

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

Public Meeting held April 4, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr., Statement

Richard Valentino

C-2023-3041051

v.

Verizon Pennsylvania LLC

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on January 17, 2024, in the above-captioned proceeding. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the Initial Decision, consistent with this Opinion and Order.

History of the Proceeding

On June 1, 2023, Richard Valentino (Mr. Valentino or Complainant) filed a Formal Complaint with the Commission against Verizon Pennsylvania LLC (Verizon) in which he alleged ongoing issues with reliability, safety or quality problems, and averred that service for both telephone and Digital Subscriber Line (DSL) are unreliable due to dropped communications from heavy static. The Complainant's requested relief is that the Commission issue an order directing Verizon to repair or replace his telephone and internet lines to his residence and improve reliability.

On June 21, 2023, Verizon filed the Answer in which it admitted it provides telephone service and retail DSL internet service at the service address, in the name of Kathleen Valentino but denied the allegations in the Formal Complaint, asserting that it: (1) had investigated the allegations; (2) offered a direct dial number to the Complainant to contact a representative; (3) applied Out of Service credits to Complainant's account; and (4) installed a signal booster operating over the DSL service. In addition, Verizon averred that it replaced the multiplexer in the remote terminal on June 7, 2023.¹

On August 3, 2023, the Office of Administrative Law Judge (OALJ) issued an Initial Telephone Hearing Notice, which scheduled the Initial Call-In Telephonic Hearing for September 27, 2023. On August 3, 2023, the presiding officer issued a Prehearing Order which outlined procedural matters to the Parties, that, *inter alia*, included the procedure to request a continuance or reschedule a hearing.

¹ A remote terminal is defined in 66 Pa. C.S. § 3012 as a structure located outside of a central office which houses electronic equipment, and which provides transport for telecommunications services to and from a central office.

On August 21, 2023, Verizon filed and served a Motion for Continuance, in which Verizon requested the initial hearing be rescheduled. Verizon indicated Complainant had no objection to the continuance. After email discussions between the Parties, the OALJ rescheduled the Initial Call-In Telephonic Hearing for September 20, 2023.

On September 20, 2023, the presiding officer convened the Parties by telephone and conducted an initial hearing. Mr. Valentino appeared pro se and testified on his own behalf. Mr. Valentino offered one exhibit, Complainant Exhibit A. Verizon was represented by Suzan Paiva, Esquire and presented the testimony of two witnesses and offered three exhibits, Verizon Exhibits 1, 2 and 3. All of the exhibits were admitted into the record.

On October 19, 2023, the ALJ closed the record via an Interim Order.

On January 17, 2024, the ALJ issued an Initial Decision sustaining the Complaint on the grounds that Mr. Valentino successfully proved that Verizon failed to provide reasonable, adequate and reliable telephone customer service by providing available and reliable Digital Subscriber Line internet and telephone service as required by the Code but did not impose a civil penalty. The ALJ directed Verizon to return to the service address and attempt to resolve the telephone issues within thirty (30) days, to create a report of the actions taken, and to provide a copy of the report to the Commission's Bureau of Technical Utility Services.

Discussion

A. Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 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, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always

remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Section 1501 of the Code imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities.² This provision of the Code specifies that every public utility:

shall furnish and maintain adequate, efficient and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service or facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.³

The term “service” is “used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied ... by public utilities ... in the performance of their duties under [the Public Utility Code.]”⁴

Whenever the Commission, after reasonable notice and hearing upon complaint, finds the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or otherwise in violation of the Code, the Commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as

² 66 Pa. C.S. § 1501.

³ 66 Pa. C.S. § 1501.

⁴ 66 Pa. C.S. § 102.

shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.⁵

Pursuant to 66 Pa. C.S. § 3019(b), the Commission has the following powers and duties relative to its regulation of telecommunications carriers and interexchange telecommunications carriers, including the power to; address the safety, adequacy, reliability and privacy of telecommunications services and the ordering, installation, suspension, termination and restoration of any telecommunications service; and establish requirements necessary to ensure the protection of customers.

To the extent that issues of installation, quality, adequacy, reliability, safety and privacy of jurisdictional public utility telecommunications services are implicated – whether those are price regulated or not – and whether the associated facilities of a regulated public utility may be involved for the adequate, safe and reliable provision of such services, the Commission is statutorily obliged to maintain the appropriate degree of interest and regulatory oversight. *See generally* 66 Pa. C.S. §§ 102 and 3019(b)(2).⁶

Section 63.56(a) of the Commission’s regulations, 52 Pa. Code § 63.56(a), states a public telephone utility must “utilize measuring devices, methods and practices generally recognized and accepted by the communications industry to obtain or to allow the calculation of the service objectives” detailed in the Commission’s telephone service regulations. On the subject of transmission requirements and standards, 52 Pa. Code § 63.63 provides:

(a) A public utility shall furnish, operate and maintain facilities adequate to provide acceptable transmission of

⁵ 66 Pa. C.S. § 1505(a).

⁶ *Daskalakis v. Verizon Pa., Inc.*, Docket No. C-2010-2172222, Motion of Commissioner James H. Cawley, March 17, 2011 (Opinion and Order entered April 4, 2011).

communications. Transmission shall be at adequate volume levels and free of excessive distortion, noise and cross-talk.

(b) The transmission standards shall be based upon the use of telephone sets connected to a 48-Volt dial central office, measured at a frequency of 1000 Hertz (Hz).

(c) A telephone line terminating at a customer's premises shall have a loop resistance not exceeding the operating design of the associated central office equipment.

(d) Overall transmission loss on a customer loop shall not exceed 15 decibels.

(Emphasis added).

B. ALJ's Initial Decision

The ALJ made forty Findings of Fact and reached five Conclusions of Law. I.D. at 4-5, 6-7. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implications.

The ALJ noted that the Complainant has experienced consistent but periodic trouble with his telephone service. Specifically, he had trouble with his ability to make/receive telephone calls, maintain a telephone call without heavy static and/or access the internet through the telephone line. I.D. at 14. At the hearing, Verizon stated that it had done everything it could think of to address the issues. *Id.* Further, it did not argue that Mr. Valentino was misrepresenting the service, rather it asserted that it could not find any flaws in its service or facilities, or in the equipment within the service address when it investigates the complaints or visits the service address. *Id.* The ALJ found the Complainant's testimony that he was experiencing intermittent interruptions was credible.

Furthermore, the ALJ found that the Complainant testified credibly about the problems he experienced when attempting to use his telephone or connect to the internet through his telephone line. *Id.* Verizon did not challenge the Complainant's representation but denied that he experienced dropped calls, experienced static or any other type of unreliable service. *Id.* In addition, Verizon acknowledged it replaced its equipment associated with the Complainant's line and intends to install new equipment in December 2023, out of an abundance of caution. *Id.* The ALJ found that Mr. Valentino proved he experiences unreliable service over his telephone line, in the form of static, dropped calls and a concomitant loss of internet service when the telephone service goes down. *Id.* Therefore, Verizon failed to sufficiently rebut the Complainant's uncontroverted testimony about the existence of service issues. *Id.*

The ALJ noted that Verizon offered no solutions, no suggested solutions or even recommendations of actions the Complainant can take that might improve his access to reliable telephone and DSL internet service. *Id.* However, the ALJ found that Verizon did prove that it provided Mr. Valentino with reasonable and adequate customer service in its handling of the calls and complaints from Mr. Valentino as it provided evidence that proved Verizon took the calls it received from the Complainant seriously and responded reasonably quickly. I.D. at 14-15.

The ALJ noted that the problem with the telephone service remains and must be rectified. *Id.* Specifically, the ALJ stated that there were too many instances between June and September of 2023 when the Complainant lost telephone service. *Id.* The ALJ rejected the possibility of issuing a civil penalty, because a civil penalty would not provide Complainant with what is critical in a modern residence – reliable and consistent telephone service. *Id.* Further, any failure to provide reliable and consistent telephone service will result in the loss of reliable and consistent DSL. *Id.* Thus, the ALJ noted that the hope would be that correcting the problem with the telephone service will improve the DSL service. *Id.*

The ALJ stated that Verizon needed to return to the service address and locate the source and/or cause of the static and dropped calls. *Id.* In addition, the ALJ, *inter alia*, ordered Verizon to provide a technical report to the Bureau of Technical Utility Services within 60 days from the date of the Initial Decision, which report should outline the actions taken to ascertain the cause of the difficulties and the result of attempts to solve the problem. *Id.*

C. Disposition

We note that any argument or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

On March 18, 2024, Verizon filed its report outlining the actions taken following the September 2023 evidentiary hearing and the issuance of the January 17, 2024 Initial Decision. Notably, while Verizon described its actions related to Mr. Valentino's internet/DSL complaints, the report does not appear to address Mr. Valentino's telephone complaints.

If Verizon has already addressed the telephone issues but inadvertently omitted its actions in the March 18, 2024 report, then Verizon is directed to file an amended report within thirty (30) days. If that is not the case, Verizon should return to the service address to attempt to resolve the telephone service issues. A report of any subsequent remedial action carried out by Verizon to address Mr. Valentino's telephone issues should be filed with the Commission within sixty (60) days.

Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings and the applicable law, we shall modify the ALJ's Initial Decision consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Formal Complaint filed by Richard Valentino, on June 1, 2023, at Docket No. C-2023-3041051, is sustained, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Katrina L Dunderdale, issued on January 17, 2024, is adopted as modified, consistent with this Opinion and Order.

3. That if Verizon Pennsylvania LLC inadvertently omitted its actions in the March 18, 2024 report in addressing the telephone issues, it is directed to file an amended report within thirty (30) days of the entry date of this Opinion and Order.

4. That if Verizon Pennsylvania LLC has not already addressed the telephone issues in this matter, it shall return to the service address to attempt to resolve the telephone issues.

5. That if Verizon Pennsylvania LLC returns to the service address, as set forth in Ordering Paragraph No. 4, it shall file a report of any subsequent remedial actions to address the telephone issues with the Bureau of Technical Utility Services within sixty (60) days of the date of this Opinion and Order.

6. That upon the filing of a report by Verizon Pennsylvania LLC in compliance with either Ordering Paragraph No. 3 or Ordering Paragraph No. 5, this proceeding shall be marked closed.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: May 9, 2024