

BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION
August 4, 2010

PEGGY ROBLES

Complainant

v.

**SERVICE ELECTRIC TELEPHONE
COMPANY, LLC.**

Respondent

Complaint Docket
No: **C-2010-2187832**

PRELIMINARY OBJECTION TO FORMAL COMPLAINT

Respondent Service Electric Telephone Company, LLC. ("SET"), pursuant to 52 Pa. Code Section 5.101, hereby submits via electronic filing this Preliminary Objection to the above-referenced Complaint filed on July 15, 2010 by Complainant Peggy Robles ("Complainant"). The Commission should dismiss the Complaint because, as discussed below, the Commission lacks jurisdiction over Complainant's non-regulated Voice-over-Internet-Protocol ("VoIP") service. SET's Answer, filed in conjunction with this Preliminary Objection, states the substantive responses to Complainant's allegations.

The Complaint falls outside the Commission's jurisdiction and should therefore be dismissed. Complaints to the Commission are limited to a "violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or any regulation or order of the Commission." 66 Pa. Cons. Stat. § 701. Complainant purchases non-regulated VoIP service from Service Electric Cablevision ("Cablevision"), a retail VoIP provider that purchase wholesale telecommunications services from SET. The Voice-over-Internet Protocol Freedom Act of 2008 [Act 2008-52, 73 P.S. § 2251.1 *et seq.*] (the "VoIP Freedom Act") generally

prohibits the Commission from regulating VoIP or other Internet protocol-enabled services. Section 4 of the VOIP Freedom Act provides that no state agency may enact or enforce any law or regulation that “has the effect of regulating the rates, terms and conditions of VoIP service or IP-enabled service.” Because none of the exceptions to this general prohibition listed in the VoIP Freedom Act apply, the Commission lacks jurisdiction to hear the Complaint and should therefore dismiss it without prejudice to Complainant’s right to seek relief in the court system, which regularly resolves disputes involving non-regulated services.¹

Though the Complaint is not within the Commission’s jurisdiction, the Commission is not without power to protect retail VoIP consumers such as Complainant. SET, a competitive local exchange carrier (“CLEC”) provides wholesale telecommunications services to Complainant’s retail VoIP provider (Cablevision). The Commission retains jurisdiction over interconnection between CLECs such as SET and incumbent local exchange carriers (“ILECs”). As discussed in SET’s Answer, Verizon’s routing errors were the cause of Complainant’s service problems. SET may file a formal complaint with the Commission related to these issues, which would enable the Commission to exercise jurisdiction.

For the reasons set forth above, SET respectfully requests that the Commission dismiss the Complaint for lack of jurisdiction.

¹ In a recent Order, the Commission discussed the VoIP Freedom Act and addressed the precise issue of when it would impose consumer protection regulation on retail VoIP providers (here Cablevision) that purchase wholesale telecommunications services from a CLEC (here SET). The Commission explained that, although it no longer regulate retail VoIP, it would continue to require that retail providers “that do not solely provide VoIP” comply with Commission rules “**to the extent that** the provider of services to retail end users is rendering regulated telecommunications services,” i.e. to the extent that the retail provider is offering a traditional non-VoIP phone service. See *Application of Comcast Business Communications LLC d/b/a Comcast Long Distance for Expanded Authority to Offer, Render, Furnish or Supply Telecommunications Service as a Competitive Local Exchange Carrier to the Public in the Service Areas of Windstream Pennsylvania, Inc., et al*, Docket Nos. A-2008-2029091, et al, Order (entered July 18, 2008). (“Comcast Order”). This case falls outside this exception, however, because Cablevision is exclusively providing a non-regulated VoIP service to Complainant.

Dated: August 4, 2010

Respectfully submitted,

James H. Lister *w/permission*
CRF

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Counsel for Service Electric Telephone Company, LLC

NOTICE TO PLEAD

Ms. Peggy Robles, you are hereby notified to file a written response to the enclosed Preliminary Objection within twenty (20) days from service or a judgment may be entered against you.

 8-29-10

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Counsel for Service Electric Telephone Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing instrument has been served on Complainant via first class mail in accordance with 52 Pa. Code. § 1.54, on this 4th day of August, 2010 addressed to:

Peggy Robles
843 Tower Road
Alburtis, PA 18011



8-4-10

Charles R. Eberle