inadequate or unreasonable service related to the service outages identified in this proceeding.

⁶ Tr. 37-38.

Calling Plans

In her Formal Complaint, Complainant avers that despite no change in her calling area, Respondent dropped Complainant from the National Plan at a cost of \$36.99 a month, resulting in Complainant having to take a Nationwide Calling Plan at a cost of \$59.95 a month, and being required to take caller ID and call waiting at a cost of \$22.96 each month.

At the hearing, evidence was presented that Complainant was initially enrolled in Respondent's National Plan at a cost of \$36.99 per month for basic telephone services. Respondent discontinued the National Plan in January of 2021.⁷ The most comparable plan now available from Respondent is the Nationwide Calling Plan, at a cost of \$59.99 a month, which includes call waiting and caller ID services. The Nationwide Calling Plan rate in effect from 2015 to 2021 was part of a FSN tariff. The plan in which Complainant was enrolled was changed effective January 24, 2021. FSN provided notice to Complainant that her calling plan was being discontinued and that she would be placed on the Nationwide Calling Plan at \$59.95 per month beginning with the February 2021 invoice.⁸

Complainant did not present any evidence challenging the ability or appropriateness of Respondent to eliminate her original calling plan and transfer her to a different plan or of the adequacy or reasonableness of Respondent's notification of the change to Complainant's plan. In addition, at the hearing, Complainant stated, under the circumstances, she was not challenging the change in her plan.⁹

Accordingly, I conclude that the Complainant has failed to prove by a preponderance of the evidence that Respondent failed to provide adequate or reasonable service to Complainant related to the change in her calling plan or of the notice provided to Complainant of the change.

⁷ See *Full Service Network LP Revisions to Competitive Local Exchange Service Tariff*, Docket No. R-20203023436, Secretarial Letter (Feb. 11, 2021).

⁸ Tr. 42-44.

⁹ Tr. 17-18.

Auto Pay

Complainant has been a customer of Respondent since approximately September of 2014, and she has always been enrolled in Respondent's auto pay option. There was never an issue with Complainant having sufficient funds in her account to pay her bill with Respondent through the auto pay feature.

Complainant experienced numerous service outages from late summer to December of 2020, and she spoke with Brooke Moran, a supervisor at Full Service on a number of occasions. During this time Complainant made ongoing complaints to Brooke Moran of FSN to solve her service outage problem, and Ms. Moran suggested that Complainant simply switch her carrier to Verizon.

On December 12, 2020, Complainant called and spoke with Ms. Moran after realizing she had an unpaid balance with Respondent as her bill was not automatically paid when it became due even though she had the auto pay option. Complainant asked who requested that her auto pay be dropped, and Ms. Moran responded it was upper management.

Complainant learned she had been removed from the auto pay service when she received a suspension notice from Respondent dated December 2, 2020, based upon a balance of approximately \$26.25, resulting from Respondent's termination of Complainant's auto pay feature. The notice advised Complainant her service would be suspended on December 9, 2020.

Complainant explained that she believed her removal from auto pay and the resulting suspension notice dated December 2, 2020, was a form of harassment by Respondent based on her repeated complaints concerning the numerous and continuing service outages and her complaints concerning the poor customer service provided by Respondent.

Respondent explained, through testimony of Chris Honeywell, that no decision was made by upper management to discontinue Complainant's auto pay status, but that Respondent inadvertently failed to process Complainant's automatic payment for her bill that

was due on November 24, 2020, resulting in a past due letter or suspension notice being sent to Complainant. Mr. Honeywell testified “I’d recommend that Ms. Babyak consider switching to Verizon so she can deal with them directly in getting her service issues resolved.” “I think she’d have more success if she was their direct customer instead of having us stuck in the middle between herself and them.”¹⁰

Complainant testified that she was told by a customer service supervisor, Ms. Moran, that upper management ordered the dropping of auto pay on her account. Why the customer service representative made the statement was not established by the evidence. In addition, Ms. Moran was not presented as a witness to explain the issue or her statements to Complainant, and no customer service records, including records related to conversations between Complainant and Ms. Moran or Respondent were offered into evidence.¹¹

Chris Honeywell, Executive Vice President of Full Service, was the sole witness presented by Respondent. He testified he was familiar with the records associated with the Complaint. Mr. Honeywell testified no one from upper management terminated or directed that Complainant’s auto pay feature be terminated. He testified it was simply missed, as it was a bill processing error, and when Complainant alerted Respondent, the error was corrected by Respondent.¹²

When asked by Complainant at the hearing why Ms. Moran would have told her that upper management removed her from auto pay, Mr. Honeywell testified,

I think when you’re talking to Brooke and Brooke doesn’t have an answer for you or an answer that, you know, that you perceived that you want to hear, she’s trying to just refer to higher authority and say, you know, she personally didn’t do it and that, you know, it must’ve happened beyond her control.

¹⁰ Tr. 50.

¹¹ See *Duquesne Light Co. v Woodland Hills Sch. Dist.*, 700 A.2d 1038 (Pa. Cmwlth. 1997); *Gaskins v. Verizon Pa. Inc.*, Docket No., C-2010-2195549 (Opinion and Order entered Apr. 18, 2013).

¹² Tr. 47.

And she's not the one that had anything to do with the change, and I think that's what she was trying to, you know, say to you and you took that to believe that someone maliciously removed your autopay and no one – no one at Full-Service Network did that.^[13]

Mr. Honeywell continued, “There were a lot of things going on with your account. You had multiple trouble tickets. You're calling and complaining about, you know, various things. There's a lot of hands who were in your account and I think someone probably had just – it was missed.”¹⁴

When asked on cross examination by Complainant why she wasn't given that as an answer, Mr. Honeywell testified, “It's – I think that kind of explanation is above and beyond what Brooke had available for her to give you. That is not something she would be involved in.”¹⁵ Mr. Honeywell's explanation that a supervisor, Brooke Moran, could not have simply said she did not know or to refer Complainant to her supervisor or a higher authority, is inexplicable. Why Mr. Honeywell would speculate why Supervisor Moran provided what he considered erroneous information to Complainant, instead of producing records or testimony of Supervisor Moran is equally inexplicable.

As stated above, the Public Utility Code at 66 Pa. C.S. §1501 requires public utilities to provide reasonable and adequate, not perfect service.

Here, the evidence presented does establish that Respondent provided unreasonable or inadequate service in its failure to process the auto pay feature and failure to investigate and communicate to Complainant why the auto pay payment was not processed in November of 2020. After her numerous complaints to Respondent, her payment was not applied to her account through the auto pay process, and Respondent then provided her with a suspension notice. Complainant was told by FSN services the removal of Complainant from auto pay,

¹³ Tr. 59.

¹⁴ Tr. 59-60.

¹⁵ Tr. 60.

without advanced notice, was a decision made by upper management. The evidence established that the failure to process the one payment through autopay, the failure to investigate the issue and the manner in which the conduct was communicated to Complainant by a supervisor employed by Respondent, was unreasonable. Respondent was asked to explain who caused this to occur in upper management and why this occurred, and Ms. Moran failed or refused to provide a response to Complainant. In addition, Respondent provided no adequate reason to explain why this situation occurred, although Respondent provided testimony at the hearing that the unidentified cause was promptly rectified by Respondent and was not repeated. I conclude that the Complainant has established by a preponderance of the evidence that the Respondent provided inadequate or unreasonable service related to the failure to process the auto pay option in November of 2020, and the failure to investigate the issue and the manner in which the conduct was communicated to Complainant by a supervisor employed by Respondent, after the fact.

Suspension Notice

Although Complainant was enrolled in Respondent's automatic payment plan, Respondent did not process Complainant's automatic payment for her bill that was due on November 24, 2020, resulting in a suspension notice dated December 2, 2020, being sent to Complainant.¹⁶

Complainant objected to the suspension notice as she had a history of 15 years of perfect credit with Verizon and/or Respondent. Also, she had the auto pay feature and sufficient funds in her account and was not sent a payment reminder notice before being provided with a suspension notice from Respondent.

On cross examination, Complainant asked Mr. Honeywell why she did not get a reminder notice before getting her suspension notice dated December 2, 2020, and Mr. Honeywell responded that the December 2, 2020, notice was the first notice or reminder

¹⁶ See ALJ Exhibit 1.

notice provided by Respondent.¹⁷ The notice dated December 2, 2020, stated that service would be suspended on December 9, 2020. Respondent did not identify or provide its second notice or explain what a second or suspension notice provides.

Respondent explained that two different types of notices, reminder notices and suspension notices are automatically generated, through a computer program, and sent to customers when a payment is missed.¹⁸ After Complainant notified Respondent that the past due letter was sent to her, Respondent did not charge Complainant any late fees or suspend her services. In addition, the auto pay error that occurred on one occasion with Complainant was corrected by Respondent and did not happen again.

In addition, Respondent did not provide or identify any authority to support the validity of providing a long-established customer using auto pay with a notice that her telephone service would be suspended seven days from the date of the notice, provided by mail, resulting from an unpaid balance of \$26.25 caused by Respondent, through no fault of the Complainant, under the circumstances.

I conclude that the Complainant has established by a preponderance of the evidence that the Respondent provided inadequate or unreasonable service related to the suspension notice sent to Complainant, after Respondent failed to process Complainant's November 2020 bill through its auto pay program under the circumstances.

Customer Service

In her Complaint, Ms. Babyak made allegations of poor customer service and poor employee attitudes, including failure to answer and to return Complainant's calls, at times as promised, receiving recordings advising to call back in the middle of the workday, and requesting information and return calls, and identifying an "I don't care attitude" of employees.

¹⁷ Tr. 62-65.

¹⁸ Tr. 61.

Complainant called Respondent's customer service phone number during work hours and requested information and return calls but her calls were not returned. During the COVID-19 pandemic in 2020 and 2021, she would have to leave messages with Respondent, who did not return the calls. Obviously, effective communication between Complainant and Respondent is very important. In a situation where Respondent acknowledged that, although Verizon maintenance issues are outside of the control of FSN, customer service appears to be the only service that Full Service was required to provide to Complainant.

Complainant also objected to the customer service she received from Respondent, as Respondent would not identify who authorized the termination of her auto pay option and why, which was identified above. Complainant also testified that she made requests for representatives of Respondent to call her back about this issue as well but received no response.

Complainant also objected to the training Respondent provides to its customer services representatives, their attitude, that they do not return telephone calls and demonstrate no respect for their customers.

Complainant is enrolled in Respondent's automatic payment plan, yet Respondent failed to process her payment for her bill due on November 24, 2020. Complainant had numerous communications about why she was removed from autopay and complained about the letter/suspension notice she received. When Complainant asked why this occurred, she was told by a Company representative that the decision was made by upper management. Complainant, despite her requests, was never told who authorized that decision, why this occurred, or otherwise provided an adequate explanation as to what had occurred and why. The issue addressed in this Section concerns the fact that to date, no adequate explanation was provided to Complainant as to why the error occurred, how it was corrected or why she was told by a Company representative that she was removed from the program by upper management, and no calls were returned to Complainant by someone in authority after each request was made to Supervisor Moran.

With regard to the complaints that Complainant would receive recorded messages that were not returned, Respondent explained that, during the COVID-19 pandemic, Respondent occasionally used a system of addressing customer calls where the customer leaves a message and the Respondent would return the calls primarily when employees were on their lunch breaks or when Respondent was experiencing staffing issues. Although Respondents explanation is reasonable, Complainant provided credible testimony that this problem was ongoing, and no evidence was presented to rebut Complainants testimony that the calls were not returned, nor did Respondent provide a reasonable explanation for why the calls were not returned.

At the hearing, Mr. Honeywell minimized Complainant’s concerns, testifying that Complainant asserted that a call was not returned by Respondent after an incident when Respondent received a recorded message from Complainant.¹⁹ Mr. Honeywell testified that Respondent took recorded messages and returned the calls during the Covid-19 pandemic on “a handful of occasions.”²⁰ No records or other evidence was provided to support Mr. Honeywell’s testimony.

Regarding Ms. Babyak’s complaint about the attitude of customer service representatives, Mr. Honeywell testified that “Ms. Babyak has called repeatedly about these issues discussed above, and I think that this concern of hers reflects that she’s just not agreeing with the answers she receives and therefore, she doesn’t like them and blames the person who’s giving them to her.”²¹ Again, Mr. Honeywell cites no factual support for his conclusion and failed to produce any customer service records to corroborate his testimony. His conclusion is also inconsistent with his testimony regarding Ms. Moran’s statements to Complainant regarding termination of the auto pay feature by upper management. Complainant provided credible testimony concerning her interaction with Supervisor Moran and a comment made by Mr. Honeywell, which he denied.

¹⁹ Tr. 47.

²⁰ Tr. 48.

²¹ Tr. 48.

Section 1501 of the Public Utility Code mandates that public utilities, such as Verizon, shall render reasonable service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay....^[22]

“Service” is broadly defined in Section 102 of the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities,...in the performance of their duties under this part to their patrons, employees, other public utilities, and the public....^[23]

Given this definition of “service” it is clear that Complainant’s allegations regarding Respondent’s representations that Complainant was dropped from the auto pay program by upper management, the failure or refusal to follow up on her complaints and return or respond to Complainants calls, the failure to return Complainant’s calls and the comment by Mr. Honeywell to Complainant regarding whether service requests were elevated, constitute part of the service Respondent provided to Complainant.²⁴

Complainant was not provided with accurate information by Respondent and despite her requests, was not provided with the information that she reasonably requested or

²² 66 Pa.C.S. § 1501.

²³ 66 Pa. C.S. § 102.

²⁴ *Meder v. The Peoples Natural Gas Co.*, Docket No. F-0162064 (Opinion and Order entered Aug. 21, 2006).

provided an opportunity to speak with someone with additional authority to address her concerns.

Ms. Moran advised Complainant that her auto pay was terminated by upper management, and the explanation provided by Mr. Honeywell was inadequate, difficult to believe and not corroborated by any evidence despite the fact that Mr. Honeywell was familiar with and reviewed Respondent's records regarding this proceeding. In addition, Respondent presented no evidence as to why its representative supervisor failed to act upon Complainant's requests for information.

Furthermore, Respondent provided the testimony of only one witness, who was not involved with substantial initial contacts between Complainant and Respondent and had little firsthand knowledge regarding Complainant's contacts with Respondent regarding this proceeding.

The record supports the conclusion that Respondent's customer service responses to Complainant's requests to speak with someone with additional authority or to follow up regarding her concerns constitutes a failure to provide reasonable or adequate customer service. The response by the Respondent in informing Complainant of the reasons for the failure and providing the information requested by Complainant was never adequately explained by Respondent.

In this case, Respondent was obligated to comply with the provisions of 52 Pa. Code §§ 56.151-56.152 in its dealings with Complainant and addressing her complaints. However, Respondent's representatives provided Complainant with inaccurate and erroneous information or information that Respondent did not explain or confirm despite Complainant's requests, as well as a failure to return numerous calls and record to requests from Complainant.

In the absence of specific regulations addressing the conduct of public utility customer service representatives, 66 Pa.C.S. §1501 governs a public utility's obligation to provide reasonable service to its customers. In *Gallagher v. Bell Telephone Co. of Pennsylvania*,

Docket No. F-8958314, (Order entered Sept. 23, 2007), the Commission held that a public utility had violated 66 Pa.C.S. §1501 by allowing its customer service employees to refuse to identify themselves to a complainant, by calling the complainant a rude and filthy name and by hanging up on the Complainant.

In *Dezort v. Verizon Pennsylvania Inc.*, Docket No. C-2009-209958 (Opinion and Order entered May 7, 2010), the Administrative Law Judge (ALJ) considered a situation where Complainant was without telephone service for approximately six days and could not obtain a service appointment scheduled for a period of five days. A Verizon service technician was to arrive at Complainant's home between 8 a.m. and 8 p.m. on the day scheduled for service, and Complainant called the technician at 6 p.m. to inquire as to the status of the appointment, when the technician laughed at him. A technician arrived at Complainant's home the following day and advised Complainant he could not fix the problem. A cable technician fixed the problem the following day. Complainant alleged that Verizon personnel, through various calls, laughed at him, badgered him, and did not treat him properly. The ALJ found Complainant was not provided adequate and reasonable service regarding the telephone calls he made to Verizon. The ALJ concluded that the issues complained about were of a serious nature and assessed a civil penalty.

Based upon the *Gallagher* and *Dezort* decisions, the representative of Respondent would have to behave in an unreasonable manner toward the Complainant for their conduct to constitute a violation of 66 Pa.C.S. §1501. I find the conduct of Mr. Honeywell and Supervisor Moran to be unreasonable as a public utility's customer service representative certainly should have the ability to answer and return telephone calls from customers and provide a customer with accurate information regarding the reason for an unsolicited change in the payment method of a customer's account, and reasonable and timely responses to a customer in addressing her various concerns. Otherwise, the representative should have agreed to transfer the customer to someone with additional authority or have such a person follow-up with the customer when available, in order to permit the customer to obtain the requested information. The information provided by the representative was either false or inaccurate, and yet nothing was done to communicate more accurate information to the customer. At a minimum, the requests for information made by

Complainant warranted further investigation or explanation by the customer service representative or her supervisor. Furthermore, Mr. Honeywell's comment to Complainant that "the information" he reported about service outages was none of her business was inexcusable.

Such conduct by the customer service representative does render the representatives conduct unreasonable in violation of 66 Pa.C.S. § 1501, under the circumstances. The Complainant has proven, by a preponderance of the evidence, that the Respondent violated the Public Utility Code by allowing its customer service representative to engage in unreasonable conduct in dealing with the Complainant. I conclude that the representatives conduct in dealing with the Complainant did violate 66 Pa.C.S. § 1501.

Civil Penalties

Section 3301 of the Public Utility Code authorizes the Commission to assess a civil penalty for violations of the Code, regulations, or orders of the Commission.²⁵ The Commission's policy statement in Section 69.1201(c)²⁶ of the regulations provides the guidance factors to be weighed in determining whether a civil penalty is appropriate:

The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

²⁵ 66 Pa.C.S. § 3301.

²⁶ 52 Pa. Code § 69.1201(c).

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.^[27]

This case raises significant issues of customer service.²⁸ Any time a customer contacts a utility about the termination or change to her service, receives a suspension notice and is unable to receive accurate, complete, and proficient service a prompt investigation and communication with the customer is warranted. It is incumbent upon the company to treat

²⁷ 52 Pa. Code § 69.1201(c).

²⁸ 52 Pa. Code § 69.1201(c)(1).

customers with respect, promptly return a customer's calls and to promptly investigate and respond to a customer's concerns. The inaction and delay in acting upon Complainant's requests and the failure to treat Complaint in a proficient manner in this case is unreasonable.²⁹

Auto Pay Issue and Information Provided to Complainant

The factors set forth above are addressed as follows:

1) Whether the conduct at issue was of a serious nature.

This case raises a significant issue of customer service.³⁰ Here, Complainant, is an 80-year-old customer of Verizon and Respondent, who always paid her bill timely and enrolled in the auto pay program upon accepting Respondents invitation to receive service from Respondent. She received no notice that her auto pay was or would be cancelled. In addition, she received confusing or inaccurate information as to why this was done, and Respondent failed or refused to respond to her requests for information as to how and why the issue arose. The conduct at issue was of a serious nature and therefore warrants a higher penalty.

2) Whether the resulting consequences of the conduct at issue were of a serious nature.

While the conduct is of a serious nature, the resulting consequences did not involve personal injury or property damage. Thus, this factor does not warrant a higher penalty.

3) Whether the conduct at issue was deemed intentional or negligent.

Based upon the representations of Ms. Moran, a supervisor of Respondent, that Complainant was removed from the auto pay feature by upper management, during a period where Complainant had repeated service outages over a lengthy period of time and regularly

²⁹ 52 Pa. Code § 69.1201(c)(3).

³⁰ 52 Pa. Code § 69.1201(c)(1).

complained to Respondent, I conclude the conduct by Respondent was intentional, which supports a higher penalty.

4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.

No credible or substantial evidence was presented to indicate that efforts to modify internal practices and procedures to address the conduct at issue and to prevent similar future conduct were established. This factor does not impact the amount warranted.

5) The number of customers affected and the duration of the violation.

Complainant is the only known customer known to be affected.

6) The compliance history of the regulated entity which committed the violation.

No evidence was presented as to this factor.

7) Whether the regulated entity cooperated with the Commission's investigation.

While there has been no formal Commission investigation relevant to this event, the conduct of the Company at the hearing based upon the dismissive testimony of Mr. Honeywell and the failure to present Supervisor Moran to testify and the customer service records in this proceeding suggest that the evidence was far more supportive of a finding of bad faith than a finding of good faith. Respondent failed to present any admissible testimony or documents of any investigation, inspection, or communication during the period of time that Ms. Babyak was raising her complaints, prior to the filing of the formal complaint. Such records are routine because they contain information which may be useful to the customers bringing complaints, for whom the information is not easily accessible otherwise. These documents contain information, which is often used to clarify certain points, which are raised in a case, and

to establish timelines with an accuracy that a customer often lacks. In addition, there are unanswered questions regarding the actions and knowledge of Supervisor Brooke Moran, however she was not presented for testimony despite her significant involvement to the claims, and no reason was provided for her absence or unavailability.

In addition, no customer service records were provided to Complainant or the undersigned presiding officer prior to the hearing nor presented at the hearing. Respondent's failure to provide those records and to have those exhibits properly sponsored weighs against a finding of cooperation. The lack of cooperation of the Company weighs in favor of a higher civil penalty.

8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

The size of the Respondent is not a factor in this proceeding to warrant an effect on the amount of a civil penalty.

9) Past Commission decisions in similar situations.

No evidence was presented regarding prior Commission assessments of civil penalties against Respondent for failing to provide adequate customer service.³¹

In *Dezort*, the Commission concluded that the issues complained of were of a serious nature and assessed a civil penalty of \$500 for respondent's conduct.

³¹ 52 Pa. Code § 69.1201(c)(6). *E.g., Olubanjo v. Verizon Pa. Inc.*, Docket No. C-2009-2123326 (Opinion and Order entered Mar. 18, 2011) (the Commission assessed a \$250 penalty for failure to timely respond to a request to terminate service); *Dezort v. Verizon Pa. Inc.*, Docket No. C-2009-2099508 (Opinion and Order entered May 7, 2010) (the Commission assessed a \$500 penalty for failing to timely respond to a customer complaint regarding noise and static on a telephone line); *Kaufman v. Verizon*, Docket No. C-20055680 (Opinion and Order entered Nov. 19, 2008) (the Commission assessed a \$14,040 penalty for failure to provide reasonable service regarding the maintenance and repair of phone lines).

10) Other relevant factors.

No other factors have been raised that would impact the amount warranted.

The amount imposed for this violation is \$2,000, which is intended to remind the Company that this Complainant and consumer complainants are not adversaries but are, in fact, valued ratepayers to whom the Company owes reasonable, reliable, adequate, and safe service. 66 Pa.C.S. § 1501. This includes providing reasonable service as well as timely, accurate and consistent information to customers.

Suspension Notice

The factors set forth above are addressed as follows:

1) Whether the conduct at issue was of a serious nature.

This case raises a significant issue of customer service.³² Mailing a suspension notice to an 80-year-old customer on December 2, 2020, advising that her telephone service would be suspended on December 9, 2020, as a result of action by the Company and through no fault or action by the customer is a serious matter. The seriousness of the situation is further compounded by the failure of the Company to provide a reminder notice or additional time for the customer to dispute or address the substance of the notice, especially under the circumstances in this case. Here, Complainant is a long-term customer of Verizon and Respondent, who always paid her bill timely and enrolled in the auto pay program upon accepting Respondents invitation to receive service from Respondent. She received no notice that her auto pay was or would be cancelled, and she received a bill advising her that she had an unpaid balance, that resulted in the suspension notice. The conduct at issue was of a serious nature and therefore, a higher civil penalty is warranted.

³² 52 Pa. Code § 69.1201(c)(1).

2) Whether the resulting consequences of the conduct at issue were of a serious nature.

This factor does not impact the amount warranted.

3) Whether the conduct at issue was deemed intentional or negligent.

Based upon the testimony of Mr. Honeywell that the notice is automatically generated when a bill is outstanding and the representations of Ms. Moran, a supervisor of Respondent, that Complainant was removed from the auto pay feature by upper management, during a period where Complainant had repeated service outages over a lengthy period of time and regularly complained to Respondent, it is certainly foreseeable that termination of auto pay would result in an outstanding balance and the resulting suspension notice. I conclude the conduct by Respondent was intentional, which supports a higher penalty.

4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.

No credible or substantial evidence was presented to indicate that efforts to modify internal practices and procedures to address the conduct at issue and to prevent similar future conduct were established. This factor does not impact the amount warranted.

5) The number of customers affected and the duration of the violation.

Complainant is the only customer known to be affected.

6) The compliance history of the regulated entity which committed the violation.

No evidence was presented as to this factor.

7) Whether the regulated entity cooperated with the Commission's investigation.

While there has been no formal Commission investigation relevant to this event, the conduct of the Company at the hearing based upon the dismissive testimony of Mr. Honeywell and the failure of the company to provide any evidence of an investigation or adequate explanation of the actual notices, the substance of the notices and when they are utilized, records in this proceeding suggest that the evidence was far more supportive of a finding of bad faith than a finding of good faith. Respondent failed to present any documents of any investigation, inspection, or communication during the period of time that Ms. Babyak was raising her complaints, prior to the filing of the formal complaint. Such records are routine because they contain information which may be useful to the customers bringing complaints, for whom the information is not easily accessible otherwise. These documents contain information which is often used to clarify certain points which are raised in a case and to establish timelines with an accuracy that a customer often lacks.

No customer service records were provided to Complainant or the undersigned presiding officer prior to the hearing nor presented at the hearing. Respondent's failure to provide those records and to have those exhibits properly sponsored weighs against a finding of cooperation. The lack of cooperation of the Company weighs in favor of a higher civil penalty.

8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

The size of the Respondent is not a factor in this proceeding to warrant an effect on the amount of a civil penalty.

9) Past Commission decisions in similar situations.

No evidence was presented regarding prior Commission assessments of civil penalties against Respondent for failing to provide adequate customer service.³³

In *Dezort*, the Commission concluded that the issues complained of were of a serious nature and assessed a civil penalty of \$500 for respondent's conduct.

10) Other relevant factors.

No other factors have been raised that would impact the amount warranted.

The amount imposed for this violation is \$500, which is intended to remind the Company that this Complainant and all consumer complainants are not just adversaries but are, in fact, valued ratepayers to whom the Company owes reasonable, reliable, adequate, and safe service. 66 Pa.C.S. § 1501. This includes providing reasonable service as well as timely, accurate and consistent information to customers.

Customer Service and Failure of Respondents Representatives to Contact Complainant

With regard to the failure to have a customer service representative return messages to Complainant on a number of occasions, the failure of Supervisor Moran to investigate and appropriately respond to Complainant's concerns and the failure to refer the complaints to someone in authority, under the circumstances, and the dismissive comment made to Complainant by Mr. Honeywell, given the service provided to Complainant over a substantial

³³ 52 Pa. Code § 69.1201(c)(6). *E.g., Olubanjo v. Verizon Pa. Inc.*, Docket No. C-2009-2123326 (Opinion and Order entered Mar. 18, 2011) (the Commission assessed a \$250 penalty for failure to timely respond to a request to terminate service); *Dezort v. Verizon Pa. Inc.*, Docket No. C-2009-2099508 (Opinion and Order entered May 7, 2010) (the Commission assessed a \$500 penalty for failing to timely respond to a customer complaint regarding noise and static on a telephone line); *Kaufman v. Verizon*, Docket No. C-20055680 (Opinion and Order entered Nov. 19, 2008) (the Commission assessed a \$14,040 penalty for failure to provide reasonable service regarding the maintenance and repair of phone lines).

period of time and after several requests were made by Complainant, this conduct by Respondent also raises a significant issue of customer service.

1) Whether the conduct at issue was of a serious nature.

The refusal or failure of Respondent to answer and return calls, to investigate and provide accurate information in response to Complainants concerns to have a person in authority investigate, contact, respond to Complainant, and to communicate with Complainant in an honest and proficient manner, under the circumstances, is inexcusable. The conduct at issue was of a serious nature and therefore, a higher civil penalty is warranted.

2) Whether the resulting consequences of the conduct at issue were of a serious nature.

This factor does not impact the amount warranted.

3) Whether the conduct at issue was deemed intentional or negligent.

The conduct in this proceeding and the repeated nature of the conduct indicates that the conduct is deemed intentional and may result in a higher penalty. This is supported by the testimony of Mr. Honeywell and his testimony regarding why false or inaccurate information was provided to Complainant. Customer service representatives should be trained to provide customer service regarding simple matters such as communicating a customer's request to address reasons for actions by a Company or to arrange for a customer to speak with a manager or other person in authority. A reasonable conclusion is that the Respondent's conduct was intentional, which supports a higher penalty.

4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future.

This factor does not impact the amount warranted.

5) The number of customers affected and the duration of the violation.

Complainant is the only customer known to be affected and will not increase the level of the penalty.

6) The compliance history of the regulated entity which committed the violation.

No evidence was presented as to this factor.

7) Whether the regulated entity cooperated with the Commission's investigation.

As previously stated, the behavior of the Company at the hearing was far more supportive of a finding of bad faith than a finding of good faith. Respondent failed to present any admissible testimony or documents of any communication with Complainant prior to the filing of the formal complaint and no Company records whatsoever. Respondent's failure to provide those records and to have those exhibits properly sponsored weighs against a finding of cooperation. The lack of cooperation of the Company weighs in favor of a higher civil penalty. In addition, the failure to separate with Complainant in a timely, honest, and proficient manner is inexcusable.

8) The amount of the civil penalty or fine necessary to deter future violations.

This factor does not impact the amount warranted.

9) Past Commission decisions in similar situations.

No evidence was presented to determine the effect on the assessment of a civil penalty in this proceeding.

The Commission, in *Dezort*, concluded that the issues complained of were of a serious nature and assessed a civil penalty of \$500 for Verizon's failure to correct the telephone service problem and for the conduct of Verizon personnel during the telephone calls made by complainant in which he was not treated properly.

10) Other relevant factors.

No other factors have been raised that would impact the amount warranted.

For all of the reasons set forth herein, the amount imposed for this violation is \$2,000. This amount is also sufficient to provide a deterrent effect against similar violations of Section 1501 and reflects the magnitude of the violations presented with regard to this issue.

Accordingly, a total civil penalty will be assessed against Respondent, as itemized above, in the sum of \$4,500.

CONCLUSIONS OF LAW

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

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

4. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990). A preponderance of evidence is

that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950).

5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

7. Complainant has sustained her burden of proof regarding the issues related to auto pay, the suspension notice and customer service issues alleged. 66 Pa.C.S. § 332(a).

8. The Respondent, through its customer service representatives, provided Complainant with confusing, incomplete, and inconsistent, information, which constitutes inadequate service. 66 Pa.C.S. § 1501.

9. The Respondent through its representatives, provided Complaint with a suspension notice, providing her service could be suspended 9 days from the mailing date even though Complainant did not fail to make a payment and through no fault of Complainant, constitutes inadequate service. 66 Pa.C.S. § 1501.

10. The Respondent, through its customer service representatives and managers failed to properly, professionally, timely and adequately communicate with Complainant despite repeated requests by Complainant regarding a requested investigation and response to her complaints, which constitutes inadequate service. 66 Pa.C.S. § 1501.

11. It is just, reasonable and in the public interest that Respondent should be assessed a civil penalty in the amount of \$2,000 for the violation of Section 1501 of the Public Utility Code through its customer service representatives and technicians, by failing to process the auto pay and providing Complainant with confusing, inconsistent, and misleading information related to the auto pay issue under the circumstances. 66 Pa.C.S. § 3301.

12. It is just, reasonable and in the public interest that Respondent should be assessed a civil penalty in the additional amount of \$500 for the violation of Section 1501 of the Public Utility Code, through its customer service representatives, and/or managers by providing Complainant with a nine-day suspension notice by mail, despite repeated requests by Complainant regarding an investigation, under the circumstances. 66 Pa.C.S. § 3301.

13. It is just, reasonable and in the public interest that Respondent should be assessed a civil penalty in the amount of \$2,000 for the violation of Section 1501 of the Public Utility Code through its customer service representatives and managers failure to properly, professionally, timely and adequately communicate with Complainant despite repeated requests by Complainant requests to investigate and respond to her Complaints, under the circumstances. 66 Pa.C.S. § 3301.

14. Under certain circumstances, a trier of fact may draw an adverse inference when a party fails to present essential evidence within its exclusive control. *Duquesne Light Company v. Woodland Hills Sch. Dist.*, 700 A.2d 1038 (Pa. Cmwlth.1997); *Gaskins v. Verizon Pa. Inc.*, Docket No. C-2010-2195549 (Opinion and Order entered Apr. 18, 2013).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kathleen C. Babyak at Kathleen C. Babyak v. Full Service Network, LP at Docket No. C-2021-3024569, is sustained insofar as it seeks a finding of unreasonable or inadequate service through its customer service representatives and/or managers by failing to process the autopay feature and failing to properly, adequately, timely and professionally communicate with Complainant despite repeated requests by Complainant regarding an investigation, under the circumstances, related to the auto pay suspension notice and customer service issues called by Complainant.

2. That pursuant to Sections 3301 and 3315 of the Public Utility Code, 66 Pa.C.S. §§ 3301 and 3315, within thirty (30) days of the date of entry of the Commission's Final Order, Full Service Network, LP shall pay a total of \$4,500 by submitting a certified check or money order payable to the Commonwealth of Pennsylvania to the following address:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

3. That Full Service Network, LP shall cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101–3316, and the regulations of the Public Utility Commission, 52 Pa. Code §§ 1.1–1065.

4. That a copy of this Initial Decision shall be sent to the Bureau of Investigation and Enforcement.

