

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 23-V-0098 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures - Appeal by Salvatore and Amanda Annarino. (984162).

COMMISSION DETERMINATION

(Issued and Effective October 19, 2023)

The Commission received an appeal by Salvatore and Amanda Annarino (the complainants) from an informal hearing decision dated January 19, 2023 decided in favor of Spectrum - Buffalo (Spectrum), complainants' cable provider. The issues identified in the appeal relate to unsatisfactory service and insufficient credit for service issues. For the reasons discussed below, the Commission upholds the Informal Hearing Officer's decision.

BACKGROUND

Complainants began to receive service from Spectrum at their current address in October 2019. On December 9, 2019, complainants contacted the Office of Consumer Services (OCS) stating that their service had been shut off for non-payment even though they paid \$50.62 on December 6, 2019. Complainants further stated that Spectrum had replaced four cable boxes, but they still could not watch the channels in their cable package. As a result, complainants requested credits for lost service. On the same day, December 9, 2019, OCS Staff sent a letter to claimants acknowledging their concerns and advising that a company representative would be contacting them to help resolve their complaint.

Spectrum responded to OCS by letter on March 8, 2020 to explain that complainants had a service call scheduled for December 7, 2019, but that call was cancelled before it was completed. Another service call scheduled for December 17, 2019 was also cancelled by complainants before it could be completed. On December 30, 2019, Spectrum completed a service call where the technician did not detect any issues with Spectrum's service and suggested that there was an issue with complainants' electrical system in the home that would need to be addressed by an electrician. On January 10, 2020, another service call had been scheduled only to be cancelled before it was completed.

In its letter to OCS, Spectrum also explained its policy to only apply service credit for a complete loss of service longer than four hours that is within the company's control, and that the company is given an opportunity to address. On February 4, 2020, Spectrum documented the call of an unauthorized person demanding service credit for claimants' account. Spectrum reviewed the account and determined no further credits were due to the account after resolving a previous payment issue. Spectrum's position was that the complainants' services were operating at the expected level of service, and complainants had been accurately billed.

On March 16, 2020, OCS sent a letter to complainants in which it explained that OCS had directed Spectrum to address complainants' concerns. Summarizing Spectrum's letter response, OCS indicated Spectrum's position that no further credit was due to complainants' account because there was no documented service outage within Spectrum's control.

On September 15, 2021, after complainants continued to communicate concerns to OCS about the quality of Spectrum's service, OCS sent a letter to complainants informing them that Spectrum agreed, due to OCS involvement in complainants' case,

to provide a courtesy credit of \$390.10 to their account, two months of credit for their video and internet services.

Complainants subsequently filed a request for an informal hearing on November 30, 2021. Complainants asserted that they had no cable for months and thought that their electric service caused the cable problems. Complainants hired an electrician who told them that their electric service was functioning properly. After submitting a complaint to OCS, complainants allege that OCS Staff promised a credit worth four months of service only to receive a two-month credit from Spectrum. Complainants alleged to have recordings they wanted to submit to OCS.

In response to a request from the Informal Hearing Officer (IHO) investigating the complaint prior to the informal hearing, Spectrum provided the following information on July 7, 2022:

"SERVICE INTERRUPTIONS

The customer's service was interrupted due to non-payment on December 2, 2019. The customer made a promise-to-pay, and service was restored. The customer did not keep that promise-to-pay, and service was interrupted again on December 9, 2019. The customer then made a payment to have service restored. On February 4, 2020, service was interrupted again due to non-payment. Service was restored when the customer made a payment. There have not been any service interruptions since that time. The customer's account is current and active at this time.

SERVICE CALLS

- November 17, 2019 - service call to address missing channels. Service call cancelled as nobody was home at the time of the service call.
- November 18, 2019 - service call for internet not working properly. Customer cancelled the service call at the door when the technician arrived.
- December 7, 2019 - service call to address missing channels. Service call cancelled as nobody was home at the time of the service call.
- December 9, 2019 - service call completed - no issues found with our service. Customer informed of an electrical issue beyond our control.
- December 17, 2019 - service call to address reported issue. Service call cancelled by the customer during the precall.
- December 30, 2019 - service call to address reported issues. Service call completed - we found that the issue was with the electrical system in the home, not Charter's service.
- January 10, 2020 - service call to address reported issues. Service call cancelled before it was completed.
- July 19, 2021 - service call to address ongoing issues. Service call cancelled as nobody was at home at the time of the service call.

CREDITS

It is our policy to only apply service credits for verifiable service issues within our control that we are given an opportunity to address. Based on the Commission's regulations, we were unable to verify there was a complete loss of service for four or more hours. As such, credits were not warranted under the Commission's regulations. There is nothing for us to calculate. The majority of the service calls were cancelled, and we were unable to verify any issues.

However, the customer received billing adjustments totaling \$318.14 on their December 15, 2019, billing statement. The customer also received a billing adjustment in the amount of \$26.45 on January 3, 2020. The customer received another billing adjustment totaling \$22.06 on February 8, 2020. The total credits received were \$366.65, nearly two months of service charges. In order to settle this matter because Charter was so delayed in filing our final response, Charter applied an additional two-month service credit (in the amount of \$396.10) on August 27, 2021. This brings the total credit received to \$762.75. There is not any documented history of a complete loss of service. Furthermore, service calls were cancelled and not completed. Therefore this credit is far in excess of what would have been required under the Commission's regulations. It was applied in good faith and as a courtesy.

BILLING STATEMENTS

Please see the attached billing statements from the time period in questions. The customer began service at this address on October 15, 2019. They had a balance of \$194.22 that transferred from the former account. They did not make a payment until December 10, 2019."

On August 10, 2022, OCS provided a complete copy of the case file to complainants at their request to assist in preparation for the upcoming informal hearing. On September 3, 2022, complainants acknowledged reviewing the case file and indicated they would like to schedule the informal hearing.¹ The informal hearing was scheduled for December 15, 2022, at 12:00 p.m. to address OCS Staff's initial determination regarding "Bill/Service Affecting Condition." The IHO sent the hearing notice to complainants by email on November 29, 2022. The hearing notice indicated that the informal hearing would be held via Telephone Conference Call and instructed complainants to dial in and enter an access code to participate in the hearing. The hearing notice also instructed complainants to submit any supplemental information for consideration in the final determination.

¹ The original informal hearing date was cancelled to give complainants the opportunity to review the entire case file. Rescheduling the informal hearing was delayed due to complainants' health concerns and exploring the possibility of holding an in-person hearing in Buffalo, NY. Given the length of time it would take to schedule an in-person hearing, approximately 6-12 months, complainants ultimately agreed to an informal hearing by phone.

Complainants did not call into the informal hearing as they misunderstood that they would be called for the hearing.² They explained that after not getting a call for ten minutes, they went back to work. The IHO emailed and called complainants at 12:13 p.m. on December 15, 2022 to inform them that the hearing had begun. After receiving a call at 12:13 p.m., complainants did not continue with the hearing. Spectrum brought a settlement agreement to the hearing, offering another courtesy credit of \$200 to finally resolve the complaint. Complainants rejected the settlement offer as insufficient and countered with an offer of \$1,600. Spectrum, believing no additional credit was due, kept \$200 as their final offer. Complainants declined Spectrum's final offer, deciding instead to wait for the IHO's written decision.

In her decision dated January 19, 2023,³ the IHO concluded that, based on the information presented, Commission rules do not provide for additional credit to complainants in connection to their cable service complaints with Spectrum between October 2019 and September 2021. The IHO considered issues raised by the complainants: unsatisfactory service and insufficient credit for service issues.⁴

The IHO recognized the undisputed facts that complainants experienced service issues which took time to resolve. Spectrum, acknowledging the service issues and delays, applied a total credit of \$762.75, to complainants' account.

² Complainants received an email from the IHO with the hearing notice and instructions in an attachment. Complainants alleged they never received the attachment. The email from the IHO stated the hearing letter is attached to the email and asked complainants to contact her with any questions.

³ It appears the informal hearing decision is incorrectly dated January 19, 2022.

⁴ Informal Hearing Decision, pg. 6.

Complainants claimed the \$762.75 credit to be inadequate. The IHO also recognized and addressed complainants' allegations that (1) OCS refused to provide a record of communication between Spectrum and Mr. David LaBombard, Chief of the Complaint Analysis and Informal Hearing Units, (2) Mr. LaBombard "promised" 6-8 months of credits for the 10 plus months of service issues complainants experienced, and (3) OCS did not hold Spectrum accountable for their failures.

With respect to allegations concerning Mr. LaBombard, the IHO included an email exchange in the informal hearing decision where Mr. LaBombard asked Spectrum to consider a 2-4 month credit to complainants' account for service issues from October 2019 to February 2020.⁵ The IHO determined that, even if Mr. LaBombard definitively promised 6-8 months of credit to complainants, the Commission rules did not provide for additional credit above what complainants already received. The IHO pointed to Commission rules defining a service outage as the following:

"Service outage shall mean a loss of picture or sound on all basic channels or on all channels provided on any other service tier or on one or more premium channels occurring during normal operating conditions which is not caused by the subscriber's television receiver or the subscriber."⁶

The IHO next points to Commission regulations concerning conditions that warrant the issuance of credit for a service outage:

⁵ Id. at 7.

⁶ 16 NYCRR 890.61(m).

(a) Every cable television company shall provide credit to subscribers affected by any service outage in excess of four continuous hours in accordance with subdivisions (b) and (c) of this section. The four-hour period shall commence at the time the cable television company first becomes aware of the service outage.

(b) Whenever a cable television company may reasonably determine the existence and scope of a service outage as, for example, a service outage caused by a major failure in the system's headend or distribution electronic equipment, which service outage exceeds four continuous hours and some part of which occurs during the hours 6:00 p.m. to 12:00 a.m., the cable television company shall automatically credit the account of each affected subscriber.

(c) In the event a cable television company cannot determine all subscribers affected by a service outage in excess of four continuous hours or no part of such outage occurs during the hours 6:00 p.m. to 12:00 a.m., credit shall be given to any eligible subscriber who makes application therefor by either written or oral notice within 90 days of such service outage.

(d) The minimum credit for a service outage shall be equal to one thirtieth times the applicable monthly charge for each 24-hour period during which a service outage continues for at least four hours.

(e) A cable television company shall be responsible for every service outage except for interruption of programming to provide emergency information to the

public using the Emergency Alert System as defined in section 896.5 of this Title.⁷

Spectrum asserted that there is no documented lengthy outage connected to complainants' account. The IHO identified complainants' issues to be more consistent with service interruptions, which are defined as the loss of picture or sound of one or more cable channels.⁸ Finally, the IHO relied on Commission Case 11-V-0613, which stated:⁹

We cannot direct that such a company provide a subscriber with credit because of reported picture or sound problems on a given channel or channels, unless a "service outage" occurs and additional requirements are met.

And

We may only direct a cable television company to credit subscribers for a service outage that is in excess of four hours in duration, with commencement of the outage being "the time the cable television company first becomes aware of the outage." Under some circumstances a customer has to notify the company to obtain credit, and the "minimum amount of credit required" is "one thirtieth times the applicable

⁷ 16 NYCRR 890.65 (emphasis added).

⁸ 16 NYCRR 890.61(i).

⁹ Commission Case 11-V-0613, Appeal by Ms. Marcia Salzburg of the Informal Decision Rendered in Favor of Time Warner Cable of New York City, Commission Determination Issued August 20, 2012.

monthly charge for each 24-hour period during which a service outage continues for at least four hours."

Based on the information presented and Commission regulations related to cable service outages, the IHO determined no further credit to complainants was warranted.

POINTS ON APPEAL

By submission dated February 8, 2023, complainants appeal from the IHO's decision arguing that it is erroneous for the reasons summarized below:

(1) Complainants first argue that the IHO overlooked video evidence that they submitted by email, which documented the cable service issues that caused them to file a complaint in the first place.

(2) Complainants argue that Spectrum offered money toward a settlement, which is an admission of wrongdoing. Yet the IHO determined otherwise.

(3) Complainants argue that they were unable to speak at the hearing as the IHO called 15 minutes after the hearing was supposed to begin, which denied them the opportunity to introduce evidence supporting their complaint.

(4) Complainants argue that new evidence is now available to grant their appeal that was unavailable previously.

(5) Complainants finally argue that the IHO refused to provide evidence from Spectrum leading up to the informal hearing.

Ultimately, complainants request a fair right to resolve what has transpired with Spectrum. For the informal hearing, complainants argued that they had received insufficient credit for the service issues they experienced with Spectrum.

DETERMINATION

The central issue in this case is whether Spectrum must provide additional service credit to complainants for service issues they experienced between 2019-2021. For the reasons explained below the Commission concludes that under the circumstances of this case, Spectrum is not required to provide any additional service credit during the disputed period.

Regarding complainants' claim that the IHO overlooked video evidence documenting their service issues - no such evidence exists in the case file.¹⁰ Nor is there evidence from complainants or Spectrum that documents a service outage meeting conditions detailed in 16 NYCRR 890.65 that would require Spectrum to credit complainants' account. Complainants had the opportunity to provide additional evidence or information to the Commission not previously submitted in connection with their

appeal and did not do so.¹¹ The Commission does not find that the IHO overlooked evidence in reaching her decision.

Next, Spectrum provided a total credit of \$762.75 to complainants for the problems they experienced with their cable service. At the hearing, Spectrum brought a settlement offer of an additional \$200 to resolve the complaint and ensure complainants would not appeal the IHO decision further. Spectrum does not dispute that complainants experienced some service problems, including cable box issues, soon after

¹⁰ Department Staff consulted with OCS during preparation of this order. No OCS or hearing Staff had record of emails from complainants containing video evidence.

¹¹ Department Staff sent a letter to complainants acknowledging receipt of their appeal. The letter instructed complainants to send any further information or documentation not previously submitted in connection with their complaint to the Commission by March 17, 2023. Complainants submitted no additional documentation or information to the Commission.

complainants began service through their current account. Rather, Spectrum's position is that there is no documented service outage, and no credits were required under Commission regulations. The credit provided and settlement offered was done so in good faith to resolve the complaint. Spectrum clarified that they made the settlement offer as a courtesy. The Commission concludes that, despite complainants' argument to the contrary, Spectrum's settlement offer is not an admission of wrongdoing.

The Commission next finds that complainants had an opportunity to present their case at the informal hearing but chose not to do so. Complainants received an email with the hearing notice and instructions included as an attachment.¹² The instructions stated that complainants needed to call in at 12 p.m. on December 15, 2022, and enter an access code to begin the hearing. When complainants failed to call in for their hearing, the IHO reached out and called complainants at 12:13 p.m., but complainants decided not to participate. Declining to participate is not the same as being deprived the opportunity to present their appeal. The IHO properly issued a decision based on the information presented consistent with Commission regulation 16 NYCRR 12.10 when a party fails to appear for an informal hearing.

Complainants stated in their appeal to the Commission that new evidence existed supporting their claims. Yet, as noted above, even though the Department's acknowledgement letter directed complainants to provide any new information or

¹² Complainants alleged that they never received the hearing notice attachment in the email they received on November 29, 2022. The body of the email read: "See attached Informal Hearing scheduling letter. If you have any questions please let me know asap." Complainants did not inquire to the IHO about any lack of letter attachment.

documentation in support of their appeal to the Commission by March 17, 2023, complainants did not submit any new information. There is no new information or documentation for the Commission to consider.

Finally, complainants claim the IHO refused to provide information and documents from Spectrum leading up to the informal hearing. First, the appeal record contains emails from complainants acknowledging that they have received and reviewed the documents in the case file from Spectrum. Next, to the extent complainants pursued communication between Mr. David LaBombard and Spectrum, the IHO quoted their email exchange in the informal decision hearing.¹³ Complainants made no additional claim against Mr. LaBombard in their appeal to the Commission. Their claim at the informal hearing stage seemed to be that Mr. LaBombard "over-promised" and "under-delivered" the credit Spectrum would provide to complainants.¹⁴ Even if that were the case, complainants received more credit than Commission regulations require based on the information in the appeal record. The Commission has no authority to require Spectrum to provide additional credit complainants in this matter.

Ultimately, complainants received a credit of \$762.75 from Spectrum for cable service-related issues between October 2019 and September 2021.¹⁵ While the record documents service terminations for non-payment and cable-box issues, the record does not contain a documented service outage, along with other conditions required by 16 NYCRR 890.65, that would require

¹³ Informal Hearing Decision, pgs. 6-7.

¹⁴ Documents in the administrative record do not reflect an unconditional "promise" by Mr. Lombard to provide complainants a financial credit covering a 6-8 month period.

¹⁵ The appeal record contains Spectrum billing statements to complainants documenting the service credits issued to complainants between December 2019 and September 2021.

additional credit to complainants' account by Spectrum. The Commission finds that the IHO properly applied 16 NYCRR 890.65 and the principles of Commission Case 11-V-0613 in rendering her determination.

CONCLUSION

The Commission determines that no further credit is due to complainants account with Spectrum for service issues they experienced from 2019 to 2021. Therefore, for the reasons set out in this determination, complainants' appeal is denied, and the informal hearing decision is upheld and affirmed.