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April 1, 2013

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2nd Floor)
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Lidia Shan v. Verizon Pennsylvania, Inc.; Docket No. C-2009-2150021;
**ANSWER OF VERIZON PENNSYLVANIA, INC. TO THE PETITION
FOR RESCISSION OF LIDIA SHAN**

Dear Secretary Chiavetta:

Attached for filing with the Commission is the Answer of Verizon Pennsylvania, Inc. to the Petition for Rescission of Lidia Shan in the above-captioned proceeding.

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

Very truly yours,

Steven K. Haas
Counsel to Verizon Pennsylvania Inc.

SKH/san
Enclosure

cc: Per Certificate of Service

BACKGROUND

On April 13, 2012, Administrative Law Judge Cynthia Williams Fordham (“ALJ”) issued her Initial Decision (“I.D.”) in this proceeding. In her I.D., the ALJ correctly determined that the Complainant had not sustained her burden of proof with respect to the assertions raised in the Complaint. Accordingly, the ALJ dismissed Ms. Shan’s Complaint.

On April 22, 2012, the Complainant filed Exceptions to the I.D. Subsequently, on May 14, 2012, Verizon PA filed its Replies to the Complainant’s Exceptions. Ms. Shan’s Exceptions and Verizon PA’s Replies are incorporated herein by reference. The Commission’s Opinion and Order in this proceeding was entered on August 31, 2012. In its Order, the Commission denied the Complainant’s Exceptions and adopted the I.D. in its entirety.

On March 17, 2013, seven months after the Opinion and Order was entered, the Complainant filed a Petition for Rescission, requesting that the Opinion and Order be rescinded and that a new trial be scheduled. As more fully explained below, Ms. Shan does not provide any basis in her Petition supporting rescission of the Opinion and Order. She does not raise or assert any new facts or arguments in support of her Petition. To the contrary, the Petition constitutes nothing more than (1) an attack on the integrity of the ALJ and Commission, and (2) an unsubstantiated statement of her belief that the Commission was incorrect in its final decision. Having had a full and fair opportunity to present all of her arguments both at the hearing and in her Exceptions, the Complainant’s belief, as expressed in her Petition for Rescission, that the conclusions reached by the ALJ and the Commission were wrong, without providing any new or previously unconsidered arguments in support of her request, provides absolutely no basis for rescinding the Opinion and Order.

ANSWER TO PETITION FOR RESCISSION

Initially, Verizon PA notes, as indicated above, that the Complainant's Petition was filed with the Commission seven months after the Opinion and Order was entered. By way of explanation for the delay in filing her Petition, the Complainant indicated on the first page of the Petition that she did not receive any correspondence from the PA PUC until February 25, 2013. She pointed out that the Opinion and Order had been returned to the Commission. She stated, "it was never delivered to my mailing address that is on the PA PUC records."

Any suggestion by the Complainant that the Opinion and Order was never sent to her is incorrect. Attached to this Answer are copies of the envelopes from the Commission's two attempts to serve the Opinion and Order on the Complainant. These copies were obtained from the Commission's Secretary's Bureau. The first attempt to serve the Opinion and Order was made via Certified Mail on August 31, 2012. This envelope was returned to the Commission. A second attempt at service was made via First Class Mail on September 6, 2012. This envelope was also returned to the Commission. Both envelopes were addressed to the Complainant at 301 Byberry Road, Apt. F-14, Philadelphia, PA 19116. This is the Complainant's correct address that was provided by her and that has been used throughout this proceeding.

With respect to the reason the service attempts were returned to the Commission, each envelope contains the notation, "Temporarily Away. Return to Sender." Therefore, the actual reason each envelope was returned to the Commission is that the Complainant was away from her residence for a period of time and had instructed the Post Office to return mail to the senders. Further, there is no indication in the Commission's records, or on anything that was received by Verizon PA, demonstrating that the Complainant provided an alternate address to use during the time she was temporarily away from her primary residence. It was her responsibility to do so.

Accordingly, the delay in responding to the Opinion and Order was solely the fault of the Complainant. While the Commission's regulation at 52 Pa. Code §5.572 does not appear to place a time limit for the filing of a Petition for Rescission, Verizon PA points out the above facts merely to clarify the statements asserted by the Complainant on this issue.

As noted above, the Complainant's Petition includes a number of vicious attacks on both the ALJ and the Commission. At various points in her Petition, she accuses the ALJ and Commission of "ludicrous bias" (Petition, p. 1), "double fraud" (Petition, p. 1), "moral depravity" (Petition, p. 2), "conflict of interest" (Petition, p. 2), "incompetency" (Petition, p. 2) and "incompetent or under duress" (Petition, p. 3). These attacks are made by the Complainant simply because neither the ALJ nor the Commission ultimately agreed with her positions in this proceeding. She offers no new reasons or arguments, other than those already made by her during the hearing and in her Exceptions, in support of her request for rescission. This is an insufficient basis for the Commission to rescind one of its Orders.

52 Pa. Code §5.572(a) provides for the filing of petitions for rescission of Commission Orders. In ruling on a Petition for Rescission, the Commission has stated, "[a] petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders." PA PUC v. Jerome P. Baylor t/a Action Enterprises/General Services, Docket Nos. A-00119454, F.2, and A-00119454C0601 (Opinion and Order entered May 10, 2012, p.2); See also, City of Pittsburgh v. Pa. Dept. of Transportation, 416 A.2d 461 (Pa. 1980). In addition, while recognizing that a petition may raise any matter designed to convince the Commission to exercise its discretion to rescind a prior order, the Commission has stated that parties ". . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically

considered and decided against them.” Application of Lenora’s Moving Company, Docket Nos. A-8913874 and A-2001-2262962, (Opinion and Order entered March 1, 2012); Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (Order entered December 17, 2982) quoting Pennsylvania Railroad Co. v. Pennsylvania Public service Commission, 179 A. 850, 854 (Pa. Super. St. 1935). Finally, the Commission has held petitions for rescission must raise new and novel arguments not previously heard or considerations that were not addressed previously by the Commission. Application of Classy Cab Company, Inc., Docket Nos. A-00121579 and A-2012-2294269 (Opinion and Order entered August 31, 2012).

The Complainant has utterly failed to meet any of the standards set forth above in her Petition. As noted, she merely argues in her Petition that the ALJ and Commission were incorrect in their respective decisions. She completely fails to present any new facts or arguments in her Petition that were previously overlooked or not considered by the Commission in its Opinion and Order.

The gravamen of her Petition is that the Commission incorrectly assigned the burden of proof to the Complainant in this proceeding, rather than on Verizon PA. This same issue was raised by the Complainant on the 2nd page of her Exceptions. She argued in her Exceptions, and again in her Petition, that the burden of proof was incorrectly assigned to her, rather than to Verizon PA. She believes that the burden should be on Verizon PA to prove that the rates in its tariff associated with the voluntary suspension of a customer’s service are reasonable, rather than upon her to prove that they are not.

This issue was thoroughly and correctly reviewed and decided by the Commission on pages 7-8 of its Opinion and Order. The Commission correctly held that, as the proponent of a rule or order, or as the person seeking relief in the form of a directive that Verizon PA take a

specific action, the burden of proof rests with the Complainant. As the Commission accurately concluded, this is particularly the case where, as here, the Complainant is challenging rates in Verizon PA's tariff that have already been approved by the Commission.

The Complainant failed to present any new facts or arguments in support of her position. She merely restated the same position and arguments that she raised in her Exceptions. The Commission fully considered and addressed the burden of proof issue in its Opinion and Order. It correctly concluded that (1) the burden of proof rested with the Complainant, and (2) she had failed to satisfy that burden by proving that the applicable tariff rates applied by Verizon PA were unreasonable. The mere fact that the Complainant does not like the decision does not render it incorrect, or warrant its rescission.

CONCLUSION

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Petition for Rescission filed by Lidia Shan be denied in its entirety.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

DATED: April 1, 2013

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



Steven K. Haas

DATED this 1st day of April, 2013