

Hawke
 McKeon &
 Sniscak LLP

ATTORNEYS AT LAW

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

May 14, 2012

Via Overnight Mail

RECEIVED

MAY 14 2012

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

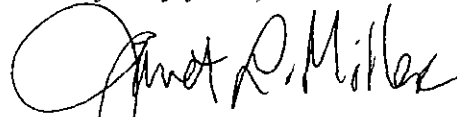
RE: Lidia Shan v. Verizon Pennsylvania Inc.; Docket No. C-2009-2150021;
REPLIES TO EXCEPTIONS

Dear Ms. Chiavetta:

Enclosed, for filing with the Commission, are the original and nine (9) copies of Verizon Pennsylvania Inc.'s Replies to the Exceptions filed by Lidia Shan in connection with the above-captioned matter. Copies of this document have 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
Enclosures

cc: Per Certificate of Service

RECEIVED

MAY 14 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

LIDIA SHAN,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2009-2150021

**REPLIES OF VERIZON PENNSYLVANIA INC.
TO THE EXCEPTIONS FILED BY LIDIA SHAN**

Verizon Pennsylvania Inc. (Verizon PA or Company), by and through its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby files with the Pennsylvania Public Utility Commission (Commission) Replies to the Exceptions submitted by Lidia Shan (Complainant or Ms. Shan) in the above-captioned matter. Ms. Shan's Exceptions were filed in response to the March 28, 2012 Initial Decision (Initial Decision or ID) of Administrative Law Judge (ALJ) Cynthia W. Fordham. For the reasons set forth below, (a) Complainant's Exceptions should be denied in their entirety, (b) the Initial Decision should be adopted by the Commission without modification, and (c) the Formal Complaint filed at Docket No. C-2009-2150021 should be dismissed, with prejudice.¹

¹ Because the Exceptions are not set forth in the format required by the Commission's Regulation at 52 Pa. Code § 5.533, the Company will respond as if each new "section" of Complainant's filing were a new Exception and will combine those "sections" that repeat the same issue or argument. Verizon PA has not replied to those statements set forth in the Exceptions that merely represent Complainant's opinions, beliefs or conclusions or that contain rhetorical pronouncements.

INTRODUCTION

1. The Initial Decision issued in this proceeding recommends that the Formal Complaint filed at Docket No. C-2009-2150021 be dismissed, with prejudice, on the basis that Complainant did not sustain her burden of proving her disputes against Verizon PA. While Complainant argues that her evidence and Exceptions require the Commission to “vacate” the Initial Decision, her Exceptions object to only two Findings of Fact and do not object to any Conclusion of Law contained in Decision. The Exceptions contain no citations to the record, notes of testimony or documentary evidence presented at the September 23, 2010 hearing upon which the Commission can rely in granting the Exceptions. Instead, the Exceptions cite certain language contained in the Initial Decision to which Complainant provides a narrative response. This narrative, however, is merely a repetition of oral testimony made by Complainant during the hearing or represents Complainant’s conclusions, opinions or beliefs about how she feels this matter should have been decided. While Complainant may not agree with the outcome of this proceeding, Verizon PA submits that nothing included in her testimony during the hearing or set forth in her Exceptions is sufficient to warrant a modification of any finding or conclusion contained in the Initial Decision or to support a finding that the Initial Decision is faulty or unsupported by the evidence.

2. For these reasons, and for the reasons set forth below, Verizon PA requests that the Exceptions be denied, the Initial Decision be adopted by the Commission without modification and the Formal Complaint filed at Docket No. C-2009-2150021 be dismissed in its entirety.

REPLIES TO EXCEPTIONS

REPLY TO EXCEPTION NO. 1

The Initial Decision Correctly Holds That Complainant Did Not Sustain Her Burden of Proof In This Proceeding; Therefore, The Complaint Should Be Dismissed.

3. Throughout her Exceptions, Complainant explains that this proceeding is not about Verizon PA overcharging her telephone account for services received, is not about Verizon PA violating the Public Utility Code² or the Commission's Regulations³ and is not about Verizon PA violating the terms of its Commission-approved Tariff. Therefore, Complainant's argument continues, she has no burden to prove the facts she has alleged in this proceeding.⁴ Instead, Complainant maintains it is Verizon PA who has the burden of proving that the rates included in its Commission-approved Tariff for the temporary suspension of telephone service at a customer's request are just and reasonable. Complainant's interpretation of the rules regarding the assignment of the burden of proof is, however, inaccurate and the holding of the Initial Decision on this issue should be adopted by the Commission.

4. As set forth in the Initial Decision, Section 332 of the Code provides that "the proponent of a rule or order" before the Commission has the burden to prove the allegations raised in the proceeding.⁵ For purposes of this proceeding, the burden of proof was properly assigned to Complainant.

² 66 Pa.C.S. §§ 101, *et seq.* (Code) (emphasis added).

³ 52 Pa. Code §§ 1.1, *et seq.* (Regulations) (emphasis added).

⁴ Exceptions at pp. 1-2.

⁵ 66 Pa.C.S. § 332(a). Although Section 315 of the Code (Burden of Proof) sets forth exceptions to the general burden of proof rule established in Section 332(a), those exceptions are not applicable in this proceeding. Section 315 provides, in relevant part, that the public utility has the burden of proof to show that (i) any proposed increase in rates is just and reasonable; (ii) the utility has complied with any determination or order of the Commission that is alleged to have been violated; (iii) the utility's service and facilities are "adequate, efficient, safe, and reasonable"; and (iv) any accounting entry questioned by the Commission is justified. None of the described situations are involved in this proceeding.

5. Regardless of how Complainant characterizes her disputes against Verizon PA, or what words she uses to describe those disputes, she is, in fact, asking that the Commission issue a rule or order as a result of this proceeding. Specifically, she seeks an order to “make Verizon ... revise their tariffs to make Verizon services affordable, to continue to have Verizon as a wire line provider.”⁶ Complainant reiterates this request at the end of her Exceptions where she states: “I request PA PUC revise the tariffs for suspended and disconnected telephone lines previously approved by PA PUC....”⁷ As the party asking for relief from the Commission in the form of a directive that Verizon PA take some specific action when no law, regulation or order of the Commission has been violated, Complainant clearly is the “proponent” of a rule or order. Thus, as set forth in Section 332 of the Code, Complainant has the burden of proof in this proceeding and she cannot escape this burden simply by claiming she is not questioning “whether Verizon violated the Pa PUC rules or tariffs.”⁸ The Commission should disregard these arguments.

6. Complainant also has the burden of proof in this proceeding because she is challenging an established rate that was previously approved by the Commission.⁹ As correctly stated in the Initial Decision, charges set forth in a Commission-approved tariff are considered to be reasonable *per se* and the tariff is binding not only on the utility but also on the utility’s customers until proven otherwise.¹⁰

7. There is no testimony or documentary evidence in the record of this proceeding to prove that Verizon PA charged Complainant’s telephone account an amount for the temporary

⁶ NT 40.

⁷ Exceptions at p. 4.

⁸ Exceptions at p. 2.

⁹ Verizon PA Exhibit No. 1 - Tariff Telephone – Pa. P.U.C No 1, Sections 22C and 27.

¹⁰ *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Lynch v. Pennsylvania Public Utility Commission*, 594 A.2d 816 (Pa. Cmwlth. 1991).

suspension of her telephone service that was different than the rate set forth in its Tariff. Complainant presented nothing to show that the existing tariffed rates for this service are not just and reasonable. In fact, Complainant presented no “evidence” during the hearing to support her claims. The testimony she gave consisted of nothing more than her opinions, which were based on a misguided understanding of what is involved in the suspension versus the disconnection of telephone service. Complainant’s unsupported opinions that the rates billed to her account for the temporary suspension of her service were or are “illogical, unjustifiable and unreasonable” are not sufficient to shift the burden of proof in this proceeding from Complainant nor can her uncorroborated opinions be used as a basis upon which to require the Company to modify its existing and Commission-approved Tariff.¹¹

8. Similarly, there is nothing in Complainant’s Exceptions to support a modification of the findings and conclusions made in the Initial Decision. Complainant does not point out any facts contained in the record that support her allegations that rates contained in the Company’s existing Tariff for temporary suspension of service are unjust and unreasonable. Her Exceptions merely make unfounded accusations regarding (a) how and/or why the findings and conclusions made by ALJ Fordham are in error; (b) activities that allegedly show the Commission, the ALJs and Verizon PA are in collusion with each other; and (c) her belief that the September 23, 2010 hearing did not provide a “level playing field” where “everyone has a fair and equal chance of succeeding.”¹² None of these accusations or allegations are true. Complainant was given, and took advantage of, a full and fair opportunity during the September 23, 2010 hearing to present any and all evidence in support of her contentions against Verizon PA. The fact that she does not agree with the outcome of the hearing does not equate to a finding that the hearing was unfair

¹¹ NT 10, 27.

¹² Exceptions at p. 3.

or that any evidence she presented was unreasonably excluded from the record.¹³ The Commission should disregard this argument.

9. Complainant did not present during the hearing, nor does she point to in her Exceptions, any record evidence that supports the allegations raised in her Complaint. Her Exceptions do not highlight evidence presented by Verizon PA that she believes was rebutted during the hearing and should not have been considered in the Initial Decision. Instead, Complainant makes unsubstantiated arguments that have no basis in fact or law. The Initial Decision correctly held that Complainant failed to sustain her burden of proving that Verizon PA somehow violated a Commission law, regulation or order.

10. For the reasons discussed above, Complainant's Exceptions should be denied and the Initial Decision should be adopted without modification.

REPLY TO EXCEPTION NO. 2

The Initial Decision Properly Denied Admission of Complainant's Late Filed Exhibit Into The Record.

11. Four of Complainant's Exceptions, which are set forth on pages 1, 2 and 3 of her filing, dispute the conclusion that a late filed exhibit presented by Complainant following the hearing should not be admitted into the record. As noted in the Initial Decision, Complainant testified during the September 23, 2010 hearing that she sent Verizon PA a request for information regarding the costs associated with a suspended telephone account to which the Company failed to respond.¹⁴ Based on these statements, the Company's counsel asked that Complainant provide copies of the "discovery" document(s) she was referring to as a late filed exhibit.¹⁵

¹³ Exceptions at pp. 2-3.

¹⁴ ID at 3, NT 42-44.

¹⁵ NT 44-47.

12. In response to the request, Complainant provided a copy of a January 27, 2010 letter that purportedly was the discovery request she sent to Verizon PA. The letter, however, was addressed to the Commission's Secretary's Bureau and contained Complainant's improper response to Verizon PA's Answer to the Formal Complaint at Docket No. C-2009-2150021.¹⁶ There is no indication on the document that the January 27, 2010 letter was served on either Verizon PA or its counsel; a fact that Complainant admitted in a later correspondence sent to the ALJ.¹⁷

13. While Complainant submitted a copy of the January 27, 2010 letter as directed during the September 23, 2010 hearing, she fails or refuses to understand that the letter did not constitute a discovery request directed to Verizon PA. At most, it contained a number of rhetorical questions that Complainant erroneously expected the Commission or Verizon PA to answer. In addition, as the document was an improper pleading not permitted by the Commission's Regulations, the Company had no obligation to and could not respond.¹⁸ Except for the January 27, 2010 letter, Complainant presented nothing to show she requested specific information from the Company that was related to the issues raised in her Complaint. The Commission should therefore disregard this argument.

14. Should the Commission determine it is appropriate to review the January 27, 2010 letter in response to Complainant's Exceptions, Verizon PA notes that the only reference in the letter that marginally supports Complainant's claim that she asked the Company for certain information prior to the hearing is a statement at paragraph 4.(b) on page 2 in which Complainant claims that, in an e-mail response to a settlement offer made by a Company

¹⁶ Because Verizon PA's Answer did not contain New Matter, Complainant's January 27, 2010 response was a pleading not permitted by the Commission's Regulation at 52 Pa. Code § 5.1 and should not be recognized by the Commission for any purpose.

¹⁷ ID at 4.

¹⁸ 52 Pa. Code § 5.1.

representative, Complainant requested that Verizon PA “settle [her] claim by not offering credit ... on a one time basis but rather to initiate suggestions of how to change tariffs that will reflect the actual cost to Verizon when the telephone is not in use or on suspension.” Nothing in that statement asks that the Company provide Complainant with any information, let alone requests specific information related to the costs associated with the temporary suspension of service as Complainant alleged at the hearing and now alleges in her Exceptions. Verizon PA should not be required to read between the lines of a document that was not addressed to or served upon the Company in order to determine what information Complainant wants to prosecute her claim before the Commission. That is part of Complainant’s burden in connection with the filing of her Formal Complaint.

15. Complainant next argues at page 2 of the Exceptions that she “discussed in the hearing the same what I wrote in my January 27, 2009 [sic] letter to Mr. McNulty [but] you managed to disregard my verbal statements....” Despite this claim, however, Complainant fails to include any reference in her Exceptions to the “verbal statements” allegedly made during the September 23, 2010 hearing that would support her claims against Verizon PA. Without the Complainant’s provision of something more substantial than her vague reference to some “verbal statements” allegedly made during the hearing, the Commission cannot accept the claims made in the Exceptions as proof that is sufficient to sustain the Formal Complaint.

16. For the reasons discussed above, Complainant’s Exceptions should be denied and the Initial Decision should be adopted without modification.

REPLY TO EXCEPTION NO. 3

Finding of Fact Nos. 11 and 12 Are Supported By
The Evidence Of Record And should Be Adopted
By The Commission.

17. Complainant's Exceptions to Finding of Fact Nos. 11 and 12 are based on her mistaken belief, despite testimony presented by Verizon PA's witness (Ms. Regina Ryan), that suspension of telephone service and disconnection of telephone service constitute the same function. As Ms. Ryan testified, they do not.

18. Specifically, Ms. Ryan testified that a customer may request a "temporary" suspension of his or her telephone service for a maximum period of nine (9) months after providing the Company with at least five (5) days' notice of the date on which the service is to be suspended and restored.¹⁹ She further testified that, during the time of the temporary suspension (a) the individual remains a Verizon PA customer, is not charged any fee to restore service following the temporary suspension and the facilities dedicated to that customer are not removed or reused for other customers; (b) callers to the customer's number are notified that the line is temporarily suspended at the customer's request; (c) if the customer chooses, a referral number is provided to callers of the suspended number, and (d) the customer retains his or her original telephone number upon restoration of service.²⁰

19. In contrast, Ms. Ryan testified that, when a customer disconnects his or her service (a) the customer's facilities are physically removed from the existing location and may be used for other customers; (b) the telephone number is put "back into the pool" and, after 30 days, is lost to the original customer; and (c) restoration of service requires an installation charge and is dependent upon the availability of facilities to serve the customer at the time service is

¹⁹ Verizon PA Exhibit No. 1, Tariff Telephone – Pa. P.U.C. No. 1, Section 27, 42nd Revised Sheet 1.

²⁰ NT 74-75; Verizon PA Exhibit No. 1.

re-established.²¹ Ms. Ryan’s testimony clearly establishes that a suspension of telephone service at the customer’s request and a disconnection of telephone service are different activities and the assumptions and conclusions made by Complainant in her testimony and Exceptions that these services are the same and should therefore have the same costs are erroneous and should not be relied upon by the Commission.

20. Complainant’s Exceptions to Finding of Fact Nos. 11 and 12 also misconstrue the evidence presented by Ms. Ryan. With regard to Finding of Fact No. 11 (which deals with suspension of service), Ms. Ryan did not testify, as stated in the Exceptions, that “[t]here is no connection between [the] central office and customer’s home” when telephone service is temporarily suspended by the customer.²² In fact, Ms. Ryan testified to just the opposite – the customer’s facilities are left in place when service is temporarily suspended so those facilities will be available for that same customer when service is restored.²³ Contrary to Complainant’s characterization of Ms. Ryan’s testimony, the connection between the central office and the customer’s location no longer exists when service is disconnected. This is because the facilities previously used by the disconnected customer are physically removed and are used for other customers.²⁴

21. Complainant’s Exception to Finding of Fact No. 12 (which deals with disconnection of service) is again based on her misunderstanding of the testimony. Complainant claims this Finding of Fact is incorrect because a telephone number is not returned to the pool of available numbers for “at least” six or nine months.²⁵ This is not what Ms. Ryan stated. She testified that, even though Complainant asked to temporarily disconnect rather than temporarily

²¹ NT 74-79.

²² Exceptions at p. 3.

²³ NT 74-79.

²⁴ NT 74-75.

²⁵ Exceptions at p. 3.

suspend her telephone service for the period during 2009-2010 when she would not be living in her residence, the Company agreed to “hold” her telephone number for an extended period of time rather than the customary 30-day period because a complaint was pending before the Commission.²⁶ Ms. Ryan testified, however, that holding a number out of service for such a long period of time after a disconnection of service “is not the normal course of business....”²⁷

22. For the reasons set forth above, Complainant’s Exceptions should be denied and the Initial Decision should be adopted without modification.

CONCLUSION

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Exceptions filed by Lidia Shan be denied in their entirety, that the Commission adopt the Initial Decision issued by Administrative Law Judge Cynthia W. Fordham, without modification, and that the Formal Complaint filed at Docket No. C-2009-2150021 be dismissed, with prejudice.

Respectfully submitted,



Janet L. Miller (Attorney I.D. No. 63491)
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: 717-236-1300
Facsimile: 717-236-4841
jlmiller@hmslegal.com

Counsel for Verizon Pennsylvania Inc.

DATED: May 14, 2012

²⁶ Exceptions at p. 3; NT 80-83.

²⁷ NT 80.

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).

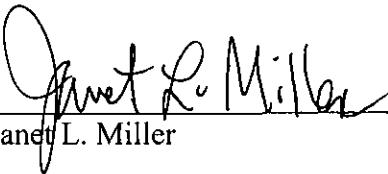
Service By First Class Mail

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

RECEIVED

MAY 14 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Janet L. Miller

DATED this 14th day of May, 2012

From: (717) 236-1300
JANET L. MILLER
HAWKE MCKEON & SNISCAK LLP
100 N. TENTH STREET
HARRISBURG, PA 17101

Origin ID: MDTA



J12101112180225

Ship Date: 14MAY12
ActWgt: 1.0 LB
CAD: 5875296/NET3250

Delivery Address Bar Code

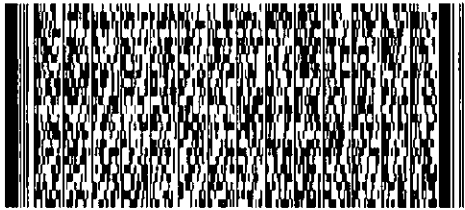


SHIP TO: (717) 787-8009 **BILL SENDER**
Rosemary Chiavetta
PA PUBLIC UTILITY COMMISSION
400 NORTH ST FL 2
COMMONWEALTH KEYSTONE BLDG
HARRISBURG, PA 17120

Ref # 368-4429 JLM/das
Invoice #
PO #
Dept #

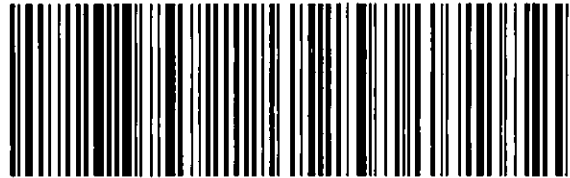
TUE - 15 MAY A1
FIRST OVERNIGHT

TRK# 7935 6376 1440
0201



E9 MDTA

17120
PA-US
MDT



512G361A4/A278

After printing this label:

- 1 Use the 'Print' button on this page to print your label to your laser or inkjet printer.
- 2 Fold the printed page along the horizontal line.
- 3 Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.