

Suzan DeBusk Paiva  
Associate General Counsel



900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107

June 11, 2019

**Via Electronic Filing**

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

Re: Optatus Chailla v. Verizon Pennsylvania LLC;  
Docket No. C-2019-3008691;  
Response to Motions for Summary Judgement

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Response to Motions for Summary Judgement in connection with the above-referenced case.

If you have any questions with regard to this filing, please direct them to me.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva/sau".

Suzan D. Paiva  
Counsel for Verizon Pennsylvania LLC

SDP/sau  
Enclosure

**Via Email & U.S First Class Mail**  
cc: ALJ Benjamin Myers

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania LLC's Response to the Motions for Summary Judgement, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 11<sup>th</sup> day of June, 2019.

**VIA USPS FIRST CLASS MAIL**

Optatus Chailla  
25 Garden Street  
Stroudsburg, PA 18360-1336

A handwritten signature in blue ink that reads "Suzan D. Paiva/san". The signature is written in a cursive style and is positioned above a horizontal line.

Suzan D. Paiva  
Verizon Pennsylvania LLC  
900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

OPTATUS CHAILLA,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2019-3008691
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**RESPONSE OF VERIZON PENNSYLVANIA LLC  
TO MOTIONS FOR SUMMARY JUDGMENT**

Verizon Pennsylvania LLC (“Verizon”) responds to certain issues raised in the following documents filed by the Complainants: (1) “Motion for Reconsideration of Interim Order Based on New Evidence Follow Up – and Prehearing Objections,” June 3, 2019; (2) “Complainant’s Motion for Summary Judgment,” June 5, 2019; and (3) “Follow Up Summary Judgment Motion,” June 10, 2019.

(1) ***The Commission Lacks Jurisdiction Over the “verizondrive” Issue.*** In the June 3, 2019, pleading Complainants raise various issues relating to the existence of a shared drive on their computer (the “verizondrive”). The Commission lacks jurisdiction over these claims because it does not have jurisdiction over the provision of retail internet services, which is an information service that is categorized as jurisdictionally interstate. *See MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173 (Opinion and Order entered May 2, 2008), affirmed by *MilleniaNet Corporation v. Pennsylvania Public Utility Commission*, Docket No. 990 CD 2008, (Memorandum Opinion by Judge Butler filed April 30, 2009), finding that “both the Pennsylvania General Assembly and Congress have indicated that the [Commission’s] authority does not . . . extend to internet services.” *See also A. Moses, Inc. v.*

*Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259 (Opinion and Order entered November 4, 2011); *Daskalakis v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2172222 (Opinion and Order entered March 17, 2011). Presumably Complainants agree that these issues are not part of this case, as they state “these matters are outside of the jurisdiction of the PAPUC” and “I will agree to discuss that issue only [Verizon’s bills] during the pre-hearing.” (6/3/19 Pleading). Accordingly, any claims relating to the “verizondrive” must be dismissed.

(2) ***Offer of Settlement Are Inadmissible.*** The June 5, 2019, pleading quotes the text of an email from Verizon’s counsel to Complainants making an offer of terms to settle this formal complaint, and then seeks summary judgment based on the contents of that email. Under 52 Pa. Code § 5.231(d), “[o]ffers of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or party claiming the privilege.” Pennsylvania Rule of Evidence 408 also prohibits introduction of settlement offers or statements made during settlement negotiations:

(a) ***Prohibited Uses.*** Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

Accordingly, Complainants are not permitted to rely on Verizon’s settlement offer or the contents of the email transmitting the settlement offer, either as a basis for summary judgment or as evidence in support of their claims.

(3) ***The Commission Lacks Authority to Award Damages.*** In the June 5, 2019, pleading Complainants contend that Verizon’s settlement offer does not “account for the

personal losses or make Complainant's whole due to suffering" or for time spent on this case.

The legislature did not grant to this Commission the power to award damages. See *Elkin v. Bell Telephone Co. of Pa.*, 420 A.2d 371, 375 (Pa. 1980) (citing *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977)); see also *Poorbaugh v. Pa. P.U.C.*, 666 A.2d 744 (Pa. Cmwlth. 1995). Accordingly, to the extent Complainants seek any form of damages, including but not limited to compensation for time spent or "pain and suffering," such claims must be dismissed.

(4) ***The Commission Lacks Authority to Enforce Consumer Protection Laws.*** The June 5, 2019, pleading contains a lengthy discussion of Pennsylvania's Unfair Trade Practices and Consumer Protection Law. However, this Commission does not have jurisdiction to enforce consumer protection and unfair trade practices laws. See, *Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa PUC LEXIS 23, \*108 (entered January 11, 1999) ("[t]he Commission does not have jurisdiction to enforce the Unfair Trade Practices Law"). See also *Commonwealth of Pennsylvania, by Attorney General Kathleen G. Kane v. IDT Energy, Inc.*, 2015 Pa. PUC LEXIS 529, \*7 (Pa. P.U.C. November 19, 2015). Accordingly, to the extent Complainants seeks to assert any claims under these consumer protection statutes, such claims must be dismissed.

(5) ***There Is No Basis For Summary Judgment or a Directed Verdict.***

Complainants' pleadings refer to seeking summary judgment and/or a directed verdict. Because there are disputed questions of fact, this case is not appropriate for decision as a matter of law under summary judgment or a directed verdict, and an evidentiary hearing is required. The only issues properly before the Commission are related to Complainants' telephone service, specifically their questions regarding the billing and their allegations regarding a telephone service outage and repairs. The opportunity to present evidence on those issues will be at the

June 13, 2019 hearing and Complainants' bear the burden of proof. Accordingly, to the extent Complainants seek summary judgment and/or a "directed verdict" their motions must be denied.

Respectfully submitted,

A handwritten signature in blue ink that reads "Suzan D. Paiva/san". The signature is written in a cursive style and is positioned above a horizontal line.

Date: June 11, 2019

Suzan DeBusk Paiva, I.D. No. 53853

Verizon

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Phone: (267) 768-6184

*Counsel for Respondent*

*Verizon Pennsylvania LLC*