

Suzan DeBusk Paiva  
Assistant General Counsel



Verizon Pennsylvania Inc.  
1717 Arch Street, Floor 3 SE  
Philadelphia, PA 19103

October 31, 2011

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 31 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Blue Mountain Equipment Rental Corporation v. Verizon Pennsylvania Inc.;  
Docket No. C-2011-2258124; **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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BLUE MOUNTAIN EQUIPMENT RENTAL :  
CORPORATION, :

Complainant :

v. :

VERIZON PENNSYLVANIA INC. :

Respondent :

Docket No. C-2011- 2258124

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**NOTICE TO PLEAD**

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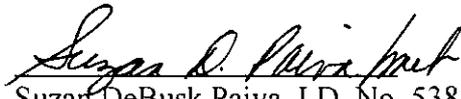
**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

TO: Blue Mountain  
Equipment Rental Corporation  
221 State Street  
Clairton, PA 15025

Jeffrey S. Proden  
99 E. Main Street  
Uniontown, PA 15401

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania Inc. ("Verizon PA") has filed Preliminary Objections and a Motion to Strike 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 31, 2011

  
Suzan DeBusk Paiva, I.D. No. 53853  
Verizon Pennsylvania Inc.  
1717 Arch Street, 3<sup>rd</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

BLUE MOUNTAIN EQUIPMENT RENTAL :  
CORPORATION, :

Complainant :

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VERIZON PENNSYLVANIA INC. :

Respondent :

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**PRELIMINARY OBJECTIONS AND MOTION TO STRIKE  
OF VERIZON PENNSYLVANIA INC.  
TO THE COMPLAINT OF BLUE MOUNTAIN  
ELECTRICAL EQUIPMENT CORPORATION**

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Verizon Pennsylvania Inc. ("Verizon PA") hereby submits the following Preliminary Objections and Motion to Strike pursuant to 52 Pa. Code § 5.101(a)(2), to the Complaint filed by Blue Mountain Electrical Equipment Corporation ("Complainant"). In support thereof, Verizon PA avers and represents as follows:

**BACKGROUND**

1. Complainant filed a Formal Complaint on August 18, 2011, seeking an order against Verizon PA for "compensation" for loss of use and convenience regarding their recent repair issues. The Commission served the Complaint on Verizon PA on August 19, 2011.

## PRELIMINARY OBJECTIONS AND MOTION TO STRIKE

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections and a motion to strike. 52 Pa. Code §5.101(a)(2). Commission procedure regarding the disposition of preliminary objections and a motion to strike 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. A motion to strike "impertinent matter" is the appropriate means to challenge an erroneous prayer for damages.<sup>4</sup>

5. 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>5</sup> The motion may be granted only if the moving party prevails as a matter of law.<sup>6</sup> Any doubt must be

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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> See *Leiby's Mobile Home Community LLC v. Verizon Pennsylvania*, Docket #C-2011-2225151, Order Denying Preliminary Objections, March 28, 2011, by Elizabeth Barnes, ALJ.

<sup>5</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>6</sup> *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>7</sup>

6. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.<sup>8</sup> For testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts. The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer.<sup>9</sup>

7. The Commission must act within, and cannot exceed its jurisdiction.<sup>10</sup>

8. Complainant seeks an order against Verizon PA for “compensation” regarding their recent repair issues.

9. The Complaint should be dismissed because the Commission does not have the authority to order utilities to pay monetary damages. 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.”

10. The Commission does not have the authority or jurisdiction to order utilities to pay monetary damages, which is the only relief sought by the Complainant 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.*

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<sup>7</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>8</sup> *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

<sup>9</sup> *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

<sup>10</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).

*Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982) and *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

11. 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.

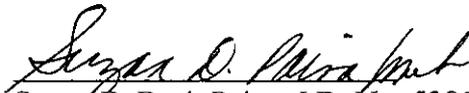
*Feingold*, 383 A.2d at 794.

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

13. 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 subject matter jurisdiction over Complainant's demand for compensation, the Pennsylvania PUC 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-2011-2258124 be dismissed or denied in its entirety.

Date: October 31, 2011

  
Suzan DeBusk Paiva, I.D. No. 53853  
Verizon Pennsylvania Inc.  
1717 Arch Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19103  
Phone: (215) 466-4755  
Fax: (215) 563-2658  
Counsel for Respondent  
Verizon Pennsylvania Inc.

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<sup>11</sup> 66 Pa. C.S. § 703(b)

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**CERTIFICATE OF SERVICE**

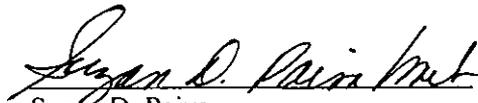
I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Preliminary Objections of Verizon Pennsylvania Inc., upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 31<sup>st</sup> day of October, 2011.

**VIA USPS FIRST CLASS MAIL**

Blue Mountain Equipment  
Rental Corporation  
221 State Street  
Clairton, PA 15025

Jeffrey S. Proden, Esq.  
99 East Main Street  
Uniontown, PA 15401



Suzan D. Paiva  
Verizon  
1717 Arch Street, 3SE  
Philadelphia, PA 19103

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