

Suzan DeBusk Paiva
Assistant General Counsel



1717 Arch Street, 3 East
Philadelphia, PA 19103

August 23, 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: Paula Ponte v. Verizon Pennsylvania LLC;
Docket No. C-2016-2559745; **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 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/meb
Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

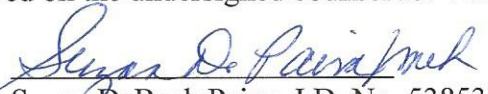
PAULA PONTE,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2559745
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Paula Ponte
P.O. Box 65
Perkiomenville, PA 18074

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: August 23, 2016


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

*Counsel for Respondent
Verizon Pennsylvania LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAULA PONTE,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2016-2559745
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF PAULA PONTE**

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 Paula Ponte (“Complainant”). Specifically, Verizon PA submits that the Commission has no subject matter jurisdiction to adjudicate public right-of-way issues. In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainant filed a Formal Complaint on July 9, 2016, seeking an order against Verizon PA to relocate a pole which is located in a public right-of-way. The Commission served the Complaint on Verizon PA on August 3, 2016.

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. Complainant seeks an order against Verizon PA to relocate a pole which is located in the public right-of-way.

7. As stated in its New Matter, Verizon PA's pole and facilities have been in place since 1987 pursuant to a valid public right-of-way agreement dated February 19, 1967. The Commission does not have the authority or jurisdiction to order utilities to relocate poles that are located in a public right-of-way.

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).

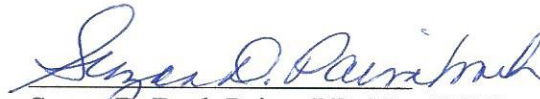
⁶ *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

8. Accordingly, the Complaint should be dismissed because the Commission lacks jurisdiction over the relief sought.

9. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.⁷ As the Commission lacks subject matter jurisdiction, and therefore has no authority to require any action to be taken by Verizon PA, holding a hearing would be a fruitless exercise and a waste of resource.

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-2016-2559745 be dismissed or denied in its entirety.

Date: August 23, 2016



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⁷ 66 Pa. C.S. § 703(b)

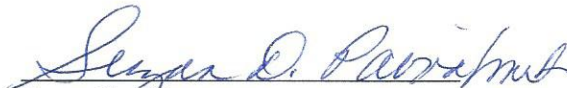
CERTIFICATE OF SERVICE

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 23rd day of August, 2016.

VIA USPS FIRST CLASS MAIL

Paula Ponte
P.O. Box 65
Perkiomenville, PA 18074



Suzan D. Paiva
Verizon Pennsylvania LLC
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Philadelphia, PA 19103