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March 12, 2015

VIA ELECTRONIC FILING

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

RE: Janet Armour v. Verizon Pennsylvania Inc.; C-2013-2395643;
REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA LLC

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the Reply Exceptions of Verizon Pennsylvania LLC in connection with the above-captioned matter. A copy of these Reply Exceptions has been served as indicated on the attached Certificate of Service.

Thank you very much for your attention to this matter. Please feel free to contact me at 717-236-1300 with any questions.

Regards,

William E. Lehman
Counsel for Verizon Pennsylvania LLC

WEL/das

Enclosures

cc: Per Certificate of Service
OSA (via email – ra-OSA@pa.gov)

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JANET ARMOUR	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2395643
	:	
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

**VERIZON PENNSYLVANIA LLC’S REPLY
TO THE EXCEPTIONS FILED BY JANET ARMOUR**

Verizon Pennsylvania LLC, (“Verizon PA”), by its attorneys in this proceeding, Hawke McKeon & Sniscak LLP, hereby Replies to the Exceptions filed in the above-captioned matter by Janet Armour (“Complainant” or “Ms. Armour”). The Exceptions were filed in response to the January 27, 2015 Initial Decision (“Initial Decision or “ID”) of Administrative Law Judge (“ALJ”) Christopher P. Pell.

I. INTRODUCTION AND SUMMARY

ALJ Pell’s ID recommended that Ms. Armour’s Formal Complaint at Docket No. C-2013-2395643 be denied because she failed to sustain her burden of proving that Verizon PA provided inadequate, unsafe or unreasonable service to the Complainant when its employees connected a new cable to the facilities already attached to her house under a valid right-of-way dating from 1948. Specifically, the ALJ found, based on credible testimony provided by both of Verizon PA’s witnesses, including the technician who did the work that day, that Verizon PA’s logo was displayed on the workers’ hats, shirts and truck and that their interactions with the Complainant were cordial. (ID at 9)

A. Under the Commission's Rules and Precedent, a Party May Not Offer New Facts through Exceptions to Challenge an Adverse Decision.

Verizon PA notes that most of the Complainant's Exceptions¹ consist of nothing more than reiterations of the testimony she provided at the hearing, which ALJ Pell considered along with the totality of the evidence in reaching his conclusion. However, the Complainant also asserts new alleged facts or statements of opinion in an inappropriate attempt to submit extra-record evidence. These statements should be stricken as an improper attempt to introduce new evidence through the exception process. The Commission's regulations and case law require a party to rely only upon record evidence at the exception stage of a proceeding.²

The Commission's (or other administrative agency) findings must be supported by substantial evidence in the record.³ This legal principle constrains Administrative Law Judges and the Commission to rely upon evidence contained in the record in reaching their findings of fact and conclusions of law. It would not be fair to the Commission or other parties to a proceeding if an Initial Decision, which must be based upon evidence in the record, could be challenged by a party asserting facts not in the record, where those claims were not introduced at the hearing, not subject to cross examination or responsive testimony, and not considered by the ALJ. This rule is necessary to avoid a never-ending cycle of litigation and wasted resources of the Commission and parties by seeking several bites at the litigation apple.

¹ The Complainant did not follow the Commission's regulations with respect to the form and content of Exceptions and instead sent two letters to the Commission in narrative form containing additional evidence and argument.

² 52 Pa. Code §5.533(c) directs that parties/participants refer to relevant portions of the record and passages in previously-filed briefs, insofar as practical, when offering a statement of reason supporting an exception. *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.*, 95 Pa. PUC 387, Docket No. R-00994697 2001 WL 94260 (Pa. PUC 2001) (as Exceptions contain extra-record evidence, they are stricken and will not be used to resolve the merits of any contested matters); *Re: Apollo Gas Company*, 81 Pa. PUC 475 (1994) (the inclusion of extra-record documents with Exceptions or Replies to Exceptions not permitted without order of this Commission).

³ *AT&T v. Pa. PUC*, 737 A.2d 201 (Pa. 1999); *George v. Pa. PUC*, 735 A.2d 1282 (Pa. Cmwlt. 1999).

B. The Exceptions Fail To State Supporting Reasons.

Furthermore, Verizon PA objects to all of the Complainant's Exceptions, because they do not identify findings of fact or conclusions of law to which exception is taken, nor do they present supporting reasons for the Exceptions as required by the Commission's regulations at 52 Pa. Code § 5.533. Notwithstanding this legal infirmity, nothing contained in the Complainant's Exceptions supports a conclusion that the well-reasoned decisions reached by ALJ Pell should be reversed. Accordingly, the Commission should adopt the Initial Decision without modification.

II. REPLIES TO EXCEPTIONS

Instead of submitting Exceptions in the form prescribed by the Commission's regulations under 52 Pa. Code § 5.533 the Complainant submitted two separate letters in narrative form which were received and stamped in by the Commission on February 17 and February 26, 2015. This narrative form makes it difficult for Verizon PA to respond; however, for ease of the Commission's review, to the extent applicable, Verizon PA will set forth, by paragraph, the text of the Complainant's letters and will respond accordingly.

A. Complainant's February 26, 2015 Letter.

First text section: I'm filing exceptions to pages 1 to10. Behind the wall were [sic] that pole is located is pipes to my gas heater. I sent a picture to the law student Miss Connor to sent [sic] to the hearing. She didn't mail the pictures to the Judge. She was inafective [sic].

Verizon PA's response: This text provides neither a finding of fact, conclusion of law, nor supporting reasons as required by the Commission's regulations at 52 Pa.Code § 5.533, and should be denied on these grounds alone. Furthermore, this text is new evidence that was not presented at the hearing and should be stricken for the reasons stated in Section I.A. above. In addition, to the extent the Complainant believes this alleged fact is of any significance, at numerous times during the hearing, counsel for the Complainant and the ALJ provided the

Complainant with an opportunity to provide any evidence she wanted. For example, her attorney asked her: “is there anything else that you would like to let the ALJ know at this point?” (Transcript (“Tr.”) at 47:22-23) The Complainant then proceeded to take the stand for a second time and provided additional evidence. (Tr. at 47:24 – 49:5) Furthermore, at the conclusion of Ms. Armour taking the stand twice, the ALJ asked her attorney, “Okay. All right. Anything else, Ms. Cannon?” To which her attorney responded: “No, sir.” (Tr. at 53:6-8) Therefore, she was provided with a full and fair hearing and if she believes there is any inadequacy in the evidence provided, the absence of this information was a result of her own failure to avail herself of the opportunity to present it. In any event, there is no evidence the alleged presence of a pipe behind the wall has any relevance to the issues raised.

Second text section: The work by Verizon Penna was unfinished and unsafe, on September 26, 2013. I called Verizon, and PUC on September 27th because they would not tell me who they were or show ID, or work order. No one wore Verizon clothes September 26, 2013 as I stated.

Verizon PA’s response: The ALJ, on pages 4 through 9 of his well-reasoned Initial Decision, fully discussed the evidence that was provided at the hearing concerning the safety and adequacy of the service provided to the Complainant on September 26, 2013 and determined that, “based on the credible testimony provided by both of Verizon’s witnesses, I cannot conclude that Verizon’s actions on September 26, 2013 constituted unreasonable, unsafe or inadequate service.” (ID at 9) The Commission should reach the same conclusion.

Complainant’s vague claim that the work performed that day was “unsafe” was thoroughly refuted on the record. Verizon PA witness, Daniel Levine, who is an outside plant technician (Tr. at 37:18-21) and was on the crew that performed the work at the Complainant’s residence that day (Tr. at 38:13-15), testified that Verizon was running fiber optic cable along the entire block and was simply attaching it to the existing copper facilities that were already

attached to Ms. Armour's house. (Tr. at 38:17-25) He testified that this work did not involve any pounding or drilling and an existing U guard (which is used to protect the cable when it comes up out of the ground (Tr. at 21:2-3)) was unscrewed and replaced by the one existing bracket that was holding it in place (Tr. at 51:12-23 and 52:1-5). The fiber optic cable was simply tie wrapped to the existing copper cable and the loose ends cut with scissors. (Tr. at 39:1-7) He then testified that he had a pleasant conversation with Ms. Armour and at the end of their conversation, the work continued down the alley with the rest of the fiber. (Tr. at 40:2-5) It is quite obvious from this testimony, which the ALJ found to be credible, that the work was not performed in an unsafe manner.

The Complainant's unfounded contention that the Verizon workers did not display the Verizon logo was also thoroughly refuted at the hearing. Mr. Levine testified that, on that day, he "was wearing a Verizon polo with the logo on it, in addition to a hard hat, which also has the Verizon logo and colors on it," (Tr. at 40:19-21) and that the rest of the crew was wearing the same thing. (Tr. at 40:22-23) He also testified that he keeps his identification card on a lanyard. For safety reasons, there shouldn't be anything hanging from his neck as he performs the job, so he keeps his lanyard and identification in the truck at all times. (Tr. at 41:2-8) He testified that the Complainant did not ask him for identification (Tr. at 40:15-16) and if she had, he would have shown it to her. (Tr. at 40:24 – 41:1) He also testified that Verizon PA's truck is marked with Verizon's logos and colors. (Tr. at 41:9-11)

It is clear from this testimony that the work was not performed in an unfinished or unsafe manner, identification was not requested by Ms. Armour and the employees were wearing clearly marked Verizon clothes when they performed the work. Accordingly, the Commission should reject the allegations made by the Complainant in this section.

Third text section: page 2 – Since 1948, this house been changed over inside. The heating system is attached to the wall as the wire's outside pole that Verizon say they have right of way to. The picture was sent to the lawyer. The name on the wire is Western Electric.

Verizon PA's response: There is no evidence in the record regarding these statements. The Complainant is attempting to provide evidence in this exception that was not part of the record of the hearing and should be stricken. This self-serving allegation provides no proof that Verizon PA provided unreasonable service to the Complainant and this extra-record evidence should be denied.

Fourth text section: I heard only a shout as I stated to Christopher P. Pell. Quote No body's home do the work. I looked out my window as the truck was backing toward this house. I went outside then to see what was going on.

Verizon PA's response: This testimony was presented at the hearing and rejected by the ALJ. Furthermore, this claim provides no proof that Verizon PA provided unreasonable service to the Complainant and likewise should be rejected by the Commission.

Fifth text section: The fiber optic cable wire was placed in front of the water drian pipe. The people were not wearing Verizon black shrirts [sic], the color was dark blue and whit [sic] hat's. The truck was white without Verizon logo.

Verizon PA's response: The Complainant's assertion that the cable was placed in front of a water drain pipe was not presented at the hearing, is extra-record evidence and should be stricken. However, to the extent a response is deemed necessary, as stated in Verizon PA's response to the second text section above, the fiber optic cable was simply tie wrapped to existing copper cable that was already attached to the Complainant's house pursuant to a valid right-of-way dating from 1948.

Furthermore, Verizon PA incorporates its response in the second text section above with regard to its employee's clothing, hats and truck logos on September 23, 2013. The

Complainant's claims in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

Sixth text section: page 4. As I walked toward's the back a heavy set man with a long beard was looking at me, I asked him what he was doing here. He stated we are only checking our wires no banging or drilling will done. He was wearing a dark blue shrut [sic] without logo. The truck was at the back wall, not in the alley.

Verizon PA's response: This evidence was presented at the hearing and rejected by the ALJ. Verizon PA witness, Dan Levine, testified that he is the employee that talked to the Complainant that day. He testified to the following conversation he had with the Complainant:

I was there working when Ms. Armour came out. She asked what we were doing. I explained that we were running the fiber optic cable along the back of the house. To my recollection, she asked if there would be any hammering or drilling and I said no. We were going on the existing copper that already had the attachments drilled and secured to the building. We were simply going along and tie wrapping it to that.

As far as I can remember, that was essentially the end of our conversation and interaction. We finished the work and continued down the alley with the rest of the fiber. (Tr at 39:19 – 40:5)

The ALJ found this testimony to be credible and stated "The Verizon Outside Plant Technician (OPT) who actually performed the work on the complainant's home testified that he had a pleasant conversation with the complainant on September 26, 2013, that he explained to her that he and his crew were there to install a new fiber optic cable, and that he and his crew completed their work without incident." (ID at 8).

Verizon PA incorporates its response in the second text section above with regard to its employee's clothing, hats and truck logos on September 23, 2013. The Complainant's claims in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

Seventh text section: Cont From page 2 I did not say I heard banging and drilling as the Judge states. I said I heard loud banging. Page 8. I testified I heard Loud Loud banging coming from the back. After that man said their would be no banging. I went back outside a

second time. Standing near my back door, was a man with gray sweat shirt [sic] on, white hat holding a large hammer. He was not pleasant at all. He was rude. I ask him why he couldn't have knocked on the door, and let me no[sic] he was back their[sic] and why was he banging on my wall. I ask him for ID. He stated I don't need ID I have right of way. Bell telephone gave it to him in 1948. I said show, me some paper work he kept say I don't to. I backed up because he

Verizon PA's response: This testimony was provided at the hearing and rejected by the ALJ. Furthermore, Mr. Levine's interaction with the Complainant that day and the ALJ's finding with regard to such is fully explained in the response to the preceding text section. With regard to his interaction with the Complainant, Mr. Levine testified that "he tries to be as polite as I can whenever dealing with customers every day that we're out there. I know I'm representing the customer – or the Company and just also for myself. I try to be as cordial as possible." (Tr. at 42:25 – 43:3) Furthermore, Mr. Levine testified that the work performed that day did not involve any pounding or digging or drilling of any sort. It simply involved unscrewing the U guard, tie wrapping the fiber cable to the existing copper facilities that were already attached to the wall, and then cutting the excess tie wrapping off with a scissors. (Tr. at 39:3-7). Verizon PA attaches new cables to existing cables this way to avoid having to drill onto the house or put any additional hardware up. (Tr. at 25:13-19)

This testimony was provided live before the ALJ at an in-person hearing and the ALJ found Mr. Levine to be a credible witness. His testimony was accepted by the ALJ and the Complainant has provided nothing that should change that conclusion; therefore, the allegations made in this text section by the Complainant should be rejected.

Eight text section: Line 11 – the work was not completed a screw[sic] was missing Page 5 Line 12. The truck was park at the back wall, and the wire is placed over 5 feet on wall using the truck to complete the work at 7641 – Overbrook Ave. The truck License Number YFP 6546 Phila PA 19103. Judge Christopher P. Pell looked at the picture and stated the wire is above the garage which is over 5 feet high, they use the lift on the back of the truck Sept 26, 2014. I watched then from my window backing the truck towards this house Sept 26th 2013.

Verizon PA's response: This testimony was presented at the hearing and rejected by the ALJ. A full description of the work that was performed at the Complainant's residence that day is provided in Verizon PA's response to the second text section above and is incorporated here. Furthermore, Mr. Levine testified that Verizon PA's truck remained in the alleyway, never went back against Ms. Armour's house or anybody's house, and he did the work on the corner of the building standing on the ground itself. The truck was never near the home. (Tr. at 41:20-24) The Complainant's allegations regarding ALJ Pell's reaction are false and not contained in the record anywhere. Furthermore, her statements are inconsistent with her testimony at the hearing that she could not really see the truck. (Tr. at 12:4-6) The statements provided by the Complainant in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

Ninth text section: page 8 The Verizon local manager for construction[sic] testified she offered to have worker return and properly secure the bracket and I declined. She also stated to the Judge I ask her help pay my bill. When I responded to her fasle statement the Judge didn't find that strange. He ruled in her favor. She also said she was on the truck that day. Sept 26 – 2013 Then why she ask me what they look like, when she visit me at my home after Sept 26. Page 10. The Judge stated I confronted the workers. If I had not went back to inspect. The man stoped [sic] banging on the wall with the hammer when I said something to him, I said what are you doing. From inside the light's [sic] were moving from my celing. [sic] Damage was done to this house. The Judge based his decision on testimony from Oct 23rd not the fact I stated on Sept 26-2014 the _____ the Judge saw was a picture of

Verizon PA's response: The statements set forth in this section are either mischaracterizations of the evidence presented at the hearing or totally false statements. First, Verizon PA's local manager for construction, Patty Ianovale, never testified that she was on the truck that day. She specifically testified that she was not at the Complainant's home when the work was being performed. (Tr. at 33:25 – 34:4) Second, Ms. Ianovale also testified concerning her interactions with the Complainant. She testified that she went to the Complainant's home,

met the Complainant and the two of them went to the back of the house to look at the work that had been done. That is when Ms. Ianovale noticed that the strap holding the U guard on did not have two screws. (Tr. at 29:19-24) She explained that she offered to have the screw replaced but that Ms. Armour refused. (Tr. at 29:25 – 30:7) She also testified that Ms. Armour told her that if Verizon PA had the right to put facilities on the back of her house, then Verizon PA should be sharing the mortgage with her. (Tr. at 30:22-25) There is no evidence in the record that Ms. Armour responded to this testimony as she alleges. This testimony was provided live before the ALJ at an in-person hearing and the ALJ found Ms. Ianovale to be a credible witness. Her testimony was accepted by the ALJ and the Complainant has provided nothing that should change that conclusion; therefore, the allegations made in this text section by the Complainant should be rejected.

Verizon PA incorporates the evidence regarding the description of the work performed and its interactions with the Complainant that is contained in its response to the Second text section above. The statements provided by the Complainant in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

Tenth text section: How can the Judge state these people were wearing Verizon clothing when he wasn't their [sic]. The truck driver wasn't there Oct 23rd, the man with the long beard was not their [sic] the lady on the back of the truck was not their [sic] either. The person their [sic] stated he was the man near Verizon's pole on Sept 26-2013 at 7641 Overbrook Ave. When I ask the court reporter could I show the Judge my pictures she said you do that when you first enter the room. Something I didn't no [sic]. I had proof on Oct 23rd 2014.

Verizon PA's response: Verizon PA incorporates its testimony about the clothing its personnel were wearing and its interactions with the Complainant, which are set forth fully above. The ALJ was present at the hearing, determined that the testimony of Verizon PA

employees was credible and made his findings of fact and determinations based on that testimony. In addition, the Complainant had a full and fair opportunity to provide any evidence she wanted to present at the hearing. The statements provided by the Complainant in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

Eleventh text section: The Judge states a small oversight like screw left behind. The screw was 1 ½ inches in length [sic] with a point. I stated the danger that oversight would cause to my family. When I open the door of my home, the small oversight tore the cover off the bottom of the door. What if I walk on it. page 10. I did prove inadequate unsafe as unreasonable service from Verizon Penna. The Judge took away my rights to be safe in and around my home, in favor of Verizon Pa.

Verizon PA's response: There was no evidence that Verizon PA left a screw behind. In fact, as stated previously, Mr. Levine testified that an existing U guard (which is used to protect the cable when it comes up out the ground (Tr. at 21:2-3)) was unscrewed and replaced by the one existing bracket that was holding it in place. (Tr. at 51:12-23 and 52:1-5) There is no evidence in the record that Verizon PA left a screw on the ground when the job was finished. This is pure speculation as is the Complainant's allegations about possible danger to her family from this screw. The ALJ acknowledged this speculation when he stated "*assuming* that this Verizon crew left behind the debris referenced by the complainant and forgot to secure a bracket with two screws rather than one, small oversights like these are not sufficient to constitute inadequate, unsafe or unreasonable service." (ID at 9, emphasis added) This finding is well-reasoned and nothing the complainant alleges here changes that. And the record also shows that when Ms. Armour complained, Verizon PA was responsive to her concerns as Local Manager Ms. Ianovale paid her a personal visit and inspected the location of the work. As the ALJ stated "There is no requirement that Verizon provide perfect service." (ID at 9) The statements

provided by the Complainant in this section provide no proof that Verizon PA provided unreasonable service to the Complainant and should be rejected by the Commission.

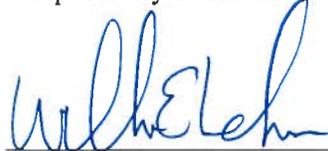
B. Complainant's February 17, 2015 Letter.

The statements set forth in this letter have been fully responded to by Verizon PA in its response above to the statements set forth in the Complainant's February 26, 2015 letter. Verizon PA's responses above are incorporated in full here. The statements provided by the Complainant in this letter provide no proof that Verizon PA provided unreasonable service to the Complainant and, therefore, should be rejected by the Commission.

III. CONCLUSION

The Complainant's Exceptions are nothing more than a reiteration of her testimony provided at the hearing or an impermissible attempt to introduce extra-record evidence. Moreover, the Complainant has provided no supporting citations from the record that support the alleged Exceptions. The Commission should strike the impermissible extra-record evidence and otherwise deny the Exceptions and affirm the well-reasoned decision of ALJ Pell.

Respectfully submitted,



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Counsel for Verizon Pennsylvania LLC

DATED: March 12, 2015

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:

Janet Armour
7641 Overbrook Avenue
Philadelphia, PA 19151

Widener Harrisburg Civil Law Clinic
3605 Vartan Way
Harrisburg, PA 17110

Honorable Christopher P. Pell
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107



William E. Lehman
Counsel for Verizon Pennsylvania LLC

Dated: March 12, 2015