



**Suzan DeBusk Paiva**  
**Assistant General Counsel**  
**Verizon**

1717 Arch Street, Floor 3 SE  
Philadelphia, PA 19103

November 4, 2013

**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: Cheryl Zack v. Verizon Pennsylvania LLC;  
Docket No. C-2013-2388000; **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

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





## 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>1</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>2</sup> The Commission has adopted this standard.<sup>3</sup>

5. A motion to strike "impertinent matter" is the appropriate means to challenge an erroneous prayer for damages.<sup>4</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>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 resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>7</sup>

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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).

<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)).

7. 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>

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

9. This Commission does not have jurisdiction over Complainant's television service, as seen in *Gray v. Comcast Phone of Pennsylvania, LLC*, Docket No. C-2012-2292826 [Final order entered August 15, 2012] the Commission has no jurisdiction over this issue.

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.

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<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).

12. Although Ms. Zack raises no issue with her telephone service, she subscribes to FiOS Digital Voice, which is a Voice over Internet Protocol service. 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.” See also *Brown v. Armstrong Digital Services* Docket No. C-2008-2079810 [Final Order entered May 12, 2009] (“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, as the instant complaint involves a dispute over television services and damages, 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 and the Commission’s regulations, Verizon PA respectfully requests that the

Formal Complaint Docket No. C-2013- 2388000 be dismissed or denied in its entirety.

Date: November 4, 2013

A handwritten signature in blue ink that reads "Suzan D. Paiva" with a stylized flourish at the end.

Suzan DeBusk Paiva, I.D. No. 53853

Verizon

1717 Arch Street, 3rd Floor

Philadelphia, PA 19103

*Counsel for Respondent*

*Verizon Pennsylvania LLC*

**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 4<sup>th</sup> day of November, 2013.

**VIA USPS FIRST CLASS MAIL**

Cheryl Zack  
825 W. Tilghman Street  
Allentown, PA 18102

  
Suzan D. Paiva  
Verizon Pennsylvania LLC  
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