

Suzan DeBusk Paiva
Assistant General Counsel



Verizon
1717 Arch Street, Floor 3 SE
Philadelphia, PA 19103

May 18, 2012

Via Electronic Filing

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: Robin Beaty v. Verizon Pennsylvania Inc.;
Docket No. C-2012-2300642; **PRELIMINARY OBJECTIONS OF VERIZON
PENNSYLVANIA INC.**

Dear Secretary McNulty:

Enclosed please find Verizon Pennsylvania Inc.'s Preliminary Objections in connection with the above-referenced case, which was electronically filed today.

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,


Suzan D. Paiva
Counsel for Verizon Pennsylvania Inc.

SDP/meb
Enclosures

cc: Via U.S First Class Mail
Office of Administrative Law Judge
Herbert Nurick, Mediator
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

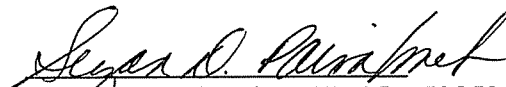
Robin Beaty and James Bloom	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2012-2300642
	:	
Verizon Pennsylvania Inc.	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Robin Beatty and James Bloom
2535 Main Street
Bethlehem, PA 18017

You are hereby notified that Verizon Pennsylvania Inc. ("Verizon PA") has filed pursuant to 52 Pa. Code §5.101, Preliminary Objections to the Formal Complaint in the above-captioned proceeding. You may submit a response to the Preliminary Objections within ten (10) days pursuant to 52 Pa. Code § 5.101(f). If no response is submitted, the presiding officer may rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings, such as a response to the 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: May 18, 2012



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

*Counsel for Respondent
Verizon Pennsylvania Inc.*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin Beaty and James Bloom	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2012-2300642
	:	
Verizon Pennsylvania Inc.	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS TO THE
COMPLAINT OF ROBIN BEATY AND JAMES BLOOM**

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 Robin Beaty and James Bloom (“Complainants”). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainants filed the instant Formal Complaint regarding billing for a second telephone line on or about April 20, 2012. The Commission served the Complaint on Verizon PA on April 26, 2012.

PRELIMINARY OBJECTIONS

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.¹

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.² The Commission has adopted this standard.³

4. A motion to strike "impertinent matter" is the appropriate means to challenge an erroneous prayer for damages.⁴

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.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

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

² *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).

³ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁴ 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.

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)).

6. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁸ 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.⁹

7. The Commission must act within, and cannot exceed its jurisdiction.¹⁰ The basis of Complainants' claim is a billing issue that dates back to 2002. However, even assuming the Commission finds that Verizon PA must refund the Complainants, pursuant to PA PUC Code §1312 Refunds, the Statute of Limitations is four years:

“...the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of filing of the complaint...”

8. Accordingly, that portion of Complainants' claim that dates back prior to April 2008 must be dismissed.

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

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

¹⁰ *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).

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-2012-2300642 be dismissed in its entirety or alternatively, that the Complaint be limited to billing issues from April 2008 to present.

Date: May 18, 2012



Suzan DeBusk Paiva, I.D. No. 53853

Verizon Pennsylvania Inc.
1717 Arch Street, 3rd Floor
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658

*Counsel for Respondent
Verizon Pennsylvania Inc.*

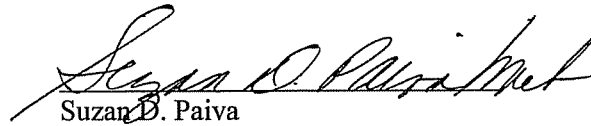
CERTIFICATE OF SERVICE

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 18th day of May, 2012.

VIA USPS FIRST CLASS MAIL

Robin Beaty
James Bloom
2535 Main Street
Bethlehem, PA 18017



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