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March 10, 2009

***Filed Via E-Filing***

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – 2 West  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Colin C. Boatin v. Verizon North Inc.; Docket No. C-2008-2066888; **MOTION TO STRIKE EXCEPTIONS**

Dear Mr. McNulty:

Enclosed is a Motion of Verizon North Inc. to Strike the Exceptions filed by Colin C. Boatin in the above-captioned matter. A hard copy of the Motion will be forwarded to the Commission and a copy has been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please feel free to call.

Very truly yours,

Janet L. Miller  
*Counsel for Verizon North Inc.*

JLM/das

cc: Colin C. Boatin

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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COLIN C. BOATIN,

Complainant

v.

VERIZON NORTH INC.,

Respondent

Docket No. C-2008-2066888

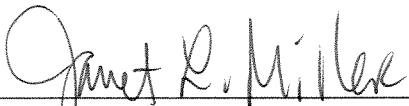
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**NOTICE TO PLEAD**

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TO: Colin C. Boatin  
215 West Chocolate Avenue  
Apartment 8U  
Hershey, PA 17033

You are hereby notified that Verizon North Inc. ("Verizon North") has filed a Motion in the above-captioned proceeding. You may submit a response to the Motion **within twenty (20) days**. If no response is filed, the claims raised in the Motion will be deemed admitted, without requiring other proof. All pleadings, such as a response to the attached Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon North.

  
\_\_\_\_\_  
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DATED: March 10, 2009

*Counsel for Verizon North Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

COLIN C. BOATIN,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2008-2066888
	:	
VERIZON NORTH INC.,	:	
	:	
Respondent	:	

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**MOTION OF VERIZON NORTH INC. TO STRIKE  
THE EXCEPTIONS FILED BY COLIN C. BOATIN**

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Verizon North Inc. (“Verizon North” or “Company”), by and through its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby files this Motion to strike in their entirety the Exceptions filed in the above-captioned matter by Colin C. Boatin (“Complainant” or “Mr. Boatin”) on the basis that they represent statements and documents that (a) deal with issues not within the jurisdiction of the Pennsylvania Public Utility Commission (“Commission”); and (b) are not part of the evidentiary record in this proceeding. Mr. Boatin’s Exceptions were filed in response to the January 9, 2009 Initial Decision (“Initial Decision” or “I.D.”) of Administrative Law Judge (“ALJ”) Louis G. Cocheres. In support of its Motion, Verizon North avers and represents as follows:

BACKGROUND

1. On September 25, 2008, Mr. Boatin filed a Formal Complaint in which he stated: “I do not have to pay Verizon any money since my obtaining the telephone since 2004 has resulted in the death of my attorney and my brother a doctor which is a case in the Pennsylvania Supreme

Court.” Formal Complaint at ¶4. All other claims set forth in the Formal Complaint involved the (a) death of Complainant’s attorney and brother; (b) alleged wiretapping of Complainant’s telephone lines; (c) theft and use of Complainant’s identity and personal information; and (d) activities of credit card companies in connection with Complainant’s credit card accounts, credit limits and credit standing.

2. On November 5, 2008, Verizon North filed an Answer and New Matter to the Formal Complaint in which the Company denied Mr. Boatın’s material allegations. Verizon North also filed Preliminary Objections seeking to dismiss the Formal Complaint on several grounds, including the fact that the Commission has no jurisdiction to hear and decide most of the issues raised by Mr. Boatın.

3. No hearings were held in this proceeding.

4. On January 9, 2009, ALJ Cocheres issued his Initial Decision in which he considered Verizon North’s Preliminary Objections to be a motion for judgment on the pleadings. That motion was granted in the Company’s favor. I.D. at 3, 5. Specifically, ALJ Cocheres properly concluded that (a) the Commission does not have subject matter jurisdiction over Complainant’s allegations about the deaths of his brother and his attorney, the possible wiretapping of his telephone line, identity theft, or his credit standing; and (b) no controversy remained between the parties with respect to Complainant’s telephone account.<sup>1</sup> I.D. at 5. As a result, ALJ Cocheres properly dismissed Mr. Boatın’s Formal Complaint as a preliminary matter.

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<sup>1</sup> The only telephone service claim raised in the Formal Complaint involved amounts owed on the account. Verizon North addressed this issue by crediting all outstanding balances owed by Complainant. None of the other issues set forth in the Exceptions with regard to Complainant’s telephone service were part of the allegations set forth in the Formal Complaint.

5. On February 17, 2009, Complainant filed Exceptions to ALJ Cocheres' Initial Decision. These Exceptions encompassed 35 pages of hand written material accompanied by nearly 1,500 pages of exhibits. Concurrently with this Motion, Verizon North is filing Replies to Mr. Boatins' Exceptions.

#### MOTION TO STRIKE

6. It is well-settled that the Commission is a creature of the legislature and, as such, only has those duties, powers, responsibilities and jurisdiction expressly given it by the legislature.<sup>2</sup>

7. The Commission Regulations and case law provide that a party may rely only upon record evidence at the exception stage of a proceeding.<sup>3</sup> Furthermore, it is an indisputable fact of administrative agency law and procedure that, in order to withstand appellate review or scrutiny, the finding of an administrative agency must be supported by substantial evidence in the record.<sup>4</sup> This legal principle requires the Commission to rely only upon evidence contained in the record in reaching its findings of fact, conclusions of law and ultimate opinions in a proceeding. It would be grossly unfair and prejudicial to the other parties in a proceeding if the decision of an ALJ, which must be based upon evidence in the record, could be challenged by a party by citing to or relying upon information or evidence that is not in the record and that was not considered by the ALJ.

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<sup>2</sup> *Western Pennsylvania Water Company v. Commonwealth, Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973). See also, *Commonwealth of PA v. VanBuskirk*, 449 A.2d 621 (Pa. Super. 1982) (neither silence nor agreement of the parties will confer jurisdiction where none exists); and *Level 3 Communications, LLC v. Marianna & Scenery Hill Tel. Co.*, 98 Pa. PUC 1 (2003) (jurisdiction may not be conferred by the parties where none exists).

<sup>3</sup> 52 Pa. Code § 5.533 directs that parties refer to relevant portions of the record and passages in previously-filed briefs, insofar as practical, when offering a statement of reasons in support of an exception. *Pa. PUC v. Verizon Pennsylvania Inc.*, 95 Pa. PUC 387, Docket No. R-00994697, 2001 WL 94260 (Pa. PUC 2001) (Exceptions that contain extra-record evidence will be stricken and will not be used to resolve the merits of any contested matters); *Re: Apollo Gas Company*, 81 Pa. PUC 475 (the inclusion of extra-record documents with Exceptions or Replies to Exceptions is not permitted without an order of this Commission) (Pa. PUC 1994).

<sup>4</sup> *AT&T v. Pa. PUC*, 737 A.2d 201 (Pa. 1999); *George v. Pa. PUC*, 735 A.2d 1282 (Pa. Cmwlth. 1999).

8. In this case, Mr. Boatin's Exceptions should be stricken for two reasons. First, the Exceptions represent statements and opinions about a variety of subjects that have nothing to do with the telephone service Complainant received from Verizon North. For example, the Exceptions include statements and opinions on subjects and issues such as: (a) "secret killing of innocent citizens. . ." in Pennsylvania, including Complainant; (b) claims against insurance companies; (c) alleged tapping of Complainant's telephone; (d) deaths of Complainant's attorney and brother; (e) workers' compensation claims; (f) Complainant's automobile accidents and medical treatments; (g) the disruption of Complainant's credit; (h) fraudulent medical reporting; (i) the availability of higher education in Pennsylvania for African and European students; and (j) salaries for Pennsylvania state employees. None of these issues involve Complainant's telephone service, either directly or indirectly, nor are they subject matter over which the Commission has jurisdiction or for which the Commission can grant relief.

9. As properly noted by ALJ Cocheres in the Initial Decision:

I agree with Verizon that the Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *Western Pennsylvania Water Company v. PA Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973). There is nothing in the Public Utility Code (66 Pa. C.S. §§ 101 *et seq.*) which allows the Commission to address the issues of the deaths of Mr. Boatin's brother and his attorney, possible wiretapping, identity theft or Complainant's credit standing. . . . Under these circumstances, those issues must be dismissed.

I.D. at 3. This same principal of law applies to the majority of the statements made and issues raised by Complainant in his Exceptions. For this reason, the Commission should strike all mention of and/or reference made in the Exceptions that does not relate to Complainant's telephone service.

10. Second, the Exceptions should be stricken because they represent an inappropriate attempt to introduce evidence in this proceeding through the exception process. Nothing contained in the Exceptions is part of the record of this proceeding because no hearing was held; thus, there is no evidentiary record developed at this point in time. Rather, the Initial Decision properly dismissed Mr. Boatin's Formal Complaint as a preliminary matter because all claims made in the complaint with regard to telephone service were addressed by Verizon North, and because the Commission has no authority or jurisdiction to hear and decide all other matters raised in the Formal Complaint.

11. Even those statements and opinions made by Complainant in his Exceptions that do deal with his telephone service should be stricken. As noted above, there was no hearing held in this matter. Thus, there is no evidentiary record upon which the Exceptions can be granted and/or upon which the Initial Decision can be modified. More importantly, from Verizon North's perspective, it has had no opportunity to test any of the statements through cross-examination or otherwise. Thus, the Commission cannot consider such statements or opinions at this stage of the proceeding without blatantly violating Verizon North's Constitutional right to due process. Complainant's Exceptions cannot substitute for or be allowed to constitute the evidentiary record of this proceeding and the Commission should not and cannot grant any portion of Complainant's Exceptions based on the documents Mr. Boatin submitted on February 17, 2009.

12. Furthermore, on the issue of his telephone service, Mr. Boatin's Formal Complaint states only: "I do not have to pay Verizon any money since my obtaining the telephone since 2004 has resulted in the death of my attorney and my brother a doctor which is a case in the Pennsylvania Supreme Court." Formal Complaint at ¶4. Notwithstanding the fact

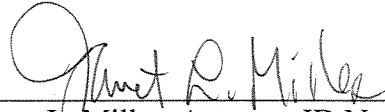
that anything included in the Exceptions in support of this allegation is extra-record evidence and should not be considered by the Commission, the basis for Complainant's claim that he has no obligation to pay for his telephone service is an issue over which the Commission has no jurisdiction – *i.e.*, the deaths of his attorney and brother. As discussed above, the Commission cannot make any rulings related to these deaths and therefore cannot determine that Complainant is entitled to relief of his telephone charges as a result of those events.

13. In addition, a review of the Exceptions quickly reveals that Complainant references events and makes claims about or related to his telephone service that go far beyond what was stated in his Formal Complaint or the Initial Decision, and about which Verizon North was given no notice. Thus, the Commission's consideration of these "facts" in reaching any decision in this matter violates the Company's due process rights and should not be permitted. Even if it were to determine that Complainant is entitled to a hearing on the matters related to his telephone service, the Commission should not accept the statements and opinions set forth in the Exceptions as part of the record of this proceeding. Mr. Boatman's original claims should not be expanded by the content of the Exceptions, and the scope of any hearing held in this matter should be limited to the claims raised in the Formal Complaint as filed.

CONCLUSION

WHEREFORE, for the reasons set forth above, Verizon North Inc. respectfully requests that the Exceptions filed in the above-captioned matter by Colin C. Boatman on February 17, 2009 be stricken in their entirety.

Respectfully submitted,



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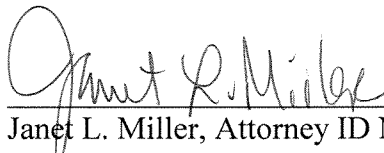
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Facsimile: 717-236-4841  
jlmiller@hmslegal.com

*Counsel for Verizon North Inc.*

DATED: March 10, 2009

## VERIFICATION

I, Janet L. Miller, certify that I am Counsel for Verizon North Inc. and that, in this capacity, I am authorized to and do make this Verification, that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief, and that I expect the Company to be able to prove the same at any hearing hereof. I understand that false statements made therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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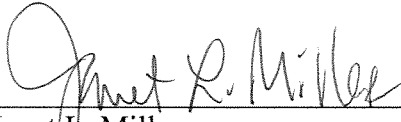
*Counsel for Verizon North Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the party listed below, in accordance with the requirements of §1.54 (relating to service by a party).

Service by First Class Mail:

Colin C. Boatin  
215 West Chocolate Avenue  
Apartment 8U  
Hershey, PA 17033

  
\_\_\_\_\_  
Janet L. Miller  
*Counsel for Verizon North Inc.*

DATED this 10<sup>th</sup> day of March, 2009.