

Suzan DeBusk Paiva
Assistant General Counsel



1717 Arch Street, 3 East
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July 18, 2016

VIA ELECTRONIC FILING

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

Re: Jacqueline Fielder v. Verizon Pennsylvania LLC;
Docket No. C-2016-2553231;
PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA LLC:

Enclosed please find Verizon Pennsylvania LLC's Preliminary Objections to the Complaint of Jacqueline Fielder 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, appearing to read "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 participants listed below.

Dated at Philadelphia, Pennsylvania, this 18th day of July, 2016.

VIA USPS FIRST CLASS MAIL

Jacqueline Fielder
7121 Verona Blvd
Pittsburgh, PA 15235



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


JACQUELINE FIELDER	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2553231
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Jacqueline Fielder
7121 Verona Boulevard
Pittsburgh, PA 15235

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: July 18, 2016


Suzan DeBusk Paiva, I.D. No. 53853
Verizon Pennsylvania LLC
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Phone: (215) 466-4755
Fax: (215) 563-2658
*Counsel for Respondent
Verizon Pennsylvania LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACQUELINE FIELDER ,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2553231
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF JACQUELINE FIELDER**

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 Jacqueline Fielder (“Complainant”). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainant filed a Formal Complaint on June 27, 2016, seeking an order against Verizon PA requesting Verizon allow her to port out disconnected Fios Digital Voice lines, reimbursement of charges, and removal of credit reporting inquiries.

PRELIMINARY OBJECTIONS

2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections for lack of jurisdiction. 52 Pa. Code §5.101(a)(1).

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. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁴ 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.⁵

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

6. The Complaint relates to a Voice over Internet Protocol voice service known as Fios Digital Voice.

7. 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

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

⁵ *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

⁶ *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).

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.”

8. 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.”

9. 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.”

10. In *Wildman v. Verizon Pennsylvania LLC*, Docket No. C-2013- 2342700 (Recommended Decision of ALJ Barnes dated February 25, 2013; Final Order entered April 9, 2013) the Commission confirmed that Fios Digital Voice is a VoIP service that the Commission does not have authority to regulate and dismissed the complaint on preliminary objections. *See also Silvestri v. Comcast Phone of Pennsylvania, LLC*, Docket No C-2011-2241959 (Order entered October 7, 2011).

11. Complainant also subscribed to television and internet services from Verizon. Although her complaint does not appear to relate to those services, the Commission also does not have jurisdiction over the provision of television and internet services. Internet service is an information service that is categorized as jurisdictionally

interstate.⁷ This service is has been declared by the FCC to be an “interstate service that is properly tariffed at the federal level.”⁸ See *A. Moses, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259 (Opinion and Order entered November 4, 2011) (“ This Commission does not have jurisdiction over the provision of retail Internet services.”). The Commission also acknowledged in *Gray v. Comcast Phone of Pennsylvania, LLC*, Docket No. C-2012-2292826 (Final Order entered August 15, 2012) that the Commission has no jurisdiction over television service.

12. The Commission does not have the authority or jurisdiction over the services to which the Complainant subscribed. Verizon will work with the Complainant to resolve the issues.

13. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.⁹ As the Commission lacks subject matter jurisdiction over the Complainant’s services, the Complainant should be dismissed.

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-2016-2553231 be dismissed or denied in its entirety.

⁷ *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).

⁸ *GTE Tel. Operating Cos; GTOC Tariff No.1 GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC RCD 22466 (1998).

⁹ 66 Pa. C.S. § 703(b)

Date: July 18, 2016



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