

Suzan DeBusk Paiva  
Assistant General Counsel



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

August 23, 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: Dominic Longo v. Verizon Pennsylvania Inc.;  
Docket No. C-2010-2191445; **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 cursive script that reads "Suzan D. Paiva".

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

**RECEIVED**

AUG 23 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOMINIC LONGO,

Complainants

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2191445

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**NOTICE TO PLEAD**

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**RECEIVED**

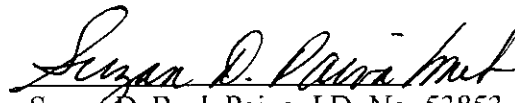
AUG 23 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

TO: Dominic Longo  
313 Trenton Road  
Fairless Hills, PA 19030

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: August 23, 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

**RECEIVED**

AUG 23 2010

DOMINIC LONGO,

Complainants

v.

VERIZON PENNSYLVANIA INC.,

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. C-2010-2191445

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**PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA INC.  
TO THE COMPLAINT OF DOMINIC LONGO**

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Pursuant to 52 Pa. Code §5.101(a)(1), Verizon Pennsylvania Inc. ("Verizon PA") submits the following Preliminary Objections to the Complaint filed by Dominic Longo ("Complainant"), on the grounds that the Commission has no subject matter jurisdiction to adjudicate private right-of-way issues or to order a public utility to pay monetary damages. In support thereof, Verizon PA represents as follows:

**BACKGROUND ISSUE #1**

1. Complainant filed the instant Complaint against Verizon PA for monetary damages and trespassing. Initially, Verizon PA will address his right of way claim. Complainant alleges that Verizon PA's technicians are "trespassing" on his property when accessing Verizon facilities located on the front lawn or within a locked gated area of the rear yard. It is respectfully submitted that these facilities are located within a recorded right of way easement. As stated in Verizon PA's New Matter, the Verizon PA's facilities are all located within a recorded right of way that was entered into on June 19, 1951, between Verizon PA's predecessor and the owner of the property at the time.

Verizon PA's facilities have been located in this exact same location from 1951 until the present. This right-of-way grant was recorded in the Bucks County Recorder of Deeds Office.

On his second claim, Complainant demands that "Verizon needs to be held accountable (after two years) for damages to our business and personal property." As stated in Verizon PA's Answer to the prior pending Formal Complaint, a Verizon PA Construction Manager made a site visit and could find no substantiation for the claim of damage to the Longo's property.

Verizon PA is filing the instant Preliminary Objections in conjunction with its Answer and New Matter. The Preliminary Objections are being raised on the ground that this Commission lacks jurisdiction to adjudicate right of way matters or to award monetary damages.

### **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>1</sup>

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<sup>1</sup> See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

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>2</sup> The Commission has adopted this standard.<sup>3</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>4</sup> The motion may be granted only if the moving party prevails as a matter of law.<sup>5</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>6</sup>

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

6. As noted above on the right of way issue, the Complainant contends that when Verizon PA's technicians access his yard, they are "trespassing," and therefore the issue to be determined in this case is whether Verizon PA's facilities are located pursuant to a proper and valid right-of-way. The Commission has no jurisdiction to adjudicate this issue.

7. It is well established that the Commission does not have subject matter jurisdiction over private contractual disputes.<sup>8</sup> It is equally well established that the

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<sup>2</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>3</sup> *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

<sup>4</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>5</sup> *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

<sup>6</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)).

<sup>7</sup> *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of right-of-ways.<sup>9</sup>

8. In a recent Commission case, *David Stefanoski v. Pennsylvania-American Water Co.*, Docket No. C-20078219 (Opinion and Order entered September 22, 2008) (**Exhibit A**), the Commission reaffirmed the principle that the Commission does not have jurisdiction over disputes that require interpretations of a validity of a right-of-way. Such matters are properly within the jurisdiction of the Courts of Common Pleas of the Commonwealth.<sup>10</sup>

9. With regard to Complainants damages claim, it is respectfully submitted that the Commission does not have the authority or jurisdiction to order Verizon PA to pay monetary damages to customers. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (Pa. 1977); *Suburban East Tires, Inc. v. Pa. PUC*, 582 A.2d 727 (Pa. Cmwlth. 1990). *See also, DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982) and *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980). Accordingly, the Complainant's request for financial damages must be dismissed as outside of the Commission's jurisdiction.

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

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<sup>8</sup> *Sowers v. PPL Gas Utilities Corp.*, 2007 WL 519687 (Pa. P.U.C.) (PUC Docket No. C-2006-6530, Order entered January 27, 2007); *Adams v. Pa. P.U.C.*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Litman v. Peoples Natural Gas Company*, 449 A.2d 720 (Pa. Supra. 1982).

<sup>9</sup> *Steve Rushkin v. Verizon Pennsylvania Inc*, Docket No. C-2004-2591 (Order entered July 14, 2004); *Fairview Water Co. v. Pa. P.U.C.*, 502 A.2d 162 (Pa. 1985); and *Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered September 23, 1998).

<sup>10</sup> Citing *Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Final Order entered July 11, 2003).

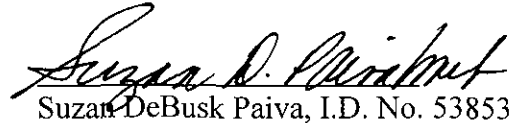
<sup>11</sup> 66 Pa. C.S. § 703(b).

subject matter jurisdiction, and therefore has no authority to require any action to be taken by Verizon PA, holding a hearing would be a fruitless exercise and a waste of resources.

11. Accordingly, because the instant complaint involves a dispute over the location of Verizon PA's facilities within an existing right-of-way and a claim for monetary damages, the Commission should dismiss the Complaint as it has no subject matter jurisdiction over these issues.

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-2010-2191445 be dismissed or denied in its entirety.

Date: August 23, 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.*

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held August 7, 2008

Commissioners Present:

James H. Cawley, Vice Chairman  
Robert F. Powelson  
Tyrone J. Christy  
Kim Pizzingrilli  
Wayne E. Gardner

David E. Stefanoski

Docket No. C-20078219

v.

Pennsylvania-American Water Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ember S. Jandebaur in the above-captioned proceeding issued April 28, 2008. The Initial Decision dismissed the Formal Complaint as time barred under the statute of limitations provision in Section 3314(a) of the Public Utility Code (Code), 66 Pa. C.S. § 3315(a). No exceptions were filed. Pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), however, we have exercised our right to review the decision. For the reasons set forth below, we modify the Initial Decision.

### History of the Proceeding

On September 7, 2007, David Stefanoski filed a Formal Complaint with the Commission against Pennsylvania American Water Company (PAWC) alleging that PAWC had a water line on his property. Mr. Stefanoski wanted the water line to be removed or, in the alternative, he wanted compensation from PAWC for the line being on his property. Mr. Stefanoski was concerned that the water main is a danger on his property. I.D. at 1.

This case is an appeal from a prior informal Bureau of Consumer Services (BCS) investigation that did not result in a decision. BCS orally informed Mr. Stefanoski on September 7, 2007, that BCS could not render a decision whether or not PAWC's right-of-way was valid. I.D. at 1.

On October 1, 2007, PAWC filed a timely Answer denying the material allegations of the Complaint. PAWC also submitted New Matter claiming that PAWC had a legal right-of-way and that the Formal Complaint failed to state a cause of action for which relief may be granted. On October 10, 2007, Mr. Stefanoski filed a timely response to the New Matter, which indicated that a new water line was installed in 1984. Due to shrubbery that was planted in the right-of-way, Pennsylvania Gas & Water (PG&W)<sup>4</sup> installed the water line outside the right-of-way. The response further indicated that, during the 1984 installation, Mr. Stefanoski was unavailable due to family medical emergency issues. This dispute proceeded through the Office of the Administrative Law Judge's (OALJ) mediation process, but was unresolved. I.D. at 1-2.

The hearing convened before the ALJ on November 20, 2007. Mr. Stefanoski appeared on his own behalf and PAWC was represented by counsel. The ALJ

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<sup>4</sup> PG&W was the predecessor water company.

dismissed the Formal Complaint as time barred under the statute of limitations provision in Section 3314(a) of the Code, 66 Pa. C.S. § 3314(a).<sup>5</sup> No exceptions were filed. I.D. at 2-3.

### Discussion

The ALJ made three Findings of Fact and reached one Conclusion of Law. The ALJ found this Complaint to be problematic because: (1) the cause of action occurred in 1984; (2) the legal interpretation of the validity of a right of way is a matter properly before a court of competent jurisdiction -- not the Commission; and (3) the cause of action was carried out by PG&W, the predecessor company, not PAWC. Since the ALJ dismissed the Formal Complaint as time barred, the other issues were rendered moot. The ALJ also noted PAWC's statement on the record that Mr. Stefanoski would have a legal cause of action against PAWC in the event that harm came to his property as a result of PAWC's water line.

We agree with the ALJ's decision to dismiss the Complaint; however, we believe the Complaint should be dismissed on the grounds that the Commission lacks jurisdiction in this proceeding. As the ALJ correctly noted, the Commission does not have jurisdiction over disputes that require interpretations of the validity of a right-of-way. I.D. at 3. Such matters are properly within the jurisdiction of the Courts of Common Pleas of the Commonwealth.<sup>6</sup>

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<sup>5</sup> Section 3314(a) of the Code states as follows:

**(b) General rule.** -- No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

<sup>6</sup> See *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (July 11, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (September 15, 1999).

The statute of limitations provision in Section 3314(a) of the Code applies only to actions that are within the Commission's jurisdiction, specifically, actions for violations of the Code. As such, the Complaint should be dismissed on the basis that the Commission lacks jurisdiction in this proceeding and not on the basis that the Complaint is time barred; **THEREFORE,**

**IT IS ORDERED:**

1. That the Initial Decision of ALJ Jandebour is amended consistent with this Opinion and Order.
2. That the Complaint of David Stefanoski be dismissed.
3. That the proceeding at Docket No. C-20078219 be closed.

**BY THE COMMISSION,**

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: August 7, 2008

ORDER ENTERED: September 22, 2008

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265

David Stefanoski  
v.  
Pennsylvania-American Water Company

Public Meeting - August 7, 2008  
JUL-2008-ALJ-0041  
Docket No. C-20078219

MOTION OF COMMISSIONER TYRONE J. CHRISTY

This proceeding concerns the Formal Complaint filed by David Stefanoski (Complainant), requesting a Commission order requiring that Pennsylvania-American Water Company (Respondent) either remove a water line on his property or compensate him for its location on his property. In her Initial Decision (I.D.), Administrative Law Judge (ALJ) Ember S. Jandebaur dismissed the Complaint as time barred under the statute of limitations provision in Section 3314(a) of the Public Utility Code, 66 Pa. C.S. §3314(a).<sup>2</sup> I.D. at 3, 4.

I agree with ALJ Jandebaur's decision to dismiss the Complaint; however, I believe the Complaint should be dismissed on the grounds that the Commission lacks jurisdiction in this proceeding. As ALJ Jandebaur correctly noted, the Commission does not have jurisdiction over disputes that require interpretations of the validity of a right of way. I.D. at 3. Such matters are properly within the jurisdiction of the Courts of Common Pleas of the Commonwealth.<sup>3</sup>

The statute of limitations provision in Section 3314(a) of the Code applies only to actions that are within the Commission's jurisdiction, specifically, actions for violations of the Code. As such, the Complaint should be dismissed on the basis that the Commission lacks jurisdiction in this proceeding and not on the basis that the Complaint is time barred.

**THEREFORE, I MOVE:**

1. That the Initial Decision of ALJ Jandebaur be amended consistent with this Motion.

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<sup>2</sup> Section 3314(a) states the following:

(a) **General rule.** – No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. §3314(a).

<sup>3</sup> See *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (July 11, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (September 15, 1999).

2. That the Office of Special Assistants prepare the necessary Opinion and Order consistent with this motion.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TYRONE J. CHRISTY, COMMISSIONER

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Stefanoski	:	
	:	
v.	:	C-20078219
	:	
Pennsylvania American Water Company	:	

**INITIAL DECISION**

Before  
Ember S. Jandebeur  
Administrative Law Judge

**HISTORY OF THE PROCEEDINGS**

This Initial Decision memorializes my oral ruling made during the hearing that dismissed the formal complaint, as time barred, by the statute of limitations found in the Public Utility Code. 66 Pa. Code § 3314.<sup>1</sup>

On September 7, 2007, David Stefanoski (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission against Pennsylvania American Water Company (Respondent) alleging that the Respondent had a water line on his property and that he wanted water line either removed or to be compensated for it being on his property. This case is an appeal from a prior informal Bureau of Consumer Services (BCS) investigation that did not result in a decision. BCS orally informed the Complainant on September 7, 2007, that BCS could not render a decision whether or not the Respondent's right of way was valid. On October 1, 2007, the Respondent filed a timely Answer denying the material allegations of the Complaint

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<sup>1</sup>No action for the recovery of penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned on this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. 66 Pa. C.S. § 3314 (a).

and also submitted New Matter. The Respondent's New Matter claimed the Respondent had a legal right of way and that the formal complaint failed to state a cause of action for which relief may be granted. On October 10, 2007, the Complainant filed a timely response to the New Matter. The response indicated a new water line was installed in 1984, and that due to shrubbery in the way, PG & W installed the water line outside of their right of way. (PG & W was the predecessor water company.) The response further indicated that during the 1984 installation, the Complainant was unavailable due to family medical emergency issues. This dispute proceeded through the Office of the Administrative Law Judge (OALJ) mediation process, but was unresolved.

By Hearing Notice dated October 5, 2007, the matter was assigned to me, and the parties were notified that an Initial Hearing in this case was scheduled for the morning of November 20, 2007. A Prehearing Order was issued on November 13, 2007, stating the date and time of the scheduled hearing and advising the parties that the case could be dismissed if they failed to obtain a continuance and failed to appear for the hearing. The Prehearing Order also advised the parties of applicable procedural rules.

The hearing convened as scheduled. The Complainant appeared on his own behalf. The Respondent was represented by counsel.

#### FINDINGS OF FACT

1. This formal complaint arose from the installation of a water main that occurred in 1984, and was installed by a company that preceded the Respondent.
2. The Complainant is concerned that the water main is a danger on his property.
3. The Respondent explained to the Complainant during prehearing discussions, that he is in no different position than any other customer. If the company's water main harmed the Complainant or the Complainant's property, the Complainant (same as any other customer) would have a cause of action against the Respondent.

## DISCUSSION

This formal complaint was problematic for a number of reasons, namely, (1) the cause of action occurred in 1984; (2) analysis of the dispute required an interpretation of the validity of a right of way, a matter properly before a court of competent jurisdiction, not the Commission; and (3) the cause of action was carried out by a predecessor company, not the Respondent. During the scheduled hearing, a prehearing discussion was conducted with the parties to determine whether there was any legal reason the statute of limitation would be inapplicable. None was offered. Therefore, I dismissed the formal complaint as time barred and there was no need to reach the second and third problem.

Finally, as noted in the findings of fact above, one of the Complainant's concerns was about potential breakage of the Respondent's water main, and harm to his property. The Respondent explained that in such a scenario, the Complainant stands in the same position as any other customer. That is, in the event the Respondent's water main causes harm to the Complainant or his property, he has a legal cause of action against the company.

## CONCLUSIONS OF LAW

1. No action for the recovery of penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned on this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. 66 Pa. C.S. § 3314 (a).

ORDER

THEREFORE,

IT IS ORDERED:

1. The formal complaint of David Stefanoski at Docket No. C-20078219 is dismissed as being time barred, and the docket shall be marked closed.

Date: April 4, 2008

\_\_\_\_\_  
Ember S. Jandebour  
Administrative Law Judge

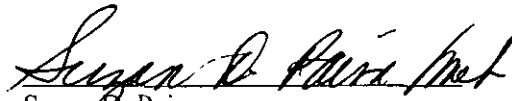
**CERTIFICATE OF SERVICE**

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 23<sup>rd</sup> day of August, 2010.

**VIA USPS FIRST CLASS MAIL**

Dominic Longo  
313 Trenton Road  
Fairless Hills, PA 19030



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

**RECEIVED**

AUG 23 2010

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**