

Suzan DeBusk Paiva  
Assistant General Counsel



Verizon Pennsylvania Inc.  
1717 Arch Street, Floor 17NW  
Philadelphia, PA 19103

May 25, 2010

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: Constantine Daskalakis v. Verizon Pennsylvania Inc.;  
Docket No. C-2010-2172222; **PRELIMINARY OBJECTIONS OF VERIZON  
PENNSYLVANIA INC.**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Verizon Pennsylvania Inc.'s Preliminary Objections in connection with the above-referenced case.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva  
Counsel for Verizon Pennsylvania Inc.

SDP/meb  
Enclosures

cc: Via U.S First Class Mail  
Office of Administrative Law Judge  
Kimberly Hafner  
Herbert Nurick, Mediator  
Certificate of Service

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSTANTINE DASKALAKIS,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2172222

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**NOTICE TO PLEAD**

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TO: Constantine Daskalakis  
633 Kimball Street  
Philadelphia, PA 19147

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania Inc. ("Verizon PA") has filed Preliminary Objections to which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings such as a reply to these Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.

Date: May 25, 2010



Suzan DeBusk Paiva, I.D. No. 53853

Verizon Pennsylvania Inc.  
1717 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19103  
Phone: (215) 466-4755  
Fax: (215) 563-2658

*Counsel for Respondent  
Verizon Pennsylvania Inc.*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSTANTINE DASKALAKIS,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2172222

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**PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA INC.  
TO THE COMPLAINT OF CONSTANTINE DASKALAKIS**

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Pursuant to 52 Pa. Code §5.101(a)(1), Verizon Pennsylvania Inc. ("Verizon PA") submits the following Preliminary Objection to the Complaint filed by Constantine Daskalakis ("Complainant"), on the ground that the Commission has no subject matter jurisdiction over the Digital Subscriber Line ("DSL") services that are the subject of the Complaint. In support thereof, Verizon PA represents as follows:

**BACKGROUND**

1. Mr. Daskalakis filed the instant Formal Complaint regarding service issues with his internet connection (DSL line) on or about April 22, 2010. The Commission served the Complaint on Verizon PA on April 28, 2010.<sup>1</sup>

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<sup>1</sup> Although the Respondent in this matter is Verizon PA, DSL service is provided by its affiliate Verizon On-Line. Therefore, the Complaint should also be dismissed because the company that provides the service complained of is not a certificated, regulated public utility company and does not provide public utility service as defined by the Code. 66 Pa. C.S. § 102.

## PRELIMINARY OBJECTIONS

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code §5.101. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>2</sup>

3. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.<sup>3</sup> The Commission has adopted this standard.<sup>4</sup>

4. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>5</sup> The motion may be granted only if the moving party prevails as a matter of law.<sup>6</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>7</sup>

5. Mr. Daskalakis claims that his DSL service has been "unreliable and slow for about 2 months." By way of relief, he requests that the Commission order Verizon

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<sup>2</sup> See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>3</sup> *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

<sup>4</sup> *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

<sup>5</sup> *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (1985); *Commw. of Pa. v. The Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Commw. 1988).

<sup>6</sup> *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

<sup>7</sup> *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Commw. 2002)).

PA to provide certain bill credits, schedule a repair appointment for a four-hour window on a day of his choosing and pay a penalty.

6. The Complaint should be dismissed because the Commission does not have subject matter jurisdiction over Internet-related services, including DSL service. Under 52 Pa. Code § 5.1.1(a)(1), a party may file a preliminary objection to dismiss a pleading for “lack of commission jurisdiction.”

7. The Commission must act within, and cannot exceed its jurisdiction.<sup>8</sup>

8. The Commission does not have jurisdiction over the provision of Internet services, including DSL service, which is an information service that is categorized as jurisdictionally interstate.<sup>9</sup> This service is has been declared by the FCC to be an “interstate service that is properly tariffed at the federal level.”<sup>10</sup>

9. This Commission confirmed in *MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173 (Opinion and Order entered May 2, 2008) that this Commission lacks “jurisdiction over disputes concerning billing and other services provided in connection with” interstate services. (*Id.* at 9). The Commonwealth Court affirmed that holding in *MilleniaNet Corporation v. Pennsylvania Public Utility Commission*, Docket No. 990 CD 2008, (Memorandum Opinion by Judge Butler filed April 30, 2009)(**Attachment A**), finding that this Commission “has no jurisdiction over

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<sup>8</sup> *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

<sup>9</sup> *Declaratory Order re: LEC Billing of Pay-Per-Call and Similar Information Services*, Docket No. M-00940569 (Order entered July 1, 1994); *Collins v. The United Telephone Company of Pennsylvania d/b/a Sprint*, Docket Nos. C-00970272 and C-00970273 (Order entered July 21, 1997); *Landis v. Denver & Ephrata Telephone and Telegraph Company d/b/a D&E Telephone*, Docket No. C-20039741 (Initial Decision dated July 15, 2003; Final Order entered September 15, 2003); *Benchmark Color Lab. Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-20042694 (Initial Decision dated June 2, 2004; Final Order entered August 2, 2004).

<sup>10</sup> *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).


disputes concerning billing and adequacy of interstate services provided by Verizon PA to MilleniaNet, since they were provided pursuant to the FCC-approved tariff” and “both the Pennsylvania General Assembly and Congress have indicated that the [Commission’s] authority does not . . . extend to internet services.”

10. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.<sup>11</sup> As the Commission lacks subject matter jurisdiction over this matter, and therefore has no authority to require any action to be taken by Verizon PA (which does not provide the service at issue, in any event), holding a hearing would be a fruitless exercise and a waste of resources.

11. Accordingly, because the instant complaint involves a dispute over DSL services, the Commission should dismiss the Complaint as it has no subject matter jurisdiction over the issue.

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code and the Commission’s regulations, Verizon PA respectfully requests that the Formal Complaint Docket No. C-2010-2172222 be dismissed or denied in its entirety.

Date: May 25, 2010

  
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*Counsel for Respondent  
Verizon Pennsylvania Inc.*

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<sup>11</sup> 66 Pa. C.S. § 703(b)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MilleniaNet Corporation, :  
Petitioner :  
v. :  
Pennsylvania Public Utility :  
Commission, : No. 990 C.D. 2008  
Respondent : Argued: April 1, 2009

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE DORIS A. SMITH-RIBNER, Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE BUTLER

FILED: April 30, 2009

MilleniaNet Corporation (MilleniaNet) appeals from the May 2, 2008 order of the Pennsylvania Public Utility Commission (PUC) which held that the PUC has no jurisdiction over disputes concerning billing and adequacy of interstate services provided by Verizon Pennsylvania, Inc. (Verizon PA) to MilleniaNet pursuant to tariffs approved by the Federal Communications Commission (FCC). The only issue before the Court is whether the PUC erred by concluding it did not have jurisdiction to resolve issues related to the quality of services purchased from an FCC-governed tariff. For reasons that follow, we affirm the PUC's order.

MilleniaNet, a telephone and internet service provider (ISP), purchased services and facilities from Verizon PA to provide internet connectivity to

MilleniaNet's customers. Verizon PA provided the internet services to MilleniaNet pursuant to their PUC-approved June 18, 2002 resale agreement (Agreement) and Verizon PA's FCC-approved Tariff No. 20 (tariff). MilleniaNet is a competitive local exchange carrier (CLEC) i.e., a local phone company certified by the PUC to resell Verizon PA's telecommunications services within Pennsylvania at a discount, and Verizon PA is an incumbent local exchange carrier (ILEC).

In 2005, MilleniaNet filed a complaint with the PUC against Verizon PA, alleging that Verizon PA failed to provide adequate service, engaged in unreasonable billing practices, and issued excessive and unjustified bills. Verizon PA admitted that it failed to bill MilleniaNet for certain services for approximately 12 months, but otherwise denied MilleniaNet's allegations, and argued that the complaint should be dismissed because the issues related to services and facilities covered by its FCC tariff are not subject to the PUC's jurisdiction.

A hearing was held on May 31, 2006 before an Administrative Law Judge (ALJ). On May 21, 2007, the ALJ issued an initial decision sustaining allegations in MilleniaNet's complaint related to whether Verizon PA's services were adequate. The ALJ's initial decision denied certain other allegations of MilleniaNet, and imposed penalties upon Verizon PA. Verizon PA filed exceptions. By an opinion and order entered May 2, 2008, the PUC granted some of Verizon PA's exceptions, and modified the ALJ's initial decision, stating in pertinent part, that the PUC has no jurisdiction over disputes concerning billing and adequacy of interstate services provided by Verizon PA to MilleniaNet, since they were provided pursuant to the FCC-approved tariff. MilleniaNet appealed the PUC's order to this Court.<sup>1</sup>

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<sup>1</sup> This Court's review of a PUC order is limited to determining whether constitutional rights have been violated, factual findings are supported by substantial evidence, or an error of law has been committed. *Lloyd v. Pennsylvania Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

MilleniaNet argues that Verizon PA's relations with local CLEC internet service providers like MilleniaNet, are subject to regulation and enforcement by the PUC, regardless of whether the amounts charged for those services are regulated by the FCC. Thus, the PUC erred by concluding that it did not have jurisdiction to resolve issues related to the quality of services purchased from an FCC-governed tariff. We disagree.

Specifically, MilleniaNet argues that the subject tariff controls only rates, not services. We note that Section 102 of the Public Utility Code (Code), 66 Pa.C.S. § 102, defines "tariff" as "[a]ll schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates, including contracts for interchange of service . . . ." Pursuant to Section 203(a) of the Telecommunications Act of 1996 (Act), Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. § 203(a), connecting carriers for interstate and foreign wire or radio communication must file their tariffs with the FCC. "Public utility tariffs have the force and effect of law. . . ." *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1004 (Pa. Cmwlth. 2007). Verizon PA's FCC-approved Tariff No. 20 was not part of the record produced on appeal, so we are unable to determine whether it addresses anything more than rates.

MilleniaNet also argues that the PUC has the authority and responsibility to regulate internet services between two Pennsylvania-based service companies providing services to Pennsylvania residents, and that such authority was not in this instance expressly preempted by Congress.

It is clear that the PUC has the authority and responsibility to regulate utility services under its jurisdiction within the Commonwealth of Pennsylvania. Section 1501 of the Code, 66 Pa.C.S. § 1501, requires that "[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. . . ." This Court has stated that the Code is the supreme law of the

Commonwealth for the regulation and supervision of public utilities, and that the PUC is fully authorized to enforce its provisions. *PECO Energy Co. v. Twp. of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007). The PUC, therefore, has “exclusive jurisdiction over the reasonableness, adequacy and sufficiency of public utility services.” *Bell Tel. Co. of Pennsylvania v. Uni Lite, Inc.*, 439 A.2d 763, 765 (Pa. Super. 1982). Moreover, the PUC is authorized to regulate local exchange telecommunications services. See Chap. 30 of the Code, 66 Pa.C.S. §§ 3011-3019.

Both the Pennsylvania General Assembly and Congress have indicated that the PUC’s authority does not, however, extend to internet services. Specifically, the Pennsylvania General Assembly set forth in Section 104 of the Code, 66 Pa.C.S. § 104, that the Code’s provisions “shall not apply, or be construed to apply, to commerce . . . among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.” Further, Congress set forth in Section 151 of the Act, 47 U.S.C. § 151, that the FCC was created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio. . . .” Although Section 152(b) of the Act, 47 U.S.C. § 152(b), specifically excludes from the FCC’s jurisdiction issues related to intrastate communication service by wire or radio; the FCC treats ISP calls as interstate for its jurisdictional purposes. *In the matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, November 5, 2008 Order on Remand and Report and Order and Further Notice of Proposed Rulemaking at 11 n.69.<sup>2</sup> It is clear, therefore, that the PUC does not have jurisdiction over interstate telecommunications services.

Neither the ALJ nor MilleniaNet cite specific authority in support of their conclusion that the PUC still has jurisdiction over the adequacy or

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<sup>2</sup> Public document published on the FCC’s website.

reasonableness of Verizon PA services and billing practices, despite the fact that the interstate services were provided under an FCC-approved tariff. The Act appears to intend otherwise.

Section 201 of the Act, 47 U.S.C. § 201, provides that

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, . . . to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, **practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable**, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful . . . .

(Emphasis added). Section 251(b) of the Act, 47 U.S.C. § 251(b), further provides that local exchange carriers have a duty “not to prohibit, and **not to impose unreasonable or discriminatory conditions or limitations** on, the resale of its telecommunications services.” (Emphasis added).

The June 18, 2002 Agreement between the parties specifically states that the parties are legally bound pursuant to Section 252 of the Act (relating to negotiation and approval of interconnection and service agreements). Reproduced Record (R.R.) at 284a. Paragraph 31.1 of the Agreement specifically requires that Verizon “shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act.” R.R. at 300a. Section 251(c) of the Act, 47 U.S.C. § 251(c), states that ILECs have the duty to negotiate agreements in good faith, and

to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . that is **at least equal in quality** to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; **and . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . .**

(Emphasis added). Moreover, “[a]n administrative agency’s interpretation of a statute for which it has enforcement responsibility is entitled to great deference and will not be reversed unless clearly erroneous. Judicial deference is even more necessary when the statutory scheme is complex.” *Armstrong Commc’ns, Inc. v. Pennsylvania Pub. Util. Comm’n*, 768 A.2d 1230, 1233 (Pa. Cmwlth. 2001) (citation omitted).

Since the PUC’s opinion is entitled to great deference, and the FCC has jurisdiction over not only the rates, but the quality and reasonableness of the services and billing supplied to MilleniaNet by Verizon PA due to Verizon PA’s FCC-approved tariff, the PUC correctly determined that the PUC does not have jurisdiction to resolve this matter. The PUC’s May 2, 2008 order as it relates to this issue is, therefore, affirmed.

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JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MilleniaNet Corporation,	:
Petitioner	:
	:
v.	:
	:
Pennsylvania Public Utility	:
Commission,	: No. 990 C.D. 2008
Respondent	:

ORDER

AND NOW, this 30th day of April, 2009, the May 2, 2008 order of the Pennsylvania Public Utility Commission is hereby affirmed.

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JOHNNY J. BUTLER, Judge

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Preliminary Objections of Verizon Pennsylvania Inc., upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 25<sup>th</sup> day of May, 2010.


**VIA USPS FIRST CLASS MAIL**

Constantine Daskalakis  
633 Kimball St.  
Philadelphia, PA 19147

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MAY 25 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

  
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