

Suzan DeBusk Paiva  
Assistant General Counsel



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

October 16, 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

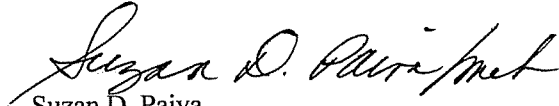
Re: Yi Jing Groeber v. Verizon Pennsylvania LLC f/k/a Verizon Pennsylvania Inc.;  
Docket No. C-2012-2326167; **PRELIMINARY OBJECTIONS OF VERIZON  
PENNSYLVANIA LLC**

Dear Secretary McNulty:

Enclosed please find Verizon Pennsylvania LLC'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 LLC

SDP/meb  
Enclosures

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YI JING GROEBER,

Complainant

v.

VERIZON PENNSYLVANIA LLC

Respondent

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Docket No. C-2012-2326167

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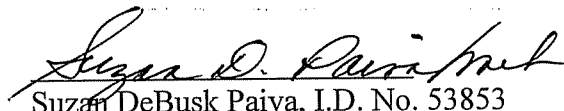
**NOTICE TO PLEAD**

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TO: Yi Jing Groeber  
259 Perry Street  
Elkins Park, PA 19027

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania LLC ("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 16, 2012



Suzan DeBusk Paiva, I.D. No. 53853

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

*Counsel for Respondent  
Verizon Pennsylvania LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

YI JING GROEBER,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2012-2326167
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

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**PRELIMINARY OBJECTIONS TO THE  
COMPLAINT OF YI JING GROEBER**

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Verizon Pennsylvania LLC (“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 Yi Jing Groeber (“Complainant”). In support thereof, Verizon PA avers and represents as follows:

**BACKGROUND**

1. Complainant filed the instant Formal Complaint regarding repair issues with phone and high speed internet on or about September 12, 2012. The Commission served the Complaint on Verizon PA on September 28, 2012.<sup>1</sup>
2. Complainant is alleging issues regarding internet service and hacking and is seeking damages.

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<sup>1</sup> 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

3. 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>2</sup>

4. 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>3</sup> The Commission has adopted this standard.<sup>4</sup>

5. A motion to strike "impertinent matter" is the appropriate means to challenge an erroneous prayer for damages.<sup>5</sup>

6. 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>6</sup> The motion may be granted only if the moving party prevails as a matter of law.<sup>7</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>8</sup>

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

<sup>3</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>4</sup> *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

<sup>5</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>6</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>7</sup> *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

<sup>8</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)).

7. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.<sup>9</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>10</sup>

8. The Commission must act within, and cannot exceed its jurisdiction.<sup>11</sup>

9. 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.<sup>12</sup> This service is has been declared by the FCC to be an “interstate service that is properly tariffed at the federal level.”<sup>13</sup> 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

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<sup>9</sup> *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

<sup>10</sup> *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

<sup>11</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>12</sup> *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).

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

2008, (Memorandum 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.” *See also A. Moses, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259 (Opinion and Order entered November 4, 2011) (“We also agree that the allegations regarding the extended service outage of the Complainant's retail Internet service should be dismissed for lack of subject matter jurisdiction. In general, this Commission does not have jurisdiction over the provision of retail Internet services.”); *Daskalakis v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered March 17, 2011).

10. In addition, the Commission does not have the authority or jurisdiction to order utilities to pay monetary damages. *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).

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.

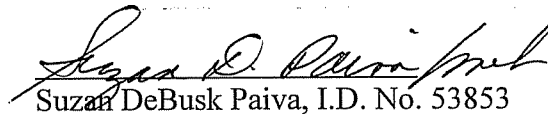
*Feingold*, 383 A.2d at 794.

12. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.<sup>14</sup> As the Commission lacks subject matter jurisdiction over both of these matters, and therefore has no authority to require any action to be taken by Verizon PA, holding a hearing on these issues would be a fruitless exercise and a waste of resources.

13. Accordingly, because the instant complaint partially involves a dispute over high speed internet services and a demand for monetary compensation, the Commission should dismiss those portions of the Complaint as it has no subject matter jurisdiction over these issues.

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 high speed internet claim and demand for monetary compensation in Formal Complaint Docket No. C-2012-2326167 be dismissed or denied in their entirety.

Date: October 16, 2012



Suzan DeBusk Paiva, I.D. No. 53853

Verizon Pennsylvania LLC

1717 Arch Street, 3rd Floor

Philadelphia, PA 19103

Phone: (215) 466-4755

Fax: (215) 563-2658

*Counsel for Respondent*

*Verizon Pennsylvania LLC*

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<sup>14</sup> 66 Pa. C.S. § 703(b)

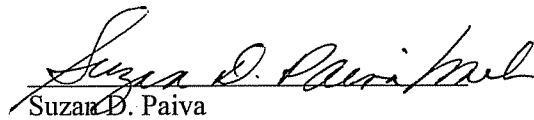
**CERTIFICATE OF SERVICE**

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

Dated at Philadelphia, Pennsylvania, this 16<sup>th</sup> day of October, 2012.

**VIA USPS FIRST CLASS MAIL**

Yi Jing Groeber  
259 Perry Street  
Elkins Park, PA 19027



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