

Hawke
 McKeon &
 Sniscak LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
Janet L. Miller
Steven K. Haas
William E. Lehman
Tori L. Giesler
Judith D. Cassel

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

September 27, 2010

Via Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

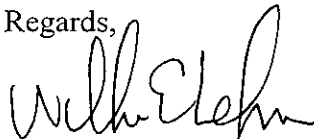
Re: Babatunde Olubanjo v. Verizon Pennsylvania Inc.; Docket No. C-2009-2123326;
REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC.

Dear Mr. McNulty:

Enclosed, for filing with the Commission, are the original and nine (9) copies of the Reply Exceptions of Verizon Pennsylvania Inc. in connection with the above-captioned matter. A copy of these Exceptions have been served as indicated on the attached Certificate of Service.

Thank you very much for your attention to this matter. Please feel free to contact me at 717-236-1300 with any questions.

Regards,



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

RECEIVED
20 SEP 27 PM 3:22
PA PUC
SECRETARY'S BUREAU

WEL/bes

Enclosures

cc: Honorable John H. Corbett, Jr.
Babatunde Olubanjo

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2010 SEP 27 PM 3:22
PA PUC
SECRETARY'S BUREAU

BABATUNDE OLUBANJO :
:
Complainant :
:
v. : Docket No. C-2009-2123326
:
VERIZON PENNSYLVANIA INC., :
:
Respondent :

**VERIZON PENNSYLVANIA INC.'S REPLY EXCEPTIONS
TO THE EXCEPTIONS FILED BY BABATUNDE OLUBANJO**

Verizon Pennsylvania Inc. ("Verizon PA"), by its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby files a Motion to Strike and Replies to the Exceptions filed in the above-captioned matter by Babatunde Olubanjo ("Complainant" or "Mr. Olubanjo"). These Exceptions were filed in response to the July 27, 2010 Initial Decision ("Initial Decision or "I.D.") of Administrative Law Judge ("ALJ") John H. Corbett, Jr.

INTRODUCTION

In his Initial Decision, ALJ Corbett recommended that Mr. Olubanjo's Formal Complaint at Docket No. C-2009-2123326 be dismissed in all respects except for his claim that Verizon PA did not timely honor his e-mail request to terminate service.¹ Verizon PA notes that most of the Complainant's Exceptions consist of nothing more than a reiteration of the testimony he provided at the hearing which was rejected by ALJ Corbett. However, the Complainant also asserts alleged new facts or statements of opinion in an inappropriate attempt at submitting

¹ Verizon PA did not file exceptions to this finding.

extra-record evidence. The Exceptions should be stricken because they are based on an inappropriate attempt to introduce new evidence through the exception process.

It is an indisputable fact of administrative agency law and procedure that, in order to withstand appellate review or scrutiny, the Commission's (or other administrative agency) finding must be supported by substantial evidence in the record.² This legal principle constrains Administrative Law Judges and the Commission to rely upon evidence contained in the record in reaching their findings of fact and conclusions of law. It would not be fair to either the Commission nor other parties to a proceeding if an Administrative Law Judge's Initial Decision, which must be based upon evidence in the record, could be challenged by a party by citing or relying upon additional information or evidence which is not in the record and which was not considered by the ALJ.

The Commission's regulations and case law provide that a party may rely upon only record evidence at the exception stage of a proceeding.³

As pointed out below where applicable, complainant is relying on extra-record evidence to support many of his Exceptions and that evidence should be stricken from the pleading.

On a general basis, Verizon PA objects to all of the Complainant's comments and opinions contained in the Exceptions as well as the inappropriate evidence. Nothing contained in the Complainant's Exceptions supports a conclusion that the decisions reached by ALJ Corbett should be reversed. The Pennsylvania Public Utility Commission ("Commission") should adopt the Initial Decision without modification.

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

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

REPLIES TO EXCEPTIONS

Complainant's alleged Exceptions do not follow the guidelines prescribed by the Commission under 52 Pa.Code § 5.533; however, subject to Verizon PA's Motion to Strike, Verizon PA will respond to the Complainant's Exceptions, to the extent applicable, in the form that the Complainant used.

Exception A. DUPLICATE BILLING/IMPROPER PLACEMENT OF CHARGE OF \$106.80 FOR INTERNET SERVICE IN PHONE BILL.

Verizon PA's response:

Initially, as counsel for Verizon PA pointed out at the hearing, and the ALJ correctly concluded on Page 10 of his I.D. and Conclusion of Law No. 2, the Commission has no jurisdiction over charges or service provided to the Complainant by Verizon Online. Verizon Online's witness, Daniel Novak, presented evidence regarding the Complainant's on-line charges and service, for informational purposes only, to clarify the events surrounding the Complainant's allegations. (N.T. at 56:4-18)

The Complainant does not suggest why the ALJ's Decision is wrong: he merely reiterates the same facts that he presented at the hearing, or attempts to bolster those facts with additional facts that should be stricken. Nonetheless, the record indicates that the Complainant was not "double billed" in an attempt to defraud the Complainant and he did not pay the \$106.80 on two different occasions.

Verizon PA witness, Angela Elliott, testified as to the Complainant's initiation of service and the sequence of events pertaining to the \$106.80 in Verizon Online charges, which was supported – for informational purposes – by Verizon Online witness Novak.

- The Complainant placed an on-line order through Verizon's website on October 17, 2007. He signed up for local service from Verizon PA and also for DSL through Verizon Online. (N.T. at 49:20-23; 60:20-23)
- Because the Complainant did not request that his Verizon Online charges be billed separately, the Verizon Online charges automatically appeared on his Verizon PA telephone bills. (N.T. at 50:8-16)
- The Complainant's Verizon Online charges clearly appear on the first page of the Complainant's November 25, 2007 Verizon PA telephone bill. (N.T. at 50:6-7; Verizon PA Exhibit No. 1, Tab U)
- The Complainant did not pay Verizon PA for his Verizon Online charges. (N.T. at 50:19-22)
- The Complainant's DSL service was established and began working on October 22, 2007. On November 19, 2007, the first DSL invoice generated, and that balance of \$106.80 was paid by Verizon PA to Verizon Online. (N.T. at 60:23-25; 61:1-3)
- On December 3, 2007, the Complainant signed into his Verizon Online account on *verizon.net*. Complainant changed the payment method to direct debit from a bank account, also known as ACH. This separates the billing from the phone bill and charges directly to the Complainant's bank account information that he provided. On December 13, 2007, the Complainant signed into his Verizon Online account via *verizon.net* and made a one-time payment for \$106.80 directly to Verizon Online. (N.T. at 61:4-12)
- Instead of paying his Verizon Online charges to Verizon PA, the Complainant mistakenly signed into his Verizon Online account on *verizon.net* and made a payment to Verizon Online in the amount of \$106.80. As Mr. Novak explained, from the original invoice, the first month's billing that generated from Verizon Online on December 19, 2007 for \$106.80 was actually paid by Verizon PA. That balance was not billed directly to Mr. Olubanjo by Verizon Online and, therefore, did not require direct payment to Verizon Online for the \$106.80.

Therefore, Mr. Olubanjo paid \$106.80 to a bill that had a zero (\$0.00) balance, thus resulting in a credit of \$106.80. When the December 19, 2007 invoice generated for the \$22.71, that resulted in an \$84.09 credit, which was given back to the Complainant in his account information he provided on December 31. This information is also contained in Mr. Olubanjo's exhibit, and it is broken down in Exhibits C and D. (N.T. at 61:23-25; 62:1-12)

- On January 8, 2008, Mr. Olubanjo again changed the payment method from the ACH payment mentioned previously, to a credit card billing. (N.T. at 62:1517)
- The Complainant did not contact Verizon PA about the Verizon Online charges until January 24, 2008, when he phoned Verizon PA and told them that he made a payment to Verizon Online. Verizon PA transferred him to Verizon Online. (N.T. at 51:3-6; Verizon PA Exhibit No. 2)
- Verizon Online spoke to the Complainant on that date and Verizon Online explained the billing to him. (N.T. at 62:18-24)
- The next contact the Complainant had with Verizon about the charges was when he called Verizon Online on February 8, 2008, when he requested a change of address and he once again wanted the charges explained to him. Verizon PA fully explained the Verizon Online charges and the credit that was applied to his account. The Complainant replied that he was fully satisfied with the explanation. (N.T. at 63:14-25; 64:1-3)

After his initial call to Verizon PA on January 24, 2008, when he was correctly transferred to Verizon Online to discuss their charges (and he indicated that he was completely satisfied with the explanation), the Complainant never contacted Verizon PA again with regard to the Verizon Online charges appearing on his telephone bill. The only contact he had with Verizon PA was on February 27, 2008, when he called and requested to have his service disconnected because he was having repair problems. Verizon PA transferred the Complainant

to a representative in the department that handles termination of service, who was able to assist Mr. Olubanjo and he decided not to disconnect his service. (N.T. at 51:7-22; Verizon PA Exhibit No. 2)

Contrary to the Complainant's assertion, the record is clear that he did not pay the \$106.80 twice. In fact, the Complainant never did pay the charges he owed to Verizon PA; however, as a courtesy, all of the Complainant's outstanding telephone charges were removed from his telephone bill. (N.T. at 52:20-24)

It is clear that Verizon PA did not double bill the Complainant for the \$106.80 in Verizon Online charges, nor did it include fraudulent telephone charges on his bill. The confusion in charges and payments was the Complainant's own doing. Instead of paying his Verizon Online charges to Verizon PA, which he should have because they appeared on his bill, he made an online payment to Verizon Online instead. Although this was his mistake, Verizon Online correctly made all adjustments necessary and provided him with a credit. This was explained to him on several occasions. To claim now that he paid twice and that Verizon somehow handled this in a fraudulent manner is disingenuous at best and otherwise, completely false, and certainly not supported by the record. Therefore, this Exception should be DENIED.

Exception B. DELIBERATE DISCONNECTION/DISRUPTION OF INTERNET SERVICE BY VERIZON TECHNICIAN.

Verizon PA's response:

Once again, the Complainant does nothing but reiterate testimony he provided at the hearing, which was rejected by the ALJ. His allegations with respect to Verizon PA's actions are pure speculation and, likewise, should be rejected by the Commission. However, in addition, rather than confining himself to the evidence of record, the Complainant propounds a wildly

fictionalized, scandalous, and speculative “script” appearing on Pages 6 and 7, at Subsections viii through 3, Subsection xi, which should be stricken.

The Complainant’s allegations are that Verizon PA somehow tampered with his Internet service because he did not want to pay Verizon PA to work on his inside wiring.⁴ As ALJ Corbett correctly found, there is absolutely no evidence that exists in the record to support this accusation. *Id.* at 12. In fact, the record evidence clearly demonstrates that Verizon PA promptly responded to and repaired the Complainant’s service in an adequate and reasonable manner.

As indicated by Verizon PA witness, David Hardnock (the Verizon PA foreman who supervised the technicians that worked on the Complainant’s service), Verizon PA promptly responded to, diagnosed, and fixed the Complainant’s alleged service problems to the extent possible. The Complainant’s service issues are detailed as follows:

- The Complainant resided in an apartment complex at 3855 Blairs Mill Road in Horsham, Pennsylvania. These are garden-style apartments. The services that are provided to that complex originate at the Hatboro Central Office, which is approximately two miles away. The cable runs aerial to the apartment complex, then goes underground to a series of pedestals which appear throughout the complex, and which serve the individual apartment buildings. (N.T. at 68:17-25; 69:1-2)
- The demarcation points in this apartment complex are determined to be at the first jack inside the individual apartment itself, because the configuration of this complex differs from a standard residence, in which one might have a network interface device on the outside of the home. (N.T. at 71:18-22)

⁴ Inside wiring has been de-tariffed by the Commission, and Verizon PA will charge a customer to work on same.

- The Complainant first called Verizon PA to report a no dial tone problem on January 15, 2008, at 10:16 p.m. (N.T. at 70:12-16; Verizon PA Exhibit No. 5, Tab A)
- Verizon PA's representative immediately advised the customer to check his customer premises equipment, which is standard practice. (N.T. at 70:23-25; 71:1-8)
- A technician was dispatched to the Complainant's residence and found his telephone service to be working fine to the demarcation point, which is the first jack inside the Complainant's apartment. The technician informed the Complainant that any problems with his telephone service were past the demarcation point and Complainant would incur a charge if Verizon PA were to repair the problem. Verizon PA's technician will make a good-will effort to fix a simple inside wiring problem but, in this case, that could not be done and the Complainant refused for Verizon PA to go any further. (N.T. at 72:3-25; 73:1-25; 74:1-23)
- The next report was filed the same day – January 16, 2008 – in which the Complainant reported that he still had no dial tone. The representative explained that Verizon PA was just at his residence and had indicated to the Complainant that the problem was with his inside wiring, and the Complainant refused a Verizon dispatch and cancelled the trouble report. (N.T. at 74:1-21)
- Verizon PA's repair department did not hear from the Complainant again until February 27, 2008, at 3:44 p.m., when he reported that he could not be called. This report was closed the next day after a technician repaired a buried service wire between Verizon PA's aerial cable and the pedestal in the apartment complex. (N.T. at 75:1-21) This problem was not related to the Complainant's previous problem from a month earlier because, at the time of the first visit, the Complainant indicated that his DSL service was working properly. The Complainant's DSL and telephone dial tone both rely on the

same cable pair, so if one would have been out of service, so would the other.
(N.T. at 76:3-18)

ALJ Corbett reasoned that, because the Complainant never lost Internet service during the time that he reported a no dial tone, except for the period in which he alleges tampering occurred, these facts suggest the problem existed with his inside wiring since his Internet service used the same cable pairs as the telephone service. (N.T. at 76:3-18; *Id.* at 12) This conclusion is consistent with the testimony of Mr. Hardnock. Therefore, the ALJ correctly determined that this undisputed fact also belies any assertion Complainant might make that Verizon PA provided inadequate or unreasonable service to him between January 14, 2008 and February 28, 2008. (*Id.* at 12, Footnote 3) ALJ Corbett correctly held, “in the absence of any substantial evidence to support his allegation, mere speculation is an insufficient basis upon which to base a decision on this issue.” (*Id.* at 13) Therefore, this Exception should be DENIED.

Exception C. ATTEMPT TO TERMINATE SERVICE/DISREGARD OF DISCONNECTION NOTICES.

Verizon PA’s response:

Once again, the Complainant merely reiterates facts that he presented at the hearing and which were rejected by ALJ Corbett.

The record indicates that the only time the Complainant called and requested termination of service was on February 27, 2008. When he called, Verizon PA transferred him to the appropriate department, and that representative discussed with him the reason for disconnection. He stated that he had no dial tone. The representative then verified some information with Repair as far as the date the trouble was reported and advised the customer to call back in after

the repair was fixed to request possible credit. The customer was satisfied with that remedy and did not choose to terminate his service. (NT at 51:7-21; Verizon PA Exhibit No. 2) At no other time did the Complainant call Verizon PA to disconnect his service.

The Complainant's allegation in C1, that the "For Your Information" section of the telephone bill allows termination of service by sending a letter to a P.O. Box in Annapolis, Maryland, is clearly false. A review of the telephone bills contained in Verizon PA Exhibit No. 1 shows that under the "For Your Information" section, it states:

If you have a **billing question or complaint**, please call or write to your Representative before the payment due date. The number to call is included in the How To Reach Us section on page 2. You may write to us at P.O. Box 9000, Annapolis, MD 21401-9000.

(Verizon PA Exhibit No. 1, Tab B)

Clearly, this section states that if you have a "billing question or complaint," you may send a letter; it does not allow for the sending of a letter if you wish to terminate service. As Ms. Elliot and Mr. Novak testified, the reason Verizon PA requires a customer to call to disconnect service is to require actual verification from the customer verbally that they want to disconnect their service. This is for customer security purposes. Verizon PA wants to be sure that its representatives are speaking with the actual correct customer before cancelling out any service in order to avoid any accounts being disconnected in error and causing customer's frustration. (NT at 52; 12-17; 65:11-19)

With regard to the Complainant's attempt to disconnect service through the mail, the ALJ correctly found that this was an ineffective means of communicating his request. The letter was addressed to a Post Office Box in Annapolis, Maryland. One would not reasonably expect a letter addressed to a Post Office Box in another state to effectuate a request to terminate telephone service. (I.D. at 13)

It should be noted that ALJ Corbett did find that Verizon PA's not responding to the Complainant's e-mail request to terminate service was unreasonable. (*Id.* at 14) Verizon PA accepted this finding and did not file an Exception.

There is no evidence to suggest that Verizon PA acted in a fraudulent manner or attempted to collect extra money from the Complainant when his service was not terminated after he sent a letter request to do so to a Post Office Box in another state. Therefore, this Exception should be denied.

Exception D. AGGREGATE EFFECT OF UNETHICAL PRACTICES AND ADDITIONAL DEVELOPMENTS.

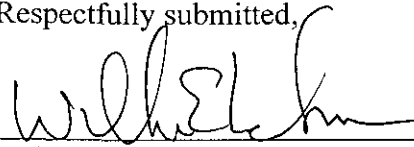
Verizon PA's response:

The Complainant takes no issue with any conclusion of the ALJ, but merely reiterates facts he presented at the hearing, or sets forth his "opinion" as to Verizon PA's practices. To the extent that a response is necessary, Verizon PA DENIES that it treated the Complainant in an unreasonable manner, or in any way harassed him or acted in a fraudulent manner. Verizon PA also DENIES the Complainant's scandalous allegations that it treats any of its customers in the same manner. Notwithstanding, the Complainant has no authority or right to make any accusations or represent the rights of others in this complaint proceeding.⁵

⁵ *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).

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Exceptions filed by Babatunde Olubanjo be stricken, or in the alternative, be denied in their entirety and the Commission, without modification, adopt the Initial Decision issued by Administrative Law Judge John H. Corbett, Jr., dated July 27, 2010.

Respectfully submitted,



William E. Lehman
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300

Counsel for Verizon Pennsylvania Inc.

DATED: September 27, 2010

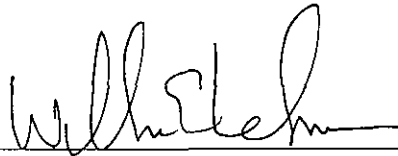
CERTIFICATE OF SERVICE

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 52 Pa. Code § 1.54 (relating to service by a party).

Service by first class mail:

Babatunde Olubanjo
3033 Bardin Road, Apt. 1110
Grand Prairie, TX 75052

Honorable John H. Corbett Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 State Office Building
300 Liberty Ave.
Pittsburgh, PA 15222



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

Dated: September 27, 2010

RECEIVED
2010 SEP 27 PM 3:22
PA PUB
SECRETARY'S BUREAU