

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vince Marino

v.

Verizon Pennsylvania Inc.

:  
:  
:  
:  
:

C-20055656

DOCUMENT  
FOLDER

PREHEARING ORDER

An initial hearing in this case is scheduled for Tuesday, February 14, 2006, at 10:00 a.m. in an 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222. Accordingly, the parties are hereby directed to comply with the following requirements:

1. You must serve me directly with a copy of any document that you file in this proceeding at the time of filing. If you send me any correspondence or document, you must send a copy to all other parties. For your convenience, a copy of the Commission's current service list of the parties to this proceeding is enclosed with this order.

2. A request for a change of the scheduled hearing date must be submitted in writing no later than five days before the hearing. 52 Pa. Code §1.15(b). Requests for changes of initial hearings must be sent to the undersigned Administrative Law Judge, with copies to all parties of record. The correct address is: Pennsylvania Public Utility Commission, Office of Administrative Law Judge, 1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222-1210. Only the undersigned Administrative Law Judge or Office of Administrative Law Judge Scheduling Unit may grant a request for a change of an initial hearing. Such changes are granted only in rare situations where sufficient cause exists. Should any party have any questions regarding this procedure, you may contact me at 412-565-3550.

**DOCKETED**  
- JAN 19 2006

3. YOU MAY LOSE THIS CASE, IF YOU DO NOT TAKE PART IN THIS HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED.

4. THIS HEARING IS A FORMAL PROCEEDING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

5. Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney represent you. However, if you are a partnership, corporation, trust, association or governmental agency or subdivision, you must have an attorney represent you in this proceeding. Unless you are an attorney, you may not represent someone else.

6. The Complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or an Order of this Commission so that the Complainant is entitled to the relief requested in the complaint.

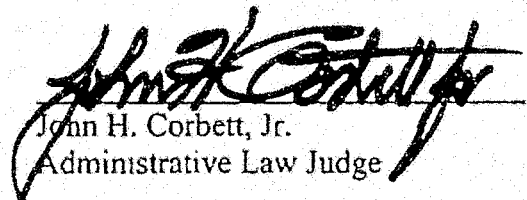
7. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa. Code §5.421. You must submit your written application to me sufficiently in advance of the hearing date so the other parties will have the required 10 days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.

8. Any party may conduct discovery to learn the factual basis of another party's position in this case. However, 52 Pa. Code §5.331(b) provides, in relevant part, that "[a] participant shall endeavor to initiate discovery as early in the proceedings as reasonably possible." Additionally, 52 Pa. Code §5.322 provides, in relevant part, that "participants are encouraged to exchange information on an informal basis." All parties are urged to cooperate in informal information exchanges and in conducting discovery. Cooperation is preferable to disagreements, which require my participation to resolve. There are limitations on discovery

(52 Pa. Code §5.361) and sanctions for abuse of the discovery process (52 Pa. Code §§5.371 & 5.372).

9. It is the Commission's policy to encourage settlements. 52 Pa. Code §5.231(a). Therefore, you are urged to discuss informally between yourselves the possible settlement of this case at least one week before the hearing. If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

Dated: January 11, 2006

  
John H. Corbett, Jr.  
Administrative Law Judge

**H**awke  
 **M**ckeon  
  **S**niscak &  
   **K**ennard LLP  
ATTORNEYS AT LAW

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January 18, 2006

**BY HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room  
P.O. Box 3265  
Harrisburg, PA 17105-3265

ORIGINAL

RECEIVED  
2006 JAN 18 PM 1:07  
SECRETARY'S BUREAU

RE: Vince Marino v. Verizon Pennsylvania Inc.; Docket No. C-20055656; ANSWER TO PETITION OF VINCE MARINO

Dear Mr. McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of Verizon Pennsylvania Inc.'s Answer to Vince Marino's "Petition to send pertinent evidence relating to wire line tampering to State Attorney General for criminal investigation of this case" filed in the above-captioned matter. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

DOCUMENT  
FOLDER

Very truly yours,

*Katherine E. Lovette*

Katherine E. Lovette  
Counsel for Verizon Pennsylvania Inc.

Enclosures

cc: Honorable John H. Corbett, Jr. (via FedEx overnight mail)  
Vince Marino

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

21

ORIGINAL

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR.

SECRETARY'S BUREAU

2006 JAN 19 PM 4:07

VINCE MARINO,

Complainant :

v.

Docket No. C-20055656

VERIZON PENNSYLVANIA INC.,

Respondent :

**ANSWER OF VERIZON PENNSYLVANIA INC.  
TO PETITION OF VINCE MARINO TO SEND PERTINENT EVIDENCE RELATING TO  
WIRE LINE TAMPERING EVIDENCE TO STATE ATTORNEY GENERAL FOR  
CRIMINAL INVESTIGATION OF THIS CASE**

Pursuant to 52 Pa. Code § 5.61, Verizon Pennsylvania Inc. ("Verizon PA" or "Company"), by its attorneys in this proceeding, Hawke McKeon Sniscak & Kennard LLP, hereby submits its Answer to Vince Marino's ("Petitioner") "Petition To send pertinent [sic] evidence relateing [sic] to wire line tampering to State Attorney General for criminal investigation of this case." In support thereof, Verizon PA responds and avers as follows:

1. Verizon PA ADMITS Petitioner filed the above-captioned Formal Complaint with the Pennsylvania Public Utility Commission ("Commission") and that the Formal Complaint included allegations of telephone interference and trouble on the line. Verizon PA is without sufficient knowledge or information to respond to Petitioner's statement that "originally the complaints to Verizon repair department started out as trouble tickets but progressed to more disturbance." This statement is therefore DENIED. Verizon PA AVERS the Company uses the

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term "trouble ticket" as a term of art to refer to a record that is generated by the Company's repair department when a customer reports a problem with his or her telephone service.

2. Verizon PA ADMITS Petitioner attached a document to his Formal Complaint form that appears to be a report from a private telecommunications company of an inspection allegedly performed at Petitioner's residence at 3324 Dawson Avenue in Pittsburgh, Pennsylvania on October 13, 2005. Verizon PA is without sufficient knowledge or information regarding the authenticity of said document, or the status of the referenced private telecommunications company as a "phone specialist and wire tap expert." These statements are therefore DENIED. Verizon PA ADMITS the Company's repair department did not find any evidence of a wire tap or other interference on Petitioner's telephone line; however, Verizon PA DENIES the Company recommended that a wire tap test be done. Verizon PA is without sufficient knowledge or information regarding Petitioner's statement that he recorded conversations he had with Company repair supervisors and dispatch operators or whether such recordings were legally obtained.<sup>1</sup> These statements are therefore DENIED.

3. Verizon PA ADMITS the Verizon Security Telecommunications Fraud Investigations Department investigated Petitioner's allegations of tampering with his telephone line in November and December of 2005, that a Verizon Fraud Investigations employee named Tom Cassidy was involved in the investigation, and that the result of the investigation was that no improper connections, evidence of wire tapping, or other disturbances were found on Petitioner's telephone line. Verizon PA DENIES Petitioner's statements that the Company "opened" a "fraud case" or "closed it in a short time." Verizon PA is without sufficient knowledge or information regarding Petitioner's statements regarding filed police reports of disturbance and threats on interrupted phone calls. These statements are therefore DENIED.

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<sup>1</sup> Any such recordings were not legally obtained if they were obtained without express permission

Verizon PA DENIES Petitioner's statement that the Company has taken "no further involvement" in response to his allegations. Verizon PA AVERS the Company is currently involved in investigating and defending the above-captioned Formal Complaint. To the extent this statement refers to the Company's Security Telecommunications Fraud Investigations Department, Verizon PA ADMITS that department has concluded its investigation and has taken no further action since December of 2005.

4. Verizon PA ADMITS Petitioner faxed a document to the Company's counsel purporting to be a report from a private telecommunications company identified as "Americom Inc." of an inspection allegedly performed by "Ralph Giglio" on Petitioner's residence at 3324 Dawson Avenue, Pittsburgh, Pennsylvania on December 13, 2005. Verizon PA is without sufficient knowledge or information regarding the authenticity of said document, the status of Americom Inc. as a "phone specialist," the status of Ralph Giglio as a "technician," or the veracity of the purported findings of said document. These statements are therefore DENIED.

5. Verizon PA ADMITS the Company's Answer and New Matter filed in response to Petitioner's Formal Complaint stated that the Company's repair department has performed many tests of the facilities providing telephone service to Petitioner but has not found any evidence of tampering, wire tapping, or other interference on Petitioner's telephone line. Petitioner's statements that (a) "it is evident that this type of listening device or wireless could have been dismantled while Verizon tested the land line" and that (b) "[i]t is also relevant that this type of situation and numers [sic] of reports to verizon can not be made up and of course a false statement made by a phone specialist" represent Petitioner's beliefs, opinions or conclusions to which no response is necessary. To the extent a response is deemed to be necessary, these statements are DENIED.

6. Verizon PA is without sufficient knowledge or information to respond to the statements made in Paragraph 6. These statements are therefore DENIED. See paragraph 2 and 4 responses above.

7. Verizon PA ADMITS the Company has continued to report to Petitioner that, despite numerous tests and inspections, the Company has found no evidence of eavesdropping equipment, wire tapping devices or other types of interference or disturbances on Petitioner's telephone line. Assuming Petitioner's reference to "the authority" means a law enforcement agency such as the police or the offices of the State Attorney General, Verizon PA ADMITS the Company has submitted no evidence of said equipment or interference to Petitioner or to "the authority." Verizon PA AVERS this is because the Company has not found, and does not possess, any evidence of said equipment or interference.

8. Verizon PA DENIES the Company has found any evidence of a "covert listening device" on Petitioner's telephone line. Verizon PA is without sufficient knowledge or information to respond to Petitioner's statements regarding his alleged contacts with the State Attorney General or statements allegedly made by an attorney employed at the State Attorney General's office. These statements are therefore DENIED. The remaining statements made in Paragraph 8 are a request for relief or represent Petitioner's opinions, beliefs, or conclusions to which no response is necessary. To the extent a response is deemed to be necessary, these statements are DENIED.

9. Based on the Notice to Plead preceding the Petition, Petitioner indicates he filed this Petition pursuant to the authority of 18 Pa.C.S. § 5706. A copy of this statute is attached hereto and incorporated herein as "Appendix A." Any reliance by Petitioner on this statute is wholly misplaced. This statute authorizes the Attorney General, a deputy attorney general, the

district attorney, or an assistant district attorney to apply to a Superior Court judge for an order authorizing the use of a listening device by law enforcement officers or agencies for investigating the specifically enumerated criminal offences. The Commission has no authority to take any action whatsoever based on this statute; furthermore, this statute does not authorize the type of relief Petitioner seems to be requesting

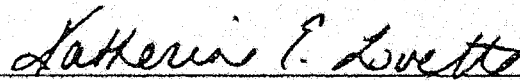
10. The relief requested by Petitioner, as stated by the title of his petition, the un-numbered opening paragraph of the Petition, paragraph 8 of the Petition, and the "Order of Court" appearing after Petitioner's signature appears to be for the Commission to transfer the wiretapping portion of Petitioner's Formal Complaint to the Attorney General as a criminal investigation. It is Petitioner's responsibility to request on his own behalf that the State Attorney General, or any other law enforcement agency, investigate his allegations as a separate proceeding, and it is within the sole discretion of the Attorney General's Office, or other law enforcement agency, whether or not to investigate the Petitioner's claims. The Commission has no authority to transfer the case to the Attorney General's Office or to open a criminal investigation on behalf of Petitioner.

11. The Commission has no authority to grant the relief requested by the Petition pursuant to the authority of the cited statute, 18 Pa.C.S. § 5706, or by any other statutory authority.

12. The Commission has no authority to decide issues related to wiretapping. Verizon PA has filed a Motion to Dismiss the portions of the Formal Complaint involving allegations of wiretapping. A copy of the Company's Motion to Dismiss is attached hereto as "Appendix B" and is incorporated herein by reference in its entirety.

WHEREFORE, for all of the reasons set forth above, and in accordance with the Commission's Regulations, Verizon Pennsylvania Inc. requests that Vince Marino's "Petition To send pertinent [sic] evidence relating [sic] to wire line tampering to State Attorney General for criminal investigation of this case" be denied in its entirety and that the Commission rule on the Company's Motion to Dismiss.

Respectfully submitted,



Katherine E. Lovette  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
PO Box 1778  
Harrisburg, PA 17105-1778  
(717) 236-1300

DATED: January 18, 2006

Counsel for Verizon Pennsylvania Inc.

mechanical or other device which is to be used by investigative or law enforcement officers at the direction of the supervising law enforcement officer solely for the purpose of interception as authorized under sections 5704(12) and 5713.1.

(4) The Pennsylvania State Police shall annually establish equipment standards for any electronic, mechanical or other device which is to be used by law enforcement officers for purposes of interception as authorized under section 5704(16). The equipment standards shall be published annually in the Pennsylvania Bulletin.

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 116, § 5, ind. effective, 1988, Feb. 18, P.L. 102, No. 19, § 7, ind. effective, 2002, June 11, P.L. 367, No. 62, § 1, ind. effective, 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days.

#### Expiration

*This chapter expires December 31, 2008, unless extended by statute. See 18 Pa.C.S.A. § 5781.*

#### Historical and Statutory Notes

Act 2002-57 legislation is about to occur\* for "the interception is to be made"

Act 2002-52, § 1, added subsec. (b)(4).

Act 2002-162 legislation

Act 2002-162, § 4, in subsec. (b)(2), substituted "the suspected criminal activity has been, is or

#### Research References

##### Encyclopedias

Summary Pa. Jur. 2d Criminal Law § 22.57.

Possession of Intercepting Devices; General.

by.

Summary Pa. Jur. 2d Criminal Law § 22.58.

Sale, Transfer or Distribution of Intercepting Device.

Summary Pa. Jur. 2d Criminal Law § 22.59.

Manufacture or Assembly of Intercepting Device.

Summary Pa. Jur. 2d Criminal Law § 22.60.

Advertisement of Intercepting Device.

Summary Pa. Jur. 2d Criminal Law § 22.62.

Purchase, Sale and Possession of Electronic Monitoring Devices by Law Enforcement Officers.

Summary Pa. Jur. 2d Criminal Law § 22.63.

Purchase or Possession of Electronic Monitoring Devices for Training Purposes.

Summary Pa. Jur. 2d Criminal Law § 22.64.

Possession by Wire and Electronic Communication Carriers.

Treatises and Practice Aids

14 West's Pennsylvania Practice W31, Wiretapping and Electronic Surveillance.

Summary Pa. Jur. 2d Criminal Law § 22.60.

Advertisement of Intercepting Device.

Summary Pa. Jur. 2d Criminal Law § 22.60.

Advertisement of Intercepting Device.

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Summary Pa. Jur. 2d Criminal Law § 22.60.

Advertisement of Intercepting Device.

*This chapter expires December 31, 2008, unless extended by statute. See 18 Pa.C.S.A. § 5781.*

#### Research References

##### Encyclopedias

Summary Pa. Jur. 2d Criminal Law § 22.61.

Intercepting Devices as Contraband

§ 5708. Order authorizing interception of wire, electronic or oral communications

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein the suspected criminal activity has been, is or is about to occur, may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers

agency having responsibility for an investigation involving suspected criminal activity when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

Section 911 (relating to corrupt organizations)

Section 2501 (relating to criminal homicide)

Section 2502 (relating to murder)

Section 2503 (relating to voluntary manslaughter)

Section 2702 (relating to aggravated assault)

Section 2706 (relating to terrorist threats)

Section 2709.1 (relating to stalking)

Section 2716 (relating to weapons of mass destruction)

Section 2901 (relating to kidnapping)

Section 3121 (relating to rape)

Section 3123 (relating to involuntary deviate sexual intercourse)

Section 3124.1 (relating to sexual assault)

Section 3125 (relating to aggravated indecent assault)

Section 3301 (relating to arson and related offenses)

Section 3302 (relating to causing or risking catastrophe)

Section 3602 (relating to burglary)

Section 3701 (relating to robbery)

Section 3701 (relating to robbery)

Section 3921 (relating to theft by unlawful taking or disposition)

Section 3922 (relating to theft by deception)

Section 3923 (relating to theft by extortion)

Section 4701 (relating to bribery in official and political matters)

Section 4702 (relating to threats and other improper influence in official and political matters)

Section 5512 (relating to lotteries, etc.)

Section 5513 (relating to gambling devices, gambling, etc.)

Section 5514 (relating to pool selling and bookmaking)

Section 5516 (relating to facsimile weapons of mass destruction)

Section 6318 (relating to unlawful contact with minor)

(2) Under this title, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 910 (relating to manufacture, distribution or possession of devices for theft of telecommunication services)

Section 2709(a)(4), (5), (6) or (7) (relating to harassment)

Section 3925 (relating to receiving stolen property) Section 3926 (relating to theft of services)

Section 3927 (relating to theft by failure to make required disposition of funds received)

Section 3928 (relating to receiving stolen property) Section 3929 (relating to theft of services)

Section 4109 (relating to rigging publicly exhibited contests)

Section 4117 (relating to insurance fraud) Section 4305 (relating to dealing in infant children) Section 4302 (relating to perjury)

Section 4909 (relating to witness or informant taking bribe)

Section 4911 (relating to tampering with public records or information)

Section 4952 (relating to intimidation of witnesses or victims)

Section 4653 (relating to retaliation against witness or victim)

Section 5101 (relating to obstructing administration of law or other governmental function)

Section 5111 (relating to dealing in proceeds of unlawful activities)

2005-11-18 P. S. SECRETARY'S CURREN

Section 6121 (relating to escape)  
 Section 6902 (relating to prostitution and related offenses)  
 Section 6903 (relating to obscene and other sexual materials and performances)  
 Section 7313 (relating to buying or exchanging Federal food order coupons, stamps, authorization cards or access devices)

(3) Under the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 1272 (relating to sales of unstamped cigarettes)

Section 1273 (relating to possession of unstamped cigarettes)

Section 1274 (relating to counterfeiting)

(4) Any offense set forth under section 130(a) of the act of April 14, 1972 (P.L. 233, No. 66),<sup>2</sup> known as The Controlled Substance, Drug, Device and Cosmetic Act, not including the offense described in clause (31) of section 130(a).

(5) Any conspiracy to commit any of the offenses set forth in this section.

(6) Under the act of, 1958 (P.L. 874, No. 110), known as the Motor Vehicle Chop Shop and Illegally Obtained and Altered Property Act.

1978, Oct. 4, P.L. 831, No. 104, § 2, effective in 60 days. Amended 1989, Dec. 2, P.L. 248, No. 67, § 2, ind. effective; 1988, Oct. 21, P.L. 1000, No. 115, § 5, ind. effective; 1990, Feb. 2, P.L. 4, No. 3, § 1, ind. effective; 1999, Feb. 18, P.L. 102, No. 19, § 7, ind. effective; 1998, Dec. 21, P.L. 1086, No. 146, § 1, effective in 60 days; 2002, June 28, P.L. 481, No. 82, § 6, effective in 60 days; 2002, Nov. 27, P.L. 1104, No. 134, § 1, effective in 60 days; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days; 2002, Dec. 9, P.L. 1759, No. 218, § 5, effective in 60 days.

172 P.S. § 7101 et seq.

235 P.S. § 780-113(a)

318 P.S. § 3923 (repealed See, now, 18 Pa.C.S.A. § 911).

#### Expiration

*This chapter expires December 31, 2003, unless extended by statute. See 18 Pa.C.S.A. § 5781.*

#### Historical and Statutory Notes

Act 2002-82 legislation  
 Act 2002-82, § 5, in par. (1), added references to Sections 2716 and 5516.

Act 2002-134 legislation

Act 2002-134 § 1, in par. (1), in the reference to Section 6318, deleted "or communication preceding "with minor".

Act 2002-162 legislation

Act 2002-162, § 4, in the introductory paragraph, substituted "the suspected criminal activity has been, is or is about to occur" for "the interception is to be made".

Act 2002-162 overlooks the amendment by Act 2002-134. The Pennsylvania Legislative Reference Bureau has determined that the amendments do not conflict in means do not conflict in substance and has given setting forth the text of this section.

effect to both Acts in setting forth the text of this section.

Act 2002-218 legislation

Act 2002-218, in par. (1), substituted "Section 27091 (relating to stalking)" for "Section 2709(b) (relating to harassment and stalking)", and in par. (2), inserted "Section 2709(a)(4), (5), (6) or (7) (relating to harassment)" and deleted "Section 5504 (relating to harassment by communication or address)".

Act 2002-218 overlooks the amendments by Act 2002-134 and Act 2002-162. The Pennsylvania Legislative Reference Bureau has determined that the amendments do not conflict in substance and has given effect to each Act in setting forth the text of this section.

#### Research References

Effect and Practice Aids  
 Standard Pennsylvania Practice 2d § 139-142.  
 Generally.  
 Standard Pennsylvania Practice 2d § 139-149.  
 Generally.  
 Standard Pennsylvania Practice 2d § 139-150.  
 Emergency Situations.

11 West's Pennsylvania Practice § 26-2, Evidence Obtained by Eavesdropping.

14 West's Pennsylvania Practice W31, Wiretapping and Electronic Surveillance.

#### § 5709. Application for order

Each application for an order of authorization to intercept a wire, electronic or oral communication shall be made in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein the suspected criminal activity has been, is or is about to occur and shall contain all of the following:

- (1) A statement of the authority of the applicant to make such application.
- (2) A statement of the identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire, electronic or oral communication is sought.
- (3) A sworn statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, which shall include:
  - (i) The identity of the particular person, if known, committing the offense and whose communications are to be intercepted.
  - (ii) The details as to the particular offense that has been, is being, or is about to be committed.
  - (iii) The particular type of communication to be intercepted.
  - (iv) A showing that there is probable cause to believe that such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be intercepted.
  - (v) The character and location of the particular wire communication facility involved or the particular place where the oral communication is to be intercepted.
  - (vi) A statement of the period of time for which the interception is required to be maintained, and, if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
  - (vii) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or are too dangerous to employ.
  - (4) Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.
  - (5) A complete statement of the facts concerning all previous applications, known to the applicant made to any court for authorization to intercept a wire, electronic or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each such application.
  - (6) A proposed order of authorization for consideration by the judge.
  - (7) Such additional testimony or documentary evidence in support of the application as the judge may require.

1978, Oct. 4, P.L. 831, No. 164, § 2, effective in 60 days. Amended 1988, Oct. 21, P.L. 1000, No. 115, § 5, ind. effective; 2002, Dec. 9, P.L. 1350, No. 162, § 4, effective in 60 days.

#### Expiration

*This chapter expires December 31, 2003, unless extended by statute. See 18 Pa.C.S.A. § 5781.*

#### Historical and Statutory Notes

Act 2002-162 legislation  
 Act 2002-162, § 4, in the introductory paragraph, substituted "the suspected criminal activity has been, is or is about to occur" for "the interception is to be made".

Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

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Rikardo J. Hull  
Katherine E. Lovette

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmsk-law.com

December 29, 2005

**BY HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Second Floor, Commonwealth Keystone Building  
PO Box 3265  
Harrisburg, PA 17105-3265

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2005 DEC 29 PM 3:29  
PA PUC  
SECRETARY'S BUREAU

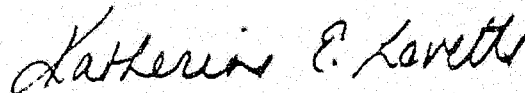
RE: Vince Marino v. Verizon Pennsylvania Inc.; Docket No. C-20055656;  
MOTION OF VERIZON PENNSYLVANIA INC. TO DISMISS PORTIONS  
OF THE FORMAL COMPLAINT FILED BY VINCE MARINO

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Verizon Pennsylvania Inc.'s Motion to Dismiss Portions of the Formal Complaint Filed By Vince Marino in the above-captioned proceeding.

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,



Katherine E. Lovette  
Counsel for Verizon Pennsylvania Inc.

Enclosures

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

VINCE MARINO,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-20055656

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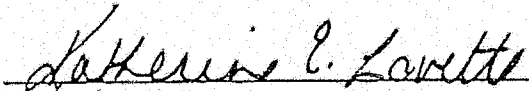
NOTICE TO PLEAD

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TO: Vince Marino  
3324 Dawson Street  
Pittsburgh, PA 15213

RECEIVED  
2005 DEC 29 PM 3:29  
PA PUC  
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code §§5.101 *et seq.* you are hereby notified that Verizon Pennsylvania Inc. ("Verizon PA") has filed a Motion to which you may answer in writing 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 Motion without a response from you, thereby requiring no other proof. All pleadings such as a reply to this Motion must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.

  
Katherine E. Lovette  
Hawke McKeon Sniscak & Kennard LLP  
Harrisburg Energy Center  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105-1778  
717-236-1300

Counsel for Verizon Pennsylvania Inc.

DATED: December 29, 2005

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 JUN 18 PM 11:07  
SECRETARY'S BUREAU

VINCE MARINO,

Complainant

v.

Docket No. C-20055656

VERIZON PENNSYLVANIA INC.,

Respondent

2005 DEC 29 PM 3:29  
SECRETARY'S BUREAU

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**MOTION OF  
VERIZON PENNSYLVANIA INC.  
TO DISMISS PORTIONS OF THE FORMAL  
COMPLAINT FILED BY VINCE MARINO**

Verizon Pennsylvania Inc. ("Verizon PA"), by its attorneys in this matter, Hawke McKeon Sniscak & Kennard LLP and pursuant to 52 Pa. Code §5.101(a), hereby moves to dismiss portions of the Formal Complaint filed by Vince Marino ("Complainant"), because the Pennsylvania Public Utility Commission ("Commission") lacks jurisdiction to adjudicate Complainant's allegations regarding wiretapping of his telephone line. In support thereof, Verizon PA avers and represents as follows:

1. On or about December 7, 2005, Complainant filed a Formal Complaint against Verizon PA with the Commission. The Formal Complaint was assigned Docket No. C-20055656.
2. In his Formal Complaint, Complainant alleges, in part, that he believes his telephone line is being wiretapped and that Verizon PA has not performed the proper tests to determine whether there is a wiretap present.
3. Verizon PA submits that the Commission is without jurisdiction to adjudicate the

wiretap issues raised by Complainant because it is a claim based on statutes other than the Public Utility Code, 66 Pa.C.S. § 101 *et seq.* Thus, Complainant's claims concerning wiretapping should be dismissed.

4. Section 701 of the Pennsylvania Public Utility Code provides that "any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission." 66 Pa.C.S. § 701 (emphasis added).

5. Likewise, the Commission's Regulation at 52 Pa. Code § 5.21 provides that "[a] person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission." 52 Pa. Code § 5.21(a) (emphasis added).

6. To the extent Complainant's Formal Complaint raises claims regarding the wiretapping of his telephone line, such claims lie exclusively within the jurisdiction of the Pennsylvania courts, not the Commission. Issues of wiretapping are controlled by the Pennsylvania Wiretapping and Electronic Surveillance Control Act (the "Wiretap Act"). 18 P.S. §§ 5701-5781. The Commonwealth Court has clearly held the Commission is without jurisdiction to adjudicate claims based on the Wiretap Act. In *McClellan v. The Pennsylvania Public Utility Commission*, 159 Pa. Cmwlth. 675, 634 A.2d 686 (1993), the Court found that any remedy to be awarded on the basis of the Wiretap Act falls exclusively to the courts. The Court stated:

We disagree with McClellan's characterization of this matter as a service problem because it is a futile attempt to force the [Commission] to address a matter which clearly must be adjudicated in the courts. Section 701 of the [Public Utility] Code does not

confer jurisdiction on the [Commission] to adjudicate wiretap matters.

\* \* \* \* \*

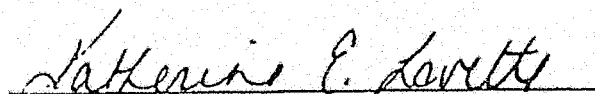
It is clear that McClellan must pursue his complaint against Bell [now Verizon PA] in common pleas court, because the [Commission] has no jurisdiction over matters governed by the [Wiretap] Act.

634 A.2d at 688. The law is clear that the Commission lacks jurisdiction to administer or adjudicate issues arising under the Wiretap Act.

7. Therefore, to the extent the Formal Complaint filed by Vince Marino at Docket No. C-20055656 raises issues related to wiretapping, those claims must be dismissed and denied.

WHEREFORE, for the reasons set forth above, and in accordance with the Commission's Regulations, Verizon Pennsylvania Inc. respectfully requests that the wiretap issues raised in the Formal Complaint filed by Vince Marino at Docket No. C-20055656 be dismissed or denied.

Respectfully submitted,



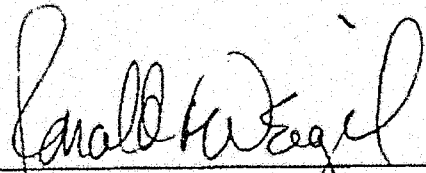
Katherine E. Lovette  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
PO Box 1778  
Harrisburg, PA 17105-1778  
(717) 236-1300

Counsel for Verizon Pennsylvania Inc.

DATED: December 29, 2005

**AFFIDAVIT**

I, **RONALD F. WEIGEL**, Director – Government Relations of Verizon Pennsylvania, am authorized to make this affidavit on its behalf, and I verify that the information provided in the foregoing document(s) is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.



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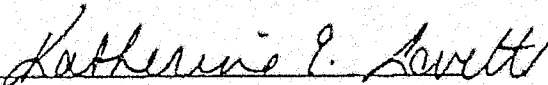
**RONALD F. WEIGEL**  
Director – Government Relations

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the person named and in the manner indicated below.

Service by first class mail:

Vince Marino  
3324 Dawson Street  
Pittsburgh, PA 15213

  
Katherine E. Lovette


DATED: December 29, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

Service by first class mail:

Vince Marino  
3324 Dawson Street  
Pittsburgh, PA 15213

  
Katherine E. Lovette

DATE: January 18, 2006

ORIGINAL

2006 JAN 18 PM 4:07  
SECRETARY'S BUREAU

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 **M**ckeon  
  **S**niscak &  
   **K**ennard LLP  
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January 23, 2005

*Via Facsimile and First Class Mail*

Honorable John H. Corbett, Jr.  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

**RECEIVED**

JAN 24 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE: Vince Marino v. Verizon Pennsylvania Inc.; Docket No. C-20055656;  
REQUEST FOR CONTINUANCE OF HEARING OF VERIZON  
PENNSYLVANIA INC.

**DOCUMENT  
FOLDER**

Dear Judge Corbett:

This case has been scheduled for a hearing to be held on Tuesday, February 14, 2006.

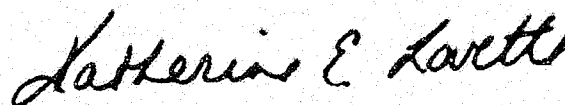
Verizon Pennsylvania Inc. ("Verizon PA" or "Company") received a request for production of documents from Mr. Marino on January 17, 2006.<sup>1</sup> Based upon issues raised by Mr. Marino's discovery request, Verizon PA believes additional time is necessary in order for the Company to conduct discovery and to adequately prepare for the hearing. Verizon PA respectfully requests that the hearing scheduled in this matter be continued for 90 days to allow sufficient time for hearing preparation and additional discovery.

<sup>1</sup> The Company's responses to Mr. Marino's request are due on or before February 6, 2006 pursuant to the Commission's regulations at 52 Pa. Code §§ 5.349 and 1.56(b).

Honorable John H. Corbett, J  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
January 23, 2006  
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If you have any questions with regard to this request, please direct them to me. Thank you for your attention to this matter.

Very truly yours,



Katherine E. Lovette  
Counsel for Verizon Pennsylvania Inc.

cc: Vince Marino  
OALJ Scheduling Office