

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacqueline Fielder	:	
	:	
v.	:	C-2016-2553231
	:	
Verizon Pennsylvania LLC	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS AND DISMISSING
COMPLAINT**

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

A customer, Jacqueline Fielder, filed this complaint alleging incorrect charges on her telecommunications bills. The complaint also claims that her phone service to three numbers was erroneously terminated. Customer requests the utility be directed to port Complainant's three phone numbers and refund her \$306.82 plus any other incorrect charges as well as remove two credit inquiries from her credit profile. This decision dismisses the complaint because the Commission lacks jurisdiction over Voice over Internet Protocol services (VoIP).

HISTORY OF THE PROCEEDING

On June 24, 2016, Jacqueline Fielder (Complainant or Customer) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Verizon Pennsylvania LLC (Verizon). At paragraph 2, the complaint alleges the Respondent is Verizon. At paragraph 4 of the complaint form, requesting the nature of the complaint, the Complainant alleges that there are incorrect charges on her bill. The complaint also avers an erroneous termination of

phone service. Customer requested Verizon Pennsylvania, LLC be directed to port Complainant's phone numbers and refund her \$306.82 plus any other incorrect charges. The Complainant also requests Verizon be directed to remove two credit inquiries from her credit profile.

The complaint was served upon Respondent on June 27, 2016. On July 18, 2016, Verizon timely filed an answer and new matter with a notice to plead. The answer admits that Verizon provided VoIP voice and data service to Complainant at the address shown on the complaint; however, the Company denies having provided Complainant with "regulated telephone service." Answer at 2. The answer contends that the allegations in the complaint concern services not regulated by the Commission.

The new matter reiterates that the Complainant's voice and data service is a VoIP service and that the Commission has no jurisdiction over VoIP services. Verizon avers it has no record of receiving a porting request for the three FiOS Digital Voice telephone numbers the customer refers to in her complaint. The answer with new matter requests that the Commission dismiss the Complainant's complaint.

Also on July 18, 2016, Verizon timely filed preliminary objections with a notice to plead. According to the preliminary objections, the complaint concerns VoIP services not regulated by the Commission. The preliminary objections allege that the complaint raises issues that are outside the Commission's jurisdiction. The preliminary objections request that the Commission dismiss the complaint.

By notice dated August 19, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to either the preliminary objections or new matter. An answer to new matter was due on July 28, 2016. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Jacqueline Fielder.
2. The Respondent in this case is Verizon Pennsylvania LLC.
3. On June 24, 2016 Complainant filed a complaint against Verizon averring that there are incorrect charges on her bill and requesting the following relief: 1) a refund in the amount of at least \$306.82; 2) an order directing Verizon to port three phone numbers; and 3) an order directing Verizon to remove two credit inquires from her credit profile.
4. The complaint was served upon Respondent on June 27, 2016.
5. On July 18, 2016, Verizon timely filed preliminary objections as well as an answer and new matter.
6. The Complainant has not filed an answer to either the preliminary objections or the new matter.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code §5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.

- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

Here, the Respondent's preliminary objections assert lack of Commission jurisdiction, pursuant to 52 Pa. Code §5.101(a)(1). Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A preliminary objection asserting lack of Commission jurisdiction, pursuant to the Commission's Rules of Practice and Procedure, is therefore analogous to preliminary objections allowed by Rule 1028 of the Pennsylvania Rules of Civil Procedure.

Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true, for purposes of disposing of the motion, all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa. Code §5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code §5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa. Code §5.101(a)(1) permits the filing of a preliminary objection to dismiss a pleading for lack of Commission jurisdiction. The provision at 52 Pa. Code §5.101(a)(1) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pennsylvania Pub. Util. Comm'n., 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pennsylvania Pub. Util. Comm'n., 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pennsylvania Pub. Util. Comm'n., 103 A.2d 502 (Pa. Super. 1954).

Viewing the complaint in this case in the light most favorable to the Complainant, Verizon provided telephone voice and data VoIP service to Complainant. Complainant claims that the Verizon FiOS service she received included charges related to phone service that are incorrect on her bills and she requests a refund for incorrect charges and that her three phone numbers be ported. Complainant further requests Verizon be directed to remove two credit inquiries from her credit profile.

Complainant attached to her complaint photocopies of correspondence including: 1) Complainant's bill dated April 12, 2016; 2) a copy of a facsimile dated May 15, 2016; 3) photocopies of two receipts from Staples. It appears from the cover of the complaint and from the attachments to the complaint that Complainant receives Verizon FiOS Digital Voice, which is a VoIP service.

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objection, Verizon contends that the Commission does not regulate the service that is

the subject of the complaint. I agree with Verizon that the issues outlined above do not rise to matters this Commission has exercised jurisdiction over regarding VoIP service.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. Tod and Lisa Shedlosky v. Pennsylvania Electric Co., Docket No. C-20066937 (Order entered May 28, 2008); Feingold v. Bell Tel. Co. of Pa., 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n., 43 A.2d 348 (Pa Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. Hughes v. Pennsylvania State Police, 619 A.2d 390 (Pa. Cmwlth. 1992) alloc. denied 637 A.2d 293 (Pa. 1993). Here the General Assembly has divested the Commission of jurisdiction over VoIP services.

The Voice Over Internet Protocol Freedom Act of 2008 at 73 P.S. §2251.4 generally prohibits the Commission, as well as any department, agency, commission or political subdivision of the Commonwealth from regulating the rates, terms and conditions of internet protocol-enabled services. The statute at 73 P.S. §2251.6 provides that the Commission, as well as any department, agency, commission or political subdivision of the Commonwealth retains the authority to regulate 1) the provision and administration of 911 service; 2) telecommunications relay service; 3) universal service fund fees; 4) switched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company and; 5) rates, terms or conditions of protected services provided under tariffs subject to approval by the Commission.

Pursuant to the Voice over Internet Protocol Freedom Act of 2008, the Commission has no jurisdiction over the terms and conditions of the Complainant's VoIP service. The Commission has previously ruled on its lack of jurisdiction over VoIP and other internet services.

In his initial decision in Silvestri v. Comcast Phone of Pennsylvania, LLC, Docket No C-2011-2241959 (Order entered October 7, 2011) (Silvestri), ALJ Christopher P. Pell dismissed a complaint regarding internet services for lack of jurisdiction where the respondent raised the Voice over Internet Protocol Freedom Act of 2008. ALJ Pell concluded that the Voice over Internet Protocol Freedom Act of 2008 and the statute at 66 Pa. C.S. §104 prohibited the Commission from exercising jurisdiction over the complaint.

The statute at 66 Pa. C.S. §104 provides as follows:

The provisions of this part, except when specifically so provided, shall not apply, or be construed to apply, to commerce with foreign nations, or among the several states, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

ALJ Pell noted that the FCC regulated interstate communications and treated internet services as interstate for its jurisdictional purposes. Since internet services are interstate, ALJ Pell concluded that they were outside the Commission's jurisdiction, pursuant to 66 Pa. C.S. §104.

Therefore, both the Voice over Internet Protocol Freedom Act of 2008 and 66 Pa. C.S. §104 prohibited the Commission from exercising jurisdiction over the complaint. By Commission final order entered October 7, 2011, ALJ Pell's initial decision became final without further Commission action. The Commission has ruled in several other cases that it lacks jurisdiction to adjudicate disputes involving VoIP and other internet services. Gray v Comcast Phone of Pennsylvania, LLC, Docket No. C-2012-2292826, (Order entered November 6, 2012) (Gray); Robles v. Service Electric Telephone Company, LLC, Docket No. C-2010-2187832 (Order entered October 28, 2011) (Robles); in Brown v. Armstrong Digital Services, Inc. d/b/a Armstrong Telephone, Docket No. C-2008-2079810 (Order entered June 30, 2009) (Brown).

The Commission's decisions in Silvestri, Gray, Robles and Brown control the outcome in this case. There are no facts in this case that distinguish it from the Silvestri, Gray,

Robles or Brown decisions. Therefore, my decision here must follow those decisions and deny the relief that the Complainant seeks with regard to his VoIP services.

Accepting as true all the facts alleged in the complaint, the Complainant is not entitled to relief as a matter of law. There is no factual dispute that the Complainant received VoIP services that the Commission lacks the authority to regulate. Since there is no factual dispute, there is no need for a hearing.

As set forth above, the Voice over Internet Protocol Freedom Act of 2008, and 66 Pa. C.S. §104 prohibit the Commission from regulating the services that are the subject of the complaint. Since the Commission's jurisdiction does not extend to these services, I will sustain the preliminary objections and dismiss the complaint.

CONCLUSIONS OF LAW

1. The Commission has no jurisdiction to regulate the rates, terms and conditions of VoIP services. 73 P.S. §§2251.1-2251.6.
2. The Commission has no jurisdiction to regulate interstate commerce. 66 Pa. C.S. §104.
3. It is just, reasonable and in the public interest that the complaint be dismissed with prejudice.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by Verizon Pennsylvania LLC at Docket No. C-2016-2553231 are sustained.
2. That the complaint of Jacqueline Fielder against Verizon Pennsylvania LLC at Docket No. C-2016-2553231 is dismissed with prejudice for lack of jurisdiction.
3. That Docket No. C-2016-2553231 be marked closed.

Date: August 23, 2016

_____/s/_____
Elizabeth H. Barnes
Administrative Law Judge