

Suzan DeBusk Paiva
Assistant General Counsel



1717 Arch Street, 3 East
Philadelphia, PA 19103

March 28, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Sherry Kalasnik v. Verizon Pennsylvania LLC;
Docket No. C-2016-2532227;
PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA LLC:

Enclosed please find Verizon Pennsylvania LLC's Preliminary Objections to the Complaint of Sherry Kalasnik 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,

A handwritten signature in blue ink that reads "Suzan D. Paiva".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/slb

Via First Class U.S. Mail
cc: Office of Administrative Law Judge
Cynthia Lehman, Mediator
Attached Certificate of Service

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 participant listed below.

Dated at Philadelphia, Pennsylvania, this 28th day of March, 2016.

Via USPS First Class Mail

Sherry Kalasnik
P.O. Box 963 State Route 49 W
Ulysses, PA 16948


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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHERRY KALASNIK,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2532227
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Sherry Kalasnik
963 State Route 49 W
Ulysses, PA 16948

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania LLC (“Verizon PA”) 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: March 28, 2016


Suzan DeBusk Paiva, I.D. No. 53853
Verizon Pennsylvania LLC
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Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658

*Counsel for Respondent
Verizon Pennsylvania LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHERRY KALASNIK,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2532227
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF SHERRY KALASNIK**

Verizon Pennsylvania LLC (“Verizon PA”) hereby submits the following Preliminary Objections pursuant to 52 Pa. Code § 5.101(a)(2), to the Complaint filed by Sherry Kalasnik (“Complainant”). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainant filed a Formal Complaint on February 25, 2016, seeking an order against Verizon PA for allegedly failing to provide Digital Subscriber Line (“DSL”) service at speeds that Complainant wants. The Commission served the Complaint on Verizon PA on March 7, 2016.

PRELIMINARY OBJECTIONS

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §5.101(a)(2). Commission procedure regarding the disposition of preliminary objections 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. 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.⁴ The motion may be granted only if the moving party prevails as a matter of law.⁵ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁶

5. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁷ For testing the legal sufficiency of the challenged pleading,

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 *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).

⁵ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

⁶ *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 *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

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.⁸

6. The Commission must act within, and cannot exceed its jurisdiction.⁹

7. 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.¹⁰ This service is has been declared by the FCC to be an “interstate service that is properly tariffed at the federal level.”¹¹ 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 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

⁸ *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

⁹ *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).

¹⁰ *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).

¹¹ *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).

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).

8. The Commission therefore lacks jurisdiction over the Complainant's demand that Verizon PA provide her an Internet service with at least 1 Mbps upload speed.

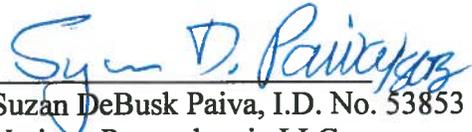
9. Under 52 Pa. Code § 5.1.1(a)(4), a party may file a preliminary objection to dismiss a pleading for legal insufficiency.

9. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.¹² As the Commission lacks authority over Complainant's demand, 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-2016-2532227 be dismissed or denied in its entirety.

¹² 66 Pa. C.S. § 703(b)

Date: March 28, 2016



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