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August 29, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
Harrisburg, PA 17120

RECEIVED
2011 AUG 29 PM 3:44
SECRETARY'S BUREAU
P.U.C.


Re: Dominic Longo v. Verizon Pennsylvania Inc.; Docket No. C-2010-2191445;
MOTION TO DISMISS OF VERIZON PENNSYLVANIA INC.

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding are an original and three copies of a Motion to Dismiss of Verizon Pennsylvania Inc. A copy of this motion has been served on the Complainant by first class mail. A Notice to Plead has been attached to the Motion.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Regards,


Steven K. Haas
Counsel for Verizon Pennsylvania Inc.

SKH/san
Enclosure

cc: Honorable Eranda Vero (w/enclosure)
Dominic Longo (w/enclosure)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOMINIC LONGO

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2191445

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SECRETARY'S BUREAU

**MOTION TO DISMISS
OF VERIZON PENNSYLVANIA INC.**

Verizon Pennsylvania Inc. ("Verizon PA"), by and through its counsel, Hawke McKeon & Sniscak LLP, and pursuant to 52 Pa. Code §5.103, hereby files this Motion to Dismiss the above-captioned Formal Complaint. A Notice to Plead is attached to this Motion.

In support of this Motion, Verizon PA states as follows:

Previous Formal Complaint at Docket No. C-2010-2184380

1. On June 28, 2010, the Complainant to this proceeding filed a separate prior Formal Complaint with the Commission at Docket No. C-2010-2184380. In his prior Complaint the Complainant alleged that Verizon personnel trespassed on his property on occasions when they entered the property to access Verizon PA telephone facilities located thereon.

2. On August 9, 2010, Verizon PA filed an Answer with New Matter in response to the Complaint. In its New Matter, Verizon PA averred that it had a valid right-of-way agreement to have its telephone facilities located on the Complainant's property. The Complainant did not deny or otherwise respond to the averments made in Verizon PA's New Matter.

3. Also on August 9, 2010, Verizon PA filed Preliminary Objections to the Complaint in which it sought dismissal thereof for lack of subject matter jurisdiction. Verizon PA argued in its Preliminary Objections that the Commission does not have subject matter jurisdiction over private contractual disputes, nor does it have subject matter jurisdiction over allegations of trespass and the validity or proper use of rights-of-way. Verizon PA argued that jurisdiction over such matters properly lies with the Courts of Common Pleas of the Commonwealth. The Complainant did not respond to Verizon PA's Preliminary Objections.

4. By initial decision dated September 10, 2010, Administrative Law Judge John H. Corbett, Jr. granted Verizon PA's Preliminary Objections and dismissed the Formal Complaint filed by the Complainant at Docket No. C-2010-2184380.

5. In his initial decision, ALJ Corbett cited a number of prior Commission decisions for the propositions that: (1) the Commission does not have subject matter jurisdiction over private contractual disputes; (2) the Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of a rights-of-way; and (3) the Commission does not have jurisdiction over disputes that require interpretation of the validity of an easement. The ALJ noted that such matters are within the jurisdiction of the Courts of Common Pleas of the Commonwealth.

6. No exceptions to ALJ Corbett's Initial Decision were filed by either party.

7. By its Order entered August 11, 2011, the Commission adopted in its entirety the Initial Decision of ALJ Corbett, thereby granting Verizon PA's Preliminary Objections and dismissing the Complaint.

Instant Formal Complaint at Docket No. C-2010-2191445

8. On August 2, 2010, during the pendency of the prior Formal Complaint, the Complainant filed the instant Formal Complaint with the Commission at Docket No. C-2010-2191445. In a virtually identical Complaint, the Complainant again asserted allegations that Verizon PA personnel trespassed on his property when accessing Verizon PA facilities located thereon.

9. On August 23, 2010, Verizon PA filed an Answer with New Matter to this Complaint. Verizon PA again averred that its facilities are located on the Complainant's property pursuant to a valid right-of-way-agreement, which was entered into on June 19, 1951, and was recorded in the Bucks County Recorder of Deeds office. The Complainant did not deny or otherwise file a response to the averments made in Verizon PA's New Matter.

10. Also on August 23, 2010, Verizon PA filed Preliminary Objections to the Complaint, again on the basis that the Commission lacks subject matter jurisdiction over the dispute. Verizon PA also argued in its Preliminary Objections that the Commission does not have subject matter jurisdiction to order the payment of monetary damages. The Complainant did not file a response to Verizon PA's Preliminary Objections.

11. By order dated February 9, 2011, ALJ Eranda Vero granted in part, and denied in part, Verizon PA's Preliminary Objections. ALJ Vero granted the Preliminary Objections with regard to the Complainant's request for monetary damages. However, ALJ Vero denied the Preliminary Objection that sought to dismiss the Complaint on the basis of lack of subject matter jurisdiction.

12. By hearing notice dated February 10, 2011, the Commission scheduled a hearing in this proceeding for Thursday, March 17, 2011, before ALJ Vero.

13. On March 3, 2011, Verizon PA filed a Motion by which it requested that the March 17, 2011 Initial Hearing in the instant proceeding be continued. In support of its Motion, Verizon PA noted that the issues in the two Formal Complaints filed by the Complainant were nearly identical; namely, the extent, if any, to which the Commission has subject matter jurisdiction over issues involving allegations of trespass, and the existence and/or scope of a valid right-of-way agreement for the location of utility facilities on a customer's property. Verizon PA further noted that its Preliminary Objections in the previous proceeding (at Docket No. C-2010-2184380) were granted by the ALJ, and that a final resolution of those issues by the Commission would have a direct impact on the resolution of these same issues in the instant proceeding. Therefore, Verizon PA requested that the hearing in the instant proceeding be continued until after a final decision was issued by the Commission in the prior proceeding.

14. By Interim Order dated March 11, 2011, ALJ Vero granted Verizon PA's Motion for a Continuance. In so ordering, the ALJ noted:

Upon review of both cases, I agree with Respondent that the resolution of the issues in the previous proceeding at Docket No. C-2010-2184380 will have a direct impact on the ultimate resolution of the issues in the present proceeding under Docket No. C-2010-2191445. For this reason, I will grant Verizon PA's Motion to continue the hearing currently scheduled in this proceeding for March 17, 2011, until after a final decision is issued in the previous proceeding at Docket No. C-2010-2184380.

Interim Order Granting Respondent's Request for Continuance, (March 11, 2011).

Motion to Dismiss

15. As noted above, the Commission's Order in the previous proceeding was entered on August 11, 2011. In its Order, the Commission adopted in its entirety the initial Decision of ALJ Corbett. In his Initial Decision, ALJ Corbett stated as follows:

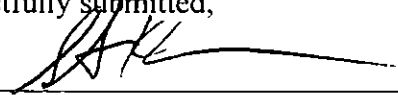
The law is well established that the Commission does not have subject matter jurisdiction over private contractual disputes. Adams v. Pa. P.U.C., 819 A.2d 631

(Pa. Cmwith. 2003); Litman v. Peoples Natural Gas Company, 303 Pa. Superior Ct. 345, 449 A.2d 720 (1982). Equally well established is the fact that the Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of a right-of-way. Fairview Water Co. v. Pa. P.U.C., 509 Pa. 384, 502 A.2d 162 (1985); Ruskin v. Verizon Pennsylvania Inc., docket No. C-20042591 (Order entered July 14, 2004); Messina v. Bell Atlantic-Pennsylvania Inc., Docket No. C-00968225 (Order entered September 23, 1998). In Stefanoski v. Pennsylvania-American Water Co., Docket No. C-20078219 (Order entered September 22, 2008), the Commission reaffirmed the principle that it does not have jurisdiction over disputes that require interpretation of the validity of a right-of-way. Such matters are properly within the jurisdiction of the Courts of Common Pleas of the Commonwealth. Perrige v. Metropolitan Edison Co., Docket No. C-00004110 (Order entered July 11, 2003).

I.D., p. 3.

16. The issues and allegations in the instant Complaint are virtually identical to those raised in the previous proceeding. Accordingly, as correctly noted by ALJ Vero in her Interim Order Granting Respondent's Request for Continuance in the instant proceeding, dated March 11, 2011, the Commission's previous Order at Docket No. C-2010-2184380 should control the outcome in this proceeding. The decision in that matter is dispositive of the issues in the instant proceeding. Accordingly, Verizon PA respectfully requests that this Motion to Dismiss be granted and the Formal Complaint at Docket No. C-2010-2191445 be dismissed in its entirety.

Respectfully submitted,



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Counsel for Verizon Pennsylvania Inc.

DATED: August 29, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOMINIC LONGO

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-2010-2191445

NOTICE TO PLEAD

TO: Dominic Longo
313 Trenton Road
Fairless Hills, PA 19030-2803

2:40:11 PM
2011 AUG 29 PM 3:44
SECRETARY'S BUREAU
PA PUC

You are hereby notified that, if you do not file a written response to the enclosed Motion to Dismiss within twenty (20) days from the date of service of this notice, the Pennsylvania Public Utility Commission ("Commission") may rule on the Motion without further input. A response, if any, to the enclosed Motion must be filed with the Secretary of the Commission, with a copy served on the presiding Administrative Law Judge and the undersigned counsel for Verizon Pennsylvania Inc.



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Counsel for Verizon Pennsylvania Inc.

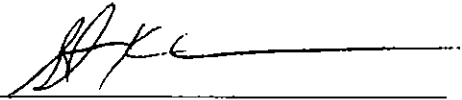
DATED: August 29, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

Service by First Class Mail:

Dominic Longo
313 Trenton Road
Fairless Hills, PA 19030-2803



Steven K. Haas

DATE: August 29, 2011

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