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September 20, 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; **REPLY EXCEPTIONS OF VERIZON
PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions of Verizon Pennsylvania LLC's 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".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/sau
Enclosure

Via Email & U.S First Class Mail
cc: ALJ Benjamin Myers
Mr. Optatus Chailla

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Reply Exceptions of Verizon Pennsylvania LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 20th day of September, 2019.

VIA USPS FIRST CLASS MAIL

Honorable Benjamin Myers
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Optatus Chaila
25 Garden Street
Stroudsburg, PA 18360-1336



Suzan D. Paiva
Verizon Pennsylvania LLC
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Philadelphia, PA 19107

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIZON PENNSYLVANIA LLC’S
REPLY TO EXCEPTIONS**

The Commission should adopt the August 26, 2019, Initial Decision (“ID”) of Administrative Law Judge Benjamin J. Myers and deny the exceptions of Complainant Optatus Chaila. The ID correctly found that the Complainant failed to meet his burden of proving that Verizon Pennsylvania LLC (“Verizon”) violated any applicable law, rule or order, and appropriately dismissed the complaint.

BACKGROUND

Verizon provides telephone and digital subscriber line (DSL) internet-access service to Mr. and Mrs. Chaila at their home in Stroudsburg, Pennsylvania. After several years of trouble-free service, the customers called Verizon on March 11, 2019, reporting “static on line / buzz. 911 was dispatched to home.”¹ A Verizon technician repaired the trouble, but Mr. Chaila filed a formal complaint questioning various items on his bill and stating that, although the technician had restored “connectivity,” he was looking for assurance from Verizon that the service issue “will not happen again.” (Complaint, ¶ 4).

¹ See Verizon Exhibit 1 (print-out of Verizon’s electronic trouble history records going back to 2015).

After filing the formal complaint, the Chaillas refused to mediate, ignored Verizon’s numerous attempts to answer billing questions and inspect their service, failed to answer Verizon’s calls and emails, and generally did not cooperate. A timeline based on the evidence of record in the case is key to understanding that Verizon’s actions in this case were reasonable.

March 11, 2019	Complainant submitted repair ticket reporting static on the line and a buzz. (VZ Ex. 1).
March 13, 2019	A technician was dispatched and repaired the service trouble. (VZ Ex. 1). Although the exceptions now claim this trouble was not fixed on that visit and the service never worked (e.g., Exceptions at 3), the formal complaint filed two days after the service visit alleged that the “Verizon Technician repaired the line at the trunk as he stated” and that “connectivity” was restored that day. (Complaint, ¶ 4).
March 15, 2019	Mr. Chailla filed the formal complaint asking for six separate items of relief, none of which claimed that the voice or DSL service were not working at the time of filing. ²
March 21, 2019	The Commission served the formal complaint on Verizon via e-service.
March 22, 2019	Complainant called in a repair ticket reporting “can’t be called, all calls, all phones.” (VZ Ex. 1).
March 26, 2019	A Verizon technician reported that no trouble was found and the service tested good all the way to the network interface device (NID), which is the limit of Verizon’s network. The technician was not able to go inside because the customer was not home. The technicians are required to call the customer and to leave a number for a call-back if the customer cannot be reached. (VZ Ex. 1; ID FOF 10-14). There were no subsequent service calls from the Complainant. (ID FOF 15).
April 1, 4 and 5, 2019	A Verizon senior analyst attempted to contact the Chaillas to discuss the issues raised in the formal complaint. He left voicemail messages both at the main landline number and at an alternative cell phone number. (ID FOF 30).
April 8, 2019	Verizon answered the formal complaint and asked for the case to be put in mediation so that Verizon could attempt to answer the billing questions and monitor the service for any issues.

² The Complaint asked to: (1) remove a shared drive from computer, (2) explain why the bill is so high, (3) explain why he should pay for a new jack, (4) possible request for a payment arrangement, (5) question regarding voicemail and lifeline service, and (6) seeks information on plans for seniors. (Complaint, ¶ 5).

April 9, 2019	Mrs. Chailla returned the senior analyst's call and left a message. The analyst returned her call the same day and left a message, but never heard back. (ID FOF 31-33).
April 10, 2019	The Commission issued an interim order placing the case in mediation.
April 15, 17 and 25, 2019	Complainant filed various documents with the Commission Secretary purporting to submit "new evidence" and petitioning for "reconsideration" of the interim order sending the case to mediation. During this period Complainant never made any service calls reporting any trouble to Verizon and did not return the calls of the senior analyst who attempted to follow up on the issues raised in the formal complaint.
April 29, 2019 ³	Having been unsuccessful in reaching Complainant or his wife on their landline or cell phone, Verizon's senior analyst sent them an email that was admitted into the record as Verizon Exhibit 2. The Chaillas acknowledged that they received this email. (Exceptions at 25; ID at 10). The pleadings filed in mid-April (which Verizon became aware of later in the month) suggested there might be service trouble (although the customer had not made a service call or responded to voice messages). The analyst therefore asked the Chaillas to "[p]lease let me know a couple of dates that would fit your schedule so that I can have a technician dispatched to troubleshoot and repair your telephone and internet services." He also attempted to answer the billing, stating "I am also providing the information below to explain the billing and answer the questions you raised," and providing a detailed explanation. The Chaillas never responded to the email, either to arrange for the technician visit or to follow up on the billing questions. (ID FOF 38-40).
May 2, 2019	Complainants filed another motion to remove the matter from mediation. They had never responded to Verizon's attempts to mediate their issues. On the same day, the Commission issued a hearing notice scheduling the matter for a hearing on June 13.
May 23, 2019	Although the Chaillas still had not called in a service trouble or responded to the senior analyst's calls or his email asking to arrange for a convenient technician visit, in preparing for the hearing Verizon's Local Manager on his own initiative issued a ticket to check the Complainant's facilities for service problems. When the assigned technician contacted the customers, however, the "Customer cancelled ticket via SMS. "Not available today, Friday or Monday. Will call back." The customer never called back to reschedule the visit. (VZ Ex. 1; FOF 18-20).
May 31, 2019	Not having heard back from the customer, the Local Manager sent a technician to test the service at the NID to see if any problem could be detected from outside the home. The technician detected a problem with the outside facilities but it was not the type of problem he could repair because a splicer was needed. (ID FOF 21-23).

³ The ID mistakenly states the date of the email as April 9, but that does not appear to be a material error.

June 3, 2019	The Local Manager issued another ticket to have splicer dispatched and the splicer repaired the issue, which was a short in the cable (not at the NID as the exceptions assert). The Local Manager explained at the hearing that this kind of short can be intermittent and difficult to detect because the ability to detect it is affected by several variables including the weather and whether the cable is wet, and that telephone and DSL services could work correctly at times and then go out. (ID FOF 24-28).
June 5 and June 10, 2019	Complainant filed a summary judgment motion and follow-up summary judgment motion.
June 11, 2019	Verizon answered the summary judgment motions.
June 13, 2019	The evidentiary hearing was conducted as scheduled. As the ID described, “[t]he Complainant appeared <i>pro se</i> and presented one witness, his wife, Florence Chailla. The Complainant did not sponsor any exhibits at the time of hearing.” Verizon “presented two witnesses who sponsored two exhibits that were admitted into the record.” (ID at 2).
August 26, 2019	ID issued.

On September 13, 2019 the Complainant filed exceptions to the portions of the ID relating to claims of voice and DSL service outages and “cramming” on his telephone bill, but did not contest other parts of the decision.⁴

⁴ The ID correctly held that the Commission the lacked jurisdiction over claims relating to an inside wire maintenance plan, claims of invasion of privacy by a shared computer drive, and a demand for damages. (ID at 7-8). The exceptions do not contest these holdings.

REPLY TO EXCEPTIONS

Although the exceptions blend issues and are not numbered and organized as required by 52 Pa. Code § 5.533(b), Verizon has attempted to identify the individual issues raised and responds to them as follows:

Exception No. 1: **The ID’s Failure To Treat Documents Filed With Secretary’s Bureau As Evidence.**

The Complainant filed a number of documents with the Secretary’s Bureau, presumably prepared by his wife, Mrs. Florence Chailla, who stated that she is an attorney but not admitted to practice in Pennsylvania. (ID at 15). These filings, which included various attached and quoted emails, screenshots and the like, were:

- Rebuttal to Answer and Additional Evidence (4/15/19)
- Letter re New Evidence (4/17/19)
- Petition for Reconsideration of Interim Order (4/25/19)
- Motion for Reconsideration of Interim Order (5/2/19)
- Follow-up Motion for Reconsideration of Interim Order and Preliminary Objection (6/3/19)
- Motion for Summary Judgment (6/5/19)
- Follow-up Summary Judgment Motion (6/10/19), and
- Motion for Summary Judgment (6/11/19).

None of these documents was served on the presiding officer as required by 52 Pa. Code § 1.54, and he states that he only became aware of them when Verizon answered the summary judgment motions (and served the presiding officer) on June 11, 2019. (ID at 16).

The exceptions complain that “not one filed document was considered or reviewed” in the ID. (Exceptions at 2). They also reprint and quote from documents and emails attached to or embedded in these filings, for example at page 7, 11-12, 17-19, 21, 24-25. However, the Complainant did not proffer any of these pleadings, or any substantive document attached or quoted in them, as evidence at the hearing.

The purpose of the hearing is for the presiding officer to “control the receipt of evidence,” (52 Pa. Code § 5.403(a)), and if a party wishes a document to be considered as evidence then it “shall move the admission of evidence into the record upon presentation of the sponsoring witness, and after opportunity for other parties to examine the witness.” 52 Pa. Code § 5.402(a). The Commission has made clear that it “stand[s] firm with our reasoning” to exclude extra-record evidence because “admission of such extra-record testimony violates the principle of fundamental fairness and violates the due process rights of other parties who have no opportunity to cross examine a witness in a separate hearing.”⁵ The Commission and courts have held that due process precludes official notice being taken of public documents introduced for the first time at the exception stage.⁶ The Complainant’s wife, who appeared as the only witness, is an attorney with a demonstrated ability to review rules and statutes, based on the numerous and detailed pleadings filed. Accordingly, the ID properly did not rely on documents or on any factual statements contained in the earlier pleadings but not admitted into evidence. While documents attached to and/or quoted in these earlier commission filings cannot be considered at the exceptions stage where they were not offered into evidence before the record was closed, this did not preclude the Complainant from making an evidentiary case because the ID relied on the oral testimony proffered by Mrs. Chailla at the hearing.

⁵ *Paul v. PECO Energy Co.*, Docket No. C-2015-2475355, 2019 Pa. PUC LEXIS 72, *34 (Opinion and Order entered March 14, 2019).

⁶ *Hess v. Pa. PUC*, 107 A.3d 246, 266 (PA Commw. 2014) (upholding Commission’s decision to strike reference to public document raised in reply exceptions because “[t]he Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness. . . . Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.”) *See also Application of Pennsylvania Ambulance, LLC*, 2015 Pa. PUC LEXIS 395, Docket No. A-2014-2420246 (Opinion and Order entered July 30, 2015) (refusing to take official notice of documents at the exception stage).

In addition to faulting the ID for failing to review the extra-record evidence, the exceptions repeatedly rely on excerpts from those unadmitted documents as substantive evidence in support of the Complainant's arguments. All these portions of the exceptions should be stricken. It is well-settled that exceptions to an initial decision must be based on evidence in the record and new evidence is not permitted to be introduced at the exception stage.⁷

Exception No. 2: **The ID's Inference Of A Lack Of Cooperation By Complainant.**

The exceptions object that the ID "infers lack of cooperation" on the part of the Chaillas, and complain that the ID's conclusion "that Complainant was uncooperative" is "wholly unfounded and an unfair conclusion." (Exceptions at 3, 7). But the record regarding the Chaillas' lack of cooperation is quite clear and any inference of this nature made by the ID is amply supported. More important, it is directly because of their lack of cooperation that Verizon was not able to learn about and repair the intermittent service issue earlier, or follow up more deeply on any remaining issues from the billing questions Verizon answered.

The record shows that the Chaillas: (1) failed to return Verizon's numerous early April calls attempting to discuss the complaint when it was filed, (2) failed to engage in mediation, (3) affirmatively objected to mediation without even trying, (4) failed to answer Verizon's April 29 email (that they admit receiving) attempting to answer their billing questions and schedule a service visit, (5) failed to call in any service trouble reports after March 22 (even though they now claim the service never worked), and (6) cancelled the May 23 service visit initiated by the

⁷ *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 is not permitted without order of this Commission); 52 Pa. Code § 5.431 ("Once the record is closed, no additional evidence may be introduced or relied upon by a participant unless allowed for good cause shown by the Commission or presiding officer.")

Local Manager without ever calling back to reschedule. Given these facts, the claim that “it was not effective or possible to get Verizon’s attention to ongoing problems had with the landline telephone and its DSL services after 68-days of trying” and the “only . . . solution” was “to complain to the Commission” is not credible. (Exceptions at 5). The record regarding the customers’ lack of cooperation speaks for itself.

Exception No. 3: **The ID’s Rejection Of The Contention That Voice Service Did Not Work At All From February 22 through June 4 And DSL Service Did Not Work At All From February 28 through April 22.**

At the hearing Mrs. Chailla testified that the voice service never worked at all for a period of 96 days between February 22 and June 4, 2019 (when Verizon’s technician repaired a short as described in the chart above) and that the DSL service did not work at all from February 28 through April 22, 2019 (when Mrs. Chailla testified that it spontaneously started working). (ID at 13-14). The ID found that this testimony regarding the extent of service outages “is not corroborated by any additional evidence of record in this matter,” that “Complainant’s allegation that he had no telephone service whatsoever between February and June 2019 is not credible,” and that his “allegation that he was without DSL service until April 22, 2019 is not credible.” (ID at 14).

The exceptions take issue with this factual finding, claiming that the “[c]hronology presented by ALJ makes it appear that Technician on March 13, 2019, repaired problems by his changing defective F1, and changed F2 pair” but that in fact “Complainant filed the initial complaint, two days later because the landline telephone was not working nor was the DSL. The landline telephone did not began working until, June 3-4, 2019.” (Exceptions at 3). This claim is directly contradicted by the Formal Complaint itself, filed two days after this technician visit, which stated that the service was repaired and working. (Complaint, ¶ 4) (“Verizon Technician

repaired the line at the trunk as he stated,” and “connectivity” was restored that day.) The record shows that another repair call was made on March 22, 2019, but the responding technician found good dial tone at the NID (in other words, working service) and the customer never called back to report any other trouble. It is undisputed that the customers did not make any other service calls after March 22, and did not respond to Verizon’s attempts to contact them via telephone and email in April to schedule another technician visit.

The ID found that “[i]t is reasonable to conclude that . . . the Complainant would have continued to report issues with his service thereafter if he had continued to experience them. However, he did not.” (ID at 14). The ID also found that “multiple attempts were made without success to contact the Complainant regarding the service issues . . . [but] [d]espite multiple requests for the Complainant to provide dates of availability so a technician could be dispatched to meet with the Complainant, the Complainant either never provided such dates or cancelled appointments.” (ID at 14). Therefore the ID’s rejection of the factual claim of a continuous service outage is supported by the evidence.

An intermittent short in the cable was only discovered after Verizon on its own initiative sent a technician to test the facilities outside the home, without the Complainant’s cooperation. The ID found that this was a problem “which could appear or disappear according to the weather” and that the technicians were never able to “identify if there were any issues inside since they could not gain access.” (ID at 14). It is unreasonable for the Complainant to fault Verizon for failing to discover this intermittent issue earlier, given their lack of cooperation and the fact that they never made any service calls after the service tested good on March 26.

Based on these facts, not only did the ID reject the claim that the service outage was continuous over the claimed period, but it also concluded that “[w]hile the Complainant may

have experienced issues with his telephone and DSL service, he has failed to demonstrate that those issues rose to the level of unreasonable or inadequate service.” (ID at 15). The ID correctly noted that “neither the Public Utility Code nor the Commission’s regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa. C.S. § 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service.” (ID at 12). The record demonstrates that Verizon’s conduct was reasonable under the circumstances.

Exception 4: The ID’s Conclusion That Complainant Failed To Prove Verizon Engaged In “Cramming” On His Telephone Bill.

The formal complaint raised certain questions about charges appearing on the Complainant’s bill. Verizon’s April 29, 2019, email responding to these question was admitted into the record as Verizon Exhibit 2. The ID concluded that Verizon answered the billing questions and the “Complainant has failed to provide any evidence that the Respondent has engaged in cramming and has failed to meet his burden.” (ID at 11). The exceptions disagree with that finding.

Cramming is defined as “the submission or inclusion of unauthorized, misleading or deceptive charges for products or services on an end-user customer’s local telephone bill.” 52 Pa. Code § 64.2. The ID concluded that, if a customer alleges cramming, the provider is required to identify the charges and provide an explanation to the customer, which the ID found that Verizon did in this instance. “The testimony of both the Respondent’s and Complainant’s witnesses indicates that once the Complainant raised an issue about charges on his bill, the Respondent identified the charges and provided an explanation to the Complainant. At no point after this explanation was provided did the Complainant contact the Respondent regarding the charges or indicate that he was unsatisfied with the explanation he had received. Had he

remained unsatisfied, it stands to reason that the Complainant would have made contact and could easily have communicated this to the Respondent by telephone or email.” (ID at 11). Complainant offered no evidence at the hearing to refute Verizon’s answers to the questions. The ID therefore correctly found that the Complainant failed to meet his burden.

Exception 5: The ID’s Rejection Of The Argument That Verizon Failed To Provide Broadband Service Within 10 Days

The Chaillas claim that, because their DSL service allegedly never worked, Verizon violated 66 Pa. C.S. § 3014(b)(5), which discusses the requirements for a network modernization plan to ensure that the network is capable of delivering broadband service (as defined) within “up to ten business days after the customer's request for broadband service.”

As an initial matter, the ID rejected the factual claim that the DSL service never worked. The ID noted that the two trouble reports on March 11 and March 22 referred only to the telephone service and “[n]either contact indicated an issue with DSL service.” (ID at 12, n.2). Further, for the reasons discussed in connection with Exception 3 above, the ID correctly rejected as factually unfounded the claim that there was a continuous DSL outage from when it was installed until it allegedly spontaneously resolved itself on April 22.⁸

There is no evidence of the exact date when the Complainants ordered DSL, except that it was in February of 2019. But there is also no evidence to support a claim that it was not provisioned and working within 10 business days. The ID correctly concluded that “[t]he Complainant has failed to provide any evidence to show that the Respondent did not provide the Complainant broadband service within 10 days of his request as contemplated under Section 3014(b)(5) described above. The Complainant has failed to meet his burden.” (ID at 12).

⁸ The complaint itself admits that the DSL service was working after it was installed, as it states that “[e]arlier the same day [March 10], from about 10:15 a.m. the Internet did not work as it was supposed to until about 11:10,” which suggests it worked before 10:15 and after 11:10. (Complaint ¶ 4).

The ID also concluded that “[e]ven assuming that the Complainant experienced an on-going disruption of his DSL service, this does not in and of itself mean that the Complainant did not receive the DSL service within 10 days of his request. It simply means that - after establishing that service - the Complainant experienced alleged disruptions.” (ID at 12). This is a correct statement of the law because 66 Pa. C.S. § 3014(b)(5) simply requires that Verizon modernize its network so that it is able to fulfill a broadband order (using any technology) within 10 business days. It does not impose requirements regarding individual customer orders. There was no evidence presented to show that Verizon’s network is not capable of provisioning a broadband service within 10 business days in this customer’s location and therefore the Complainant failed to meet his burden of proving any violation of the law. Further, while the Commission has jurisdiction over Chapter 30 network modernization issues, it does not have jurisdiction over the rates, terms, conditions or quality of an individual customer’s retail DSL service because “retail broadband access services to the Internet are generally under the regulatory purview of the FCC” and outside the jurisdiction of this Commission.”⁹

CONCLUSION

For the foregoing reasons the Commission should deny the Complainant’s exceptions and adopt the ID as its final decision in this case.

⁹ *Daskalakis v. Verizon Pennsylvania, Inc.*, No. C-2010-2172222 (Opinion and Order entered April 4, 2011).

Respectfully submitted,

A handwritten signature in blue ink that reads "Suzan D. Paiva". The signature is written in a cursive style.

Date: September 20, 2019

Suzan DeBusk Paiva, I.D. No. 53853

Verizon

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Counsel for Respondent

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