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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. Boatn v. Verizon North Inc.; Docket No. C-2008-2066888; **REPLIES
TO EXCEPTIONS**

Dear Mr. McNulty:

Enclosed are the Replies of Verizon North Inc. to Exceptions filed by Colin C. Boatn in connection with the above-captioned matter. By letter dated February 27, 2009, Verizon North was given an extension until today for the filing of these Replies. A hard copy of the Replies to Exceptions 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: Honorable Louis G. Cocheres
Colin C. Boatn

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**VERIZON NORTH INC.’S REPLIES TO THE
EXCEPTIONS FILED BY COLIN C. BOATIN**

Verizon North Inc. (“Verizon North” or “Company”), by its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby submits its Replies to the Exceptions filed in the above-captioned matter by Colin C. Boatin (“Complainant” or “Mr. Boatin”).¹ These Exceptions were filed in response to the January 9, 2009 Initial Decision (“Initial Decision” or “I.D.”) issued by Administrative Law Judge (“ALJ”) Louis G. Cocheres.²

BACKGROUND

1. On September 25, 2008, Mr. Boatin filed a Formal Complaint against Verizon North in which he stated as follows:

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. The death of these two people resulted in a parson *[sic]* tapping on and listening on my telephone calls. The same person

¹ Concurrently with these Replies to Exceptions, Verizon North Inc. has filed a Motion to Strike Complainant’s Exceptions in their entirety.

² The Initial Decision was served by Commission letter dated January 29, 2009.

also has acquired all my personal information as well as social security number and my mothers *[sic]* maiden name and has called many times in attempt to either obtain a credit card in my name or distroy *[sic]* my credit rating, resulting into two credit card companies one cancelling the card totally and the other reducing two of my credit card limits to almost nothing, as a result of too many inquiries into my credit, which was never made by me.

I will produce evidence of Verizon attempt to help and to stop it. And the company did not stop it.

Formal Complaint at ¶4.

2. On November 5, 2008, Verizon North filed an Answer and New Matter to the Formal Complaint in which the Company denied Mr. Boatins 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 in that complaint.

3. 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.³ I.D. at 5.

³ The only claim made in the Formal Complaint related to Complainant's telephone service involved the amounts owed on the account. Verizon North addressed this issue by crediting all outstanding balances. None of the other issues set forth in the Exceptions with regard to Complainant's telephone service were included in the allegations made in the Formal Complaint.

4. On February 17, 2009, Complainant filed Exceptions to the Initial Decision. These Exceptions encompassed 35 pages of hand written material accompanied by nearly 1,500 pages of exhibits (collectively referred to herein as the “Exceptions”).

REPLIES TO EXCEPTIONS

On a general basis, Verizon North objects to all of Complainant’s comments and opinions contained in the Exceptions, as well as his inclusion of inappropriate evidence in or referred to therein. In addition to the Company’s general objection, nothing contained in the Exceptions supports a conclusion that the decisions reached by ALJ Cocheres should be reversed and the Pennsylvania Public Utility Commission (“Commission”) should adopt the Initial Decision without modification.

A. Complainant’s Exceptions Must Be Denied Because The Commission Lacks Subject Matter Jurisdiction Over A Majority Of The Matters Raised

5. The Exceptions should be denied because the Commission has no jurisdiction to hear and decide the issues raised.

6. The majority of Complainant’s Exceptions have absolutely nothing to do with the telephone service he received from Verizon North. Rather, the Exceptions represent extra-record statements made by Complainant about a variety of subjects, including but not limited to, (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; and (h) fraudulent medical reporting.

7. As properly noted by ALJ Cocheres in the Initial Decision, the Commission has only those duties, powers, responsibilities and jurisdiction expressly given it by the legislature.⁴ I.D. at 3. The Public Utility Code (“Code”), 66 Pa. C.S. §§ 101 *et seq.*, does not give the Commission the power to regulate or decide claims made by Complainant that do not directly involve his telephone service. Nor does the Commission have the power to order any remedy in response to those claims. For this reason, the Commission should deny all portions of Complainant’s Exceptions that do not relate to Complainant’s telephone service.

8. 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. 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 a result, 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.

9. Because the Commission does not have the authority or jurisdiction to hear and decide Complainant’s disputes, the Exceptions must be denied and the Initial Decision of ALJ Cocheres must be adopted by the Commission in its entirety and without modification.

⁴ *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).

B. Complainant's Exceptions Must Be Denied Because They Represent Extra-Record "Evidence"

10. The Exceptions also should be denied because they represent an inappropriate attempt by Complainant to introduce evidence through the exception process.

11. The Commission Regulations and case law provide that a party may rely only upon record evidence at the exception stage of a proceeding.⁵ 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.⁶ 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.

12. In addition, the Commission's Regulation at 52 Pa. Code § 5.533 (Procedure to except to initial, tentative and recommended decisions) states in relevant part as follows:

- (b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.
- (c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously

⁵ *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).

⁶ *AT&T v. Pa. PUC*, 737 A.2d 201 (Pa. 1999); *George v. Pa. PUC*, 735 A.2d 1282 (Pa. Cmwlth. 1999).

filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

13. While Verizon North realizes that *pro se* complainants are not held to the same standards as other parties appearing before the Commission with respect to compliance with the Commission's procedural rules and regulations, no part of Complainant's Exceptions complies with the Regulation provisions cited above. Complainant does not object to any Finding of Fact, Conclusion of Law or portion of the ALJ's Discussion in the Initial Decision. He offers no reasons why the ALJ's Initial Decision should be modified or ignored by the Commission. Instead, Complainant's Exceptions present a rambling narrative (that is often repetitive) on a variety of issues.

14. Even if the procedural failures identified above could be excused, the Commission still is compelled to deny the Exceptions in their entirety and to adopt the Initial Decision without modification because the Exceptions 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. Boatman'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. I.D. at 3, 5.

15. More importantly, from Verizon North's perspective, is the fact that it has had no opportunity to test any of the statements contained in the Exceptions 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 Complainant submitted on February 17, 2009.

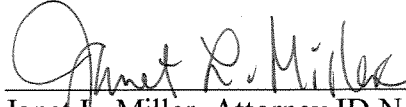
16. To the extent Complainant is entitled to any relief as a result of his Exceptions, the most the Commission can grant is the opportunity for Complainant to present evidence with regard to issues related to his telephone service during a hearing held before an Administrative Law Judge.

CONCLUSION

WHEREFORE, for the reasons set forth above, Verizon North Inc. respectfully requests that the Exceptions filed by Colin C. Boatin at Docket No. C-2008-2066888 be denied in their entirety and that the Commission adopt the January 9, 2009 Initial Decision of Administrative Law Judge Louis G. Cocheres without modification. To the extent the Commission finds that Complainant is entitled to any relief as a result of his Exceptions, Verizon North Inc. respectfully requests that such relief be limited to a hearing before an

Administrative Law Judge and that the Commission specifically direct that Complainant (a) may present evidence during such hearing only as it relates to the telephone service he previously received from Verizon North Inc.; and (b) may not present evidence during the hearing on any of the other issues or subject matters included in his Formal Complaint or in the Exceptions.

Respectfully submitted,



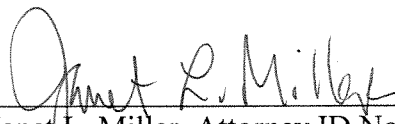
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Counsel for Verizon North Inc.

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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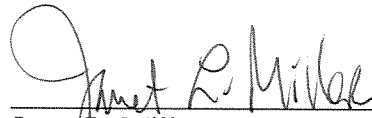
Counsel for Verizon North Inc.

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 10th day of March, 2009.