

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Optatus and Florence Chailla,)
Complainants,)
v.)
Verizon Pennsylvania LLC,)
Defendant.)
Proceeding No. 22-135
Bureau ID No. EB-22-MD-001

MEMORANDUM OPINION AND ORDER

Adopted: October 24, 2022

Released: October 24, 2022

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant the Motion to Dismiss of defendant Verizon Pennsylvania LLC, an intrastate carrier (Verizon PA),1 and dismiss with prejudice the formal complaint2 filed pursuant to section 208 of the Communications Act of 1934, as amended (Act), by pro se complainants Dr. Optatus N. Chailla, who subscribed to Verizon PA service, and his wife, Florence R. Parker Chailla (Complainants).3 As discussed below, we agree with Verizon PA that the Commission lacks jurisdiction over the Complaint because Verizon PA did not provide interstate or foreign telecommunications service to Complainants.

II. FACTUAL BACKGROUND

2. In addition to the intrastate service provided by Verizon PA, Dr. Chailla also subscribed to interstate service from Bell Atlantic Communications, Inc. D/B/A Verizon Long Distance (Verizon Long Distance) and broadband internet access and "TechSure" service from Verizon Online LLC (Verizon Online).4 "TechSure" is advertised as providing technical support for software installation and

1 Verizon Pennsylvania LLC's Motion to Dismiss, Proceeding No. 22-135, Bureau ID No. EB-22-MD-001 (filed May 4, 2022) (Motion). See id. at 2, 6 (Verizon PA only provided intrastate services).

2 Formal Complaint, Proceeding No. 22-135, Bureau ID No. EB-22-MD-001 (filed Mar. 18, 2022) (Complaint). While the Complaint names "Verizon of Pennsylvania, LLC," Verizon PA states that the correct name is "Verizon Pennsylvania LLC." Motion at 1 n.1.

3 47 U.S.C. § 208. See Complaint Exh. 1 (Wyckoff Aff.) at 1, para. 1.

4 See Motion at 2; Complainants' Concurrently Filed Motions [in] Opposition to Dismissal and a Motion for Decision, Proceeding No. 22-135, Bureau ID No. EB-22-MD-001 (filed June 6, 2022) (Opposition) at Exhs. Z and attached Verizon bill dated June 3, 2020 at 5.

electronic device setup (i.e., “help-desk” service); security for internet-connected devices other than cell phones; inside wire maintenance; identity theft protection; and digital password storage.⁵

3. In April 2019, Dr. Chailla filed a formal complaint against Verizon PA with the Pennsylvania Public Utility Commission (PUC) alleging that Verizon PA provided faulty service and overcharged for service.⁶ The PUC granted the complaint in part, finding that Dr. Chailla had experienced a series of service outages and delays, but denied Dr. Chailla’s cramming, invasion of privacy, and violations of consumer protection rights claims.⁷ Approximately one month after the *PUC Order*, Complainants filed a complaint against Verizon PA in Pennsylvania state court alleging that Verizon PA provided faulty internet service.⁸ The court dismissed the complaint on the ground that the parties’ agreement contained a mandatory arbitration clause.⁹

4. Complainants filed the Complaint at issue here in March 2022.¹⁰ The Complaint, which requests damages, has three Counts.¹¹ Count I seeks enforcement of the Pennsylvania *PUC Order* and also asserts that the *PUC Order* and *State Court Order* are vitiated by fraud.¹² Count I also alleges that Verizon PA provided faulty service, overcharged for service, and violated sections 201 and 202 of the Act, various Pennsylvania statutes, and the federal Civil Rights Act.¹³ Count II contends that the advertising for “TechSure” was deceptive, and that Verizon PA violated the Commission’s rule against cramming by charging for services that, under TechSure, should have been free, and by charging for a more expensive calling plan than was actually provided.¹⁴ Count III of the Complaint alleges that Verizon PA provided faulty internet access service.¹⁵

⁵ See Complaint at 23-33, paras. 204-33; Motion at 3.

⁶ See Complaint Exh. A (*Chailla v. Verizon Pennsylvania LLC*, Order, No. C-2019-3008691 (Pa. PUC Mar. 31, 2020) (*PUC Order*)) at 5.

⁷ See Complaint Exh. A (*PUC Order*).

⁸ See Motion at 4 (citing *Chailla v. Verizon of Pennsylvania, LLC*, Opinion and Order, No. 3504-CV-2020 (Pa. Ct. of Common Pleas, Monroe County, July 8, 2021) (*State Court Order*) at 1). The state court complaint was filed in Pennsylvania Commonwealth Court and then transferred to the Court of Common Pleas. *State Court Order* at 2.

⁹ See Motion at 4 (citing *State Court Order* at 4). The arbitration agreement appears to have been between Complainants and Verizon Online. See *State Court Order* at 1.

¹⁰ Complainants have, without the permission of the Enforcement Bureau or Verizon PA, responded to the Motion by filing a “revised” complaint. See Opposition (attaching “Formal Complaint-revised”) (Revised Complaint). Commission rules forbid amendments to complaints. See 47 CFR § 1.721(g). In any event, as discussed *infra*, even if we were to allow the Revised Complaint, we would dismiss it for the same reasons we dismiss the Complaint with prejudice.

¹¹ See Complaint at 41-43, paras. 279-89 (requesting damages); Revised Complaint at 51-53 (same).

¹² See, e.g., Complaint at 4, paras. 14-19, 5-6, paras. 27-50, 11-12, paras. 96-116, 13, paras. 122-27, 16-21, paras. 150-93; Revised Complaint at 4-5, paras. 1-3, 13-17, paras. 20-27.

¹³ See, e.g., Complaint at 4, para. 20 (47 U.S.C. § 201), 9, para. 77 (47 U.S.C. § 202), 5, para. 29 (Pennsylvania broadband access statute), 14, para. 127 (Pennsylvania consumer protection statute); 16, para. 155 (42 U.S.C. § 1981); Revised Complaint at 9, para. 7 (47 U.S.C. § 201), 11 (heading) (47 U.S.C. § 202), 5-6, 12, 17 (Pennsylvania state statutes); 22-22 (42 U.S.C. §§ 1981, 1983), 40-45 (Count III) (15 U.S.C. § 1692).

¹⁴ See, e.g., Complaint at 22, para. 195 (47 CFR § 64.2401(g)); Revised Complaint at 27 (same). See generally Complaint at 22-33, paras. 195-233; Revised Complaint at 27-40, paras. 1-26.

¹⁵ See Complaint at 34-41, paras. 235-77. Count III of the Revised Complaint alleges violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, see Revised Complaint at 40-45, and Count IV alleges that Verizon PA provided faulty internet access service. See *id.* at 45-51.

III. DISCUSSION

5. In its Motion, Verizon PA argues that we should dismiss the Complaint with prejudice for lack of jurisdiction.¹⁶ We agree. The Complaint was filed under section 208 of the Act, which provides, “Any person...complaining of anything done or omitted to be done by any *common carrier* subject to this Act, in contravention of the provisions thereof, may apply to [the] Commission by petition....”¹⁷ Section 3 of the Act defines “common carrier” as “a common carrier for hire, in interstate or foreign communication by wire or radio....”¹⁸ Because Verizon PA did not provide interstate or foreign service to Complainants, it is not a “common carrier,” and the Complaint does not, as it must, “complain[] of anything done or omitted to be done by a [] common carrier....”¹⁹ As a result, we do not have jurisdiction over the Complaint.

6. Complainants oppose the Motion on a number of grounds, none of which is successful. First, they contend that the Commission may assert jurisdiction over the Complaint under an enterprise liability theory, which holds that related corporations that act jointly as a single “enterprise” to achieve a common regulated purpose may be found individually liable for violations of the Act committed in furtherance of the purpose.²⁰ Complainants submit that Verizon PA’s parent is “a multinational telecommunications conglomerate” with an “operations-based divisional organizational structure;”²¹ that the services at issue in the Complaint are bundled; that Complainants’ bills are headed “Verizon;” and that these bills state that “Verizon offers...high-speed internet...and local and long distance services.”²² We are unpersuaded. Complainants’ evidence regarding Verizon PA’s parent says little, if anything, about the degree or nature of control exercised by that entity over its subsidiaries.²³ In addition, although Complainants’ services are bundled, Complainants do not show that their service providers (Verizon PA, Verizon Long Distance, and Verizon Online) acted on behalf of one another in providing those services.²⁴

¹⁶ See Motion at 1, 5-7. Verizon argues that we should dismiss the Complaint on other grounds as well, which are discussed below. See *infra* at paras. 8-9.

¹⁷ 47 U.S.C. § 208(a) (emphasis added).

¹⁸ 47 U.S.C. § 153(10).

¹⁹ E.g., Opposition at attachment (Verizon bill dated Feb. 3, 2019) (stating, under the heading “Service Providers,” that “Verizon PA provides regional, local calling and related features... Verizon Long Distance provides long distance calling [and] Verizon Online provides internet service...”). See 47 CFR § 64.2401(a)(1) (telephone bills must provide “the name of the service provider associated with each charge...”). The Revised Complaint, like the Complaint, also would be dismissed with prejudice because Verizon PA did not provide interstate or foreign communication service to Complainants.

²⁰ See Opposition at 2-6 (discussing *Improving Pub. Safety Commc’ns in the 800 MHz Band*, Declaratory Ruling, 25 FCC 13874 (2010) (*800 MHz Band*)). In *800 MHz Band*, the Commission was asked whether a parent company could be held responsible, under an enterprise liability theory, for the costs of relocating broadcast auxiliary service incumbents in the 2 GHz band where the parent’s subsidiary, which had launched a satellite in the band, was bankrupt. *Id.* at 13885-92, paras. 28-39. The Commission listed, as factors to consider in applying the theory: the extent to which a parent company directs its subsidiaries’ operations to achieve the common regulatory goal at issue; whether members of the alleged enterprise act for or on behalf of one another to achieve the goal; whether members hold different assets and provide different services, each of which helps achieve the goal; whether the alleged enterprise presents itself to the Commission and the public as a unified entity with respect to the goal; and any legitimate arrangements the members have among themselves concerning the allocation of the liability at issue. *Id.* at 13889, para. 35.

²¹ Opposition at 2-3 (citing www.panmore.com/verizon-organizational-structure-business-expansion) (emphasis removed).

²² Opposition at 10.

²³ *Cf.* n.20, *supra* (factor in enterprise liability theory is extent to which parent directs subsidiaries’ operations).

²⁴ *Cf. id.* (factor in enterprise liability theory is whether related companies act on behalf of one another).

Moreover, Complainants' bills identify each service provider by name and service provided²⁵ and also separate local calling charges from other charges.²⁶

7. For similar reasons, Complainants' remaining arguments also fail. They note that the Commission applies the doctrine of piercing the corporate veil, but do not explain how we could apply that doctrine to overcome Complainants' failure to name a common carrier.²⁷ In any event, if we are to pierce the corporate veil of Verizon PA, Complainants must show, among other things, that a parent or affiliate of Verizon PA controlled its actions.²⁸ Complainants have not proffered evidence even suggesting such control by Verizon PA's parent.²⁹ Complainants also cite section 217 of the Act (entitled "Agents' acts and omissions; liability of carrier").³⁰ Again, however, they do not explain their reasoning, so we do not know why Complainants believe this provision is relevant. Further, Complainant's mere citation of section 217 is not tantamount to evidence that Verizon PA was an agent of a common carrier. Next, Complainants turn to the statement in section 208 that "[i]f...there shall appear to be any reasonable ground for investigating *said complaint*, it shall be duty of the Commission to [do so]...."³¹ But section 208 is clear that "said complaint" means a complaint "complaining of anything done or omitted to be done by any common carrier."³² Because Verizon PA is not a "common carrier," the Complaint does not trigger a duty to investigate. Complainants contend that we may exercise ancillary jurisdiction over their allegations regarding TechSure service.³³ We disagree. The Complaint does not meet the requirements of section 208. Therefore, we have no "statutorily mandated responsibilities" with respect to its allegations

²⁵ *E.g.*, Opposition at attachment (Verizon bill dated Feb. 3, 2019) (stating, under the heading "Service Providers," that "Verizon PA provides regional, local calling and related features.... Verizon Long Distance provides long distance calling [and] Verizon Online provides internet service..."). See 47 CFR § 64.2401(a)(1) (telephone bills must provide "the name of the service provider associated with each charge...").

²⁶ *E.g.*, Opposition at attachment (Verizon bill dated Feb. 3, 2019 (under the heading "Restatement of Charges"). See 47 CFR § 64.2401(c) (bill containing charges for basic local service, in addition to other charges, must distinguish between basic and non-basic charges). Because Complainants do not show that Verizon PA was part of an enterprise, we do not address whether (i) the theory applies in a section 208 proceeding, or, (ii) if the theory does apply, an enterprise member may be considered a "common carrier" under section 208.

²⁷ See Opposition at 4-6. Under the doctrine of piercing the corporate veil, "[t]he Commission may hold an entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or shareholders; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions." *Telseven, LLC*, Forfeiture Order, 31 FCC Rcd 1629, 1631, para. 8 (2016).

²⁸ *Cf.*, *e.g.*, *John C. Spiller*, Forfeiture Order, FCC 21-35, File No. EB-TCD-18-00027781 (2021) at 25, para. 48 (piercing corporate veil where indirect owners of related companies "exercised complete supervisory and management control" of companies); *Telseven*, 31 FCC Rcd at 1632, para. 10 (2016) (piercing corporate veil of common carrier where its sole shareholder exercised "total control" over carrier); *Liability of Federated Publications, Inc., former owner of WMRI, Inc., for Forfeiture*, Memorandum Opinion and Order, 7 FCC 2d 522, 523, para. 4 (1967) (corporation in "absolute control" of radio station licensee is liable for licensee's violations of the Act).

²⁹ *Id.*

³⁰ Opposition at 10 (citing 47 U.S.C. § 217 ("In construing and enforcing the provisions of this Act, the act...of any ...agent...acting for...any common carrier..., shall in every case be also deemed to be the act...of such carrier...")).

³¹ Opposition at 11 (citing 47 U.S.C. § 208(a) (emphasis added)).

³² See 47 U.S.C. § 208(a) (Any person...complaining of anything done...by any *common carrier*...may apply to said Commission by petition..., whereupon a statement of the complaint thus made shall be forwarded...to such common carrier.... If...there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate...") (emphasis added).

³³ See Opposition at 7-8 (citing 47 U.S.C. § 154(i) ("The Commission may...issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions"))).

and do not have ancillary jurisdiction over them.³⁴ Finally, the fact that section 3 of the Act defines Verizon PA as a “Bell Operating Company” does not speak to whether Complainants may bring a section 208 complaint against it when it did not provide interstate or foreign service to Complainants.³⁵

8. While we dismiss the Complaint with prejudice because it does not comply with section 208, we also note that, as Verizon argues, the great majority, if not the entirety, of the Complaint would fail even if it named a common carrier.³⁶ The bulk of Count I seeks enforcement of the *PUC Order* or alleges that the *PUC Order* and *State Court Order* are vitiated by fraud;³⁷ other allegations assert violations of Pennsylvania statutes and the federal Civil Rights Act.³⁸ Yet section 208 requires that complaints allege a “contravention of the provisions [of the Act].”³⁹ No provision of the Act regulates the Complainants’ proceedings before the Pennsylvania PUC or the Pennsylvania state court, and state statutes and the Civil Rights Act are not “provisions [of the Act].”⁴⁰ The Complaint’s remaining counts contain similar flaws. The allegations in Count II pertain primarily to TechSure service.⁴¹ But none of the services offered under TechSure (inside wiring maintenance, password storage, etc.) is an “interstate or foreign communication” service within the meaning of section 3 of the Act, and no provision of the Act regulates such services or their marketing.⁴² Count III would fail entirely, because the Commission has repealed the rules and orders on which Complainants rely to establish a cause of action with respect to their internet access service.⁴³

9. Additional allegations of the Complaint would be dismissed with prejudice, even if brought against a different defendant, because they are time-barred or violate Commission procedural rules. Section 415(b) of the Act requires that, “All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the

³⁴ See *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (Commission may exercise ancillary jurisdiction only if, among other things, “the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities”) (quoting *American Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (2005)).

³⁵ See Opposition at 10 (citing 47 U.S.C. § 153(4)).

³⁶ See Motion at 2 (“Nearly all of [the Complaint’s] claims... fall outside the Commission’s jurisdiction or otherwise are not candidates for a complaint under Section 208”). See generally *id.* at 1-4, 7-12.

³⁷ See, e.g., Complaint at 4, paras. 14-19, 11-12, paras. 96-116 (allegations regarding the *PUC Order* or *State Court Order*); Revised Complaint at 4-5, paras. 1-3, 20-27, paras. 13-17 (same).

³⁸ See, e.g., Complaint at 5, para. 29 (alleging violations of Pennsylvania broadband access statute), 14, para. 127 (Pennsylvania consumer protection statute); 16, para. 155 (42 U.S.C. § 1981); Revised Complaint at 5-6, 12, 17 (Pennsylvania broadband statute and consumer protection statutes); 21-22 (42 U.S.C. §§ 1981, 1983), 40-45, (Count III) (15 U.S.C. § 1692). See also Motion at 4 (“Insofar as the Complaint either challenges or seeks enforcement of... the Pennsylvania [PUC] order, or the state court’s mandatory arbitration decision, the Complaint should be dismissed”).

³⁹ 47 U.S.C. § 208(a).

⁴⁰ See Motion at 7-8. The Revised Complaint’s Count III, which alleges violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, see Revised Complaint at 40-45, also fails to allege a “contravention of the provisions [of the Act]” as required by 47 U.S.C. § 208(a), and so also would be dismissed with prejudice.

⁴¹ See n.14, *supra*.

⁴² See 47 U.S.C. § 153(22); Motion at 11. Accordingly, the Commission would not have ancillary jurisdiction over TechSure claims under 47 U.S.C. § 4(i), even if brought against a different defendant.

⁴³ See Motion at 9 (citing *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018)); *id.*, 33 FCC Rcd at 442, para. 225 (eliminating the performance metric), 490, para. 302 (repealing 47 CFR §§ 8.2, 8.3). Complainants’ allegations pertaining to internet access service are found in Count IV of the Revised Complaint, see Revised Complaint at 45-51, and would be dismissed with prejudice on the same ground as the Complaint’s Count III.

cause of action accrues....”⁴⁴ Thus, for example, many of the Complaint’s allegations of faulty service,⁴⁵ as well as the claim in Count II that Dr. Chailla should not have been charged for services that were free under TechSure,⁴⁶ are time-barred. Finally, many of the Complaint’s allegations would be dismissed because they violate Commission procedural rules.⁴⁷ For example, Commission rule 1.721(b) requires that pleadings “be clear, concise, and direct,” and that, “[a]ll matters concerning a claim ... be pleaded...with specificity.”⁴⁸ Although the Complaint repeatedly states that Verizon PA violated Title II of the Act, it nowhere specifies which of the 75 statutory provisions in that Title are at issue.⁴⁹ Similarly, Complainants provide no specific information supporting the allegation that, for years, their service was “degraded,” “inadequate,” or “failed to meet the legal standards for service access.”⁵⁰ No defendant could reasonably be expected to answer such overbroad allegations.

10. Thus, we dismiss the Complaint with prejudice. The Commission does not have jurisdiction under section 208 of the Act to adjudicate Complainants’ claims because Verizon PA did not provide interstate or foreign telecommunications service to the Complainants.

IV. ORDERING CLAUSE

11. Accordingly, pursuant to sections 3, 4(i), 4(j), and 208 of the Communications Act, 47 U.S.C. §§ 153, 154, 154(i), 154(j), and 208, and sections 0.111, 0.311, and 1.720-1.740 of the Commission’s rules, 47 CFR §§ 0.111, 0.311, and 1.720-1.740, the Complaint is **DISMISSED WITH PREJUDICE** and this proceeding is **TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Acting Chief
Enforcement Bureau

⁴⁴ 47 U.S.C. § 415(b).

⁴⁵ The Complaint seeks damages for the service interruptions at issue in the *PUC Order* even though claims for most of these interruptions are time-barred. *See* Complaint at Exh. A (*PUC Order*) at 15 (service interruptions occurred between February 15, 2019 and June 3, 2019). *See also, e.g.*, Complaint at 5, para. 28 (“Verizon beginning March 15, 2019...did not furnish such communication service upon reasonable request”) (emphasis added); Revised Complaint at 8, para. 2 (“violations began February 15, 2019...”).

⁴⁶ *See* Complaint at 33, para. 232; Revised Complaint at 39, para. 26.

⁴⁷ *See* Motion at 13-14 (detailing the Complaint’s procedural deficiencies).

⁴⁸ 47 CFR § 1.721(b).

⁴⁹ *See, e.g.*, Complaint at 4, para. 21 (“Verizon violated Title II beginning March 31, 2020 till May 10, 2021...”), para. 21, 5, para. 27, 8, para. 69; Revised Complaint at 8, para. 3 (same).

⁵⁰ *See, e.g.*, Complaint at 10, para. 83 (“from March 15, 2019, through to February 3, 2020, Verizon’s service failed to meet the legal standards for service access required by law”); *id.* at 11, para. 93 (Complainants experienced “inadequate degraded access to services [from March 2020] and beyond...”); Revised Complaint at 9, para. 7 (“between May 10, [2019] through September 21, 2021, Verizon continued to provide degraded telephone... services...”).