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May 6, 2016

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: Terry R. White v. Verizon Pennsylvania LLC; Docket Number: C-2016-2532236
PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA LLC

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Preliminary Objections in connection with the above-referenced case, which were 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/sau".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/sau
Enclosures

Via U.S. First Class Mail
cc: Office of Administrative Law Judge
Cynthia Lehman, Mediator
Terry R. White

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.

VIA USPS FIRST CLASS MAIL

Terry R. White
4343 Ziegler Road
Glen Rock, PA 17327

Dated this 6th day of May, 2016.


Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TERRY R. WHITE,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2532236
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON NORTH LLC
TO THE COMPLAINT OF TERRY R. WHITE**

Verizon North LLC (“Verizon”) hereby submits the following Preliminary Objections pursuant to 52 Pa. Code § 5.101(a) to the complaint filed by Terry R. White (“Complainant”). In support thereof, Verizon avers and represents as follows:

BACKGROUND

1. Complainant filed a formal complaint on February 27, 2016, seeking an order against Verizon for allegedly failing to comply with Chapter 30 of the Public Utility Code and not providing him with broadband internet service. The Commission served the complaint on Verizon Pennsylvania LLC on March 7, 2016.¹

¹ Although the Commission served and docketed this complaint against Verizon Pennsylvania LLC, the company that serves the area where Mr. White lives is Verizon North LLC. Verizon respectfully requests that the caption be amended to reflect Verizon North LLC as the respondent.

PRELIMINARY OBJECTIONS

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §5.101(a). Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.²

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.³ The Commission has adopted this standard.⁴

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.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

5. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁸ 52 Pa. Code § 5.101(a)(4). For testing the legal sufficiency

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

³ *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).

⁴ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

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)).

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

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

6. The Commission must act within, and cannot exceed its jurisdiction.¹⁰

The Commission's regulations also permit the filing of preliminary objections for lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

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.¹¹ This service has been declared by the FCC to be an "interstate service that is properly tariffed at the federal level."¹² 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

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).

¹¹ *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).

¹² *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).

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).

8. Under Chapter 30, the Commission has limited authority over broadband deployment issues. Chapter 30 of the Public Utility Code requires Verizon to make broadband service available to “each telephone customer,” not to noncustomers. 66 Pa. C.S. § 3012 (definition of “universal broadband availability”). “Broadband” is defined as a service “using any technology” that provides a speed of at least “1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction.” 66 Pa. C.S. § 3012.

9. The Commission has limited authority to determine whether Verizon has complied with the requirement to make Chapter 30 broadband service available to an existing customer. But it does not have authority over any other aspect of the rates, terms or conditions of retail internet service, including but not limited to any claim for speeds higher than Chapter 30 requires or for any specific technology.

10. The Commission therefore lacks jurisdiction over the Complainant's issues regarding the terms or functioning of his retail internet service beyond the very narrow question of whether Verizon has made available a service using any technology that provides 1.544 megabits per second (Mbps) in the downstream direction and equal to or greater than 128 kilobits per second (Kbps) in the upstream direction." 66 Pa. C.S. § 3012.

10. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.¹³ 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 respectfully requests that the Formal Complaint Docket No. C-2016-2532236 be dismissed or denied in whole or in part.

Date: May 6, 2016



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¹³ 66 Pa. C.S. § 703(b)