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July 31, 2012

Via E-Filing and Hand Delivery

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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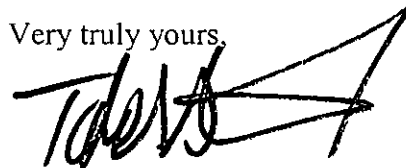
RE: A. Moses Inc. v. Verizon Pennsylvania Inc.; Docket No. C-2010-2205259  
**MAIN BRIEF OF VERIZON PENNSYLVANIA INC.**

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Main Brief of Verizon Pennsylvania Inc. in the above-captioned docket. Copies of this Brief have been served in accordance with the attached Certificate of Service

Thank you for your attention to this matter. If you have any questions related to this filing, please contact the undersigned.

Very truly yours,



Todd S. Stewart

*Counsel for Verizon Pennsylvania Inc.*

TSS/bes

Enclosures

cc: Honorable Christopher P. Pell, Administrative Law Judge

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

A. MOSES INC.,

Complainant,

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2205259

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MAIN BRIEF OF  
VERIZON PENNSYLVANIA, INC.

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DATED: July 31, 2012

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On or about October 12, 2010, A. Moses, Inc. (“Complainant”) filed a Formal Complaint against Verizon Pennsylvania Inc. (“Verizon PA”) with the Pennsylvania Public Utility Commission (“Commission”). The complaint was docketed at Commission Docket No. C-2010-2205259 (“Complaint”).

The Complaint raised a number of counts including allegations that: (1) the Complainant had contracted with Verizon PA for telephone service in April of 2009 for thirteen (13) POTS lines as well as DSL internet service; (2) the Complainant had experienced inadequate service from Verizon PA during the migration of the Complainant’s lines from its former telephone provider, Line Systems Inc. (“LSI”); (3) Verizon PA failed to migrate all of the lines that it had agreed to migrate; (4) the Complainant had experienced sporadic intermittent service on the lines during the migration process including termination by LSI for the lines that were not migrated; and finally (5) on March 27, 2010 Verizon PA willfully and without notice shut down Complainant’s internet service and redirected all of its emails to a third party and that the shutdown continued until April 15, 2010 when the internet service was restored and email accounts were reconfigured. The Complainant alleged that the loss of internet service and its inability to access its email account caused Complainant’s business losses and sought relief in the form of damages in excess of \$100,000. (Complaint Paragraph 5)

On October 20, 2010, the Commission’s Secretary Bureau served the Complaint on Verizon PA. On November 10, 2012, Verizon PA answered the Complaint and filed new matter denying material allegations of the Complaint. In particular, Verizon PA averred that DSL services are provided by Verizon Online, a different entity from Verizon PA, and that nonetheless the DSL service interruption was caused by Complainant’s nonpayment of invoices for that service. Moreover, Verizon PA also averred that the migration was timely and that the

interruptions in service during the period had nothing to do with migration but rather, were a result of Complainant's nonpayment of current or past-due charges owed to Verizon PA. Finally, Verizon PA averred that Complainant had failed to pay for any services since January 2010 and at that point in time owed Verizon PA approximately \$6,375 in past due charges.

Also on November 10, 2010, Verizon PA filed Preliminary Objections seeking to dismiss the Complaint in its entirety with prejudice because the Commission lacks jurisdiction over the provision of internet service, including DSL service and the fact that the Commission lacks authority to order utilities to pay monetary damage and the damage request was the sole request for relief in the Complaint.

In her Initial Decision ("ID"), issued February 15, 2011, Administrative Law Judge Eranda Vero dismissed the Complaint with prejudice and granted Verizon PA's Preliminary Objections, finding that the Commission lacks jurisdiction over the provision of internet services (Id. at 6) and that similarly the Commission does not have the statutory authority to award damages and therefore the request for \$100,000 was stricken as impertinent. Moreover, ALJ Vero found under Section 703 of the Public Utility Code the Commission may dismiss any complaint without hearing it if in its opinion a hearing is not necessary in the public interest and because the Commission lacks "jurisdiction to adjudicate matter involving internet service and more importantly because the Commission lacks the authority necessary to grant the sole relief requested by the Complainant, i.e. monetary damages for lost profits, a hearing would be a fruitless exercise and a waste of Commission resources." (ID. at 8)

This matter was then brought before the Commission at the Public Meeting of October 14, 2011, where the Commissioners agreed that the Commission lacks authority to grant requests for monetary damages and the Commission lacks subject matter jurisdiction to adjudicate issues with regard to internet service. The Commission concluded that the Complainant raised

“jurisdictional adequacy of service” issues regarding the migration of its phone lines and that such an allegation implicates the obligation under 66 Pa. C.S. § 1501 to provide reasonable service. The Commission also suggested that the issue of access line migration is important and is a part of the issues raised in the case. The Commission then inserted the issue whether Verizon PA’s suspension and/or termination of Complainant’s telephone service “was lawful and appropriate.” The Commission then remanded the matter to the Office of Administrative Law Judge for further proceedings with regard to the service migration and billing/termination issues.

In the Remand Order entered November 4, 2011, the Commission encouraged the parties to pursue remediation before the Commission.

A Hearing Notice dated December 5, 2011 scheduled this matter for hearing, on remand, before Administrative Law Judge Christopher P. Pell. By a separate order issued by ALJ Pell on December 19, 2011, ALJ Pell required the parties to engage in settlement discussions and to file a report within ten (10) days following the conference date, stating the time, date and place of the conference, who participated for each party and a statement of the results of the conference. To that end, the parties scheduled a settlement conference for January 6, 2012 at 1 PM. However, sometime prior to the date of the conference, Stuart Cottee, Esquire, counsel for Complainant, suffered a medical emergency and was unable to participate in the scheduled call and was unable to contact counsel for Respondent for some time.

On January 10, 2012, undersigned counsel submitted a response to ALJ Pell and to Cynthia Lehman, the Commission’s ADR Mediator, reporting this fact and the fact that Verizon PA was prepared to engage in meaningful settlement discussions but no representative for Complainant appeared.

Pursuant to a request dated January 18, 2012 by undersigned counsel for Verizon PA, Verizon PA's witness Meryl Freeman was permitted to participate telephonically in the hearings in this matter as she is located in California.

February 2, 2012 the February 3, 2012 hearing was postponed at the request of counsel for Complainant due to his ongoing medical problems.

By Notice dated March 19, 2012, this matter was scheduled for a hearing before ALJ Pell to be held on June 26, 2012 at 10 AM in Philadelphia. Prior to that time, counsel for Complainant and counsel for Verizon PA discussed the possibility of settlement on the telephone and concluded that the parties were too distant in their positions to allow for a reasonable settlement of this matter. This representation was made by counsel for Verizon PA on the record at the hearing on June 26, 2012. (Transcript "TR", 5: 6-9)

A hearing was held before ALJ Pell at 10 AM on June 26, 2012, at which time a Transcript was compiled consisting of forty-three (43) pages and four (4) exhibits were admitted into the record, one labeled C-2 on behalf of the Complainant and three (3) on behalf of Verizon PA, labeled as Verizon Exhibits 1, 2, and 3. At the conclusion of the hearing, the parties discussed the necessity for briefs and orally agreed to a briefing schedule that would require Main Briefs to be filed on or before July 31, 2012 and Reply Briefs to be filed on or before August 10, 2012.

On June 27, 2012 ALJ, Pell issued a briefing order which memorialized the briefing schedule and included the requirements for briefs set forth in the Commission's regulations at 52 Pa. Code § 5.501(a). This brief is submitted in compliance with ALJ Pell's Briefing Order.

## II. PROPOSED FINDINGS OF FACT

1. Complainant placed a Service Order to port seven (7) jurisdictional lines from its current provider, Line Services, Inc. to Verizon PA, plus two (2) existing remote call forwarding lines and its DSL on April 6, 2009. The target date for the completion of that transfer was April 27, 2009. (Transcript (“TR”) 26: 3-11; Verizon Exhibit No. 1)

2. When Verizon PA provides a “target date” for installation it is not a firm commitment but rather a target because there are too many variables. (TR. 26: 14-17; Verizon Exhibit No. 1)

3. Verizon PA completed the porting of the lines by May 12, 2009. There was an error in the written order – it had an incorrect address – which caused the order to stall. Once Verizon PA realized the error, it only took one day to complete the transfer the lines. During the process the Complainant did not lose service because it was still being provided service by its existing carrier. (TR. 26: 12-21).

4. The service application signed by the Complainant clearly shows the date of April 27, 2009, as “a due date requested”. Nowhere does the Application state that April 27, 2009 was a firm commitment for installation. (Verizon Exhibit No. 1)

5. Nothing in the service order signed by the Complainant (Verizon Exhibit No. 1) indicates a cap on Verizon PA’s charges to Complainant at \$500 per month.

6. During the transition, Complainant never lost service on the seven (7) pots lines (cust-o-pack lines) that were transferred back to Verizon PA. However, there was an additional service application for a remote call forwarding line, 610-642-6065, that was also being ported and which because of an incorrect address did not get ported immediately. In the interim period, that line was suspended by Line Services, Inc. (“LSI”) for non-payment, so it did go out of

service, but not because of anything to do with Verizon PA's porting or non-porting, but only because Complainant did not pay its bill to LSI. (TR. 28: 8-19)

7. During the period May 2009 to November 2009 there were no calls from Complainant to Verizon PA regarding service issues. (TR. 28: 24-25; 29: 1)

8. Verizon Exhibit No. 2 is a summary of the billing and collection for all of Complainant's accounts with Verizon PA. (Verizon Exhibit No. 2; TR. 29: 14-19) Complainant had two remote call forwarding lines, 215-947-8033 and 215-947-8035, which were created in July of 2003 and had always been with Verizon PA and were terminated for non-payment in September of 2011. (TR. 30: 7) From the time that service was installed on Complainant's account until the time that service began in May of 2009 through the date of the hearing, Complainant made a single payment of \$500 in February of 2010 in order to avoid suspension of his service. (Verizon Exhibit No. 2; TR. 32: 1-9)

9. Verizon PA issued a credit to the Complainant in the amount of \$1,769.03 based upon Complainant's representation to the service representative that it had been double-billed during the transfer period. This representation was not true and the credit was not warranted, but it was not removed from Complainant's account. (TR. 32: 19-25)

10. On the various accounts that are the subject of this Complaint, Complainant's service was suspended at least five (5) times for non-payment. (Verizon Exhibit No. 3)

11. Verizon PA's witness testified that Verizon PA does not enter into separate customer-written contracts for service, nor does it make "deals" with customers that would cap their payments at a certain amount per month. The reason is that there are usage charges for the various calls including 800 numbers, taxes and surcharges and it simply is not typical that Verizon PA would provide a customer with any type of capped rate. In the case of the

Complainant, several of the lines had no long distance package, which meant they paid on a per call basis, which would create variable charges per month. (TR. 34: 1-25)

12. As of the date of the hearing, Complainant owes Verizon PA \$13,844.49 for telephone services provided to Complainant during the period under examination. Despite the fact that the Complainant's total telephone bill from Verizon PA was approximately \$500 per month Complainant paid nothing for all months except for one during the period of service. (TR. 35: 5-25)

### **III. SUMMARY OF THE ARGUMENT**

Simply put, this matter is about a Complainant that did not pay its telephone bill, suffered suspension and eventual termination of service, and then filed a complaint seeking damages for lost business as a result of not having telephone service. The Commission appropriately dismissed the damage claim the first time the matter came before it, and appropriately dismissed the claims regarding DSL service. But the Commission nonetheless remanded to consider issues not even raised by the Complainant, and clearly not supported by the Complainant on remand. There is no evidence in the record to support the notion that any service was provided in a manner that violates the applicable statutes or regulations. The evidence makes it clear that any service interruption was caused by Complainant's service being suspended for non-payment, and the evidence also is clear that those suspensions were performed in accordance with the law as well. The Complainant offered no evidence of any violation of law. Complainant's scant testimony lacks credibility, its sole exhibit was incomprehensible, and even if the testimony were believable, it consisted of a few conclusory statements, but no facts. By contrast, Verizon PA provided a complete documentation of the facts, including the fact that Complainant simply did not pay its telephone bill and still owes Verizon Pa in excess of \$13,000. All of the issues raised in this case spring from Complainant's failure to pay. The Complaint must accordingly be dismissed.

#### IV. ARGUMENT

**1. Complainant failed wholly to carry its burden of proof that Verizon PA violated any law, Commission regulation or tariff.**

The Complainant, as the proponent of a rule or order in this Commission proceeding bears the burden of proof. 66 Pa. C.S. § 332. Accordingly, the Complainant has the burden of proving, in this matter, by a preponderance of the evidence, which is evidence which is more convincing than the evidence presented by the other parties, that Verizon PA violated the Pennsylvania Public Utility Code, Commission's regulations, an order of the Commission, or its own tariffs. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). Moreover, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704. More evidence is required than a mere trace or suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the Complainant, for instance fails to introduce sufficient evidence, the opposing party is entitled to

receive a favorable ruling, such as in this case. That is, the opposing party should be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict.

Once the party with the initial burden of production produces sufficient evidence to make out a *prima facie* case, however, the burden of production shifts to the opposing party. If the opposing party introduces sufficient evidence to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to its position. The burden of persuasion however remains with the party with the burden of proof, and must convince the trier of fact that there is sufficient evidence to find in its favor. *Riedel v. County of Allegheny*, 633 A.2d 1325; 1328 n. 11 (Pa. Cmwlth. 1993). It is entirely possible therefore that a party could successfully bear the burden of production but not be entitled to a verdict in their favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or rejection of inferences. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006).

In this case, Complainant has failed utterly to produce any evidence sufficient to show any violation of law. Mere bald statements, which is the extent of the “evidence” submitted by Complainant in this case, do not comprise credible evidence. Accordingly, Verizon PA is entitled to judgment in its favor.

A prime example of this lack of evidence or inconsistent evidence can be found in the testimony of Complainant’s sole witness, its President, Mr. Attias. Early on in the hearing he testified that he was charged “nine hundred, one thousand, eleven hundred.” (TR. 11:23:24). However, Verizon PA’s Exhibit clearly shows that Complainant was charged

approximately \$500 per month. (Verizon Exhibit No. 2) Moreover, Complainant's attorney later admitted this fact. (TR. 38: 7-11, 39:17-18). There is no evidence that Verizon PA made a commitment to port the lines in question by a certain date, in fact the evidence shows that it did not make such a promise and that the porting took place in a reasonable amount of time nonetheless and that Complainant maintained service during the porting. (TR. 26: 12-21) There is no evidence that Verizon PA's service was inadequate, nothing to refute the evidence that Complainant's failure to pay Verizon's charges – to pay anything – toward its bill was the sole factor that Complainant lost service due to suspension – not bad service. The fact is that Verizon PA has demonstrated the Complainant's history of non-payment and there is no evidence to support its bald and ill-defined allegations of inadequate service. Accordingly, the Complaint must be denied in its entirety.

**2. Verizon PA provided reasonable service in porting Complainant's accounts from LSI to Verizon PA in April/May 2009.**

The Commission on remand ordered the parties to address the issue of the reasonableness of Verizon PA's porting of Complainant's service from LSI back to Verizon PA. Section 1501 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1501, imposes on public utilities, including Verizon PA, the statutory obligation to furnish and maintain reasonable, adequate, efficient, safe and reasonable service and facilities. However, "a public utility is not obligated to provide perfect service and facilities 100% of the time; rather, the test of adequacy of the utilities' service and facilities is that of reasonableness." *Eugene Scherich and Bertha Scherich v. Verizon Pennsylvania Inc.*, Docket Nos. C-2008-2061224, et al. (Initial Decision of Administrative Law Judge Robert P. Meehan, October 28, 2009, *slip op.* p. 13; adopted as Final Order, January 28, 2010).

Under the circumstances here, Verizon PA's service to Complainant was reasonable and complied with the requirements of the Public Utility Code. That is, contrary to Complainant's assertions that it took several months for Verizon PA to port Complainant's telephone numbers from LSI to Verizon PA, the record is clear that it took about a month. (TR. 26:9-21). Likewise, Verizon PA's service to the Complainant was not fraught with service interruptions, as suggested by the Complainant but, rather, the "interruptions" of Complainant's service were the result of Complainant's own refusal to pay its telephone bill. Even if one were to accept the implication of Complainant's argument that it did not pay the bills because the bills were not the flat \$500.00 fee that Complainant falsely contends was agreed-to, and which is refuted by Verizon PA's evidence, Complainant was nonetheless obligated to pay the undisputed portion of those bills – namely the \$500.00 he contends he agreed-to. The undisputed evidence shows he did not, with the exception of one isolated circumstance. Complainant provided no credible evidence of unreasonable service. To the contrary, the evidence show that Verizon acted reasonably.

The only credible evidence on the reasonableness of that transfer of service was provided by Verizon Pa's witness, Ms. Friedman, who made it clear that the service was ported within a month of the order and that with the exception of a single call forwarding line that was suspended by LSI in the midst of the porting, Complainant did not lose service during the transition. Moreover, the testimony is clear, backed by actual records, that Complainant was not double billed by Verizon PA during the transition, despite Complainant's untrue representations to the contrary, which already have yielded Complainant a credit that it did not deserve. (TR. 32:19-24) There simply is no basis on which to conclude that Verizon Pa provided unreasonable service, and no conceivable basis on which to conclude that Complainant has carried the substantial burden of proving a violation. Accordingly, the Complaint must be denied on this point.

**3. Complainant's service was appropriately suspended for non-payment.**

Upon remand the Commission suggested that Complainant's service may have been suspended or terminated improperly. Complainant offered no testimony whatsoever to suggest – let alone prove – that any suspension was not proper or warranted. The only evidence in the record was provided by Verizon PA and shows that Complainant was properly noticed for each and every suspension or termination of service. (Verizon Exhibit No. 3) There simply is no evidence in the record to support the notion that there was any violation of 66 Pa. C.S. § 1501 or any applicable Commission Regulation or tariff. (TR. 31:18-34:6) Accordingly, the Complaint must be dismissed as to this point.

Also, Ms. Friedman made clear in her direct testimony that Verizon PA was correctly and appropriately billing complainant for the services it was using. Verizon Exhibits Nos. 1 & 2 show that the base amounts were consistent and correct, and that the charges varied by month based upon Complainant's usage. The record also is clear that Verizon PA never agreed to limit its charges to Complainant to a fixed amount per month. (TR. 34:4-35:2) And while there is no evidence of any agreement to limit charges to the Complainant, the evidence shows that Complainant was indeed charged approximately \$500 per month, and yet still refused to pay even a single dollar for its telephone service in all but one month on the combined accounts. (Verizon Exhibit No. 2) The record is clear that Verizon PA provided reasonable and adequate service to Complainant and the Complainant has offered no evidence to prove the contrary.

**V. PROPOSED CONCLUSIONS OF LAW.**

1. The Commission has jurisdiction over this matter pursuant to 66 Pa. C.S. § 701, et seq.
2. The Complainant bears the Burden of Proof in this matter. 66 Pa. C.S. § 332.
3. Verizon PA at all times relevant to the Complaint, provided Complainant with adequate service as required by 66 Pa. C.S. § 1501.

4. All suspensions and terminations of Complainant's telephone service by Verizon Pa were reasonable.

5. Complainant failed to carry its burden of proving any violation of the Public Utility Code, 66 Pa. C.S. § 101, et seq., the Commission's Regulations or Verizon Pa's tariff.

6. The Complaint must accordingly be dismissed with prejudice.

**VI. PROPOSED ORDERING PARAGRAPHS**

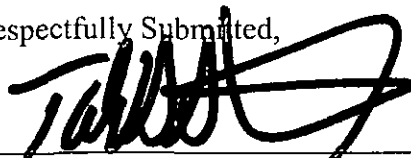
1. That the Formal Complaint of A. Moses, Inc. against Verizon Pennsylvania Inc. at Docket No. C-2010-2205259 is hereby dismissed with prejudice.
2. That this docket is marked closed.

**VII. CONCLUSION**

Over the course of the two plus years that Complainant took telephone service, it repeatedly and persistently failed to pay for the telephone service it used. There was no interruption other than suspensions when Complainant failed to pay, which was often. The bills rendered to Complainant were correct and timely and there is no evidence to the contrary. In short, the Complaint must be dismissed.

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Respectfully Submitted,



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*Counsel for Verizon Pennsylvania Inc.*

DATED: July 31, 2012

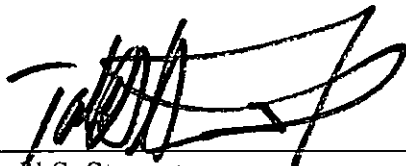
**CERTIFICATE OF SERVICE**

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).

**VIA FIRST CLASS MAIL**

Honorable Christopher P. Pell  
Philadelphia District Office  
Pennsylvania Public Utility Commission  
801 Market Street  
Philadelphia PA 19107

Stuart T. Cottee, Esquire  
Law Offices of Stuart T. Cottee, PC  
645 W Porter Street  
Philadelphia, PA 19148-3800

  
\_\_\_\_\_  
Todd S. Stewart  
*Counsel for Verizon Pennsylvania Inc.*

Dated this 30<sup>th</sup> day of July 2012

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