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March 1, 2012

Via Hand Delivery

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

RE: Thomas Clark, Jr. v. Verizon Pennsylvania Inc.; C-2011-2276695
MOTION FOR JUDGMENT ON THE PLEADINGS

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are an original and three (3) copies of Verizon Pennsylvania Inc.'s Motion for Judgment on the Pleadings. A copy of this document has been served upon the Complainant in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Regards,

William E. Lehman
Counsel for Verizon Pennsylvania Inc.

WEL/bes
Enclosures
cc: Thomas J. Clark, Jr.

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

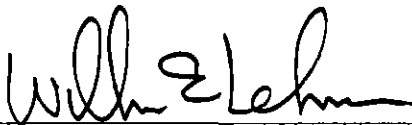
THOMAS CLARK, JR., :
 :
 Complainant :
 :
 v. : Docket No. C-2011-2276695
 :
 VERIZON PENNSYLVANIA INC., :
 :
 Respondent :

NOTICE TO PLEAD

TO: Thomas Clark, Jr.
44 Park Street
Carbondale, PA 18407

Pursuant to 52 Pa. Code § 5.102, you are hereby notified that, if you do not file a written response to the enclosed Motion for Judgment on the Pleadings within twenty (20) days from service of this notice, the facts set forth in the Motion will be deemed to be admitted and the Administrative Law Judge may rule on this Motion without further input. All pleadings, such as a Reply to the enclosed Motion, must be filed with the Secretary of the Public Utility Commission, with a copy served on the undersigned counsel for Verizon Pennsylvania Inc.

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DATED: March 1, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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THOMAS CLARK, JR., :
 :
 Complainant :
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 v. : Docket No. C-2011-2276695
 :
 VERIZON PENNSYLVANIA INC., :
 :
 Respondent :

**MOTION OF VERIZON PENNSYLVANIA INC.
FOR JUDGMENT ON THE PLEADINGS**

Verizon Pennsylvania Inc. (“Verizon PA” or “Company”), by its attorneys, Hawke .
McKeon & Sniscak LLP, hereby submits this Motion for Judgment on the Pleadings in the
above-captioned proceeding. In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. On or about December 7, 2011, the Pennsylvania Public Utility Commission
 (“Commission”) served the Formal Complaint of Thomas Clark, Jr. (“Complainant” or “Mr.
 Clark”) on Verizon Pennsylvania Inc. (“Verizon PA”). In the Formal Complaint, Mr. Clark
 alleged that Verizon PA employs a subcontractor who requires a \$3.50 service charge to pay by
 “check-by-phone.” (Formal Complaint at ¶4) By way of relief, Mr. Clark requests Verizon PA
 provide its customers with a payment option which does not cost the consumer any money.
 (Formal Complaint at ¶5)

2. On December 16, 2011, Verizon PA filed its Answer to Mr. Clark's Formal Complaint averring that a third-party vendor charges a flat fee to customers who decide to make their payment by phone. (Answer at ¶4) Verizon PA also averred that this fee is not imposed by Verizon PA, and none of this fee is returned to Verizon PA. (Answer at ¶4) By way of further answer, Verizon PA averred that it provides several no-cost options to customers to pay their monthly Verizon PA bills. Mr. Clark can mail his payment to Verizon PA at the Post Office Box return address that is listed on his monthly bill, or he can enroll in Automatic Bill Payment. Automatic Bill Payment is a free service that authorizes Verizon PA to charge a customer's credit card 12 days from the bill date, or to debit the customer's bank account or bank debit card 20 days from the bill date. Verizon PA imposes no fees for either paying by mail or Automatic Bill Payment. (Answer at ¶4)

3. By Order dated December 21, 2011, this matter was set for informal mediation by the Commission. After no agreement could be reached between the Parties, the matter was referred to the Commission's Administrative Law Judge Scheduling Department for hearing. No date for the hearing has been scheduled at this time.

ARGUMENT

4. The Commission's regulations provide for the filing of a Motion for Judgment on the Pleadings after the pleadings are closed.¹ Judgment on the Pleadings is limited exclusively to the pleadings and documents properly attached to the pleadings; no matter outside the record may be considered.² In ruling on a motion for judgment on the pleadings, the Commission must accept as true all well-pleaded facts that appear in the pleadings of the non-moving party and

¹ 52 Pa. Code § 5.102(a).

² *Giddings v. Tartler*, 567 A.2d 766 (1989).

must examine all facts on record in light of most favorable to the non-moving party.³ However, in order for a fact to be material, it must directly affect the disposition of the case.⁴ Judgment on the Pleadings must be granted if the pleadings and documents properly attached thereto show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.⁵

5. The Commission is granted discretion to “dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary or in the public interest.”⁶ A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing.⁷

6. The pleadings have been closed in this case. Furthermore, there are no material facts in dispute. First, the Complainant has alleged, and Verizon PA has admitted, that a third-party vendor charges \$3.50 to Verizon PA customers for their decision to make a “check-by-phone” payment. The pleadings also show no genuine issue of fact as to no part of this fee is charged by or returned to Verizon PA. (Answer at ¶4) Second, there is no dispute that Verizon PA has no cost options available to Complainant to pay his Verizon PA bill, which is the very relief requested by the Complainant.

7. This case does not involve disputed questions of fact. The question presented is one of law only. A hearing in this case is not necessary. Moreover, Verizon PA is not required by its tariff, by the Public Utility Code, or by any Commission regulation or order to provide fee-less third-party payment locations.

³ *Rybas v. Wapner*, 457 A.2d 108 (Pa. Super. 1983).

⁴ *Zuppo v. Department of Transportation*, 739 A.2d 1148 (Pa. Cmwlth Ct. 1999).

⁵ 52 Pa.Code § 5.102(c)(1).

⁶ 66 Pa. C.S. § 703(b)

⁷ *Lehigh Valley Power Comm'n v. Pa. Pub. Util. Comm'n.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transportation v. Pa. Pub. Util. Comm'n.*, 623 A.2d 6 (Pa. Cmwlth. 1993).

A. The Commission Has Repeatedly Found That When A Customer Decides To Use a Third-Party Vendor To Pay a Utility Bill, And Is Charged A Fee By Such Vendor, No Violation Of The Public Utility Code Exists By The Utility.

8. Judgment should be entered in Verizon PA's favor here as the Commission has repeatedly and consistently held that when: (1) a customer elects to pay his bill via a third-party vendor not affiliated with the regulated utility; (2) is charged a nominal fee for such optional payment method, and (3) when no part of the fee is collected by or returned to the utility; no violation of the Public Utility Code by the utility may be found.

9. Specifically, in *Kolar v. Columbia Gas of Pa., Inc.*, Docket No. C-00992742 (March 22, 2000), in which the Commission allowed an Initial Decision of the ALJ to become final without further action, the ALJ found that Columbia's practice of offering an additional payment method that allows its customers to make payment through agents that may charge a fee for accepting payments was not prohibited by any statute or regulation. The ALJ also found that this practice did not constitute inadequate or unreasonable service. (*Kolar* I.D. at 4). In *Charlton v. Duquesne Light Co.*, Docket No. C-20066929 (Opinion and Order entered April 17, 2007) the Commission held that the Public Utility Code does not require a utility to provide company-owned cash payment centers and that the utility had no obligation to reimburse customer the fee charged by a third-party cash payment vendor.⁸

10. Fees from unaffiliated third-party vendors that customers elect to use to pay their bills have been found to be neither prohibited by law nor unreasonable service by the utility under the Public Utility Code. *Robertson v. Columbia Gas of Pa., Inc.*, Docket No. C-00004377 (August 10, 2001) (utility was not required to provide a means or place to pay bills without an extra charge); and *Miller v. Columbia Gas of Pa., Inc.*, Docket No. C-20043942 (April 6, 2005)

⁸ Similarly, in *Charlton v. Columbia Gas of Pa., Inc.*, Docket No. C-20066027 (Opinion and Order entered August 22, 2006), the Commission held that utilities are not required to provide fee-less cash payment centers.

(utility was not required to provide a method for customers to pay bills without having to pay fees to agents for accepting payments).

11. Notably, the *Charlton v. Columbia Gas of Pa., Inc.* case cited in footnote 8 was decided by the Commission's Administrative Law Judge on a grant of the utility's Motion for Judgment on the Pleadings. The Commission's final order affirmed the grant of the Motion for Judgment on the basis that the utility admitted the basic facts (that there were no fee-less cash payment locations), and that the issue of whether a utility must provide a fee-less cash payment location was a question of law that the Commission's prior decisions had already decided against the Complainant's position.

12. Most recently, on May 18, 2007, Administrative Law Judge Nene issued an Initial Decision dismissing a Formal Complaint filed by Fred Charlton against Verizon PA, holding that a \$1.00 service fee for making cash payments is not unreasonable pursuant to prior Commission decisions, and stating, "[t]here is no statute or regulation or order of the Commission prohibiting such a charge." *Charlton v. Verizon Pennsylvania Inc.*, Docket No. C-20067199 (Initial Decision dated May 18, 2007, Order entered August 2, 2007.).

13. Just as in the cases cited above, this case should be dismissed. Judgment on the Pleadings in this case will conserve the time and expense of the parties, Your Honor, and the Commission.

B. The Relief Requested, A Payment Option Without Cost, Is Available For Complainant To Pay His Verizon PA bills.

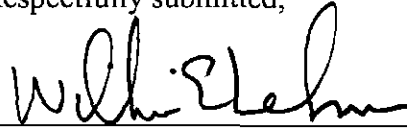
14. The relief requested by the Complainant, to the extent he requests a means to pay his bill from Verizon PA without cost (Complaint at ¶5), has been provided and thus sets forth no cause of action or for that matter, any violation of the Public Utility Code. Verizon PA imposes

no fee for payment by mail or by Automatic Bill Payment. (Verizon Answer at ¶4) No genuine issue of material facts exists regarding these options existing and being available.

15. Thus, these means for payment are available for payment at no cost to Complainant and his decision or preference not to use them, but rather to use another payment method provided by an unaffiliated third-party vendor that charges a fee for such service, cannot *as a matter of law* support his complaint as the cases cited above show the use of such vendor service and fee is not unreasonable service by the utility. Accordingly, Judgment should be entered in Verizon PA's favor.

WHEREFORE, for the reasons cited above, Verizon Pennsylvania Inc. respectfully requests that Your Honor grant this Motion for Judgment on the Pleadings, and deny the Formal Complaint for a lack of legal merit.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

Dated: March 1, 2012

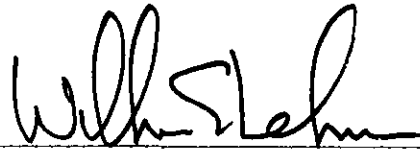
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the person listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class U.S. Mail:

Thomas Clark, Jr.
44 Park Street
Carbondale, PA 18407



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

Dated this 1st day of March 2012

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