**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna Morgan :

 :

 v. : C-2012-2288367

 :

Commonwealth Telephone Company, LLC :

d/b/a Frontier Communications :

**INITIAL Decision**

Before

Ember S. Jandebeur

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On or about February 9, 2012, Donna Morgan (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Commonwealth Telephone Company, LLC d/b/a Frontier Communications (Frontier or Respondent) alleging that there is a reliability, safety or quality problem with her service. On or about March 1, 2012, the Respondent filed an Answer that neither admitted nor denied the material allegations of the Formal Complaint. The Answer stated that the Respondent was working in good faith with the Complainant to address the service issues.

By Hearing Notice dated July 25, 2012, the parties were notified that an Initial Hearing in this case was scheduled for the morning of September 10, 2012. A Prehearing Order was issued on July 27, 2012, stating the date and time of the scheduled hearing and advising the parties that the case could be dismissed if they failed to obtain a continuance and failed to appear for the hearing. The Prehearing Order also advised the parties of applicable procedural rules.

The hearing convened as scheduled. The Complainant appeared *pro se*, the Respondent was represented by counsel. Neither party proffered any exhibits. Kathi Yarnell, Thomas Snavely, Dan Morgan and Michelle Ross all testified on the Complainant’s behalf. Russell Johnson testified on behalf of the Respondent. A transcript of the hearing was generated comprising seventy-three (73) typewritten pages. The record closed on October 10, 2012.

FINDINGS OF FACT

1. Donna Morgan, the Complainant, is a current customer of the Respondent’s and receives telephone service at 3967 North Street, Forksville, Pennsylvania 18616.

1. Frontier Communications, the Respondent, is a jurisdictional public utility providing telephone service to the Complainant and others in Pennsylvania.
2. June 9, 10, and 14–16, 2012, the Complainant was unable to receive telephone calls on her line. Tr. at 10.
3. The Complainant has more trouble with receiving calls when it is raining. Tr. at 10.
4. On occasion, the Complainant does not have a dial tone. Tr. at 11.
5. Sometime in the spring of 2012, the Respondent went through the Complainant’s house and computer, and was unable to determine any problems with their lines, or the Complainant’s telephone. Tr. at 12.
6. During the spring 2012 visit, the Respondent found a problem with an outside line, but even after fixing the line, the problems with Complainant’s telephone remained. Tr. at 12-13.
7. The Complainant was told by the Respondent that her telephone issues may not be caused by Respondent’s equipment but by her long distance provider. Tr. at 15.
8. Kathi Yarnall testified on behalf of the Complainant. Tr. at 18.
9. During 2011 and 2012, Ms. Yarnall had trouble telephoning the Complainant; the phone would ring twice and then go dead. Tr. at 22.
10. Out of twenty (20) times, Ms. Yarnall telephoned the Complainant she had trouble four (4) times. Tr. at 24.
11. Thomas Snavely testified on behalf of the Complainant. Tr. at 25.
12. Mr. Snavley telephones the Complainant about once weekly and encounters volume fluctuations, clicks, recordings telling him he dialed the number in error, disconnections, third parties speaking, and echoes. Tr. at 26-27.
13. Dan Morgan, son of the Complainant, testified on behalf of the Complainant. Tr. at 32.
14. Mr. Morgan telephones his mother, the Complainant, daily or every other day and her telephone rings once or twice and then goes dead. Tr. at 32, 34.
15. Mr. Morgan’s problems with the Complainant’s telephone are the same as Ms. Yarnall and Mr. Snavely. Tr. at 36.
16. Michelle Ross, daughter of the Complainant, testified on behalf of the Complainant. Tr. at 37.
17. Ms. Ross telephones her mother, the Complainant, several times a day and approximately half of the time she has a problem with the connection. Tr. at 38.
18. Ms. Ross encounters connection problems whether she dials her mother from her cell phone or from a land line. Tr. at 38.
19. The Complainant has three (3) telephones; all three (3) exhibit the same connectivity issues. Tr. at 42.
20. Russell Johnson, manager, testified on behalf of the Respondent. Tr. at 44.
21. Mr. Johnson spoke with the Complainant on February 15, 2012. Tr. at 46.
22. Mr. Johnson visited the Complainant at her home on February 28, 2012. Tr. at 47.
23. On February 28, 2012, Mr. Johnson tested the Complainant’s local loop, cable pairs, internal wiring and made several long distance calls in state and out of state. Tr. at 47-48.
24. The tests Mr. Johnson conducted showed no problems with the Complainant’s telephone lines. Tr. at 49.
25. Mr. Johnson left the Complainant with a “cliff note” version of the Federal Communications Commission[[1]](#footnote-1) ruling and with a form to fill out if she had call issues. Mr. Johnson was interested in the originating and terminating call numbers so that he could trace the calls through the Respondent’s network and determine who the originating carrier was. Ms. Morgan did not fill out the form or contact Mr. Johnson. Tr. at 50.
26. The Federal Communications Commission ruling deals with calls coming into a rural area such as the Complainant’s. Tr. at 50-51.
27. The issues that the Complainant is experiencing may be caused by the originating carrier and not the Respondent. Tr. at 51.
28. Mr. Johnson provided the Complainant with his business card and cell phone number for her to call him for assistance. Tr. at 52.
29. After February 28, 2012, Mr. Johnson received one further contact from the Complainant on April 23, 2012, that her lines were fine except for a Magic Jack concern. Tr. at 54.
30. Magic Jack is a least cost long distance provider. Tr. at 54.
31. On May 7, 2012, the Complainant called in a complaint to the Respondent. Tr. at 55.
32. On May 14, 2012, the Respondent visited the Complainant and did the same testing that was performed on February 28, 2012, with the same result; the lines were fine. Tr. at 56.
33. On September 6, 2012, the Respondent again visited the Complainant and did not find problems. Tr. at 58.
34. The Complainant’s service is on fiber optic. Tr. at 59.

DISCUSSION

Burden of Proof:

Section 332(a) of the Public Utility Code, [66 Pa. C.S. § 332(a)](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=3&_butInline=1&_butinfo=66%20PACODE%20332&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=cb17ec69e230c7619c8bcdc9002e288f), provides that the party seeking relief from the Commission has the burden of proof. Complainant seeks relief from the Commission, and, therefore, has the burden of proof in this proceeding.

“Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. [*Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=4&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b364%20Pa.%2054%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=80bd42820a055317af98ca0121ce181a)

 If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility’s evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. [*Replogle v. Pennsylvania Electric Company,* 54 Pa. PUC 528 (1980),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%20528%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=8e9b44fa2e271a9e231b97bdcfd3251d) and [*Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b54%20Pa.%20PUC%2098%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=1448b9480cd7b69d87fa0b3a68f908ad)

 If Respondent submits evidence of “co-equal” weight to refute Complainant’s evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent's evidence. [*Morrissey v. PA Dept. of Highways,* 424 Pa. 87, 225 A.2d 895  (1967),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=7&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b424%20Pa.%2087%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=27432e77422dd0ba6521cf4e67013ed4) and [*Burleson v. Pa. P.U.C*. 66 Pa. Commonwealth Ct. 282, 443 A.2d 1373 (1982),](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=4cd0729466bfd1d39c0fd713cc26b525) aff'd. [501 Pa. 443, 461 A.2d 1234.](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=9&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b501%20Pa.%20443%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=28aeeafc2a370113292dc79dfa134b36)

 The decision of the Commission must be supported by substantial evidence. See, e.g., Section 704 of the Administrative Agency Law, [2 Pa. C.S. § 704](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=10&_butInline=1&_butinfo=2%20PACODE%20704&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=e7a924bc9a2d8da2187d70ea5b41d8bb). “Substantial evidence” is such relevant evidence that a reasonable mind might 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. [*Norfolk & Western Ry. Co. v. Pa. P.U.C*., 489 Pa. 109, 413 A.2d 1037 (1980);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=11&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b489%20Pa.%20109%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=71ad7d7d43f91e4c535e8ea71ac62adb) [*Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961);](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b194%20Pa.%20Super.%20278%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=68dba5dca7025d27a9423554a1c6f72b) and [*Murphy v. Comm., Dept. of Public Welfare, White Haven Center,* 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).](http://www.lexis.com/research/buttonTFLink?_m=cd18bf6b106de1ce89522a0ab7ac078a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b1994%20Pa.%20PUC%20LEXIS%2095%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b85%20Pa.%20Commw.%2023%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlW-zSkAl&_md5=065374b59b018301e33819591229d308)

 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.

The Complainant alleges that there is a reliability, safety or quality problem with her telephone service from the Respondent. She encounters uncompleted calls, echoes, third parties talking, clicks, and calls simply not coming in despite efforts to reach her. The Complainant had several witnesses that supported her allegations of problems with her telephone. Therefore, I find that the Complainant made a *prima facie* case of inadequate and unreliable service.

 Section 1501 of the Public Utility Code states:

Character of service and facilities

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. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. … 52 Pa. Code § 1501.

The Respondent asserted that it has changed out her equipment and checked all of her lines and cannot find anything wrong with her lines. Additionally, the Respondent stated that her lines are fiber optic and that others would have the same issues if the problems were rooted in the Respondent’s equipment, and that they have not had similar problems with other customers. Additionally, the Respondent asserts that the problem likely lies with low cost long distance carriers.

In an attempt to follow through on addressing the Complainant’s problems the Respondent left a log with the Complainant and wanted to track her incoming and outgoing calls. The Complainant chose not to keep the log, therefore, the Respondent was unable to confirm or rule out that the root of Complainant’s telephone issues was not with them, but with Complainant’s long distance carrier.

The Respondent successfully rebutted the Complainant’s allegations of problems with her lines as they relate to the Respondent. The Respondent checked their lines to the Complainant’s home, repaired one line and still the Complainant has service issues. Unfortunately, the Respondent was not able to track the Complainant’s calls and determine with some accuracy whether the problem lies with the Complainant’s long distance carrier because the Complainant chose not to keep the log the Respondent provided. Nonetheless, the evidence does not support a finding of inadequate or unreliable service. On the contrary, the evidence supports a finding that the problem does not lie with the Respondent’s equipment or the Complainant’s three (3) telephones, as all have been checked, or changed out. Based on the evidence presented, it appears that the Complainant should have worked with the Respondent to verify incoming and outgoing calls, let them track the originating provider and confirm or refute issues with the Complainant’s long distance carrier.

Based upon the record presented, the Complainant failed to meet her burden of proof and the Formal Complaint will be dismissed.

CONCLUSIONS OF LAW

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

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

3. As a matter of general principle, 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 Telephone Company of Pennsylvania*, 72 Pa. Pub. Util. Comm’n 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. Pub. Util. Comm’n 300 (1976). 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), *alloc. den.*, 602 A.2d 863 (1992).

4. The Complainant failed to meet her burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Donna J. Morgan at Docket No. C-2012-2288367 is denied and dismissed.

1. That the Secretary’s Bureau shall mark Docket No. C-2012-2288367 closed.

Date: November 5, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

  Ember S. Jandebeur

 Administrative Law Judge

1. This is referred to in the transcript as SEC, it should have read FCC. [↑](#footnote-ref-1)