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September 12, 2011

Via Hand Delivery

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

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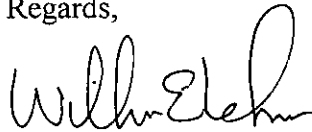
Re: Jacqueline Fielder v. Verizon Pennsylvania Inc.; Docket No. C-2010-2189352;
REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC.

Dear Secretary Chiavetta:

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 Reply Exceptions has 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.

WEL/bes

Enclosures

cc: Cheryl Walker Davis, Office of Special Assistants (via hand delivery)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JACQUELINE FIELDER,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2189352

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**VERIZON PENNSYLVANIA INC.'S REPLIES
TO THE EXCEPTIONS FILED BY JACQUELINE FIELDER**

Verizon Pennsylvania Inc. ("Verizon PA"), by its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby files Replies to the Exceptions filed in the above-captioned matter by Jacqueline Fielder ("Complainant" or "Ms. Fielder"). Complainant's Exceptions were filed in response to the June 16, 2011 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 Ms. Fielder's Formal Complaint at Docket No. C-2010-2189352 be dismissed because the Complainant failed to demonstrate by a preponderance of the evidence that Verizon PA acted unreasonably or inadequately in responding to her reports of service trouble. I.D. at 15, 18, 19.

On a general basis, Verizon PA objects to all of the Complainant's Exceptions, because they do not identify a finding of fact or conclusion of law to which an exception is taken nor do they present supporting reasons for the Exceptions as required by the Pennsylvania Public Utility

Commission's ("Commission") regulations at 52 Pa. Code § 5.533. Notwithstanding this legal infirmity, nothing contained in the Complainant's Exceptions supports a conclusion that the well-reasoned decisions reached by ALJ Corbett should be reversed. The Commission should adopt the Initial Decision without modification.

REPLIES TO EXCEPTIONS

Complainant's alleged Exceptions do not follow the guidelines prescribed by the Commission under 52 Pa.Code § 5.533; however, Verizon PA responds to the Complainant's Exceptions, to the extent applicable, as follows:

Complainant's Exception 1. The ALJ abused his discretion and committed error of law by denying Complainant's complaint.

Verizon PA's response:

This Exception provides neither a finding of fact, conclusion of law, nor supporting reasons why the ALJ "abused his discretion and committed error of law," as required by the Commission's regulations at 52 Pa.Code § 5.533, and should be denied on these grounds alone. However, to the extent a reply is deemed necessary, Verizon PA asserts that the ALJ set forth a thorough statement of the facts presented by both sides in this case and presented a well-reasoned analysis which determined the Complainant did not carry her burden of proving that Verizon PA provided her with unreasonable service.

The gravamen of the Complainant's complaint is that she allegedly never had dial tone service on two telephone lines (412-661-1919 and 412-661-6679) between February 2009 until July 10, 2010. Findings of Fact 7; Notes of Testimony ("N.T.") 13-26, 37. However, the Complainant provided no credible evidence at the hearing that supports this claim. In fact, as the ALJ found, the only credible evidence was provided by Verizon PA, which showed that the Complainant had telephone service during this time frame. I.D. at 15.

Verizon PA's witnesses testified, using reliable business records, that, despite alleging that she had no telephone service, numerous outgoing telephone calls were actually made from these telephone numbers during this timeframe. I.D. at *Id.*; N.T. at 110-14; Verizon PA Exhibit 1. In addition, she contacted Verizon PA's business office and filed repair reports raising other issues during this time, but never once complained that she did not have telephone service on either of these two telephone lines until April 26, 2010. I.D. at *Id.* Additionally, the Complainant continued to pay her telephone bill during this timeframe, never once complaining that she was paying for service which she did not receive. I.D. at *Id.* This overwhelming evidence provided by Verizon PA clearly shows that the Complainant had telephone service on these two numbers during the timeframe in question. The ALJ relied on this evidence to conclude that the Complainant failed to demonstrate that Verizon PA provided her with unreasonable service. The ALJ did not abuse his discretion or commit an error of law by denying the Complaint, and this Exception should be denied.

Complainant's Exception 2. The ALJ abused his discretion and committed error of law by permitting Respondent witness Nancy Dasher to testify over the telephone and to refer to notes that were not a part of the record nor made available to Complainant's counsel.

Verizon PA's response:

The Presiding ALJ correctly allowed Verizon PA employee, Nancy Dascher, to testify concerning Ms. Dascher's contacts with the Complainant in March and August of 2009. Ms. Dascher's testimony was presented to refute the Complainant's allegations regarding the content of those conversations. Findings of Fact 14-15; I.D. at 12. Ms. Dascher testified from her personal knowledge regarding those contacts with the Complainant and counsel for the Complainant had an opportunity to cross-examine Ms. Dascher. I.D. at *Id.* The ALJ's

acceptance of Ms. Dascher's testimony was neither an abuse of discretion, nor an error of law, and this Exception should be denied.

Complainant's Exception 3. The ALJ abused his discretion and committed error of law by accepting into evidence and relying upon various exhibits introduced by Respondent at the hearing, including exhibits purporting to track the number of phone calls made from the phone number at issue (412-661-1919) and the number of complaints about said phone number purportedly made by Complainant. It was not established at the hearing that these exhibits were records of the regularly conducted business activity of Respondent and were therefore hearsay. See Pa.R.E. 801, 802 and 803(6). Said exhibits also were not properly authenticated. See Pa.R.E. 901.

Verizon PA's response:

The Complainant provides no supporting reasons why the ALJ should not have accepted evidence or exhibits that Verizon PA presented, and the Exception should be denied on this basis alone. However, as the Commission has held in *Farida B. Rahman v. Verizon Pennsylvania, Inc.*,¹ with regard to Verizon's business records, it would not be possible for Verizon employees to be personally familiar with the records of all its customers. Hence, Verizon's regularly-kept records of customer contacts and billing are an allowable substitute for first-hand knowledge.²

Verizon PA repair manager Joe Seles, who directly supervises Verizon PA's repair technicians that responded to the Complainant's trouble reports, testified regarding the information contained in those trouble reports. Tr. at 99, 101. Mr. Seles testified that the trouble reports are created when a customer calls Verizon PA with a service problem, and the information documented in those trouble reports is true and correct to the best of his knowledge. *Id.* Mr. Seles also presented an exhibit containing a list of telephone calls that were placed and

¹ Docket No. F-02009165 (Order Entered May 15, 2007).

² *Id.* at 7.

received from the Complainant's residence during the timeframe in question. Tr. 110-114. These exhibits were properly accepted into evidence and relied on by the ALJ.³ Therefore, the trouble report and list of calls qualify as business records and were properly accepted and relied upon by the ALJ.⁴

Verizon PA Witness Anthony Nigro, who works in Verizon PA's business office, testified from the information contained in Verizon PA's notescreens, which are records of customer contacts made when a customer calls Verizon PA's business office. Tr. at 65. Mr. Nigro testified from the information contained in the notescreens, which is true and correct to the best of his knowledge. *Id.* Therefore, these notescreens are a business record, which was properly accepted and relied upon by the ALJ.⁵ The ALJ neither abused his discretion, nor committed an error of law, by accepting into evidence and relying upon the information contained in these business records, and this Exception should be denied.

Complainant's Exception 4. The ALJ abused his discretion and committed error of law by denying Complainant's complaint, in part at least, because she only complained six times. There is nothing in the relevant law that mandates how many times a service or dial tone complaint must be made to Respondent or any other public utility before it is to be acted upon. One should be enough.

Verizon PA's response:

The ALJ did not deny the Complaint on the basis that the Complainant complained only six times. This is a complete misstatement of the ALJ's analysis and findings. In the ALJ's analysis of the facts presented, he determined that, although the Complainant called Verizon PA's repair department six times between March 2009 and July 2010 to report unrelated issues with her telephone service (each of which was addressed), she never reported a lack of dial tone

³ *Rahman supra.*

⁴ *Id.*

⁵ *Rahman supra.*

service until April 26, 2010. I.D. at 15, Findings of Fact 39. Nowhere in the I.D. does the ALJ state that the Complainant did not sustain her burden of proof because she only reported trouble to Verizon PA on six occasions. To the contrary, the ALJ found that, although the Complainant complained to Verizon PA on six different occasions, she never once alleged that she had no dial tone on either telephone line until April 2010. I.D. at 14. The ALJ neither abused his discretion, nor committed an error of law by denying the Complainant's complaint, and this Exception should be denied.

Complainant's Exception 5. The ALJ abused his discretion and committed error of law by accepting the testimony of Respondent's witnesses Anthony Nigro and Joe Seles who lacked firsthand knowledge of the matters they testified about relative to Complainant's complaint and were relying upon exhibits that, as noted above, were hearsay documents.

Verizon PA's response:

The Complainant provides no supporting reasons why the ALJ should not have accepted evidence or exhibits that Verizon PA presented, and the Exception should be denied on this basis alone. However, as the Commission has held in *Farida B. Rahman v. Verizon Pennsylvania, Inc.*,⁶ with regard to Verizon's business records, it would not be possible for Verizon employees to be personally familiar with the records of all its customers. Hence, Verizon's regularly-kept records of customer contacts and billing are an allowable substitute for first-hand knowledge.⁷

Verizon PA repair manager Joe Seles, who directly supervises Verizon PA's repair technicians that responded to the Complainant's trouble reports, testified regarding the information contained in those trouble reports. Tr. at 99, 101. Mr. Seles testified that the trouble reports are created when a customer calls Verizon PA with a service problem, and the information documented in those trouble reports is true and correct to the best of his knowledge.

⁶ Docket No. F-02009165 (Order Entered May 15, 2007).

⁷ *Id.* at 7.

Id. Mr. Seles also presented an exhibit containing a list of telephone calls that were placed and received from the Complainant's residence during the timeframe in question. Tr. 110-114. These exhibits were properly accepted into evidence and relied on by the ALJ.⁸ Therefore, the trouble reports and list of calls qualify as business records and were properly accepted and relied upon by the ALJ.⁹

Verizon PA Witness Anthony Nigro, who works in Verizon PA's business office, testified from the information contained in Verizon PA's notescreens, which are records of customer contacts made when a customer calls Verizon PA's business office. Tr. at 65. Mr. Nigro testified from the information contained in the notescreens, which is true and correct to the best of his knowledge. *Id.* Therefore, these notescreens are a business record, which was properly accepted and relied upon by the ALJ.¹⁰ The ALJ neither abused his discretion, nor committed an error of law, by accepting into evidence and relying upon the information contained in these business records, and this Exception should be denied.

Complainant's Exception 6. The ALJ abused his discretion and committed error of law in relying upon the fact that Complainant continued to pay her telephone bill to Respondent for 17 months even though she did not have service despite Complainant's un-refuted testimony explaining her reasons there for.

Verizon PA's response:

It is unrefuted that, although the Complainant contacted Verizon PA's business office and repair department on numerous occasions between March 2009 and July 2010, she never once complained that she did not have telephone service on either one of her telephone lines until April 2010, I.D. at 14, all the while continuing to pay her telephone bill during the entire 17 months in question. I.D. at 15. The ALJ reasoned that no reasonably prudent person would

⁸ *Rahman supra.*

⁹ *Id.*

¹⁰ *Rahman supra.*

continue to pay her telephone bill each month for 17 months for a service she was not receiving. I.D. at 15. The ALJ was present at the in-person hearing, heard the testimony of each witness, and made a determination that the Complainant's testimony on this issue was not credible. The ALJ neither abused his discretion, nor committed an error of law with regard to this finding, and this Exception should be denied.

Complainant's Exception 7. In light of the exceptions noted above at paragraphs 2, 3 and 5, the ALJ abused his discretion and committed error of law in relying upon incompetent evidence to support his decision. The exhibits and testimony referred to in said paragraphs should have been stricken, and without such evidence, Complainant clearly met any burden of proof that was required of her to sustain her complaint.

Verizon PA's response:

This Exception is merely a reiteration of the Complainant's statements in Exceptions Nos. 2, 3 and 5, and Verizon PA incorporates its responses to those Exceptions as its reply to Exception 7. The ALJ neither abused his discretion, nor committed an error of law in relying on the evidence presented, and this Exception should be denied.

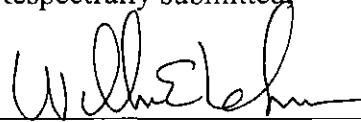
Complainant's Exception 8. In any event, the ALJ abused his discretion and committed error of law in not finding that Complainant met any burden of proof that was required of her to sustain her complaint. The evidence of record demonstrated Respondent's culpability and liability to Complainant for the sums complained of.

Verizon PA's response:

This Exception is merely a general conclusion restating the allegations in Exceptions 1 through 7, and Verizon PA responds by incorporating its responses to those Exceptions as its reply to Exception 8. The ALJ neither abused his discretion, nor committed an error of law in finding that the Complainant did not meet her burden of proof that was required to sustain her complaint, and this Exception should be denied.

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Exceptions filed by Jacqueline Fielder be denied in their entirety and the Commission, without modification, adopt the Initial Decision issued by Administrative Law Judge John H. Corbett, Jr., dated June 16, 2011.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

DATED: September 12, 2011

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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:

Honorable John H. Corbett, Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh District Office
Piatt Place, 301 5th Avenue, Suite 220
Pittsburgh, PA 15222

Charles P. McCullough, Esquire
P.O. Box 12971
Pittsburgh, PA 15241

Counsel for Complainant



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

Dated: September 12, 2011

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