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March 12, 2010

Via Hand Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
Harrisburg, PA 17120

RE: Richard Ryan v. Verizon Pennsylvania, Inc.; Docket No. C-2009-2135745;
**OBJECTIONS OF VERIZON PENNSYLVANIA INC. TO
COMPLAINANT'S REQUESTS FOR SUBPEONA OF WITNESSES**

Dear Mr. McNulty:

Enclosed please find an original and three (3) copies of the Objections of Verizon Pennsylvania Inc. Complainant's Requests for Subpoena of Witnesses in the above-captioned matter.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

William E. Lehman
Counsel for Verizon Pennsylvania Inc.

WEL/bes
Enclosure
cc: Per Certificate of Service

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RICHARD RYAN,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2009-2135745
	:	
VERIZON PENNSYLVANIA INC.,	:	
	:	
Respondent	:	

**OBJECTIONS OF VERIZON PENNSYLVANIA INC.
TO COMPLAINANT’S REQUESTS FOR SUBPEONA OF WITNESSES**

AND NOW, Pursuant to 52 Pa. Code § 5.421, Verizon Pennsylvania Inc. (“Verizon PA”) by its attorneys in this matter, Hawke McKeon and Sniscak LLP, hereby files Objections to the Requests for Subpoenas in the above-captioned matter submitted by Richard Ryan. In support of its Objections, Verizon PA avers and represents as follows:

BACKGROUND

1. On or about October 15, 2009, the Pennsylvania Public Utility Commission (“Commission”) served the Complaint of Richard Ryan on Verizon PA. The gravamen of the Complaint is the Complainant’s dissatisfaction with the location of Verizon PA’s facilities on the side of the Complainant’s residence. The Complainant specifically states that: “it degrades the appearance of our home.” By way of relief, the Complainant requested Verizon PA remove its telephone wires from the outside of his home and place them underground.

2. On November 4, 2009, Verizon PA filed its Answer and New Matter to the Complaint, and Preliminary Objections asserting that the Commission does not have jurisdiction to adjudicate the validity or scope of an easement.

3. By Order issued by Chief Administrative Law Judge (“ALJ”) Veronica Smith, dated January 28, 2010 (“*January 28 Order*”), the Preliminary Objections of Verizon PA were denied based on the findings that material facts regarding the existence of an easement were in dispute and that Verizon PA’s dealings and communications with Mr. Ryan regarding the validity of the easement could possibly have violated 66 Pa. C.S. § 1501.¹ *January 28 Order* at 7, 8. The *January 28 Order* specifically set forth the issues to be adjudicated at a hearing, namely, “whether an easement exists giving Verizon PA the right to place its facilities [*sic*] Complainant’s property, and whether Respondent has violated Section 66 Pa.C.S. § 1501 in its dealings with Complainant and/or his property. *January 28 Order* at 8.

4. On or about February 17, 2010, the Complainant propounded Interrogatories and Requests for Production of Documents on Verizon PA. On March 1, 2010, Verizon PA served Objections to most of the Interrogatories and Request for Production of Documents on the Complainant and agreed to answer the remaining questions.

5. On February 24, 2010, the Complainant submitted subpoena applications for three (3) separate Verizon PA witnesses and a request for those witnesses to bring certain documents to the hearing. The documents requested in the subpoena applications are almost identical to the documents requested, **and objected to**, in the discovery. Verizon PA will address this below.

6. A Prehearing Conference was held on March 8, 2010, before ALJ Fordham. At the Prehearing, both parties agreed on the record that Verizon PA would file Objections to the Request for Subpoenas by Friday, March 12, 2010. This document is filed in Compliance with that agreement.

¹ On February 22, 2010, Verizon PA filed a Motion to Vacate the Order on Respondent’s Preliminary Objections because the Order impermissibly relied on documentary filings that were not served on Verizon Pa. As of the date of this filing, Verizon PA’s Motion has not been ruled on.

OBJECTIONS

7. The Complainant filed three (3) Requests for Subpoena for three (3) separate Verizon PA employees. Verizon PA will respond to each individual request below, but in general, the documents requested by the Complainant in his Applications for Subpoenas are almost identical to the documents requested in his discovery and to which Verizon PA has objected. The requests are nothing more than a fishing expedition that impermissibly attempts to expand the scope of this proceeding beyond that which has been delineated by ALJ Smith's *January 28, 2010 Order*. These requests simply are an attempt at an end run around the Commission's discovery process by trying to have Verizon PA produce documents that otherwise would not be legally obtainable through the discovery process, and to impose undue burden, annoyance and expense upon Verizon PA to gather voluminous material that has no bearing on the issues at hand.

A. Request for Subpoena of the Director of Outside Plant Engineering, Verizon Pennsylvania Inc.

8. The Complainant requests the witness testify to Respondent's system of telephone service delivery to Complainant's home and Respondent's system of telephone service delivery to Complainant's block. In addition the proposed scope of testimony would be to support Complainant's allegations of a pattern of distinct disadvantage and undue prejudice towards Complainant as an individual and distinct disadvantage and undue prejudice towards Complainant's locality by continuing to utilize allegedly substandard and antiquated above-ground wiring and poles, all of which results in what the Complainant describes as degrading clutter on Complainant's property, which consists of wiring for the neighborhood, not just for the Complainant's service.

9. Verizon PA does not object to providing a witness, at its discretion, to testify to the existence/validity of any document that is relevant to the issues of this case or to the locating of Verizon PA's facilities on the Complainant's home; however, Verizon PA does object to the Complainant's request for documents and/or testimony that impermissibly attempts to expand the scope of this proceeding.

10. Specifically, Verizon PA objects to the following requests for documents that the Complainant requests in Paragraph 2.

- Budget numbers for the support and maintenance of the copper wire network in years 2004-2010, zip code 19107 only.
- Budget numbers for the support and maintenance of the fiber optic network, AKA FIOS, in Montgomery County in years 2004-2010, zip code 19010 only.
- Purchase Orders for replacement covers of Outdoor Distribution Boxes in 19107, and size, 2005-2010.
- Map showing the number and location of wooden telephone poles in the Verizon PA system, Philadelphia zip code 19107 only.
- Map of the number of homes for whom service provided by Verizon PA is carried on wooden telephone poles in Philadelphia zip code 19107 only.
- Map of the number of homes for whom Verizon PA provides service in Philadelphia zip code 19107 only.
- A listing of all physical addresses of all the homes served by the wires of Verizon PA, placed upon the western façade of Complainant's home at 310 South Juniper Street, pursuant to the alleged right-of-way easement.
- Published figures, annual revenue of Verizon PA 2004-2010.
- Published figures, annual procurement of Verizon PA 2004-2010.

11. These requests are almost identical to the Complainant's discovery requests and are just as objectionable here because the request is overly broad and involves documents that are irrelevant to the specific issues in this Complaint. It also impermissibly attempts to expand the scope of this proceeding, would be unduly burdensome to answer and seek the proprietary information of other Verizon PA customers.

12. The limited issue to be determined at hearing, as stated in ALJ Smith's *January 28 Order* is "whether an easement exists giving Verizon PA the right to place its facilities [*sic*] Complainant's property and whether Respondent has violated 66 Pa.C.S. § 1501 in its dealings with Complainant and/or his property." *January 28 Order* at p.8. In addition, the Complainant has no standing to prosecute the rights of anyone other than himself in this proceeding.²

13. All of the information that the Complainant requests either as the subject of testimony or documents, cited in Paragraph 10 above, has nothing whatsoever to do with whether Verizon PA has a valid easement to have its facilities on the side of the Complainant's building or Verizon PA's dealings with him regarding that easement.

14. In addition, Complainant's subpoena is premature, because Your Honor has yet to issue a ruling on Verizon PA's Motion to Vacate. When that Order is issued, the scope of the issues in this matter may be more clearly delineated, allowing for a more precise request for subpoena and the documents associated therewith.

² *Camile Bud George v. Pennsylvania Public Utility Commission*, 735 A.2d 1282 (Pa. Cmwlth. 1999) (legislator had no authority and thus lacked standing to bring complaint on behalf of his constituents).

15. Verizon PA will provide an engineering witness at the hearing who can testify to Verizon PA's placement of its facilities on the side of the Complainant's building. The witness will also be prepared to testify to any document that was supplied to the Complainant in the course of discovery, whether voluntarily or so ordered by Your Honor.

16. For the foregoing reasons, Your Honor should deny the Complainant's request that Verizon PA's witness be required to bring to the hearing the objected to documents.

B. Request for Subpoena of the Custodian of Records, Verizon Pennsylvania Inc.

17. The Complainant requests the witness testify to the methods whereby Verizon PA's claim of a right-of-way agreement since 1924 is physically possible, and to establish the existence, security and sovereignty of Verizon PA's "chain of ownership."

18. Verizon PA does not object to providing a witness, at its discretion, to testify to the existence/validity of any document that Verizon PA believes establishes its legal right to have its facilities on the side of the Complainant's home; however, Verizon PA does object to the Complainant's request for documents and/or testimony that impermissibly attempt to expand the scope of this proceeding.

19. Specifically, Verizon PA objects to providing the following documents that the Complainant requests in Paragraph 2.

- Any and all documents concerning requests for service or maintenance at property 310 South Juniper Street, Philadelphia, PA 19107, from 1926-2010, **New Matter No. 1.**
- Any and all recorded easements, indicating Book and page number for even numbered addresses on the 300 block of S. Juniper Street, Philadelphia 19107.

- Any and all documents concerning requests for service or maintenance at 306 South Juniper Street, Philadelphia, PA 19107 for the year 2010.

Verizon PA objects to providing these documents because the request is overly broad, this information is not relevant to the issues in this Complaint, it would be unduly burdensome to gather and it requests the proprietary information of other Verizon PA customers.

20. The limited issues to be determined at the hearing, as stated in ALJ Smith's *January 28 Order* is "whether an easement exists giving Verizon PA the right to place its facilities [*sic*] the Complainant's property, and whether Respondent has violated 66 Pa.C.S. § 1501 in its dealings with Complainant and/or his property." *January 28 Order at p.8*. The Order is quite clear in limiting the scope of the issues in this proceeding - - whether Verizon PA has a valid easement to have its facilities located on the side of the Complainant's building, and whether Verizon PA's dealings with the Complainant regarding the easement for these facilities has been reasonable. The Complainant's request for all documents concerning requests for service or maintenance at his property from prior owners going back to 1926 has nothing whatsoever to do with whether there is a valid easement or Verizon PA's dealings with him about that easement. The Complainant's request for these documents is clearly a "fishing expedition," and is an impermissible attempt to expand the scope of this proceeding and impose undue burden, annoyance and expense upon Verizon PA, and should be denied.

21. In addition, his subpoena is premature, because Your Honor has yet to issue a ruling on Verizon PA's Motion to Vacate. When that Order is issued, the scope of the issues in this matter may be more clearly delineated, allowing for a more precise request for subpoena, and the documents associated therewith.

C. Request for Subpoena of the Philip J. Wood, Jr., Director, Regulatory Affairs, Verizon Pennsylvania Inc.

22. The Complainant requests Philip J. Wood, Jr. testify as to the facts in Verizon PA's Answer and New Matter to which is attached his Verification.

23. Mr. Wood is Director of Regulatory Affairs with Verizon PA. In his position at Verizon PA, Mr. Wood has numerous employees who report to him, many of whom participate in the fact-gathering process and respond to formal complaints. Verizon PA will produce employees with knowledge of the pertinent issues. Mr. Wood's attendance and testimony at this hearing would at best be duplicative and a waste of the Commission's, the Complainant's, and Verizon PA's time.

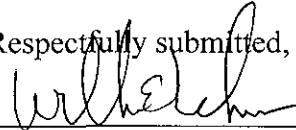
24. The Commission's regulations at 52 Pa. Code § 1.36 only require that answers to formal complaints containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party of the corporation or association. These regulations do not require that the corporate official have personal knowledge of the averments of fact, but only that to the best of the corporation's knowledge, the averments are true and correct.

25. All averments of fact that Verizon PA has placed in its Answer and New Matter will be the subject of testimony by an appropriate witness with either personal knowledge of the fact or through the business records of Verizon PA. These witnesses will be specialized employees dealing with these issues on a day-to-day basis. Mr. Wood's testimony will not add anything of relevance to the record.

26. For the foregoing reasons, Verizon PA requests that Complainant's request for Subpoena of Philip J. Wood, Jr. be denied in its entirety.

WHEREFORE, for the foregoing reasons, Verizon Pennsylvania Inc. requests that the enumerated objections to the production of documents for the aforementioned Requests for Subpoena be DENIED and that the Request for Subpoena for Philip J. Wood, Jr., be DENIED in its entirety.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

DATED: March 12, 2010

CERTIFICATE OF SERVICE

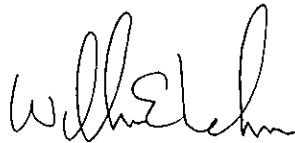
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

SERVICE VIA FIRST CLASS MAIL:

Richard Ryan
310 South Juniper Street
Philadelphia, PA

Robert C. Cohen, Esq.
740 Sandy St.
Norristown, PA 19401

Administrative Law Judge Cynthia W. Fordham
Pennsylvania Public Utility Commission
Suite 4063, 801 Market St.
Philadelphia, PA 19107



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

Dated this 12th day of March 2010

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