



Steven K. Haas
(717) 236-1300 x244
skhaas@hmslegal.com

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

August 4, 2013

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105

RE: Lidia Shan v. Verizon Pennsylvania LLC; Docket No. C-2013-2371560;
**REPLIES OF VERIZON PENNSYLVANIA LLC TO THE EXCEPTIONS
OF LIDIA SHAN**

Dear Secretary Chiavetta:

Enclosed for e-filing with the Commission are Verizon Pennsylvania LLC's Replies to the Exceptions of Lidia Shan in the above-captioned proceeding.

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

Sincerely,

Steven K. Haas
Counsel for Verizon Pennsylvania LLC

SKH/jld

Enclosures

cc: Honorable Christopher P. Pell (Via First Class Mail)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Lidia Shan	:		
	:		
	:	Complainant	
	:		
v.	:		Docket No. C-2013-2371560
	:		
Verizon Pennsylvania LLC	:		
	:		
	:	Respondent	

**REPLIES OF
VERIZON PENNSYLVANIA LLC
TO THE EXCEPTIONS OF LIDIA SHAN**

NOW COMES Verizon Pennsylvania LLC (“Verizon PA”), by and through its counsel in this matter, Hawke McKeon & Sniscak LLP, and submits its Replies to the Exceptions filed by Lidia Shan in the above-captioned proceeding.

Background

A brief review of the Complainant’s prior formal complaints against Verizon PA will be useful in understanding the true scope of this proceeding and the Complainant’s ongoing attempt to expand the issues well beyond this scope. The Complainant’s Exceptions constitute, in large part, her latest in a series of unsuccessful attempts to revive and re-litigate an issue that has been fully considered and finally decided by the Commission via its Orders in two previous formal

complaint proceedings. These repeated attempts by the Complainant have caused a significant waste of the time and resources of both Verizon PA and the Commission.

The issue of the legality of Verizon PA's Commission-approved, tariffed rate for its temporary suspension service was first raised by Ms. Shan in her complaint at Docket No. C-2009-2150021. Ms. Shan challenged the monthly rate charged by Verizon PA during the time that a customer's service has been voluntarily suspended by the customer. This proceeding was ultimately concluded by the Commission in its Order entered July 16, 2013, wherein it denied the Complainant's Petition for Rescission of the Commission's August 31, 2012 Opinion and Order. The August 31st Order dismissed the complaint in its entirety. On the issue of the legality of Verizon's tariffed rate for its temporary suspension service, the Commission concluded, "[i]n this case, while the Complainant has questioned and expressed dissatisfaction with the charges in Verizon's tariff, she has not presented evidence to demonstrate that the existing charges for temporary suspension of service are unreasonable." (August 31, 2012 Order, at pp. 8-9). Ms. Shan did not appeal this Order to the Commonwealth Court.

The Complainant's second attempt to litigate this same issue was made by the filing of a second complaint during the pendency of the 2009 proceeding. Her second complaint was filed in May of 2011, at Docket No. C-2011-2243183, and again raised the issue of the legality of Verizon's tariffed rate for its temporary suspension service. This proceeding was closed by the Commission's Opinion and Order entered January 12, 2012, wherein it granted Verizon PA's Preliminary Objection to the complaint on the basis of the pendency of the prior proceeding. In ordering paragraph 5 of that Opinion and Order, the Commission stated that Ms. Shan ". . . is precluded from filing any further informal or formal complaints with identity of issues to the

pending complaint, Docket No. C-2009-2150021, for Lidia Shan's telephone account at her current service address."

In the instant complaint proceeding, Ms. Shan raised the issue of whether she was charged correctly by Verizon PA from November of 2011 until September 2012. As discussed below, this is the sole issue in this proceeding. However, as can be seen from her numerous filings in the instant matter, including her Motion to Disqualify the Presiding Officer, she continues to attempt to re-litigate the issue of the legality of Verizon PA's tariffed rate for its temporary suspension service, and she refuses to accept the fact that this issue has been concluded by the Commission..

Administrative Law Judge Pell correctly informed the Complainant during the course of this proceeding, both before and during the hearing, that the legality of Verizon PA's tariffed rate for its temporary suspension service is not an issue and will not be addressed or considered at the hearing. For example, on page 7 of his September 11, 2013 Order Granting Motion of Verizon Pennsylvania LLC to Strike the New Matter of Lidia Shan, Judge Pell informed the parties that "the only issue that will be addressed during the September 27, 2013 hearing [subsequently rescheduled to November 26, 2013] is whether Verizon properly charged her for services between December 2001 and September 2012." Further, on page 17 of his October 8, 2013 Order Denying Complainant's Motion For Disqualification Of Presiding Officer, Judge Pell directed, "that a hearing be scheduled in this matter to address the *sole issue* of whether Verizon properly charged the complainant for services provided between December 2011 and September 2012." (Emphasis in the original). Finally, at the beginning of the November 26, 2013 Initial Hearing in this matter, Judge Pell, yet again, informed the parties, "[a]s I have indicated to the parties prior to today's hearing, the issue before me today is whether Verizon properly charged

the Complainant for services between December 2011 and September 2012. (Tr., p. 4). This is the sole issue addressed by Verizon PA during the hearing.

Despite these clear and repeated instructions from Judge Pell, Ms. Shan attempts to raise this issue again at various points in her Exceptions. Judge Pell correctly ruled that the issue of the legality of Verizon PA's tariffed rate for its temporary suspension service has been resolved by the Commission and is not a part of the instant proceeding. Accordingly, Ms. Shan's continued attempt to challenge Verizon PA's tariffed rates is improper and must be rejected.

The Complainant further challenges the Initial Decision ("I.D.") on several other grounds, including her assertion that Judge Pell was disqualified from the proceeding, and the fact, as acknowledged by Verizon PA and fully addressed in the I.D., that Verizon PA had initially quoted an incorrect monthly rate to Ms. Shan for its temporary suspension service. These grounds are scattered by the Complainant throughout her Exceptions and will be addressed below.

Although Ms. Shan's Exceptions are not numbered and do not identify specific findings of fact or conclusions of law, as required under 52 Pa. Code §5.533(b), she does identify the pages from the I.D. that contain various provisions she is challenging. This begins on the eighth page of her document. Verizon PA will address each of these challenges below.

Page 1

One of the main grounds for Ms. Shan's challenge to the I.D. is her belief that, because Verizon PA acknowledged that it initially quoted an incorrect monthly rate for its temporary suspension service when it spoke with her in November of 2011, her case has been proven and she should have prevailed. To the contrary, Judge Pell thoroughly discussed this topic in the I.D.

and correctly concluded that Verizon PA's and Ms. Shan's subsequent actions rendered the fact of the initial misquote moot.

This issue was fully addressed by Judge Pell on pages 12-13 of the I.D. Ms. Shan contacted Verizon PA on November 21, 2011, to request that her account be voluntarily suspended, beginning on December 5, 2011. (Tr., p. 35). During this contact, Verizon PA incorrectly quoted a rate of \$6.00 per month during the time the account was to be suspended. (Tr., p. 39). The correct monthly rate that should have been quoted was approximately \$16.00-\$17.00. (Tr., p. 39). Verizon PA witness Nancy Dascher explained that, pursuant to the company's tariff, customers are to be billed the full monthly rate for certain charges, such as dial tone line charge, federal line cost charge, wire maintenance, special listings and federal universal service fund. (Tr., p. 37; Verizon PA Ex. No. 2). In Ms. Shan's case, the monthly charge should have been approximately \$16.00-\$17.00, the same as she would have been billed if she had not suspended her service. (Tr., p. 38, 39). In addition, there is a one-time charge of \$26.00 when customers request to have their service voluntarily suspended. (Tr., p. 39; Verizon PA Ex. No. 3). This one-time charge was explained to Ms. Shan during the November 21, 2011 call. (Tr., p. 42; Verizon PA Ex. No. 4).

Ms. Shan subsequently called Verizon PA on December 19, 2011, to discuss her service. (Tr., p. 41). It was during this contact that the correct rate was provided to Ms. Shan. Recognizing its mistake, Verizon PA agreed during this call to honor the incorrect \$6.00 rate for six months, after which time it would begin charging her the correct rate. (Tr., p. 41) It was also during this call that Ms. Shan instructed Verizon PA to cancel the suspension on her account. (Tr., p. 44; Verizon PA Ex. No. 5). As a result of the cancellation of the suspension, the regular monthly charge of \$16.00-\$17.00 began again. (Tr., pp. 45-46). Despite the fact that the

suspension was cancelled and her regular service was restored, which nullified Verizon PA's agreement to honor the incorrect quote for six months, Verizon PA continued to bill the \$6.00 rate for four months. (Tr., p. 46). This worked to Ms. Shan's benefit. In addition, Verizon PA also removed the \$26.00 one-time fee from her account. (Tr., p. 47).

Judge Pell correctly concluded that, considering the actions taken by Verizon PA and Ms. Shan subsequent to the November 21, 2011 call, Verizon PA's mistake did not constitute unreasonable or inadequate service. (I.D., p. 13). Verizon PA clarified the correct charge during the December 19, 2011 call, and it continued to bill the \$6.00 rate for four months, even after Ms. Shan cancelled the suspension and she was no longer entitled to the lower rate. The mistakes that Verizon PA acknowledged making worked to Ms. Shan's financial benefit.

Ms. Shan argues that, because the initial quote was \$6.00, Verizon PA was required to charge this amount until September of 2012. In addition to the discussion above, Judge Pell also correctly explained on page 10 of the I.D. that utilities, including Verizon PA, are required to charge customers according to their Commission approved tariffs. The Pennsylvania Public Utility Code requires that ". . . no utility shall demand or receive a rate that is greater or less than that specified in its tariff." 66 Pa.C.S. §1303. In light of the actions of both Verizon PA and Ms. Shan subsequent to the November 21, 2011 contact, as well as the legal requirement that utilities must charge the rates contained in their Commission approved tariffs, Judge Pell correctly dismissed Ms. Shan's complaint, and her argument that she should prevail solely on the basis of the initial misquoted rate must be rejected.

Page 4

This issue was addressed above. As Judge Pell directed, the legality of Verizon PA's Commission approved, tariffed rate is not an issue in this proceeding. Accordingly, there is no evidence in the record on this topic. Sm. Shan's Exception on this basis must be denied.

Page 5

On July 22, 2013, Verizon PA filed its Answer to Ms. Shan's complaint. Verizon PA's Answer did not contain New Matter. On August 9, 2013, Ms. Shan filed a document identified as New Matter in response to Verizon PA's Answer. On August 15, 2013, Verizon PA filed a Motion to Strike the New Matter of Lidia Shan, on the ground that the Commission's regulations do not permit the filing of a response to an Answer. Ms. Shan did not file a response to Verizon PA's Motion. On September 11, 2013, Judge Pell issued his Order Granting Motion of Verizon Pennsylvania LLC To Strike The New Matter of Lidia Shan. Ms. Shan appears to be dissatisfied with her New Matter filed in response to Verizon PA's Answer being stricken.

In his September 11, 2013 Order, Judge Pell reviewed the relevant Commission regulations, which do not permit the filing of a response, whether titled New Matter or otherwise, to an Answer that does not contain New Matter. The regulations are clear and Judge Pell correctly applied them in response to Verizon PA's Motion. Accordingly, Ms. Shan's Exception to the I.D. on this basis must be denied.

Page 6

On September 15, 2013, Ms. Shan filed a document titled Petition to Assign A New Impartial ALJ For Scheduled Hearing On September 27, 2013. On September 27, 2013, Verizon PA filed its Answer to this Petition. On October 8, 2013, Judge Pell issued his Order Denying Complainant's Motion For Disqualification of Presiding Officer. Ms. Shan appears to believe

that Judge Pell should have been disqualified from this proceeding and, because her request was denied, his I.D. is improper and of no force.

Judge Pell's denial of Ms. Shan's Petition was absolutely correct. The Commission's regulations allow for parties to move for the disqualification of a presiding officer. The regulation provides, "[a] party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging **personal bias or other disqualification.**" 52 Pa. Code §5.482(a) (Emphasis added). A Motion to Disqualify an Administrative Law Judge from participating in a complaint proceeding must be denied if the moving party's allegations are unsubstantiated and do not constitute good cause to warrant removal. *Lorraine F. Mosso v. Peoples Natural Gas Co. and Duquesne Light Co.*, 70 Pa. PUC 146 (1989). In *Mosso*, the Commission stated, "[t]he Complainant's references to certain provisions of the Public Utility Code and our regulations, **without proof of specific disqualifying acts**, are tantamount to mere assertions". *Mosso*, at 147. (Emphasis added). Accordingly, a party moving for disqualification of an ALJ in a complaint proceeding must not only allege but also prove actions on the part of the ALJ that demonstrate personal bias or some other disqualifying characteristic.

Here, the only actions asserted by the Complainant in support of her motion are (1) the ALJ refuses to allow her to re-litigate the issue of the reasonableness of Verizon PA's temporary suspension service which, as described above, has already been fully litigated and concluded by the Commission, and (2) the ALJ granted Verizon PA's Motion to Strike her New Matter, which was improperly filed in response to Verizon PA's Answer. These allegations constitute mere recitations of the procedural history of this proceeding, rather than assertions of instances of bias on the part of Judge Pell. Ms. Shan has utterly failed to not only prove but even assert in the first

instance any behavior on Judge Pell's part that shows unfairness or bias. He merely made rulings in this proceeding that, under the Commission's regulations, he was required to make.

Ms. Shan's standard or threshold for requesting the disqualification of a Presiding Officer appears to be any unfavorable ruling. Under her interpretation of the standard, every ruling made by an ALJ would present grounds for disqualification by the non-prevailing party. In this case, there has been absolutely no showing of any improper or biased actions by ALJ Pell in this proceeding.

Judge Pell's denial of Ms. Shan's request for his disqualification was proper and her Exception on this basis must be denied.

Page 7

Ms. Shan takes exception to Judge Pell's directive, set forth in his October 8, 2013 Order Denying Complainant's Motion For Disqualification Of Presiding Officer, that further filings addressed to the issues raised in her 2009 proceeding at Docket No. C-2009-2150021 be rejected by the Commission. His reasoning for issuing this directive is set forth on page 16 of this Order. She repeatedly filed improper Motions in which she attempted to re-litigate issues that were finally resolved in her prior proceedings. Judge Pell was correct in putting a stop to these filings as being a significant waste of the parties' and Commission's time and resources.

Ms. Shan also argues that the rescheduling of the September 27, 2013 hearing was somehow improper. In fact, it was precisely due to her repeated filing of improper and meritless documents that caused Judge Pell to have to reschedule the hearing. At that point, Ms. Shan's had several Motions pending, answers to which were not due until after the originally scheduled hearing date. In order to allow time to properly address the Motions and any Answers filed in

response thereto, Judge Pell had no choice but to continue the hearing. This decision was made necessary entirely by the actions of Ms. Shan.

Page 8

Ms. Shan once again attempts to challenge the legality of Verizon PA's tariff and its Commission approved rates. As discussed above, these issues are not a part of this proceeding and her attempts to raise them here as a basis for challenging the I.D. are improper and must be denied.

Page 9

Ms. Shan again mentions the initial conversation that occurred on November 21, 2011 wherein, as acknowledged by Verizon PA, it incorrectly quoted the monthly fee for its temporary suspension service. For the reasons stated above, this Exception must be denied.

Ms. Shan also questions Judge Pell's determination that she cancelled the suspension of her service during the conversation of December 19, 2011. She claims she did not make this request.

In his I.D., Judge Pell correctly noted the compelling record evidence that supports Verizon PA's position that Ms. Shan did, in fact, cancel the suspension on her account. Ms. Dascher testified that Verizon PA's records show she made this request. Verizon PA Exhibit No. 5 is a copy of the service order that was generated by Verizon PA on December 19, 2011, when Ms. Shan cancelled the service. In addition, Verizon PA Exhibit No. 4 includes a copy of a notescreen record from December 19, 2011, that reflects the conversation between a Verizon PA representative and Ms. Shan wherein she requested that the suspension be cancelled. Judge Pell correctly concluded that, although Ms. Shan denies cancelling the suspension, there is substantial record evidence showing that she did. He also correctly noted, in footnote 3 on page 12 of the

I.D. that the distinction is of no consequence since the rate would be the same in either case. Accordingly, Ms. Shan's Exception on this issue must be denied.

Page 10

Ms. Shan again raises the topic of the November 21, 2011 and December 19, 2011 conversations. These issues have been addressed above.

Page 11

Ms. Shan again argues that she should have only been charged \$6.00 per month through September of 2012, and that, since she paid \$6.00 each month during that time period, she should not have an outstanding balance. As discussed above, Judge Pell correctly determined that Ms. Shan was billed properly and that Verizon PA's mistakes do not rise to the level of unreasonable or inadequate service. Accordingly, the billing was proper and Ms. Shan's Exception on this ground must be denied.

Page 12

Ms. Shan challenges Judge Pell's findings about the legal significance of a utility's Commission approved tariff as related to the allowable rates the utility is required to charge for various services. Judge Pell addresses this issue on pages 10-11 of his I.D. He cites to relevant case law and Pennsylvania Public Utility Code provisions in support of his findings. Ms. Shan, on the other hand, merely claims that he is incorrect. She provides no citations to legal authority in support of her position. The determinations about the legal significance of a tariff made by Judge Pell are black letter law and Ms. Shan's unsupported attempts to challenge them must be denied.

Page 13

The passages cited by Ms. Shan actually appear on pages 11-12 of the I.D. Here, Ms. Shan appears to be re-arguing her points about the legality of Verizon PA's charges for its temporary suspension service, as well as the initial mistaken quote for the service provided by Verizon PA during the November 2011 contact. These arguments have been addressed above and, for those same reasons, provide no basis for challenging the I.D.

Ms. Shan also refers to statements attributed to Ms. Regina Ryan. Ms. Ryan was Verizon PA's witness in the 2009 proceeding. Her statements are not part of the record in this proceeding and, accordingly, are irrelevant here and provide no basis for challenging the I.D.

Page 14

The passages quoted by Ms. Shan actually appear on pages 12-13 of the I.D. Ms. Shan is again arguing that, because Verizon PA initially quoted an incorrect rate, she was only required to pay \$6.00 per month, rather than the correct, tariffed rate. These arguments were addressed above and, for those same reasons, must be denied here.

Page 15

The passages quoted by Ms. Shan actually appear on page 13 of the I.D. Ms. Shan's argument about the initial, incorrect rate quote has been addressed at length above.

Page 16

The passage quoted by Ms. Shan actually appears on page 13 of the I.D. Ms. Shan is essentially saying nothing more than the I.D. is wrong and that Judge Pell was or should have been disqualified. Such unsubstantiated arguments provide no basis to challenge the I.D. and must be denied.

Page 17

Ms. Shan essentially challenges Judge Pell's directive that she be precluded from filing any further complaints in which she raises the issue of the legality of Verizon PA's Commission approved rate for its temporary suspension service on the basis that the charges are improper. This issue is not a part of this proceeding and, accordingly, must be rejected. In any event, this issue was fully addressed in the 2009 proceeding.

Ms. Shan also argues here that her residence address should not have been disclosed. This is not an issue in this proceeding and has not been raised by her at any prior point in the proceeding. Accordingly, she may not raise this issue for the first time in her Exceptions.

Page 18

Ms. Shan again appears to be challenging the Commission's refusal to allow her to attempt to re-litigate the issue of the reasonableness of Verizon PA's Commission approved rates. This argument has been addressed above.

Page 19

Ms. Shan argues that she disqualified Judge Pell because he refused to order Verizon PA to provide copies of its conversation with her. She states that, because of this refusal, "I disqualified ALJ."

Ms. Shan sought in discovery a recording she believes was made of her conversation with Verizon PA on November 21, 2011. In its Answer to this request, Verizon PA stated that it did not record calls during that time period and, accordingly, the recordings do not exist. In his October 8, 2013 Order Denying Complainant's Motion to Compel, Judge Pell accurately stated, ". . . there is nothing for me to compel Verizon to provide. I cannot force Verizon to produce what it does not have. Therefore, the Complainant's Motion to compel Verizon to provide her

with recordings or transcripts of these conversations is denied.” (Order Denying Complainant’s Motion To Compel And Granting Verizon’s Motion To Strike Lidia Shan’s Motion To Dismiss Verizon’s Answer Of September 17, 2013, p. 17).

Ms. Shan refuses to accept the fact that the recordings do not exist and asserts as a ground for his disqualification that Judge Pell refused to force Verizon PA to provide the non-existent recordings. She seems to believe that, by virtue of her having declared that she disqualified the ALJ, it is, in fact, so. To the contrary, Judge Pell correctly concluded that the recordings at issue do not exist and, therefore, their disclosure by Verizon PA may not be compelled. He also correctly denied Ms. Shan’s Motion For Disqualification of Presiding Officer. Her unsubstantiated disagreement with these determinations provides no basis to challenge the I.D. and must be denied.

Page 20

Ms. Shan here argues, once again, that the ALJ was disqualified and, accordingly, the I.D. is ineffective. This argument has been addressed above and must be denied.

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania LLC respectfully requests that the Complainant's Exceptions be denied in their entirety.

Respectfully submitted,



Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
717-236-1300

DATED: August 4, 2014

Counsel for Verizon Pennsylvania LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lidia Shan	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2371560
	:	
Verizon Pennsylvania LLC	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served a true and correct copy of the foregoing Replies of Verizon Pennsylvania LLC to the Exceptions of Lidia Shan upon the persons and in the manner indicated below.

Service by First Class Mail

Lidia Shan
301 Byberry Road, Apt. F-14
Philadelphia, PA 19116

Service by Electronic Mail

Lidia Shan
smellsense@aol.com

Office of Special Assistants
ra-OSA@pa.gov

DATED: August 4, 2014



Steven K. Haas