

Suzan DeBusk Paiva
Assistant General Counsel



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

November 10, 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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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: A. Moses Inc. v. Verizon Pennsylvania Inc.;
Docket No. C-2010-2205259; **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 meb".

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**

A. Moses Inc.,

Complainant,

v.

Verizon Pennsylvania Inc.,

Respondent

Docket No. C-2010-2205259

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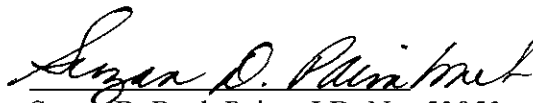
NOTICE TO PLEAD

TO: A. Moses Inc.
8 E. Oregon Avenue
Philadelphia, PA 19148

Glenn C. Romano
310 Huntington Pike
Rockledge, PA 19046

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: November 10, 2010



Suzan DeBusk Paiva, I.D. No. 53853

Verizon Pennsylvania Inc.
1717 Arch Street, 17th 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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A. Moses Inc.,

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2010-2205259

**PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA INC.
TO THE COMPLAINT OF A. MOSES, INC.**

Verizon Pennsylvania Inc. ("Verizon PA") hereby submits the following Preliminary Objections, pursuant to 52 Pa. Code § 5.101, to the Complaint filed by A. Moses Inc. ("Complainant"). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. On or about October 21, 2010, A. Moses Inc. filed the instant Formal Complaint alleging service interruption issues with its internet connection (DSL line) and telephone service and seeking money damages. The Commission served the Complaint on Verizon PA on October 22, 2010.¹

¹ Although the Respondent in this matter is Verizon PA, DSL service is provided by its affiliate Verizon On-Line. Therefore, the Complaint should also be dismissed because the company that provides the service complained of is not a certificated, regulated public utility company and does not provide public utility service as defined by the Code. 66 Pa. C.S. § 102.

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.²

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.³ The Commission has adopted this standard.⁴

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.⁵ The motion may be granted only if the moving party prevails as a matter of law.⁶ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁷

5. A. Moses Inc. claims that its telephone and DSL service had been interrupted, resulting in financial losses to its business. By way of relief, A. Moses Inc. is

² See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

³ *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).

⁴ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁵ *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).

⁶ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

⁷ *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)).

requesting the Commission to order Verizon PA to compensate it for alleged damages “in excess of \$100,000.00” for “lost profits.”

6. The Complaint should be dismissed for lack of Commission jurisdiction for two reasons. First, the Commission does not have subject matter jurisdiction over Internet-related services, including DSL service. Second, the Commission does not have the authority to order utilities to pay monetary damages. Under 52 Pa. Code § 5.101(a)(1), a party may file a preliminary objection to dismiss a pleading for “lack of commission jurisdiction.”

7. The Commission must act within, and cannot exceed its jurisdiction.⁸

8. The Commission does not have jurisdiction over the provision of Internet services, including DSL service, which is an information service that is categorized as jurisdictionally interstate.⁹ This service has been declared by the FCC to be an “interstate service that is properly tariffed at the federal level.”¹⁰ 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

⁸ *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).

⁹ *Declaratory Order re: LEC Billing of Pay-Per-Call and Similar Information Services*, Docket No. M-00940569 (Order entered July 1, 1994); *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).

¹⁰ *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).

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 Pennsylvania General Assembly and Congress have indicated that the [Commission’s] authority does not . . . extend to internet services.”

9. Neither does the Commission have the authority or jurisdiction to order utilities to pay monetary damages, which is the only relief sought by the Complainants here. *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).

10. In *Feingold*, the Pennsylvania Supreme Court explained:

. . . the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.
Feingold, 383 A.2d at 794.

11. Accordingly, the Complaint should be dismissed because the Commission lacks jurisdiction over the relief sought.

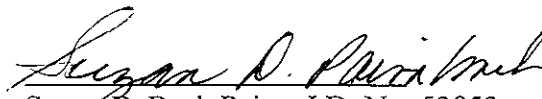
12. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.¹¹ As the Commission lacks subject matter jurisdiction over the DSL portion of the Complainant’s claim and its

¹¹ 66 Pa. C.S. § 703(b).

demand for damages on all issues, the Commission has no authority to require any action to be taken by Verizon PA and a hearing would be a fruitless exercise and a waste of resources.

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-2010-2205259 be dismissed or denied in its entirety.

Date: November 10, 2010



Suzan DeBusk Paiva, I.D. No. 53853

Verizon Pennsylvania Inc.

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Phone: (215) 466-4755

Fax: (215) 563-2658

Counsel for Respondent

Verizon Pennsylvania Inc.

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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 10th day of November, 2010.

VIA USPS FIRST CLASS MAIL

A. Moses Inc.
8 E. Oregon Ave.
Philadelphia, PA 19148

Glenn C. Romano, Esq.
Law Offices of Maribeth Blessing
310 Huntington Pike
Rockledge, PA 19046

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

From: Origin ID: REDA (215) 466-6365
Marie E. Barker
Verizon
1717 Arch St
MailCode N/A
Philadelphia, PA 19103



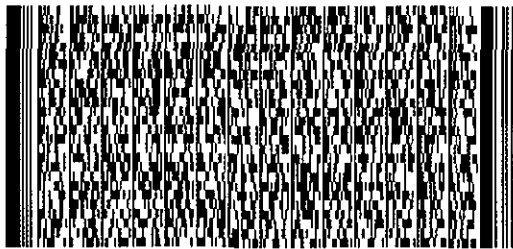
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SHIP TO: (717) 787-8009 BILL THIRD PARTY
**Rosemary Chiavetta Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
HARRISBURG, PA 17120**

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invoice #
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Dept #



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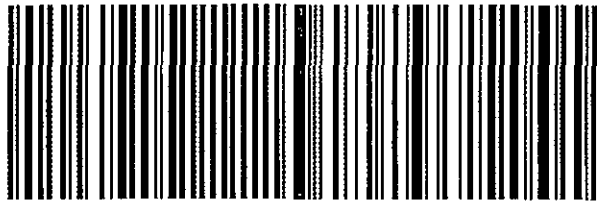
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