

Suzan DeBusk Paiva
Assistant General Counsel



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

November 7, 2012

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: Thomas Skiffington v. MCI Communications Services Inc.
d/b/a Verizon Business; Docket No. C-2012-2329943;
PRELIMINARY OBJECTIONS OF MCI COMMUNICATIONS SERVICES, INC.
d/b/a **VERIZON BUSINESS**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of MCI Communications Services, Inc. d/b/a Verizon Business' 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 blue ink that reads "Suzan D. Paiva met".

Suzan D. Paiva
Counsel for Verizon

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

THOMAS SKIFFINGTON,

Complainant

v.

VERIZON PENNSYLVANIA LLC

Respondent

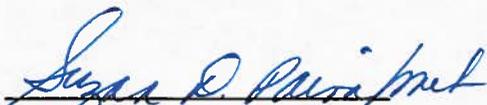
Docket No. C-2012- 2329943

NOTICE TO PLEAD

TO: Thomas Skiffington
Remax 440 and Remax Central
701 Market Street
Perkasie, PA 18944

You are hereby notified that Verizon Pennsylvania LLC (“Verizon PA”) pursuant to 52 Pa. Code §§5.101 et seq. 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 7, 2012


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

*Counsel for Respondent
Verizon Pennsylvania LLC and MCI
Communications*

BACKGROUND

1. Complainant filed the instant Formal Complaint against “Verizon Pennsylvania” regarding billing issues with VOIP service on or about October 11, 2012. The Commission served the Complaint on Verizon Pennsylvania LLC on October 18, 2012; however the correct entity serving Complainant is MCI Communications Services Inc. (“Verizon Business”), which is addressed in Respondent’s Answer.

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.

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. The Commission has adopted this standard.

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

5. Mr. Skiffington filed the instant Formal Complaint on behalf of his company, Re/Max 440, regarding a service it purchased from Verizon Business known as

Private Internet Protocol providing voice and data capability over the internet. The service was provided pursuant to a contract that is attached to Verizon Business's

Answer.

6. The Complaint should be dismissed on several grounds.

7. First, the contract between Complainant and Verizon Business contains an arbitration provision, as follows:

“Any claim, or dispute (“Dispute”) arising out of or relating to this Agreement (other than claims relating to indemnification and equitable relief) must be resolved by binding arbitration of a single arbitrator under the rules of the American Arbitration Association at a mutually agreed upon location. . . .” (Contract, ¶ 15).

8. Under the Federal Arbitration Act, any “written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The Commission is not free to disregard an arbitration provision and proceed to decide a dispute the parties have agreed to arbitrate. *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (U.S. 2011). Accordingly, the Complaint must be dismissed.

9. Second, this Commission lacks jurisdiction to address any disputes relating to Complainant's service based on the Voice over Internet Protocol Freedom Act. Under that statute, the Commission does not have subject matter jurisdiction over VoIP service as defined in 73 P.S. § 2251.3. 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 must act within, and cannot exceed its jurisdiction.

11. The Commission does not have jurisdiction over the provision of VoIP services pursuant to the Voice over Internet Protocol Freedom Act [73 P.S. § 2251.1 (2008) et seq.], which provides at §2251.4: “...no department, agency, commission or political subdivision of the Commonwealth may enact or enforce, either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of regulating, the rates, terms and conditions of VoIP service or IP-enabled service.”

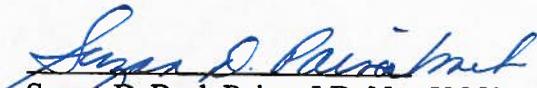
12. This Commission confirmed in *Brown v. Armstrong Digital Services*, Docket No. C-2008-2079810 (Final Order entered May 12, 2009) that “VoIP [is a] telephone service that this Commission does not regulate.”

13. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. As the Commission lacks subject matter jurisdiction over either of the matters brought by Complainant, holding a hearing would be a fruitless exercise and a waste of resources.

14. Accordingly, to the extent the instant complaint involves a dispute over issues the parties have agreed to arbitrate and relating to VoIP services, the Commission should dismiss the entire Complaint as it has no subject matter jurisdiction over either of these issues.

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code, the VoIP Freedom Act and the Commission’s regulations, Verizon PA respectfully requests that the Formal Complaint Docket No. C-2012- 2329943 be dismissed or denied in its entirety.

Date: November 7, 2012



Suzan DeBusk Paiva, I.D. No. 53853

Verizon

1717 Arch Street, 3rd Floor

Philadelphia, PA 19103

Phone: (215) 466-4755

Fax: (215) 563-2658

Counsel for Respondent

Verizon Pennsylvania LLC and MCI

Communications

Services Inc. dba Verizon Business

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Preliminary Objections of MCI Communications Services, Inc. d/b/a Verizon Business, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 7th day of November, 2012.

VIA USPS FIRST CLASS MAIL

Thomas Skiffington
Remax 440 and Remax Central
701 W. Market Street
Perkasie, PA 18944



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