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June 17, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Second Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Lidia Shan v. Verizon Pennsylvania Inc.; Docket No. C-2011-2243183;
PRELIMINARY OBJECTIONS

Dear Ms. Chiavetta:

Attached, for filing with the Commission, are the Preliminary Objections of Verizon Pennsylvania Inc. in connection with the above-captioned Formal Complaint. The original Preliminary Objections will be delivered to your office as required by the Commission's Regulations. A copy of this document also 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 contact me.

Very truly yours,

Janet L. Miller

Counsel for Verizon Pennsylvania Inc.

JLM/das
Attachment

cc: Lidia Shan

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LIDIA SHAN,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent


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Docket No. C-2011-2243183

NOTICE TO PLEAD

TO: Lidia Shan
301 Byberry Road
Apartment F-14
Philadelphia, PA 19116

Pursuant to 52 Pa. Code §5.101, you are hereby notified that, if you do not file a written response to the enclosed *Preliminary Objections of Verizon Pennsylvania Inc.* within ten (10) days from service of this notice, the facts set forth by Verizon Pennsylvania Inc. in the Preliminary Objections may be deemed to be true, thereby requiring no other proof and allowing an Administrative Law Judge to rule upon the Preliminary Objections without additional input. All pleadings, such as a Reply to the enclosed Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon Pennsylvania Inc.



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DATED: June 17, 2011

Counsel for Verizon Pennsylvania Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LIDIA SHAN,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2243183
	:	
VERIZON PENNSYLVANIA INC.,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTION OF VERIZON PENNSYLVANIA INC.
TO THE FORMAL COMPLAINT FILED BY LIDIA SHAN**

Verizon Pennsylvania Inc. (Verizon PA or Company), by its attorneys in this matter, Hawke McKeon & Sniscak LLP, and pursuant to 52 Pa. Code § 5.101, hereby asserts the following Preliminary Objection in response to the Formal Complaint filed by Lidia Shan (Complainant) in connection with the above-captioned proceeding. Specifically, Verizon PA requests that the Formal Complaint filed at Docket No. C-2011-2243183 (2011 Complaint) be dismissed preliminarily on the grounds that the dispute raised in the 2011 Complaint is the same as was raised in a previous Formal Complaint filed by Complainant at Docket No. C-2009-2150021 (2009 Complaint), which proceeding is still pending before Administrative Law Judge Cynthia W. Fordham (ALJ Fordham) and the Commission. Thus, a new and separate proceeding is not necessary to resolve the issue raised in the 2011 Complaint and moving forward in this matter would not be a prudent use of the time or resources of the parties, the ALJ or the Commission. In support of its Preliminary Objection, Verizon PA avers and represents as follows:

I. BACKGROUND

1. Lidia Shan filed the 2009 Complaint with the Commission on December 29, 2009, in which she disputed charges billed to her telephone account during periods of time when she was out of the country and her telephone service was voluntarily suspended at her request.

2. An evidentiary hearing was held in connection with the 2009 Complaint on September 23, 2010 before ALJ Fordham during which Complainant presented oral testimony and cross-examined the Company's witness. Complainant's testimony covers more than 50 pages of testimony notes. Neither an Initial Decision nor a final Commission Order has been issued in connection with the 2009 Complaint proceeding.

3. On May 24, 2011, Lidia Shan filed the 2011 Complaint with the Commission. The substance of the 2011 Complaint is the same as that of her 2009 Complaint – *i.e.*, that Complainant disagrees with the charges billed to her account when her telephones are “on temporary suspension or vacation.” The relief sought in both Complaints is for the Commission “reform” the Company's existing tariffs to conform to Complainant's opinion of the charges that are appropriate and should be billed when a customer voluntarily requests that his or her service be temporarily suspended while the customer is not going to use the service.

4. Concurrently with these Preliminary Objections, Verizon PA has filed an Answer and New Matter in response to the 2011 Complaint, which Answer and New Matter is incorporated herein by reference.

II. PRELIMINARY OBJECTIONS

5. The Pennsylvania Public Utility Code¹ provides that a written complaint may be filed by any person concerning “any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”²

6. The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections under certain circumstances, including when a prior proceeding involving the same parties and the same issue is pending before the Commission.³ In addition, Section 703 of the Code allows the Commission to dismiss a complaint without a hearing, if the Commission determines such a hearing “is not necessary in the public interest.”⁴

7. Preliminary Objections allowed by 52 Pa. Code § 5.101 are comparable to a demurrer in a civil case, which is authorized by Rule 107(b) of the Pennsylvania Rules of Civil Procedure.⁵ The Commission has adopted this standard.⁶

8. In filing a Preliminary Objection, the moving party may not rely on its own factual assertions but must accept, for purposes of disposition of the objection, all well-pleaded material facts of the other party, as well as every inference reasonably deductible from those facts. The objection is granted only if the moving party prevails as a matter of law. Thus, in order to be successful, the moving party must show that, even if every factual allegation raised in the

¹ 66 Pa.C.S. §§ 101, *et seq.* (Code).

² 66 Pa.C.S. § 701. *See also*, 52 Pa. Code § 5.21.

³ 52 Pa. Code § 5.101(a)(6).

⁴ 66 Pa.C.S. § 703(b).

⁵ A *demurrer* is an assertion that the complaint does not set forth a cause of action upon which relief can be granted, and it admits, for purposes of testing the sufficiency of the complaint, all properly pleaded facts, but not conclusions of law. *Estate of Cletus J. Hollywood v. First National Bank of Palmerton*, 859 A.2d 472 (Pa. Super. 2004), *reargument denied*, 876 A.2d 396 (Pa. 2005); *Walter Balsbaugh v. James H. Rowland*, 290 A.2d 85 (Pa. 1972); *Milton Engle v. Friend’s Hospital, et al.*, 266 A.2d 685 (Pa. 1970).

⁶ *Application of Main Line Transit Service, Inc.*, Docket No. A-00116172, Initial Decision issued January 4, 2000, Final Order entered October 3, 2002.

complaint were considered to be true, it still would not state a cause of action that is cognizable before the Commission. The purpose of such a demurrer is to save the Commission and the parties the time and expense of preparing for and holding a hearing, when no hearing is required to dismiss the complaint.

9. The 2011 Complaint must be dismissed preliminarily because Complainant already has an open proceeding before the Commission that involves the exact same issue as raised in the present case – namely, that her telephone account should not be billed for that period of time when she requests the service be temporarily suspended while she is out of the country (*i.e.*, vacation suspension). Because this is the same and only allegation raised in the 2009 Complaint, the issue will be finally decided when the Commission enters an Order in the C-2009-2150021 proceeding. At that time, Complainant will have been afforded, and will have taken advantage of, her opportunity to have her “day in court” to convince ALJ Fordham and, ultimately, the Commission that the charges billed to her account while it is temporarily suspended (at her request during periods of time when she is not using the service) violate a Commission statute, regulation or Order or are not consistent with the Company’s Commission-approved tariffs.

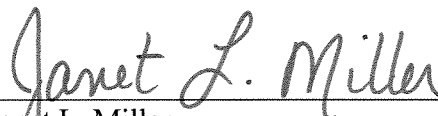
10. Allowing Complainant to re-litigate the issue raised in her 2011 Complaint, especially before the Commission has decided the 2009 Complaint, would be redundant and unnecessary and would waste the precious time and resources of all those involved. It is clear Complainant has no understanding of how utility rates are determined nor is she familiar with the Commission’s procedures in a complaint proceeding. Regardless of her reason for filing the 2011 Complaint, the outcome of fully litigating her dispute most likely will be the same as the outcome of the 2009 Complaint, which is still being decided at this time. Complainant’s dispute

involves the same parties, the same issue and the same charges; therefore, the testimony and evidence to be presented by both parties will be the same and further litigation is not necessary.

11. Complainant was afforded a full and fair opportunity to litigate the issue raised in the 2009 Complaint and she took full advantage of that opportunity. Her testimony covers more than 50 pages of the transcript notes taken during the September 23, 2010 evidentiary hearing. Nothing further will be gained by holding a second hearing with regard to Complainant's dispute.

WHEREFORE, for all the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Formal Complaint filed at Docket No. C-2011-2238995 be dismissed preliminary on the grounds that the issue raised in this Complaint currently is pending in an open Commission proceeding and will be decided by the ALJ and the Commission in the Initial Decision issued and the final Order entered at Docket No. C-2009-2150021.

Respectfully submitted,



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DATED: June 17, 2011

Counsel for Verizon Pennsylvania Inc.

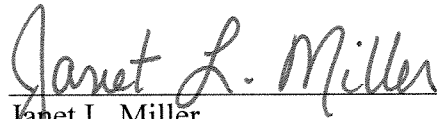
CERTIFICATE OF SERVICE

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 Via First Class Mail:

Lidia Shan
301 Byberry Road
Apartment F-14
Philadelphia, PA 19116

Dated this 17th day of June, 2011.



Janet L. Miller

Counsel for Verizon Pennsylvania Inc.