

Suzan DeBusk Paiva  
Assistant General Counsel



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

October 13, 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

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OCT 13 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Charles Ball v. Verizon Pennsylvania Inc.;  
Docket No. C-2010-2200618; **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 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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHARLES BALL,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2200618

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**NOTICE TO PLEAD**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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: October 13, 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

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CHARLES BALL,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Docket No. C-2010-2200618

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**PRELIMINARY OBJECTIONS OF  
VERIZON PENNSYLVANIA INC.  
TO THE COMPLAINT OF CHARLES BALL**

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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 Charles Ball ("Complainant"), on the ground that the Complainant raises no act or thing done or omitted to be done by Verizon PA in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, and therefore the Commission has no subject matter jurisdiction over the Complaint. In support thereof, Verizon PA represents as follows:

**BACKGROUND**

1. Mr. Ball filed the instant Formal Complaint on or about September 24, 2010. The Commission served the Complaint on Verizon PA on September 27, 2010.

## 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>

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. Mr. Ball demands that Verizon PA make a determination that he will have no future liability regarding trees planted by his neighbor purportedly above utility lines, and that Verizon PA must relocate these trees to a "safe" distance from the utility lines on

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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).

<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)).

his neighbor's property. It is evident that Mr. Ball has no complaint regarding the telephone service provided to him by Verizon PA, and his dispute is with his neighbor, Mr. Giannini. He requests that the Commission order Verizon PA to provide the relief he seeks.

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

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."

6. Pursuant to Section 501 of the Code, 66 Pa. C.S. § 501, the Commission's duty is "to enforce, execute and carry out, by its regulations, orders or otherwise" all the provisions of the Public Utility Code. Section 701 of the Code, 66 Pa. C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code § 5.21(a).

7. Although Verizon PA is a public utility subject to the Commission's jurisdiction, the Complainants makes no allegation setting forth any act or thing done or omitted to be done by Verizon PA in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. Accordingly, the Complaint should be dismissed for lack of jurisdiction.<sup>8</sup>

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<sup>7</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).

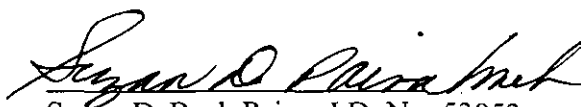
<sup>8</sup> *Steve Rushkin v. Verizon Pennsylvania Inc*, Docket No. C-2004-2591 (Order entered July 14, 2004); *Fairview Water Co. v. Pa. P.U.C.*, 502 A.2d 162 (Pa. 1985); and *Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered September 23, 1998).

8. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.<sup>9</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, holding a hearing would be a fruitless exercise and a waste of resources.

9. Accordingly, because the instant complaint involves a dispute between neighbors regarding placement of newly planted trees, 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 of Charles Ball at Docket No. C-2010-2192349 be dismissed or denied in its entirety.

Date: October 13, 2010



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<sup>9</sup> 66 Pa. C.S. § 703(b).

**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 13<sup>th</sup> day of October, 2010.

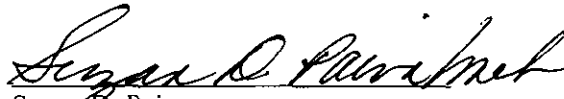
**VIA USPS FIRST CLASS MAIL**

Charles Ball  
705 N. Sandy Hill Road  
Honey Brook, PA 19344

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