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December 23, 2013

Via Hand Delivery

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

RE: Patricia Manganaro v. Verizon Pennsylvania LLC; C-2012-2332597
REPLY BRIEF

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply Brief of Verizon Pennsylvania LLC in the above-referenced matter.

If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

William E. Lehman
Counsel for Verizon Pennsylvania LLC

WEL/bcs
Enclosure
cc: Honorable Mark A. Hoyer, Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PATRICIA MANGANARO,	:	
Complainant	:	
	:	
	:	
	:	Docket No. C-2012-2332597
v.	:	
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

REPLY BRIEF OF
VERIZON PENNSYLVANIA LLC

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Counsel for
Verizon Pennsylvania LLC

DATED: December 23, 2013

REPLY ARGUMENT

The parties to this proceeding submitted Main Briefs on December 9, 2013. As stated in its Main Brief, the only question with regard to Verizon Pennsylvania LLC's ("Verizon") interest in this matter is ownership of the downed poles on the Complainant's property. Although the Complainant's Main Brief primarily addresses the adequacy of the service provided to her by Duquesne Light Company ("Duquesne") and only tangentially addresses the ownership of the poles, Verizon will reply here to certain statements made in the Complainant's Brief that may be implied as suggesting ownership of the poles by Verizon.

As set forth fully in Verizon's Main Brief, the record developed in this proceeding shows that the Complainant has provided no evidence that Verizon owns the poles in question. In fact, the evidence provided by Verizon and Duquesne overwhelmingly shows that the Complainant, Ms. Manganaro, is the owner of the poles. This evidence includes Verizon's pole agreement (Verizon Exhibit No. 1) showing the poles are subscriber owned poles, that there is no equity ownership by Verizon of the poles, no joint-use agreements, and that a custom work order was requested by the property owner for Verizon to place customer-owned poles on their property. In addition, there are no joint-use agreements, right-of-way or easement agreements, which would have been required if Verizon owned the poles. There were no tags on the poles indicating Verizon's ownership, which would have been there had Verizon owned the poles. Finally, Duquesne's witness testified that there are thousands of customer-owned poles in Duquesne's service area so these poles being customer owned is not surprising, and, in fact, very probable. This evidence is overwhelming, and clearly shows that the Complaint, not Verizon owns the downed poles and the Complaint against Verizon should be dismissed. Verizon will respond, however, to certain statements in the Complainant's Main Brief as follows.

On page 2 of the Complainant's Brief, under the Statement of the Case section (the pages are not numbered) is the statement, "A representative of Duquense Light alleged that Duquesne Light does not own the poles and said Verizon is the likely owner. (R. at 15)" This statement should be disregarded for several reasons. First, it is hearsay. It was made by the Complainant purportedly to repeat what a Duquesne employee told her during a meeting at the Complainant's premises. This is classic hearsay and should be disregarded on that basis alone. Second, it does not accurately represent the testimony of the Complainant. What she actually said was, "And I said, 'Well, who owns them?' He said, 'It's probably, Verizon.'" (Transcript "Tr." at 15:2-3) Quite obviously, the use of the adverb "probably" indicates the Duquesne representative's statement was pure speculation and not based on any factual knowledge he had at the time about the owner of the poles (however, we will never know, because he was not there to be examined about his actual knowledge of the ownership of the poles, thus this statement is hearsay). This speculative, hearsay statement sheds no light whatsoever on the ownership of the poles.

Second, Duquesne witness John Klim testified that at the time of the outage, when he inquired with Duquesne about the ownership of the poles, the only thing Duquesne could tell him was they did not belong to Duquesne. (Tr. at 62:22-24) Also, Duquesne's witness, Jane Ann Posney, supervisor in charge of, *inter alia*, pole mapping, (Tr. at 75:1-6) testified that she found nothing in Duquesne's records that indicates that the poles in question were owned by Verizon. (Tr. 87:7-9)

Next, and related to Duquesne's position on the ownership of the poles, the Complainant, on page 3 of her Main Brief, relies on a letter from a BCS investigator (which was entered into the record over the objection of Verizon's counsel as Complainant's Exhibit 1) for the statement "Duquesne confirmed the poles 517/1 and 517/2, found in the right-of-way, belong to Verizon,

and that, Duquesne owns the pole on the road." Once again, this statement should be disregarded for numerous reasons. First, this is merely a letter from a BCS investigator indicating her interpretation of Duquesne's response to an inquiry made by the BCS to Duquesne. As argued by Verizon at the hearing, the statements in this document have no relevance to this proceeding because the current proceeding is a *de novo*[1] review of the evidence provided in this proceeding. This review standard was acknowledged by the presiding ALJ at the hearing. (Tr. at 27) As set forth in Verizon's Main Brief and this Reply Brief, the ***record evidence developed at the de novo hearing in this matter*** overwhelmingly shows that the Complainant is the owner of the poles.

Second, should Your Honor consider this document relevant at all – which it is not – the Complainant fails to state, however, that the letter also indicates Verizon's position with regard to the same inquiry: "Verizon investigation has determined poles 517/1 & 2, lying on the ground now, were set in 1937 and are subscriber poles according to Verizon pole records." (Complainant's Exhibit No. 1) The evidence presented at the hearing supports Verizon's statement in this document that the poles in question are subscriber owned poles. Whereas, the evidence provided at the hearing refutes the BCS statement that Verizon owns the poles, because Duquesne's witness, Jane Ann Posney, supervisor in charge of, *inter alia*, pole mapping (Tr. at 75:1-6), testified that she found nothing in Duquesne's records that indicates that the poles in question were owned by Verizon. (Tr. 87:7-9). Furthermore, there is no "right-of-way" associated with these poles. (Tr. at 16:11-17; 33:8-34:3; 42:10-43:6; 84:11-17) For these

[1] 52 Pa. Code § 64.163 ("All appeals from informal complaint reports shall be heard de novo by the Commission, a Commissioner, or an Administrative Law Judge."); *Raftery v. Verizon Pennsylvania Inc.*, Dkt. F-02211831 (Opinion and Order Entered December 18, 2008) (attached as **Appendix A** hereto) ("appeals from informal complaint reports will be heard *de novo*. ... because the appeal is a *de novo* proceeding, the party with the burden of proof in the Formal Complaint proceeding must ensure that the record in that proceeding contains substantial evidence to support its desired outcome.").

reasons, Your Honor should give no weight to any information contained in Complainant's Exhibit No. 1.

On page 3 of the Complainant's Main Brief is the statement, "Nowhere in Complainant's deed is there any mention of the poles." While implying that this lack of mentioning the poles in her deed somehow shows she must not own them, this statement actually supports that Verizon does not own the poles in question. As Verizon witness, Mr. Browning explained, if Verizon had owned the poles, to place them on the Complainant's property would have required a right-of-way or easement agreement, which would have to be recorded. (Tr. at 43:10-43:6) However, there was no such right-of way or easement agreement. (Tr. at 16:11-17; 33:8-34:3; 42:10-43:6; 84:11-17) Therefore, the lack of right-of-way or easement agreement appearing in her deed shows that Verizon did not own the poles. Furthermore, if the Complainant owns the poles – which she does – there would be no reason for these poles to be mentioned in the deed. These poles are no different than a fence, shed, swingset, or anything else the property owner owns, none of which would be mentioned or recorded in the deed. This shows that the poles are indeed owned by the Complainant.

Finally, on page 2 of the Complainant's Main Brief is the statement, "Despite numerous requests, Complainant has never been shown the original document which Verizon alleges lists Complainant as the owner of the wooden utility poles. (R. at 14)." First of all, there is no testimony like this on page 14 of the transcript, but assuming the Complainant was referring to the testimony contained on pages 22 and 23 of the transcript, this statement mischaracterizes the Complainant's testimony regarding this "document." When reviewing the Complainant's testimony on this matter, she testified that a Verizon representative told her, "From what I understand, they're telling me that, there is a document that says the owner of the property owns

these poles." (Tr. at 22:19-24) The Complainant only later refers to this document as one that is "signed," (Tr. at 23:7-8) and that she was never shown this "signed" document. (Tr. at 23:17-24:13). The Complainant provided no testimony at all that a Verizon representative told her there is a "signed" document. In fact, the only testimony on this subject at all was provided by Verizon witness, Charles Browning, who testified that:

> Sometime in May or June of 2012, she called me and questioned me about the poles, asked me --- she mentioned about a form that was signed. ***I said we had nothing like that.*** I pulled our pole record, which indicates that, this is a subscriber pole, and I emailed it to her. And then, later on, she came to the office, and ***I showed her the original.*** (Tr. at 37:15-20)

This testimony shows that Verizon did show the Complainant the original of the pole record document showing that the poles in question are subscriber owned poles and this is the same document that Verizon has presented in this proceeding as Verizon Exhibit No. 1.

CONCLUSION

For the reasons set forth above and in its Main Brief, Verizon Pennsylvania LLC respectfully requests that the Formal Complaint filed by Patricia Manganaro be dismissed or denied in its entirety.

Respectfully submitted,

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Counsel for Verizon Pennsylvania LLC

DATED: December 23, 2013

APPENDIX A

Raftery v. Verizon Pennsylvania Inc.
Docket No. F-02211831

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 18, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert Powelson
Kim Pizzingrilli
Wayne E. Gardner

Patrick Raftery

Docket No. F-02211831

v.

Verizon Pennsylvania Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Patrick Raftery (Complainant) filed

APPENDIX A

on May 5, 2008,[1] to the Initial Decision of Administrative Law Judge (ALJ) Ember S. Jandebeur, which was issued April 15, 2008, in the above-captioned proceeding. On November 24, 2008, Verizon filed Reply Exceptions along with a Motion to Strike the Exceptions Filed by Patrick Raftery. Verizon's Reply Exceptions and Motion to Strike are considered timely filed.[2]

History of the Proceeding

On June 6, 2007, the Complainant filed a Formal Complaint against Verizon Pennsylvania Inc. (Verizon), an Incumbent Local Exchange Carrier, alleging that on October 31, 2006, Verizon had refused to grant his application for low-income telephone assistance programs – "Link-Up America" and "Lifeline" services.[3] The Complainant also alleged that at the time he applied for services, he had indicated to Verizon that he was receiving Federal Housing Assistance and that his income is less than 100 percent of poverty level. Nevertheless, Verizon disconnected the Complainant's

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[1] On October 20, 2008, the Complainant filed correspondence with the Commission claiming that his telephone service was about to be terminated for non-payment. He asked that the Commission prohibit the termination of his service until the instant proceedings are concluded. As will be discussed later, Verizon made separate arrangements for the Complainant to receive new service from Verizon under a different phone number, and the Complainant's correspondence here relates to the new service. We see no connection between these proceedings and the facts alleged in that correspondence. As a result, we will deny the requested relief.

[2] A copy of the Complainant's Exception was not served on Verizon until November 5, 2008, and Verizon was granted additional time until November 24 to file its Reply Exceptions.

[3] Link-Up America and Lifeline programs are federally subsidized telephone assistance programs that help low income residential customers to get or keep their telephone service. Link-Up America covers 100% of new customer line connection charges if those customers also qualify and sign up for Lifeline Service. For all other low income qualifying customers, Lifeline provides a fifty percent discount on new customer line connection charges. The Lifeline program provides a credit of $11.42 on the monthly telephone bills of qualified customers' whose income is at or below 100% of the United States Census Bureau Poverty Level Guidelines, or who receive assistance from certain Public Welfare Programs.

service on January 11, 2007, due to an unpaid bill for $95.68. The Complainant requested: (1) that his application for Link-Up America and Lifeline be found valid from the day of his application for telephone service; (2) that his bill reflect credits from the Link-Up and Lifeline Programs;and (3) that Verizon be directed to restore his telephone service. Complaint 5-6, ID at 4, Findings of Fact 2-11.

The Complaint is a timely appeal of the Bureau of Consumer Services' (BCS) decision on the Informal Complaint at BCS No. 211831, which upheld Verizon's termination of service for an unpaid bill of $95.68 and found that Verizon was unable to complete the customer's Lifeline application due to the customer not providing proof of income to verify eligibility.

After the filing of this Formal Complaint, the dispute was sent for mediation. On July 16, 2007, Verizon filed a Certificate of Satisfaction and a Proposed Settlement of Terms (Settlement) indicating that the Parties have arrived at a resolution to the Formal Complaint and that the Complainant has agreed to withdraw the Formal Complaint. However, on July 25, 2007, the Complainant filed an Objection to the Certificate of Satisfaction noting that Verizon failed to satisfy the terms of the Settlement.

On September 13, 2007, Verizon filed an Answer and a Response to the Complainant's Formal Complaint and Objection to the Certificate of Satisfaction wherein Verizon indicated that it had adjusted the Complainant's past due bills to $0.00;[4] made arrangements for the Complainant's new service without a connection charge; and enrolled the Complainant in its Lifeline Program.[5]

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[4] We note that as a result of Verizon's action we will not have to order such relief in the event that the Complainant prevails in this case.

[5] On September 20, 2007, Verizon also filed a Petition for Issuance of Protective Order, which was not formally acted upon by the ALJ.

The ALJ conducted a telephonic hearing on November 25, 2007. The Complainant appeared *pro se* and submitted eighteen exhibits. Verizon was represented by its counsel, presented the testimony of one witness and submitted five exhibits. All the exhibits were admitted into record and the record was closed at the conclusion of the hearing.

By Initial Decision issued April 15, 2008, ALJ Jandebeur dismissed the Complaint for the Complainant's failure to satisfy his burden of proof. The ALJ concluded that Verizon was correct to not approve Lifeline or Link-Up America, at the time of Complainant's application, without a completed application.

As noted, the Complainant filed Exceptions on May 5, 2008, and Verizon filed Reply Exceptions on November 24, 2008.

Discussion

A. Verizon's Motion to Strike

In its Motion to Strike Verizon states that the Complainant's Exceptions consist of nothing more than an inappropriate attempt at submitting extra-record evidence and that the Complainant relies on the extra-record evidence to support his Exceptions. Verizon cites to the Commission's Regulation at 52 Pa. Code §5.533(c) and states that a Party to the case needs to refer to relevant portions of the record and passages in previously-filed briefs, when offering a statement of reasons supporting an exception.

Based on the foregoing, Verizon PA asserts that the Commission cannot rely upon Complainant's extra-record factual assertions and requests that the Complainant's Exceptions be stricken.

Disposition:

On consideration of the Verizon Motion to Strike, such Motion shall be denied, consistent with our discussion. We disagree that the Exceptions do nothing more than introduce extra-record evidence. To the contrary, as Verizon notes on page 1 of its Reply Exceptions and Motion to Strike, a large part of Complainant's Exceptions "consist of nothing more than a reiteration of the allegations in his complaint and testimony which he gave at the hearing, which was properly rejected by the ALJ." We will not consider extra-record evidence, but we will consider those portions of the Complainant's Exceptions that do not rely on such evidence.

B. Exceptions

The ALJ made twenty-nine Findings of Fact and reached five Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As a preliminary matter, we note that any issue or exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Section 332(a) of the Public Utility Code (Code) places the burden of proof on the proponent of a rule or order. The ALJ found that the Complainant bears the burden of proof in this proceeding. Conclusion of Law 2.

Section 56.172 of our Regulations provides:

> Within 20 days of notification or mailing of the informal complaint report and not thereafter except for good cause, an appeal from the report of the Consumer Service Representative may be initiated by means of a written intention to appeal. Upon receipt of this written intention, the Secretary's Bureau will determine whether the appeal is from a mediation decision of the Bureau of Consumer Services—to be docketed with the prefix "Z"—or another type of appeal. Thereafter, formal complaint forms shall be filed by the party taking the appeal.
>
> (1) Appeal from mediation decisions where the issue is solely ability to pay shall proceed in accord with § 56.174 (relating to formal complaint procedures for appeals from mediation decisions of the Bureau of Consumer Services).
>
> (2) Other appeals shall proceed in accord with § 56.173 (relating to formal complaint procedures other than appeals from mediation decisions of the Bureau of Consumer Services).

This proceeding is not an appeal from a mediation decision where the issue is solely ability to pay. As a result, it is governed by Section 56.173 of the Regulations. That section provides that appeals from informal complaint reports will be heard *de novo*. In *Claypool v. T.W. Phillips Gas & Oil Company*, 1995 Pa. PUC LEXIS 160 (December 22, 1995), we held that the Complainant bears the burden of proof in a *de novo* appeal of an informal complaint, except for legal issues raised by the utility on appeal. We further stated that, because the appeal is a *de novo* proceeding, the party with the burden of proof in the Formal Complaint proceeding must ensure that the record in that proceeding contains substantial evidence to support its desired outcome.

The Complainant here excepts to certain aspects of the BCS proceedings. For example, he alleges that the BCS did not contact him during its investigation. Exc.

at 1. These Exceptions are irrelevant and are, therefore, denied. The Complainant had the burden of proving his case by presenting substantial evidence at the hearing to support the allegations in his Formal Complaint.

In addition, the Complainant alleges in his Exceptions that during the telephonic hearing, he asked the ALJ to bring certain persons to the telephone to testify and the ALJ refused. For example, the Complainant alleges that on October 31, 2006, he spoke with George Jones, a Verizon customer representative, regarding his application for Link-Up America and Lifeline. The Complainant asked the ALJ to bring this person to the telephone to testify. She refused. Exc. at 5. We shall also deny this Exception. This Commission has long recognized the mitigating affect *pro se* status confers upon litigants unlearned in the law when confronted with technical violations of its procedural rules. *See, e.g., Carlock v. The United Telephone Company of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993). Nevertheless, it is the responsibility of all litigants to prepare their case and bring all pertinent witnesses and exhibits to the hearings.

Finally, we note that the Complainant must prove that the Respondent violated the Code, a Commission Regulation, or a Commission Order. 66 Pa. C.S. § 701. The crux of the instant Complaint is that on October 31, 2006, Verizon improperly refused to grant the Complainant's application for Link-Up America and Lifeline services.

In her Recommended Decision, the ALJ found that Complainant failed to carry his burden of proving that Verizon's refusal to grant his application on October 31, 2006 violated the Code, a Commission Regulation, or a Commission Order. The ALJ found that Verizon sent the Complainant a letter explaining that it could not process his application for Lifeline because additional information was needed to confirm his eligibility. The Complainant did not immediately provide the requested information. On

January 12, 2007, the Complainant's telephone service was terminated for non-payment. The Complainant alleges that he subsequently provided the requested documentation to Verizon, but Verizon denies receiving said information at that time. On July 30, 2007, after the Complainant called for service, Verizon the Respondent installed a new service (with new telephone numbers), waived his connection fee and also enrolled him in the Lifeline and Link-Up America. Findings of Facts Nos. 11-12, 16, 24-26.

The ALJ determined that Verizon refused to provide Lifeline and Link-Up America to the Complainant in 2006 due to the Complainant's failure to submit a complete application. The ALJ indicated that certain assumptions made by the Complainant about telephone assistance programs were simply wrong. The ALJ reasoned as follows:

> During his testimony, it became clear that the Complainant did not grasp how various low-income assistance programs are administered, nor that such administration may change from state to state. It was clear that the Complainant failed to provide information to the Respondent so that they could make a timely determination of the Complainant's eligibility.
>
> . . . The Complainant was required to submit a number of documents to that the Respondent could determine his eligibility. He did not submit the documentation. The Respondent asked for numerous documents to determine eligibility on November 30, 2006. Sometime in January 2007, the complainant submitted them.

I.D. at 6-7.

Nothing in the Complainant's Exceptions persuades us that the ALJ erred in reaching this conclusion. Many of the Complainant's Exceptions repeat arguments that were considered and properly rejected by the ALJ. Many other Exceptions are irrelevant to the issue of whether or not Verizon violated the Code, the Regulations, or a

Commission Order. For example, the Complainant argues that Link-Up America in New Jersey is much different than Link-Up America in Pennsylvania. He believes that a federal program should have only slight differences from state to state. This point does not support the Complainant's claim that Verizon violated applicable Pennsylvania law. Based on our review of the record, we agree with the ALJ that the Complainant failed to prove, by substantial evidence, that Verizon violated the Code, our Regulations, or a Commission Order by refusing to grant Complainant's incomplete application for Link-Up American and Lifeline.

Before concluding, we note that Lifeline is a government program that provides qualified low-income households with discounted telephone service. Verizon is reminded of the duties charged to it pursuant to Section 3019(f) of the Code. We encourage Verizon to take steps to ensure that all of its customers are informed of the availability of Lifeline service and reasonable effort taken to resolve issues related to eligibility of Lifeline services within a reasonable time. Additional information regarding Lifeline can be found on our website, www.puc.state.pa.us and at Lifeline Across America, www.lifeline.gov.

Conclusion

Based upon the foregoing discussion, we shall deny the Exceptions of the Complainant and adopt the Initial Decision of ALJ Ember S. Jandebeur consistent with the foregoing discussion; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Patrick Raftery to the Initial Decision of Administrative Law Judge Ember S. Jandebeur are denied consistent with this Opinion and Order.

2. That the Motion to Strike the Exceptions filed by Patrick Raftery is denied, consistent with this Opinion and Order.

3. That the Initial Decision of Administrative Law Judge Ember S. Jandebeur is adopted consistent with this Opinion and Order.

4. That the Formal Complaint filed by Patrick Raftery is dismissed.

5. That this proceeding be marked closed.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 18, 2008

ORDER ENTERED: December 22, 2008

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

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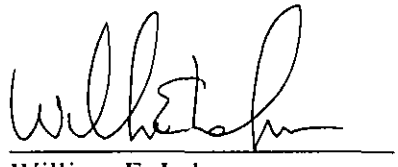

William E. Lehman
Counsel for Verizon Pennsylvania LLC

Dated: December 23, 2013