

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Loran Yonkers	:	
	:	
v.	:	C-2025-3057531
	:	
Windstream Pennsylvania, LLC	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision denies Complainant’s Formal Complaint alleging there was a reliability, safety or quality problem with his telephone/telecommunications service caused by Respondent failing to clear trees which resulted in damage to Complainant’s property.

HISTORY OF THE PROCEEDING

On September 12, 2025, Loran Yonkers (Mr. Yonkers or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Windstream Pennsylvania, LLC (Windstream or Respondent). Complainant alleged there was a reliability, safety or quality problem with his telephone/telecommunications service. Specifically, Complainant alleged there were trees crisscrossing his driveway which Respondent had not cleared in 30 years, and one tree fell on his house two years ago.

In the formal complaint, Mr. Yonkers indicated he preferred to receive all documents by First Class Mail.

On October 9, 2025, Respondent filed the Answer and New Matter (Answer), with a Notice to Plead. Respondent acknowledged it provides telephone/telecommunication services as an Incumbent Local Exchange Carrier (ILEC) in Washington County, Pennsylvania. Windstream denied it had responsibility for trees that might be crossing over Complainant's driveway, denied it was responsible for tree maintenance generally on Complainant's property, denied responsibility to remove vegetation unless vegetation interrupted service and denied it had not reasonably maintained its facilities.

In New Matter, Respondent alleged Complainant raised matters concerning property law and easement rights and his request was that the Commission should order Windstream to maintain Complainant's property outside the utility right of way. Windstream further alleged Complainant wanted to expand the utility right of way to force Windstream to clear an additional 15-foot bilateral clearing along the right of way. Windstream asserted Complainant alleged trespass and/or questioned the scope and validity of the utility easement, but it argued jurisdiction over any interpretation concerning the easements was outside the Commission's purview. Windstream argued the Commission is not permitted to adjudicate the validity and scope of an easement, including the width of the easement which Windstream must maintain, pursuant to a line of cases.¹ In addition, Windstream argued the Commission lacks the jurisdiction to

¹ *Fairview Water Co. v. Pa. Pub. Til. Comm'n*, 502 A.2d 162 (Pa. 1985); *Lasko v. Windstream Pa., LLC*, Docket No. C-2010-2217869 (Final Order dated April 1, 2011); *Perrige v. Metropolitan Edison Co.*, Docket No. C00004110 (Order dated July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-2020-3022169 (Initial Decision dated December 8, 2020).

adjudicate allegations of trespass, pursuant to a similar line of cases.² Accordingly, Windstream asserted the complaint should be dismissed.

On January 21, 2026, the Office of Administrative Law Judge (OALJ) issued a Call-In Telephone Hearing Notice scheduling an Initial Call-In Telephonic Hearing for March 3, 2026. On the same date, the presiding officer issued the Prehearing Order which set forth the date and time of the scheduled hearing and provided procedural rules for requesting continuances and engaging in discovery.

On February 9, 2026, Windstream filed with the Commission and served on Complainant a Motion for Summary Judgment (Summary Judgment Motion), with a Notice to Plead within twenty (20) days. Respondent asserted a judgment on the pleadings or summary judgment should be rendered “if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issues as to a material fact and that the moving party is entitled to a judgement as a matter of law.”³ Further, Respondent asserted judgment on the pleadings is appropriate only upon acceptance of the material facts asserted in the non-moving party’s pleading.⁴

Windstream acknowledged the Commission has been made responsible by the legislature to ensure Windstream, as a regulated ILEC, shall provide and maintain adequate, efficient, safe and reasonable service and facilities. However, Respondent argued the Commission is not the proper forum to resolve a controversy regarding property rights, claims of trespass and claims a utility’s facilities are not located within a

² *Perrige v. Metropolitan Edison Co.*, Docket No. C00004110 (Order dated July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-2020-3022169 (Initial Decision dated December 8, 2020); *Stabler v. Verizon Pennsylvania, Inc.*, Docket No. C-2012-2284222 (Order dated June 1, 2012).

³ 52 Pa. Code § 5.102(d)(1).

⁴ *Accord Travelers Cas. & Sur. Co. v. Castegnaro*, 772 A.2d 456 (Pa. 2001).

valid right of way because real property disputes are within the exclusive jurisdiction of the local Court of Common Pleas.

Mr. Yonkers did not file a response to the Summary Judgment Motion, pursuant to 52 Pa.Code § 5.102(b).

The Summary Judgment Motion was denied orally at the initial hearing as untimely made because barely twenty days existed from the date the Motion was filed (February 9, 2026) prior to the commencement of the hearing (March 3, 2026). The Notice to Plead informed Complainant he had twenty days from the date of the Summary Judgment Motion (February 9, 2026) in which to file a response. Twenty days from February 9, 2026 would have been March 1, 2026, which was a Sunday. Accordingly, the deadline would move to the next business day, or March 2, 2026. One day prior to the start of the hearing was an insufficient amount of time in which the presiding officer could provide an order disposing of the Motion for Summary Judgment and still provide both parties a meaningful amount of time in which to prepare for the initial hearing.

On March 3, 2026, the presiding officer convened the parties by telephone and conducted an initial hearing. Mr. Yonkers appeared *pro se* and testified on his own behalf and did not offer any exhibits. Respondent was represented by Bryce R. Beard, Esquire, who presented the testimony of one witness (Christopher Sinclair) and offered two exhibits, which exhibits were admitted into evidence as Windstream Exhibits 1 and 2.

On March 24, 2026, the presiding officer closed the hearing record by Interim Order Closing the Hearing Record (Close Order).

On May 27, 2026, the Commission received notice from the United States Postal Service (USPS) that the USPS was unable to deliver to Complainant or forward to Complainant the Close Order issued on March 24, 2026.

On June 4, 2026, a Legal Assistant with the Commission's OALJ contacted Complainant using the email address Complainant provided in the Complaint. The Legal Assistant asked Complainant to confirm his address because the Commission had been unable to deliver the Close Order to the address provided in the Complaint. As of June 18, 2026, Complainant did not provide an updated mailing address or provide an alternative means of serving documents on him.

This proceeding is ready for adjudication.

FINDINGS OF FACT

1. Complainant, Loran Yonkers, resides at 7 Apple Drive, Fredericktown, Pennsylvania (service address), where he has resided for twenty (20) years. (Tr. 23, 40).

2. Respondent, Windstream Pennsylvania, LLC, is an incumbent local exchange carrier (ILEC)⁵ that currently provides fiber broadband service to Complainant at the service address. (Tr. 23, 49, 60, 64).

⁵ Pursuant to 66 Pa.C.S. § 3012, an incumbent local exchange carrier is defined as the incumbent carrier authorized by the Commission to provide local exchange telecommunications services. The term includes a rural telecommunications carrier and a nonrural telecommunications carrier.

3. The service address, located in a rural area, is the highest residence on a hillside, but Complainant also owns property located across the road in a heavily forested area. (Tr. 24, 52-54).

4. The utility poles located on Complainant's property are owned by Windstream, but the poles also hold the facilities of some local cable companies. (Tr. 61).

5. Complainant began to experience service reliability and availability problems. (Tr. 25).

6. The wires providing service to Complainant and others hung within the tree canopy, and service to the service address became less reliable. (Tr. 25).

7. Respondent installed fiber optic cable and put a modem in the residence, at no cost to Complainant, after which the service improved. (Tr. 25, 50).

8. Respondent's lines provide service up the road that allows access to the service address before extending beyond the property into a heavily forested area. (Tr. 25, 29-37, 77; Respondent Exhibits 1 and 2).

9. Complainant contacted Respondent with concerns about vegetation management on October 25, 2024; November 5, 2024; February 17, 2025; April 24, 2025; May 15, 2025; June 3, 2025; June 23, 2025; June 26, 2025; August 2025; and September 2025. (Tr. 66-78).

10. Windstream technicians and personnel visited the service address several times, starting in October 2024, to address vegetation management, including a tree pushing a pole into leaning over the driveway, but Respondent's employees and

contractors did not observe any immediate safety concerns and/or negative impacts on Complainant's service. (Tr. 25, 26, 45, 63-98).

11. In October 2024, Windstream visited the service address because Complainant wanted Windstream to remove trees owned by the local township along the road, but there were no immediate safety concerns or impacts on Windstream's facilities, and Complainant's service worked properly. (Tr. 66-68).

12. In February 2025, Windstream visited the service address to re-inspect for any new issues but observed no immediate safety concerns or impacts on service. (Tr. 69).

13. In April 2025, Windstream visited the service address but observed no safety concerns or service impacts. (Tr. 69).

14. In May 2026, Complainant called Windstream with a new concern about a low hanging aerial line located down the street from Mr. Yonkers' residence which also included low cable company lines. (Tr. 70).

15. In mid-June 2025, Windstream's contractors performed maintenance to relocate the low line and clear trees at the service address. (Tr. 70, 71).

16. As part of the work the contractor did in June 2025, the contractor raised the aerial line located down the street from the service address and started to clear trees around the poles on Complainant's property. (Tr. 71).

17. After Complainant called to demand Windstream cut more trees in the right of way, Windstream sent a technician out who observed the trees did not affect service and there were no immediate concerns. (Tr. 73).

18. After receiving a complaint Mr. Yonkers filed with the Federal Communications Commission (FCC), Windstream sent a tech out in late June 2025, who did not observe any safety issues or service disruptions. (Tr. 74).

19. During the visit in late June 2025, Complainant demanded Respondent clear cut a new thirty (30') foot right of way. (Tr. 74).

20. Windstream visited the service address again in August 2025 to meet with Mr. Yonkers and discuss his demand for a new right of way that would extend approximately 200 yards beyond Complainant's property through the woods. (Tr. 74, 75).

21. Windstream's contractor returned to the service address in September to address a tree that was not affecting Respondent's facilities but leaned against another tree extending over the driveway and to generally clean vegetation around the service address. (Tr. 77, 78; Windstream Exhibit 1).

22. Respondent's contractor removed some vegetation including a tree and left the un-chipped material in a pile on Complainant's yard. (Tr. 27-37, 45-50; Respondent Exhibits 1 and 2).

23. Windstream returned to the service address on September 30, 2025, to meet with Complainant who indicated the lumber cut on previous visits could remain, but he was not happy with the work done or Windstream's continued insistence it would not clear a new right of way. (Tr. 83, 84).

24. Windstream's contractor returned to the service address, and by November 17, 2025, the contractor had removed a downed tree, cleared some trees and shrubs and old fencing. (Tr. 84-86; Windstream Exhibit 1).

25. Windstream spent almost \$5,000 to clear areas at the service address, in addition to sending its own technicians and personnel. (Tr. 87).

26. Respondent did not comply with Complainant's request to show him where the right of way exists, and Respondent did not know the exact location or dimensions of the right of way. (Tr. 40; 89-92).

27. Complainant cannot walk easily along the right of way located on his property across the road from his residence because Respondent does not maintain a cleared right of way beyond Complainant's residence. (Tr. 52-54).

28. Windstream has maintained its facilities so the facilities will work reliably, without safety hazards and without compromising service. (Tr. 87).

DISCUSSION

A. Legal Standard

Any person, having an interest in the subject matter, may file a complaint with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation of any law, which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701. Section 1501 of the Public Utility Code ("Code") imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities. 66 Pa.C.S. § 1501. 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.^[6]

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.]”⁷ 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 shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public. 66 Pa.C.S. § 1505(a).

B. Burden of Proof

The Pennsylvania Supreme Court has defined the term “burden of proof” to mean a duty to establish a fact by a preponderance of the evidence.⁸ The term “preponderance of the evidence” means one party must present evidence which is more convincing by even the smallest amount than the evidence presented by the other party.⁹ Accordingly, one must review the record in this case to determine whether Complainant

⁶ 66 Pa.C.S. § 1501.

⁷ 66 Pa.C.S. § 102.

⁸ *Se-Ling Hosiery v. Marquies*, 70 A.2d 854 (Pa. 1954) (*Se-Ling Hosiery*); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976) (*Feinstein*).

⁹ *Se-Ling Hosiery; Feinstein*.

has satisfied his burden of proof. If the review indicates the burden has been satisfied, one must then determine whether Respondent has submitted evidence of “co-equal” value or weight to refute Complainant’s evidence. If this has occurred, the burden of proof has not been satisfied, unless the party bearing the burden of proof presents additional evidence.¹⁰

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record.¹¹ The Pennsylvania appellate courts have defined the term “substantial evidence” to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹² The Commission has held that a complainant must show the utility is responsible or accountable for the problem described in the complaint, to establish a sufficient case against a utility and satisfy the burden of proof.¹³

C. Responsibility of Public Utilities Offering Telephone Service

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,

¹⁰ *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

¹¹ *See, e.g.*, 2 Pa.C.S. § 704; *Yellow Cab Co. v. Pa. Pub. Util. Comm’n*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

¹² *Norfolk & W. Ry. Co. 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. 1961); *Murphy v. Pa. Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

¹³ *Feinstein*.

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).¹⁴

D. Complainant's Position

Complainant asks the Commission to require Respondent to clean the right of way located on his property, because the condition of the right of way has affected adversely his use of the road that leads to the service address farther up the hill. Complainant argues he cannot get deliveries to the service address due to the condition of the right of way farther down the hill. (Tr. 26). Complainant contends Respondent's contractor removed some vegetation including a tree and left the un-chipped material in a pile on Complainant's yard. (Tr. 27-37, 45-50; Respondent Exhibits 1 and 2). Complainant asks that Respondent be required to remove debris it left behind and be required to maintain the current right of way. (Tr. 40-54). As the proponent of this allegation seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

¹⁴ *Daskalakis v. Verizon Pa., Inc.*, Docket No. C-2010-2172222, Motion of Commissioner James H. Cawley, March 17, 2011 (Opinion and Order entered Apr. 4, 2011).

E. Respondent's Position

Windstream denies there are problems with its service at the service address, and it denies that its maintenance of the right of way adversely affected the broadband services Complainant received. Respondent insists, as of the initial hearing, there are no reliability issues with its facilities, the lines hung on and around the service address are not in current danger of being broken, and there are no broken poles, no safety issues and no service issues. (Tr. 62). Windstream argues there is no need to clear cut the right of way on Mr. Yonkers' property across the road because Windstream has access there and the vegetation is not affecting adversely its facilities. (Tr. 63). Lastly, Windstream insists that Mr. Yonkers cannot unilaterally expand the location, width or length of the right of way.

F. Disposition

The Complaint is denied in the Ordering Paragraphs below. Complainant did not meet the burden of proving that Windstream violated 66 Pa.C.S. §§ 1501 or 3019(b), or any other provision in the Public Utility Code, or the Commission's regulations and orders. Windstream made numerous visits to Complainant's residence to address his concerns and complaints. Each time Windstream visited the service address, no immediate safety concern was observed. In addition, after addressing the initial reliability concerns and installing a new modem at the service address, Windstream did not detect any reliability or accessibility service issues and Complainant did not allege any such service issues.

Complainant's allegations center on forested sections of his property as well as forested sections of adjoining property. Complainant wants Respondent to clear and keep cleared forested sections of his property so Complainant can walk under the lines – both on his property and off his property. Respondent is not responsible to clear

walking paths for Complainant. Respondent's responsibility is solely related to ensuring the adequate, safe and reliable provision of such services as needed to maintain the vegetation around and under its facilities.

The evidence presented in this proceeding proves Windstream provided adequate and reasonable customer service to Complainant by ensuring its facilities provided adequate, safe and reliable service to Complainant and other consumers who access service along the same line. Accordingly, the Complaint will be denied in the Ordering Paragraphs for failure of Complainant to meet the burden of proof.

CONCLUSIONS OF LAW

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

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

3. The Commission is obliged statutorily to maintain interest and regulatory oversight of the facilities of a regulated public utility in the provision of adequate, safe and reliable service. 66 Pa.C.S. §§ 102 and 3019(b)(2).

4. The proponent of a rule or order has the burden of proof and, to satisfy his burden of proof, Complainant must demonstrate by a preponderance of the evidence Respondent violated the Public Utility Code or a regulation or order of the

Commission. 66 Pa.C.S. §§ 332(a), 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).

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

6. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate customer service in the provision of adequate, safe and reliable service to the service address. 66 Pa.C.S. §§ 332, 1501, 3011.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Loran Yonkers in *Loran Yonkers v. Windstream Pennsylvania LLC*, docketed at No. C-2025-3057531, is denied.

2. That the Secretary mark this proceeding as closed.

Date: June 15, 2026

/s/
Katrina L. Dunderdale
Administrative Law Judge