

Suzan DeBusk Paiva
Assistant General Counsel



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

August 11, 2010

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: Constantine Daskalakis v. Verizon Pennsylvania Inc.;
Docket No. C-2010-2172222;
REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC.

Dear Secretary Chiavetta:

Enclosed please find the Reply Exceptions of Verizon Pennsylvania Inc., being filed in the above referenced matter.

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 cursive script that reads "Suzan D. Paiva mek".

Suzan D. Paiva
Counsel for Verizon Pennsylvania Inc.

SDP/meb
Enclosures

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


CERTIFICATE OF SERVICE

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

Dated at Philadelphia, Pennsylvania, this 11th day of August, 2010.

VIA USPS FIRST CLASS MAIL

Constantine Daskalakis
633 Kimball Street
Philadelphia, PA 19147


Suzan D. Paiva
Verizon
1717 Arch Street, 17NW
Philadelphia, PA 19103

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSTANTINE DASKALAKIS,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2010-2172222
	:	
VERIZON PENNSYLVANIA INC.,	:	
	:	
Respondent	:	

REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC.

Pursuant to 52 Pa. Code § 5.535, Verizon Pennsylvania Inc. replies to the exceptions filed by Constantine Daskalakis (“Complainant”) to the Initial Decision of Administrative Law Judge (“ALJ”) Wayne L. Weisman del issued on July 13, 2010 (“ID”).

BACKGROUND

Mr. Daskalakis’s complaint relates to issues with his internet service, which he contends has been “unreliable and slow for about 2 months.” He asks the Commission to order Verizon to provide certain bill credits for internet service and to direct Verizon schedule a repair appointment for his internet service for a four-hour window on a day of his choosing and pay a penalty. While the complaint simply states that it is against “Verizon,” the Commission docketed the complaint naming the respondent to be Verizon Pennsylvania Inc. (“Verizon PA”) and served it on April 28, 2010. On May 25, 2010, Verizon PA answered the complaint and filed preliminary objections pursuant to 52 Pa. Code §5.101(a)(1), noting that high-speed internet (DSL) service is not provided by Verizon PA, but rather is provided by its affiliate Verizon Online LLC (“Verizon Online”),

a company that is not regulated by this Commission, and that the Commission does not have subject matter jurisdiction over internet-related services.

By Initial Decision issued July 13, 2010, ALJ Weisman del granted Verizon PA's preliminary objections, finding that "the Complaint suffers from legal insufficiency and fails to state a claim upon which relief can be granted," and ordered that the complaint be dismissed. (ID at 4). The ALJ concluded that Verizon PA does not provide DSL service to the complainant, and so the complaint "fails to allege any act or omission committed by respondent which violates a statute, regulation or order of the Commission." (ID at 4). Because he determined that the complaint should be dismissed on that basis, the ALJ concluded that "[i]t is unnecessary to rule on respondent's additional Preliminary Objection." (ID at 4). Mr. Daskalakis filed an exception to the ID on July 30, 2010. Verizon PA responds to this exception as follows:

REPLY TO EXCEPTION

A. The ID Correctly Dismissed The Complaint Because Verizon Pennsylvania Inc. Does Not Provide Internet Service To The Complainant

The ID correctly concluded that "[t]hroughout his Complaint, complainant alleges reliability issues with his DSL service and the customer service attached to it; respondent [Verizon PA] does not provide any of these services." (ID at 4). Accordingly, the ID found that "complainant fails to allege any act or omission committed by respondent which violates a statute, regulation or order of the Commission" and that the complaint was legally insufficient. (*Id.*).

Mr. Daskalakis asks the Commission to reject the ALJ's conclusion because he contends that "Verizon and Verizon Online share the same websites and advertising often

states that the services are provided by Verizon,” that advertisements contain only a “Verizon” logo. But the use of the “Verizon” name by these affiliated companies does not alter the fact that Verizon PA is a separate corporate entity and does not provide DSL service to complainant, and that this Commission does not have jurisdiction over the provision of internet service.

Mr. Daskalakis also contends that high-speed internet service is included under the “Verizon Double Freedom” plan and billed on a single bill. However, Mr. Daskalakis does not allege an error with the billing for the service. Rather, he alleges problems with the quality of the DSL service provided by Verizon On-Line and the repair response, issues that are unrelated to the billing for the service. It is undisputed that the service itself is actually provided by an affiliate, Verizon Online, which is not a regulated public utility subject to this Commission’s jurisdiction.

This case should be dismissed for the same reason that the Commission dismissed the complaint in *Benchmark Color Lab. Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-20042694 (Initial Decision dated June 2, 2004; Final Order entered August 2, 2004), where the complaint, although docketed against Verizon PA, actually “allege[d] that two other entities Verizon Internet Services, Inc. (“Verizon Online”), and ECommunications, Inc., provided poor high-speed internet service beginning in March 2003.” (Benchmark ID at 2). The Commission adopted as its final order ALJ Nene’s conclusion that under these facts:

Verizon is entitled to a dismissal. There is nothing in the complaint which raises an issue related to the telephone utility service provided by Verizon. Benchmark complains only about the provision of internet service by an Internet Service Provider (“ISP”) or by a commercial solicitor seeking to sell such ISP service. Verizon cannot answer a complaint filed against a separate entity. Verizon connects a customer to an ISP, but does not provide internet services. The complaint cannot be construed as alleging faulty telephone service.

The provision of internet service by an ISP is not a “service” rendered by a “public utility” as those terms are defined in the Public Utility Code. 66 Pa. C.S.A. Section 102.

The Commission has consistently distinguished between *telephone services* subject to Commission regulation and *information services* not subject to Commission regulation, even though a telephone is used to acquire the information. *Declaratory Order re LEC Billing of Pay-Per-Call and Similar Information Services*, Docket No. M-00940569 (Order entered July 1, 1994; *John W. Collins and Daniel L. Stump v. The United Telephone Company of Pennsylvania, d/b/a Sprint*, Docket Nos. C-00970272 and C-00970273 (Order entered July 21, 1997); *Michael F. Pullifrone, Sr. and Tammy J. Pullifrone v. The United Telephone Company of Pennsylvania*, Docket No. F-00351252 (Order entered June 12, 1998); *Kouto Anyika v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-20015944 (entered October 31, 2001).

(Benchmark ID at 2-3). For the same reason, this complaint relating to the services provided to complainant by Verizon Online should be dismissed.

B. The Commission Should Dismiss The Complaint Because It Lacks Jurisdiction Over The Provision Of DSL Service

In any event, the Commission should dismiss the complaint because the Commission does not have jurisdiction over Mr. Daskalakis’s claims. This Commission has recognized that “challenges to an agency’s jurisdiction can be raised by a party or the court *sua sponte* at any time.” *Houdanic v. Borough of Homestead*, Docket No. C-00956610, 1995 Pa. PUC LEXIS 140 (Opinion and Order entered December 4, 1995).¹ It is well-settled that the Commission must act within, and cannot exceed its jurisdiction.² Thus, even if Verizon PA provided the complainant’s internet service -- which it does not -- this

¹ See also *Fried v. Fried*, 501 A.2d 211, 212 (Pa. 1985) (“Questions relating to jurisdiction are not waived by the failure of the parties to raise them, and may properly be raised by the court *sua sponte*”).

² *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).

complaint still must be dismissed because the Commission lacks jurisdiction over claims relating to internet service.

Mr. Daskalakis's complaint claims that "[m]y internet connection (DSL line) has been unreliable and slow for about 2 months," and that by way of relief he requests that the Commission order Verizon to provide certain bill credits for internet service, schedule a DSL repair appointment for a four-hour window on a day of his choosing and pay a penalty. (Complaint ¶ 4-5). The Commission has consistently held that issues involving internet service providers are outside its regulatory jurisdiction, and has dismissed numerous other customer complaints alleging problems with internet services.³

DSL service has been declared by the FCC to be an "interstate service that is properly tariffed at the federal level."⁴ 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), finding that this Commission "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" and "both the

³ See, e.g., *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); *Peluso v. North Pittsburgh Telephone Company*, Docket No. C-20054257 (Initial Decision dated March 31, 2005; Final Order entered June 7, 2005).

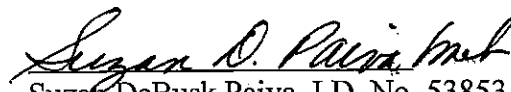
⁴ *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).

Pennsylvania General Assembly and Congress have indicated that the [Commission's] authority does not . . . extend to internet services." Accordingly, because the instant complaint involves a dispute over DSL services, an interstate internet service, the Commission has no subject matter jurisdiction over the issue and should dismiss the Complaint.

CONCLUSION

For the foregoing reasons the Commission should deny the complainant's exceptions and should affirm the ID dismissing the complaint.

Date: August 11, 2010



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