



THOMAS, LONG,  
NIESEN & KENNARD

*Attorneys and Counsellors at Law*

JENNIFER M. SULTZABERGER

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July 15, 2010

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

SECRETARY'S BUREAU

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In re: Marko Maylack, Esquire v. Consolidated Communications  
Docket No. C-2010-2183903

Dear Secretary Chiavetta:

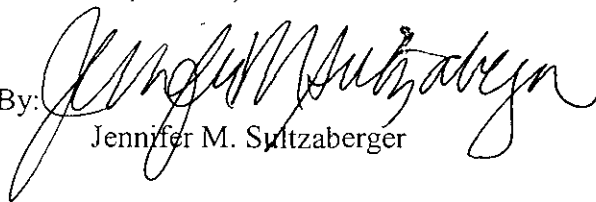
Enclosed for filing are an original and three (3) copies of the Preliminary Objections of Consolidated Communications to the Complaint of Marko Maylack, Esquire. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:



Jennifer M. Sultzaberger

Enclosures

cc: Certificate of Service

ORIGINAL

53973

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Marko Maylack, Esquire :  
Complainant :  
 : Docket No. C-2010-2183903  
v. :  
 :  
Consolidated Communications of :  
Pennsylvania Company LLC, :  
Respondent :

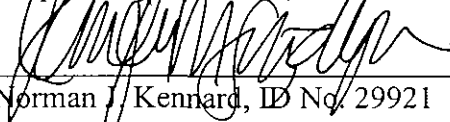
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**NOTICE TO PLEAD**

To: Marko Maylack, Esquire  
600 Jennifer Drive  
Cranberry Township, PA 16066

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections of Consolidated Communications of Pennsylvania Company LLC within ten (10) days from service of this notice as required under § 5.101(f), the facts set forth in the Preliminary Objections may be deemed to be true, without requiring other proof. All pleadings such as a Response to the Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned as counsel for Consolidated Communications of Pennsylvania Company LLC.

Respectfully submitted,

  
Norman J. Kennard, ID No. 29921  
Jennifer M. Sultzaberger, ID No. 200993  
THOMAS, LONG, NIESEN & KENNARD  
212 Locust Street, Suite 500  
Harrisburg, PA 17108-9500  
(717) 255-7600  
Attorneys for Consolidated Communications of  
Pennsylvania Company LLC

Dated: July 15, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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<b>Marko Maylack, Esquire</b>	:	
<b>Complainant</b>	:	
	:	<b>Docket No. C-2010-2183903</b>
<b>v.</b>	:	
	:	
<b>Consolidated Communications of Pennsylvania Company LLC,</b>	:	
<b>Respondent</b>	:	

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**PRELIMINARY OBJECTIONS OF  
CONSOLIDATED COMMUNICATIONS OF PENNSYLVANIA COMPANY LLC  
TO COMPLAINT OF MARKO MAYLACK, ESQUIRE**

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AND NOW COMES, Consolidated Communications of Pennsylvania Company LLC (“Consolidated”), Respondent herein, by and through its attorneys, Thomas, Long, Niesen & Kennard, and, pursuant to 52 Pa. Code § 5.101, files these Preliminary Objections to the Complaint of Marko Maylack, Esquire (the “Complainant” or “Attorney Maylack”). In support of preliminary dismissal of the Complaint, Consolidated submits as follows:

1. This proceeding involves the formal complaint of Attorney Marko Maylack filed on or about June 24, 2010 (the “Complaint”), docketed at C-2010-2183903. Respondent’s Answer, which is being filed concurrently herewith, is incorporated herein by reference.
2. Consistent with the Commission’s regulations at Section 5.101(a)(4), 52 Pa. Code §§ 5.101(a)(1) and (a)(4), Consolidated raises the following preliminary objections as to the Commission’s lack of jurisdiction and as to the legal insufficiency of the Complaint, which serve as adequate reasons for the dismissal of the Complaint.

**A. Internet Services- Not Actionable**

3. Consolidated provides two services to Attorney Maylack- telephone and internet.

In his Complaint, Attorney Maylack mentions problems with his DSL, internet service. However, the Commission does not have jurisdiction over internet services.

4. *The Commission does not have jurisdiction over the internet service provided by Consolidated Communications. DSL is a federally jurisdictional service, controlled exclusively by federal tariff and the Federal Communications Commission, and is therefore not within the Commission's jurisdiction.*

5. The Commission only has jurisdiction over Attorney Maylack's telephone services, but Complainant does not raise issues regarding his telephone service as a cause of action. Any minor issues Attorney Maylack was experiencing with regard to his telephone service were immediately rectified. *See Answer at Paragraph 4 (a).*

6. Complainant has failed to allege any act or thing done or omitted to be done by Consolidated in violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. 66 Pa. C.S. § 701; 52 Pa. Code §§ 5.21(a) and 5.22 (a)(5). For this reason, the Complaint warrants dismissal.

7. Based on the Commission's lack of jurisdiction over internet services, to the extent issues in the Complaint relate to internet services, such issues should be dismissed with prejudice.

**B. Cause of Action involving Cable Service – Not Actionable**

8. The crux of Attorney Maylack's complaint is not directed at any alleged problem with the actual telephone service provided by Consolidated, but rather is limited to the Complainant's perceived inconvenience of the inadvertent disconnection of cable service.

9. The Commission is a creature of the legislative body which created it. It has only those powers, duties and responsibilities and jurisdiction given to it by the Legislature. See, *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

10. The Commission does not have jurisdiction over any cause of action in this Complaint related to the cable television service as it was not provided by Respondent Consolidated, but was provided to Attorney Maylack by an entirely separate utility company, namely Armstrong.

11. Even if the Commission had jurisdiction, Consolidated took all proper and lawful precautionary steps before digging on Attorney Maylack's property by calling PA One Call and diligently following the markings left by the utilities, including Armstrong.

12. Complainant has failed to allege any act or thing done or omitted to be done by Consolidated in violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. 66 Pa. C.S. § 701; 52 Pa. Code §§ 5.21(a) and 5.22 (a)(5). For this reason, the Complaint warrants dismissal.

**C. Cause of Action involving Negligence – Not Actionable**

13. Attorney Maylack alleges that Consolidated "negligently" severed his cable line.

14. Negligence is a civil tort action and thus properly not brought before the Commission as the Commission does not have jurisdiction over a claim for negligence.

15. As such, any claims related to negligence are not actionable before the Commission and should be dismissed with prejudice.

**D. Cause of Action involving Trespass – Not Actionable**

17. Attorney Maylack alleges that Consolidated “illegally trespassed” on his property and home.

18. Trespass is a criminal action and thus properly not brought before the Commission as the Commission does not have jurisdiction over a claim for trespass.

19. As such, any claims related to trespass are not actionable before the Commission and should be dismissed with prejudice.

**E. Cause of Action involving Harassment– Not Actionable**

20. Attorney Maylack alleges that Consolidated filed police reports in order to intimidate and harass him.

21. Harassment is a criminal action and thus properly not brought before the Commission as the Commission does not have jurisdiction over a claim for harassment.

22. As such, any claims related to harassment are not actionable before the Commission and should be dismissed with prejudice.

**F. Request for Money Damages– Not Actionable**

23. Attorney Maylack alleges property damage and reimbursement for Complainant’s related expenses and requests “payment of full damages of \$1,905.00.” However, the Commission does not have jurisdiction to award monetary damages. Rather, the Commission’s authority is limited to the authority set forth in the Public Utility Code which does not include the

awarding of monetary damages. 66 Pa. C.S. § 501 *et seq.*; *See Elkin v. Bell Tel. Co.*, 491 Pa. 123, 420 A.2d 371 (1980).

24. In light of the Commission's lack of jurisdiction over damages, all issues in the Complaint relating to the reimbursement of damages or awarding of damages to Complainant should be dismissed with prejudice.

25. The Complainant fails to allege a violation of a statute, regulation or order of the Commission that would entitle Attorney Maylack to a hearing in this matter. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. Section 5.21(d) reads, in pertinent part:

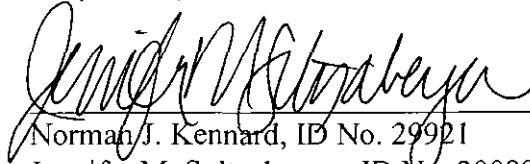
(d) The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

52 Pa. Code § 5.21(d)

26. All actions taken by Consolidated were in conformity with the Commission's regulations and acceptable industry practice, and are neither unusual nor a breach of the company's duty as a public utility to furnish and maintain adequate, efficient, safe and reasonable service and facilities. Accordingly, Attorney Maylack has failed to present any legally sufficient claims that are within the Commission's jurisdiction, and its Complaint should be dismissed for all the reasons set forth above.

WHEREFORE, Consolidated Communications of Pennsylvania Company LLC requests that the Pennsylvania Public Utility Commission grant these preliminary objections and dismiss the Complaint of Attorney Marko Maylack at Docket No. C-2010-2183903.

Respectfully submitted,



Norman J. Kennard, ID No. 29921

Jennifer M. Sultzaberger, ID No. 200993

THOMAS, LONG, NIESEN & KENNARD

212 Locust Street, Suite 500

P.O. Box 9500

Harrisburg, PA 17108-9500

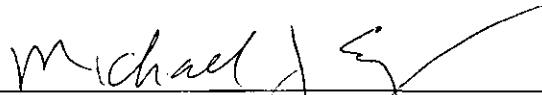
(717) 255-7600

Attorneys for Consolidated Communications of  
Pennsylvania Company LLC

Dated: July 15, 2010

**VERIFICATION**

I, Michael Shultz, Vice President, Regulatory and Public Policy of Consolidated Communications, hereby state that the facts set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the facts. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to falsification to authorities.

  
\_\_\_\_\_  
Michael Shultz, Vice President  
Regulatory and Public Policy  
Consolidated Communications

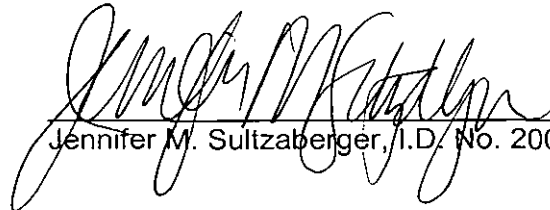
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of July, 2010, I did serve a true and correct copy of the foregoing upon the persons below via first class mail as follows:

Marko Maylack, Esquire  
600 Jennifer Drive  
Cranberry Township, PA 16066

  
\_\_\_\_\_  
Jennifer M. Sultzabinger, I.D. No. 200993

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