

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Kathleen C. Babyak
v.
Full Service Network, L.P.

Public Meeting held August 3, 2023
3024569-ALJ
Docket No. C-2021-3024569

MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

The case before us today concerns a formal Complaint filed by Kathleen C. Babyak (Complainant) against Full Service Network (FSN), a certificated competitive local exchange carrier that is authorized to provide local exchange telecommunications services to customers within Verizon Pennsylvania, Inc. and Verizon North Inc.'s (Verizon) service areas in Pennsylvania.

The Complainant raised concerns with multiple instances of service interruptions and reliability problems. She also questioned the Respondent's customer service adequacy, including FSN's issuance of a service suspension notice to the Complainant for a single nonpayment which, in fact, was caused by FSN removing Auto-Pay from the Complainant's account. The Complainant also alleged numerous other customer service violations by FSN, including that FSN failed to investigate the Autopay removal, the unsatisfactory manner in which FSN's supervisor communicated with the Complainant about that conduct, FSN's provision of inaccurate and erroneous information to the Complainant, FSN's failure to explain or confirm information upon the Complainant's requests, FSN's failure to return numerous phone calls from the Complainant, and its failure to record the Complainant's requests.

I move today to remand the matter to the Office of Administrative Law Judge so that Verizon can be joined as an indispensable party given that FSN provided service to the Complainant using Verizon's leased network and the Complainant's averments regarding service outages can be properly addressed.

An indispensable party is "one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction." Columbia Gas Transmission Corp. v. Diamond Fuel Co., 464 Pa. 377, 379 (Pa. 1975). Failure to join an indispensable party goes to the court's jurisdiction and, if not raised by the parties, should be raised *sua sponte*. Posel v. Redevelopment Authority of Philadelphia, 72 Pa. Commw. 115, 121 (Pa. Cmwlth 1983). The Pennsylvania Supreme Court has established that "the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party ... In order to make the analysis, however, one must refer to the nature of the claim and the relief sought." Cry, Inc. v. Mill Service, Inc., 536 Pa. 462, 468-469 (Pa. 1994).¹

¹ The test for determining indispensability involves "at least" the following considerations: 1. Do absent parties have a right or interest related to the claim? 2. If so, what is the nature of that right or interest? 3. Is that right or interest

I note in particular, that in her Complaint, Ms. Babyak stated in the section regarding relief requested that she wants “Full Service to work with Verizon to solve my service outage problems.” Ms. Babyak also referenced Verizon multiple times in her detailed explanation of her Complaint in an attachment. FSN also mentioned Verizon multiple times in its Answer and New Matter filed in response to Ms. Babyak’s Complaint. Finally, Verizon was referenced multiple times during the hearing. Tr. 13, 16, 23, 25, 30, 36-42, 49, 56. In particular, FSN submitted a screen shot of the Verizon portal as an exhibit. FSN Exh. No. 5. Therefore, this matter will be remanded so that Verizon can be joined as an indispensable party with regard to the averments pertaining to service outages.

A remand of this matter will also allow for a further explanation regarding any civil penalties imposed for violations not related to service outages. As part of the remand, the ALJ should provide a detailed explanation regarding how any civil penalties ultimately levied are consistent with Section 3301 of the Public Utility Code.²

I believe that Verizon should be interpleaded as an indispensable party to this proceeding in order to address the service outages, particularly because multiple service interruptions occurred as discrete events from summer to December of 2020.

THEREFORE, I move that:

1. This matter be remanded to the Office of Administrative Law Judge for the conduct of further proceedings as necessary to interplead Verizon Pennsylvania, Inc. and Verizon North, Inc. (Verizon) as indispensable parties; and
2. In the Initial Decision on Remand, the Office of Administrative Law Judge shall provide further explanation regarding how any civil penalties ultimately levied are consistent with Section 3301 of the Public Utility Code.
3. That the Office of Special Assistants shall prepare an Opinion and Order consistent with this Motion.

August 3, 2023
DATE


Gladys Brown Dutricuille, Chairman

essential to the merits of the issue? 4. Can justice be afforded without violating the due process rights of absent parties? Mechanicsburg Area School District v. Kline, 494 Pa. 476, 481 (Pa. 1981).

² Section 3301 provides, in pertinent part, that “if any public utility ... shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited.... such public utility, person or corporation for such violation, omission, failure, neglect or refusal, shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000.” 66 Pa. C.S. § 3301. When assessing an appropriate civil penalty, the Commission applies a ten-factor test set forth in our Policy Statement at 52 Pa. Code § 69.1201 and drawn from a prior Commission Order in *Rosi v. Bell-Atlantic, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000).