



Department of Public Service

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January 19, 2022

Salvatore & Amanda Annarino

[REDACTED]

Spectrum - Buffalo
Mr. William Wesselman
Regulatory Manager
6399 S. Fiddlers Green Circle
Greenwood Village, Colorado 80111

**Subject: Informal Hearing Decision
Complaint # 984162
Service affecting condition, insufficient credit**

Dear Mr. and Ms. Annarino and Mr. Wesselman:

An informal hearing in the case referred above was held on December 15, 2022. The complainants, Salvatore & Amanda Annarino, (the complainants) did not attend the hearing.¹ Mr. Wesselman attended the hearing and represented Spectrum – Buffalo (Spectrum or the company). The hearing has been recorded. Based on all the information presented, I find that no additional credit is warranted by Commission rules.

Background

The complainants started to receive service from the company in October 2019. The initial package included three services: TV, internet and phone. In 2021, the phone service was discontinued. Current charges on a bill dated July 14, 2022 were \$242. Page 4 of the said bill contained the 2022 Annual Notice which stated in part:

¹ If a customer or the utility does not appear for a scheduled hearing, without good cause, the hearing officer will accept information from the attending party and make a determination on the dispute. 16 NYCRR Part 12.10 Failure to appear.

- New York: If a video service outage occurs for at least 4 hours and between 6pm and 12am and Spectrum is aware of such outage, Spectrum will provide a minimum credit equal to one day of Spectrum video service charges. In the event Spectrum cannot determine affected Customers or such outage occurs entirely outside the 6pm to 12am time frame, Spectrum will provide a credit to eligible Customers who request a credit within 90 days of such service outage.

The complainant contacted the Office of Consumer Services (OCS) of the Department of Public Service on December 9, 2019². The complainant stated that service had been shut off for non-payment while she paid \$50.62 on December 6, 2019. She stated that they replaced four cable boxes but still do not get the channels they pay for. The complainant requested credits for the lost service.

OCS wrote the following to the complainant on March 16, 2020:

Spectrum has informed the Department that they have made several attempts to resolve your service issues. Spectrum states that the appointments for December 7, 2019 and December 17, 2019 were both cancelled by the customer. On December 30, 2019, a service call was completed with no trouble found, but did note that you were advised of an electrical issue that needed to be resolved. Spectrum is only required to provide credit for loss of service in excess of four hours that is within its control and given the opportunity to address. Since no service issue could be identified, no credit is warranted.

Spectrum also states that your previous payment issue has been resolved, and the current balance on your account is \$3.16 after your February 29, 2020 payment was posted to your account.

On August 27, 2021, the company wrote the following to OCS:

The total credit applied to the Annarino account is \$396.10. That is two months of their monthly billing rate for video and internet services.

OCS wrote the following to the complainant on September 15, 2021:

I have received your e-mails and voice mails regarding your ongoing concerns with your case. While I empathize with your experiences and understand the inconvenience and frustration that this situation has caused, the credit of \$396.10 is the maximum amount I was able to obtain in compensation from Spectrum.

I understand that based on your experience, you believe that Spectrum should provide additional compensation, however, based on the Public Service Law regulations, Spectrum is not required to provide any compensation. Due to this

² Archived OCS case 011058 was opened on 12/09/2019.

office's involvement, you were able to receive the \$396.10 credit which Spectrum provided as a courtesy and at its discretion.

Spectrum will not consider any additional credit and this office cannot require Spectrum to provide any further credit. I regret that this response could not be more favorable.

The complainant disagreed with OCS' determination in this case and requested an Informal Hearing.

Complainant

The complainant stated the following on September 16, 2021:

You mention Public Service Laws and regulations but none of that was mentioned by any single person including you. Then you attach a pamphlet for some strange reason, technically we would be at stage 3 because we appealed the original decision that was made since no one reached from the Public Service Commission after the fact. We could only ever go off of what you told us. You talked everything up big time then ignored our calls and texts for months. What does the Public Service Commission's complaint department do if it's not to take utility customer's complaints of service issues and interruptions and holding the utility company accountable? Now you are telling us basically that Spectrum is doing us a "favor". Not to mention it's a free for all and they don't have to provide the services that a customer is paying for, or maintain their service lines, or equipment, rather they can send techs to our home to purposely switch our box to a non-compatible box that they knew would not work on their "network" instead, That doesn't sound right. Yet at the same time they had just came out with a new box. I seriously must be delusional!!!

The complainant stated the following on August 25, 2022:

I wanted to reach out to you once again to request all documentation that Spectrum has in regards to this complaint. There was communications and correspondence between David Labombard and Spectrum, their written statement to our complaint, their defense in the matter. As the letter from a Monica Ferreri states we have the right to all of that in addition to what you provided as the complaint file which is notations of when we called some of the time. We also need to take care of the matter of making David Labombard accountable for his actions, or maybe lack of because countless times in the files it requests for him to contact us or to cc him to the notes yet we never heard from him.

The complainant stated the following on September 3, 2022:

We have had the opportunity to go over the file completely and would like to proceed with rescheduling the formal hearing.

The complainant stated the following on December 28, 2022:

How is a determination made now? Is it unbiased the decision? Spectrum never provided any evidence or reply as we asked for that information multiple times and it was never available. As Spectrum customers that have dealt with so much for so long, and the timeframe on this case one would hope all of that is taken into consideration. We don't appreciate the lowball offer, the pushback, the lies we were told, the difficulty in communication with the case, we have no control over Spectrum, their lack of quality service, or how anyone involved behaved towards us when we were just asking for help from NYS utility regulatory agency since we were wronged.

The complainant stated the following on December 29, 2022:

We didn't ask for any of this we only asked that the service we were paying for actually be received which it wasn't. We had tech after tech in our home, team leads & supervisors coming in our home lying telling it was microwave interference putting bowls of water in our microwave & running it, running our washer & dryer, then they said it was our electricity so we had an electrician and the city building inspector out and nothing was wrong with our electricity. They kept grasping at straws making up excuses after excuses, lie after lie on why the cable wasn't working. We had several box swaps, we had a brand new box & a tech came and took it saying his supervisor said we weren't allowed to have a new box unless we paid for it, installed a "refurbished" box and it started resetting itself continuously until I went to a store location the next day to swap box back out again. It was a continuous cycle until we made the complaint. David Labombard promised 6-8 months of credit out of 10 months plus of issues. There is an email in the file where he contacted someone from Spectrum and said Spectrum was at fault as well as the public service commission for dropping the ball. So now we are at a stand still what is the next step? What does policy dictate for a determination?

Company

The company stated the following on August 27, 2021:

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.

Analysis

The issues raised by the complaint are unsatisfactory service and insufficient credit for service issues. Based on the information provided below, I find that no additional credit is warranted by the Commission rules.

The complainant's description of service issues included the following:

- Disconnection of service due to non-payment
- Inability for watch channels they paid for
- The company's failure to find the real cause of service problems and incorrectly pointing out the electrical issues in the house
- Service interruptions and lack of quality service

It is undisputed that the complainants had service issues which took time to resolve. The company acknowledged service issues by applying the following credits – \$366.65 during the period of 2019-2020 and \$396.10 on August 27, 2021. The total credit of \$762.75 was not to the complainants' satisfaction.

Additionally, the complainants alleged the following:

- OCS Staff refused to provide a record of communications between the company and Mr. David LaBombard, Chief of the Complaint Analysis and Informal Hearing Units;
- Mr. David LaBombard promised 6-8 months of credit out of 10 months plus of issues; and
- OCS Staff did not hold the company accountable for their failures.

Regarding the claims against OCS, I will refer to internal communication between the company and OCS which was included in the copy of the complaint file that was delivered to them on August 10, 2022.

On July 21, 2021 Mr. LaBombard wrote the following to Spectrum:

I have a case 984162 – Annarino that I'd like you to take a look at. It appears that this customer had some service issues back in Oct 2019 – Feb 2020 that could have been handled better by Spectrum and my staff. The problem was eventually solved with a new router and a new set top box, but the problem was poorly handled all around, I believe. I am asking you to look at the case and consider a

customer courtesy credit for two of the four months. I know it is a lot to ask, but, let me know what you think when you get to it.³

Mr. LaBombard wrote to the complainants on August 27, 2021:

My apologies for not getting back to you sooner, I have been fighting with Spectrum to issue you a credit. We have reached a final number of \$396.10 to be applied to your account. This credit should be reflected on your next bill. This number may not be the number you were hoping for, but after three weeks of fighting, it is the highest Spectrum will go and I don't want to risk losing it. This is equal to two months of service as your current service level. I hope you can accept it along with my sincere apologies for all that you have been put through.

Despite the above written records, the complainants insist that they were promised six to eight months credit to hold the company accountable. If, for the sake of argument, such credit was promised by OCS Staff by mistake, neither Staff nor the Informal Hearing Officer have the authority to overstep the Commission rules.

Commission rules define 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.⁴

Commission rules state the conditions that warrant issuance of a credit for service outage:

(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.

³ Email from Mr. David LaBombard to the company dated July 21, 2021.

⁴ 16 NYCRR §890.61(m).

(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.⁵

The company's record from the copy of the complaint file states that the customer called on February 2, 2022 to verify outages of more than four hours. The representative was unable to find any lengthy outages; the customer got upset and inquired where such terms and conditions were displayed. The terms and conditions of service are stated in the Annual Privacy Notice. An example of such notice was in the customer's bill dated July 14, 2022.⁶

Commission rules define service interruptions differently and provide no credit for service interruptions:

(I) Service interruption shall mean the loss of picture or sound of one or more cable channels.⁷

The Commission addressed similar issues in Case 11-V-0613 and stated the following:⁸

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

Based on the above review of the complainants' statements, company records and Commission rules, I find that no additional credit is warranted.

Determination

⁵ 16 NYCRR Part 890.65.

⁶ See Background Section of this determination, pages 1-2.

⁷ 16 NYCRR Part 890.61 (i).

⁸ 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.

The company's billing is sustained as rendered; no additional credit is warranted by Commission rules.

APPEAL PROCEDURE

If you believe that this decision is incorrect, you may appeal to the Commission. The basis for an appeal to the Commission is limited to one or more of the following grounds:

- (1) The hearing officer made a mistake in the facts in the case or in the laws or regulations which affected his or her decision; or
- (2) The hearing officer did not consider evidence presented at the hearing or review, which resulted in an unfavorable decision; or
- (3) New facts or evidence, not available at the time of the hearing, have become available, and could affect the decision on the complaint.

If you choose to appeal, your appeal must be in writing and must contain an explanation of the facts or conclusions in the decision with which you disagree, the reasons for your disagreement, the relief or remedy sought from the Commission, and documentation of your position or legal arguments supporting your position.

The appeal should be filed within fifteen (15) days after the informal hearing or review decision is mailed and may be filed electronically or by regular mail. To file electronically, e-mail your appeal to the Secretary of the Public Service Commission, Michelle L. Phillips, at: Secretary@dps.ny.gov

If you are using regular mail, your appeal letter should be addressed to:

Michelle L. Phillips, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

A copy of the appeal letter should also be sent to the opposing party. Appeals of Informal Hearing Decisions become a matter of public record and are listed on the Commission's website. Both your appeal letter and the informal hearing decision will be available to members of the general public (subject to limited redaction in the case of residential customers).

The Commission may make a determination on your appeal, reject it, return the case to the informal hearing officer for additional consideration, order a formal evidentiary hearing on the complaint or take such other action as it deems appropriate.

Sincerely,

/s/ Tatyana Benyaguyeva

Tatyana Benyaguyeva
Informal Hearing Officer
Office of Consumer Services