

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BRODIE & RUBINSKY
C/O JOSHUA P RUBINSKY

v.

ALLEGIANCE TELECOM OF PENNSYLVANIA,
INC
VERIZON PENNSYLVANIA INC

C-20043568
& C-20043569

INTERIM ORDER
SETTING RESOLUTION CONFERENCE

On or about August 20, 2004, Brodie & Rubinsky c/o Joshua P Rubinsky ("Complainant") filed a complaint against Allegiance Telecom of Pennsylvania, Inc. and Verizon Pennsylvania Inc ("Respondents"), at the above-captioned docket numbers. On or about September 30, 2004, Allegiance Telecom of Pennsylvania, Inc. filed a response to the complaint. On or about September 16, 2004, Verizon Pennsylvania Inc filed an answer to the complaint and a motion to dismiss.

Based upon a review of the information contained in this material, I direct the parties to attempt to resolve this matter themselves. Respondents shall jointly contact Complainant no later than November 18, 2004, to set a mutually convenient time, date and place for Respondents and Complainant to hold a conference about resolving the case. The conference must take place no later than December 2, 2004, unless this is not possible.

Within ten (10) days following the conference, either or both Respondent(s) shall file a short report with Bruce Bigelow ("Mediator"), setting forth:

- (a) The time, date and place of the conference;
- (b) Who participated for each party;

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(c) A statement whether a full resolution, including withdrawal of complaints, was achieved, and, if not, whether the parties consent to have this case set for mediation by the mediation staff of the Commission; and

(d) A statement of any issues which have been resolved, if a full resolution was not achieved.

The Commission encourages mediation if the parties cannot reach an agreement through the resolution conference. Mediation is an informal process in which the parties attempt to resolve the case with the help of a mediator. The mediator is a neutral staff member of the Commission who does not give advice, make a decision, or represent any party. Instead, the mediator assists the parties in their efforts to come to an agreement.

If the parties do not reach an agreement on their own, and do not consent to mediate, they are entitled to have a hearing. The hearing process usually includes the presentation of oral testimony and other evidence before a Commission administrative law judge, who will then consider the case and make a written decision to resolve it.

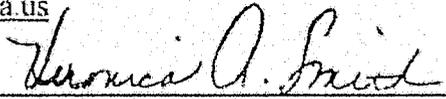
If it is not possible to have the conference by the date set for that purpose, either or both Respondent(s) shall file a report with the Mediator, on or before ten (10) days following the conference due date, giving the reason(s) why the due date could not be met.

In either situation, Respondent(s) must file a report with the Mediator by the applicable due date set forth above.

If you have any questions, you should contact the Mediator. His address and phone number are:

Mediator Bruce Bigelow
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-5413
Email: bbigelow@state.pa.us

Date: October 25, 2004


VERONICA A. SMITH
Chief Administrative Law Judge

Hawke
 Mckeon
 Sniscak &
 Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
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

April 27, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room (2nd Floor)
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

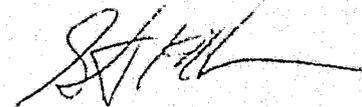
RE: Joshua P. Rubinsky, Esquire v. Verizon Pennsylvania Inc.;
Docket No. C-20043569; **AMENDED ANSWER OF VERIZON
PENNSYLVANIA INC.**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Verizon Pennsylvania Inc.'s ("Verizon PA") Amended Answer in the above-captioned proceeding. A copy of this document has been served upon the Complainant 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.

Very truly yours,



Steven K. Haas
Counsel for Verizon Pennsylvania Inc.

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SKH/kml
Enclosures
cc: Joshua P. Rubinsky, Esquire

SECRETARY'S BUREAU
2006 APR 27 PM 3:54

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSHUA P. RUBINSKY, ESQUIRE

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

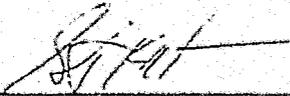
Docket No. C-20043569

NOTICE TO PLEAD

2006 APR 27 PM 3:54
SECRETARY'S BUREAU

TO: Joshua P. Rubinsky, Esquire
Brodie & Rubinsky
121 S. Broad Street, Suite 800
Philadelphia, PA 19107

Pursuant to 52 Pa. Code §§5.62 and 5.63, you are hereby notified that, if you do not file a written response denying or correcting the enclosed New Matter of Verizon Pennsylvania Inc., within twenty (20) days from service of this notice, the facts set forth by Verizon PA in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.


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

DATED: April 27, 2006

Counsel for Verizon Pennsylvania Inc.

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU
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JOSHUA P. RUBINSKY,

Complainant

v.

Docket No. C-20043569

VERIZON PENNSYLVANIA INC.,

Respondent

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MAY 08 2006

AMENDED ANSWER AND NEW MATTER OF
VERIZON PENNSYLVANIA INC.
TO THE COMPLAINT OF JOSHUA P. RUBINSKY, ESQUIRE

Verizon Pennsylvania Inc ("Verizon PA"), by its attorneys in this proceeding, Hawke McKeon Smiscak & Kennard LLP, hereby submits its Amended Answer to the Complaint filed by Joshua P. Rubinsky, Esquire, ("Complainant"), and raises New Matter. In support thereof, Verizon PA avers and represents as follows:

ANSWER

ORIGINAL

1. ADMITTED, upon information and belief.
2. ADMITTED. The correct corporate name of the Respondent identified by the Complainant in this proceeding is Verizon Pennsylvania Inc.
3. Verizon PA DENIES that it failed to provide ongoing service to the Complainant.¹ By way of additional response and explanation, Verizon PA AVERS that the Complainant is not its customer.² The Complainant's local exchange carrier at all times relevant to this proceeding was Allegiance Telecom of PA, Inc. (now XO Communications). The Complainant contacted Verizon on or about June 30, 2004, about his telephone service. Since the Complainant was not Verizon PA's customer, it referred him to his local exchange carrier and informed him that any service quality issues must be raised with Allegiance Telecom.
4. Paragraph 4 of the Complaint contains requests for relief to which no responses are required. To the extent that the relief sought by the Complainant includes a request for damages, Verizon PA avers that the Commission does not have the power to award such damages.³

¹ The copy of the complaint served on Verizon PA did not include the attachment referred to by the Complainant in paragraph 3 of the complaint.

² Verizon PA filed a Motion to Dismiss on this basis.

³ *Feingold v. Bell of Pennsylvania*, 477 PA. 1, 383 A.2d 791 (1977).

NEW MATTER

ORIGINAL

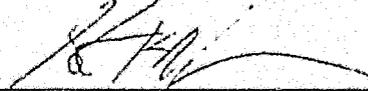
Pursuant to 52 Pa. Code §5.62(b), Verizon PA avers by way of New Matter as follows:

1. As mentioned in paragraph 3 of its answer above, Verizon PA avers that the Complainant was, and still is, a customer of Allegiance Telecom (now XO Communications) at all times relevant to this proceeding. Accordingly, as a customer of another carrier, the Complainant has no standing to file a complaint against Verizon PA.

2. The Complainant filed a Formal Complaint against Allegiance Telecom (XO Communications) with the Commission on or about August 20, 2004. This complaint is docketed at Commission Docket No. C-20043568 and is identical to the complaint filed against Verizon PA. A copy of the Formal Complaint filed against Allegiance Telecom is attached to this Motion as Appendix A. This is the proper proceeding through which the Complainant may pursue the allegations raised in his complaint.

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Formal Complaint filed by Joshua P. Rubinsky, Esquire at Docket No C-20043569 be dismissed or denied in its entirety.

Respectfully submitted,



Steven K. Haas
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: April 27, 2006

C-20043568 RECEIVED

Formal Complaint Form

2004 AUG 20 PM 12: 21

ORIGINAL
SECRETARY'S BUREAU

Please Print

1. Your name, mailing address and telephone number:

Name Joshua P. Rubinsky, Esquire BRODIE & RUBINSKY

Street/P O.Box 121 S. Broad Street, Suite 800 Apt #

City Philadelphia State PA Zip 19107

County Philadelphia Area Code/Home Phone 215-848-7073

Area Code/Work Phone 215-925-1470

2. Name of company your complaint concerns: Allegiance Telecommunications

3. What is your complaint? (Use additional paper if need more space).

The failure to provide ongoing working phone service from June 25, 2004 to July 28, 2004 (see attached for a summary of the problem)

4. What do you want the Public Utility Commission to do about your complaint? (Use additional paper if need more space).

- 1. Identify the problem
- 2. Correct the problem
- 3. Punish the wrongdoer (if any with appropriate sanctions)
- 4. Make our office whole for all disruption

5. You must sign and date your complaint below.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information

[Signature]
Signature

8/6/14
Date

Continued on next page

6. If you are represented by a lawyer you must provide your lawyer's name, address and telephone number.

Lawyer's Name Brodie & Rubinsky

Street 121 S. Broad Street

City Philadelphia State PA Zip 19107

Area Code/Phone Number 215-925-1470

Mail to:

Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

For more information, please contact the Secretary's Bureau at
717-772-7777.

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:

Joshua P. Rubinsky, Esquire
Brodic & Rubinsky
121 S. Broad Street, Suite 800
Philadelphia, PA 19107

ORIGINAL



Steven K. Haas

DATED: April 27, 2006

Hawke

ORIGINAL

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart

Craig R. Burgraff
Steven D. Snyder
Janet L. Miller
Steven K. Haas
William E. Lehman
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

April 27, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105-3265

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SECRETARY'S BUREAU

2006 APR 27 PM 3:57

Re: Joshua P. Rubinsky, Esquire v. Verizon Pennsylvania Inc.;
Docket No. C-20043569; AMENDED MOTION TO DISMISS

Dear Mr. McNulty:

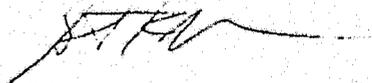
Enclosed for filing with the Commission are an original and three (3) copies of Verizon Pennsylvania Inc.'s ("Verizon PA") Amended Motion to Dismiss. A copy of this document has been served upon the Complainant in accordance with the attached Certificate of Service.

Verizon PA notes that its original Answer and Motion to Dismiss were filed on September 16, 2004. Shortly thereafter, this proceeding was referred to the Commission's informal settlement/mediation process. Accordingly, Verizon PA's original Motion to Dismiss has not been addressed by the Commission. Informal settlement discussions between the parties did not result in a settlement. The parties agreed to participate in a formal mediation session with Mediator Bruce Bigelow. A formal mediation session was held on Monday, April 24, 2006, in Philadelphia, PA. The parties were unable to reach a settlement. Mr. Bigelow indicated that he would refer the matter to the Commission's scheduling office for the scheduling of a hearing. Since settlement discussions have been unsuccessful, Verizon PA now requests that the Commission consider and issue a decision on the Amended Motion to Dismiss

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
April 27, 2006
Page 2

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

Regards,



Steven K. Haas
Counsel for Verizon Pennsylvania Inc.

SKL/kml
Enclosures
cc: Joshua P. Rubinsky

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOSHUA P. RUBINSKY, ESQUIRE,

Complainant

v.

Docket No. C-20043569

VERIZON PENNSYLVANIA INC.,

Respondent

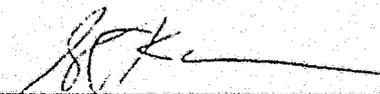
NOTICE TO PLEAD

TO: Joshua P. Rubinsky, Esquire
Brodie & Rubinsky
121 S. Broad Street, Suite 800
Philadelphia, PA 19107

SECRETARY'S BUREAU

2006 APR 27 PM 3:57

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 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.


Steven K. Haas
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: April 27, 2006

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

2006 MAY 27 PM 3:57
SECRETARY'S BUREAU

JOSHUA P. RUBINSKY, ESQUIRE,

Complainant

v.

VERIZON PENNSYLVANIA INC.,

Respondent

Docket No. C-20043569

DOCKETED
MAY 31 2006

AMENDED MOTION OF
VERIZON PENNSYLVANIA INC.
TO DISMISS THE COMPLAINT
OF JOSHUA P. RUBINSKY, ESQUIRE

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Verizon Pennsylvania Inc. ("Verizon PA"), by its attorneys in this proceeding, Hawke McKeon Sniscak & Kennard LLP, hereby moves, pursuant to 52 Pa. Code §5.101, to dismiss the above-captioned Formal Complaint of Joshua P. Rubinsky, Esquire ("Complainant") due to lack of standing. In support of its Motion, Verizon PA represents as follows:

BACKGROUND

1. On or about August 20, 2004, the Complainant filed the instant Formal Complaint. Mr. Rubinsky alleges in his complaint that he failed to receive ongoing working telephone service from June 25, 2004 to July 28, 2004.

2. On September 16, 2004, Verizon PA filed a timely Answer to the Complaint in which it denied the Complainant's allegations and averred that the Complainant is not its

customer. As indicated in Verizon PA's Answer, the Complainant has been a customer of Allegiance Telecom of PA, Inc. ("Allegiance Telecom") (now "XO Communications") for local exchange service at all times relevant to this proceeding.

3. Verizon PA filed an Amended Answer and New Matter in this proceeding on April 25, 2006. In its Amended Answer and New Matter, Verizon PA again averred that the Complainant was not its customer at any time relevant to this proceeding. Verizon PA's Amended Answer and New Matter are incorporated herein by reference.

4. Verizon PA AVERS that the Complainant was a customer of Allegiance Telecom (now XO Communications) at all times relevant to this proceeding.

MOTION TO DISMISS

5. The Complainant failed to state in his complaint any basis giving him standing to challenge the reasonableness of Verizon PA's service. In fact, he does not have such standing because Verizon PA does not provide service to the Complainant. Verizon PA has no duty to the Complainant, either via the Pennsylvania Public Utility Code, the Commission's regulations or Verizon PA's tariff, concerning the reasonableness of its service, since he is not its customer.

6. The Commission has determined in prior decisions that in order to have standing to complain against a utility, the Complainant must be a customer of the utility.¹

7. Most recently, in *Delta Precision Alloys c/o Ted Davis v. Verizon Pennsylvania Inc.*, Docket No. C-20055505 (Initial Decision dated December 29, 2005; Final Order entered

¹ See *Re Pennsylvania-American Water Company*, 85 Pa. P.U.C. 548 (1995); *Pa. P.U.C. et al. v. Marietta Gravity Water Company*, 87 Pa. P.U.C. 864 (1997); *Connolly v. Duquesne Light Company*; Docket No. C-00015603; (Order entered October 31, 2001); *Richard Parker Paving v. Verizon Pennsylvania Inc.*, Docket No. C-20043096 (Initial Decision dated August 23, 2004, Final Order entered October 27, 2004); *Paul Rabmowitz Glass Company v. Verizon Pennsylvania Inc.*, Docket No. C-20043541; (Initial Decision dated November 2, 2004, Final Order entered December 29, 2005).

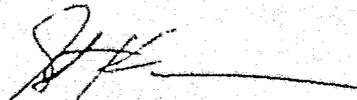
March 1, 2006), Administrative Law Judge Weisman del stated, as the basis for dismissing the complaint, “[a] Complainant must be the respondent’s customer to have standing to file a complaint.” *Delta Precision*, Initial Decision at p. 5. This Initial Decision was adopted by the Commission in its March 1, 2006 Final Order.

8. In this matter, the Complainant is a customer of a Competitive Local Exchange Carrier (“CLEC”), formerly Allegiance Telecom, now XO Communications. Accordingly, he does not have a direct relationship, either contractual or otherwise, with Verizon PA. Verizon PA provides no telephone service to the Complainant. The Complainant can only bring an action against his own service provider, XO Communications. Because the Complainant is not a customer of Verizon PA, he lacks standing to pursue this matter via a Formal Complaint against it.

9. Verizon PA notes that the Complainant did, in fact, file a Formal Complaint against Allegiance Telecom with the Commission on or about August 20, 2004. This complaint is docketed at Commission Docket No. C-20043568 and is identical to the complaint filed against Verizon PA. A copy of the Formal Complaint filed against Allegiance Telecom is attached to this Motion as Appendix A. The proceeding against the Complainant’s own service provider at Docket No. C-20043568 is the proper proceeding in which to address the issues raised by the Complainant concerning his telephone service, since he that carrier’s customer for that service.

WHEREFORE, for the reasons set forth above, Verizon Pennsylvania Inc. respectfully requests that the Commission dismiss the Formal Complaint of Joshua P. Rubinsky, Esquire, at Docket No. C-20043569, in its entirety.

Respectfully submitted,



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

DATED: April 27, 2006

Counsel for
Verizon Pennsylvania Inc.

C-20043568 RECEIVED

Formal Complaint Form

2004 AUG 20 PM 12: 21

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SECRETARY'S BUREAU

Please Print.

1 Your name, mailing address and telephone number:

Name Joshua P. Rubinsky, Esquire BRODIE & RUBINSKY

Street/P.O.Box 121 S. Broad Street, Suite 800 Apt # _____

City Philadelphia State PA Zip 19107

County Philadelphia Area Code/Home Phone 215-848-7073

Area Code/Work Phone 215-925-1470

2. Name of company your complaint concerns: Allegiance Telecommunications

3. What is your complaint? (Use additional paper if need more space).

The failure to provide ongoing working phone service from June 25, 2004 to July 28, 2004 (see attached for a summary of the problem)

4. What do you want the Public Utility Commission to do about your complaint (Use additional paper if need more space).

- 1. Identify the problem
- 2. Correct the problem
- 3. Punish the wrongdoer (if any with appropriate sanctions)
- 4. Make our office whole for all disruption

SECRETARY'S BUREAU
2004 AUG 21 PM 3:57

5. You must sign and date your complaint below.

The information I have placed on this form is true and correct to the best of my knowledge. I understand that I could be punished under Pennsylvania State Law if I purposely give false information.

[Signature]
Signature

8/6/14
Date

Continued on next page

6. If you are represented by a lawyer you must provide your lawyer's name, address and telephone number.

Lawyer's Name Brodie & Rubinsky

Street 121 S. Broad Street

City Philadelphia State PA Zip 19107

Area Code/Phone Number 215-925-1470

Mail to:

Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

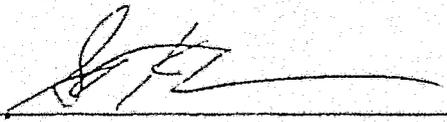
**For more information, please contact the Secretary's Bureau at
717-772-7777.**

CERTIFICATE OF SERVICE

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

Service by first class mail:

Joshua P. Rubinsky, Esquire
Brodie & Rubinsky
121 S. Broad Street, Suite 800
Philadelphia, PA 19107



Steven K. Haas

DATE: April 27, 2006

2006 APR 27 P.1 3:57
SECRETARY'S BUREAU



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
May 4, 2006

IN REPLY PLEASE
REFER TO OUR FILE

Re: ~~C-20042569~~

C-20043569

(SEE ATTACHED LIST)

Brodie & Rubinsky c/o Joshua P. Rubinsky, Esquire v. Verizon
Pennsylvania Inc.

Service Dispute

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DOCKETED
MAY 18 2006

Motion Judge Assignment Notice

This is to inform you that a preliminary motion was filed on the above-captioned case. This motion is being assigned to Chief Administrative Law Judge Veronica A. Smith for ruling. The Commission rule of practice at 52 Pa. Code §5.101 specifies that the person who filed the complaint has ten (10) days from the date the motion was served on you to file an answer.

If you file any pleading or document relating to this motion with the Secretary of the Commission, please provide a duplicate copy to the judge.

Procedural questions or comments should be directed to the judge at:

717-783-5452

pc: SA Rumsey
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section