

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

John Spiesberger

v.

Verizon Pennsylvania Inc.

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C-20077284

ORDER SUSTAINING PRELIMINARY OBJECTION  
AND  
GRANTING CONTINUANCE

**DOCKETED**  
MAR 21 2007

Before  
Angela T. Jones  
Administrative Law Judge

DOCUMENT  
FOLDER

HISTORY OF THE PROCEEDING

On January 17, 2007, Mr. John Spiesberger ("Complainant") filed a Formal Complaint with the Pennsylvania Public Utility Commission ("Commission" or "PUC") against Verizon Pennsylvania Inc. ("Respondent" or "VZPA" or "Company") alleging reliability and safety issues concerning VZPA's REACT system service to his home company office. Complainant suggests: (1) the REACT system service be fixed with contingencies to detect failure and expertise to diagnosis and fix problems; and (2) provide funds to his company, Scientific Innovations, Inc. for an alternative method to obtain the service sought from the REACT system service.

On February 8, 2007, Respondent filed an Answer with New Matter, addressing the allegations raised in the Complaint and a Preliminary Objection challenging the Complainant's standing to bring a formal complaint against VZPA. Respondent requests that the matter be dismissed with prejudice.

By correspondence dated February 13, 2007, Complainant filed a response to the New Matter<sup>1</sup> portion of Respondent's Answer and its Preliminary Objection with four points of dispute.<sup>2</sup> The Motion to Dismiss is now ready for ruling.

By Motion filed March 8, 2007, pursuant to 52 Pa.Code §5.103 VZPA requested that this matter be continued. VZPA suggests that a continuance is in the best interests of the parties because the decision on the Preliminary Objection has not been issued and the parties are without guidance as to how to proceed with the date of scheduled hearing in close proximity. Furthermore, the parties need adequate time to prepare for a hearing if a hearing is found necessary. VZPA states that Complainant concurs in the request.

### DISCUSSION

Before the Commission are a Complaint, a Preliminary Objection seeking dismissal of the Complaint on the basis that the Complainant lacks the capacity to sue, 52 Pa.Code §5.101(a)(5) and a Motion for Continuance of the proceeding if, in fact, a proceeding is necessary.

When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as

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<sup>1</sup> Pursuant to 52 Pa.Code §5.63(a) Complainant's response to New Matter was due on or before February 28, 2007.

<sup>2</sup> Pursuant to 52 Pa Code §5.101(f)(1) a reply to the Preliminary Objection was due on or before February 19, 2007.

well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

The issue presented is whether the Complainant can dispute reliability of service regarding the REACT system in his individual capacity or whether the issues raised must be brought forth by the entity that uses the REACT system service, Complainant's company. For the reasons set forth below, the Preliminary Objection will be sustained and the Complainant will have no later than 4:30 p.m. March 30, 2007 to cure.

In order to bring a complaint before a tribunal, a complainant must first demonstrate that he/she has standing to maintain the action. Nye v. Erie Insurance Exchange, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. William Penn Parking Garage, Inc. et al. v. City of Pittsburgh, 346 A.2d 269 (1975). These criteria are defined follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statute or the constitutional guarantee in question.

George v. Pa. PUC, 735 A.2d 1282 (Pa. Commw. 1999). See also Pa. Bankers Ass'n v. Dept. of Banking & Trumark Fin. Credit Union, 893 A.2d 864 (Pa. Commw. 2006); South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989); Bergdoll, et al. v. Kane, et al., 731 A.2d 1261, 1268 (Pa. 1999).

The standard set by William Penn Parking Garage is applicable to Commission cases. See Courier Express, Inc. v. F.L. Shaffer Company, Inc., Order entered August 30, 1990 at Docket No. C-892462, petition for reconsideration denied December 3, 1990. Furthermore, the Commission has held that a complainant must be the respondent's customer to have standing to file a complaint. 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); Delta Precision Alloys c/o Ted Davis v. Verizon Pennsylvania, Inc., Order entered March 1, 2006 at Docket No. C-20055505.

It is the requirement that the complainant be the respondent's customer to have standing to file a complaint that Complainant fails to meet in this proceeding. VZPA asserts that Complainant is not a customer of the Company for purposes of the REACT service. VZPA alleges the service is provided to Complainant's alarm company and VZPA bills the alarm company for the service.

Furthermore, in Complainant's Answer to the Preliminary Objection, Complainant makes three significant statements: (1) both Complainant's family and company are affected by the failure of the REACT system; (2) when the REACT system is not working Complainant's alarm system is not correctly performing the monitoring that is required of it for his company, Scientific Innovations; and (3) the payment for the phone line for Complainant's company is billed to Complainant's home. These statements taken in totality affirm that the REACT system service is for an entity - that is the Complainant's company, rather than a specific person - that is the Complainant individually.<sup>3</sup> Complainant is not a company but an individual. Complainant does not have standing to bring forth this Complaint.

I do not find it appropriate to dismiss the Complaint.

Pursuant to Section 5.101(h) of the Pennsylvania Code, if a preliminary objection is granted, the party who submitted the stricken pleading has the right to file an amended

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<sup>3</sup> It is somewhat ambiguous as to whether the company the service is for is an entity that employs Complainant, or the alarm company that monitors Complainant's home, or both. In any event, the company is an entity separate and distinct from Complainant individually.

pleading within ten (10) days of service of the order. 52 Pa.Code §5.101. The party adversely affected by the sustained preliminary objection is the Complainant. It is within the spirit of Section 5.101(h). I find it appropriate to provide the Complainant an opportunity to cure his pleading rather than to dismiss his Complaint entirely. Further, to conserve Commission resources it is more effective to proceed with a Complaint that can be cured rather than to dismiss the Complaint only to have it be brought back before the Commission by another party.

Complainant is directed to modify the Complaint with the company that purchases the REACT system service as the Complainant. Complainant is cautioned that persons, other than individuals, in adversarial proceedings must be represented by an attorney or certified legal intern pursuant to Section 1.22, Title 52 of the Pennsylvania Code. 52 Pa.Code §1.22. The appearance of said attorney and the modification to the Complaint must be received no later than 4:30 p.m. March 30, 2007. Failure to submit the appearance of counsel and the modification to the Complaint as directed above would be a violation to a Commission Order. Consequences of such a violation can result in the dismissal of the Complaint unless the presiding officer should find sufficient cause to proceed otherwise.

The request for a continuance complies with Commission regulations at 52 Pa.Code §1.15(b). That request is granted to the extent that the Complainant cures the Complaint as directed. If the Complaint is appropriately cured, the parties will be notified of a rescheduled date and time for the hearing. In any event, the hearing currently scheduled for Thursday, April 5, 2007, at 10:00 a.m. is canceled.

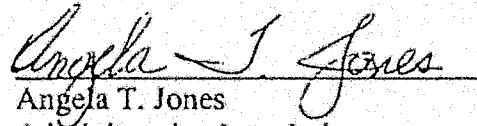
ORDER

THEREFORE,

IT IS ORDERED:

1. That Verizon Pennsylvania, Inc.'s Preliminary Objection seeking dismissal of the Complaint filed by Mr. John Spiesberger at Docket No. C-20077284 is sustained.
2. That Mr. John Spiesberger is directed to modify the Complaint and obtain appropriate representation consistent with this Order.
3. If Mr. John Spiesberger fails to comply with ordering paragraph no. 2, his Complaint will have cause to be dismissed, unless the presiding officer finds sufficient cause to proceed otherwise.
4. That the Motion for Continuance filed by Mr. Todd Stewart, Esquire on behalf of Verizon Pennsylvania Inc. is granted.
5. That this matter be rescheduled for hearing.

Dated: March 14, 2007

  
Angela T. Jones  
Administrative Law Judge

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

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March 16, 2007

John Spiesberger  
6 Derringdale Road  
Wayne, PA 19087

**DOCUMENT  
FOLDER**

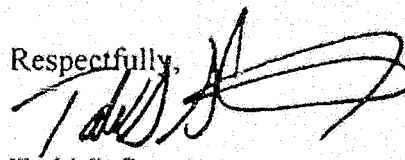
RE: John Spiesberger v. Verizon Pennsylvania Inc.; Docket No. C-20077284;  
**OBJECTION OF VERIZON PENNSYLVANIA INC., TO  
INTERROGATORY NO. 1 PROPOUNDED BY COMPLAINANT ON OR  
ABOUT MARCH 6, 2007.**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of the Objection of Verizon Pennsylvania Inc., to Interrogatory No. 1 Propounded by Complainant on or about March 6, 2007. Copies of this document have 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.

Respectfully,



Todd S. Stewart  
Counsel for Verizon Pennsylvania Inc.

TSS/bks/ajt  
Enclosures

cc: Per Certificate of Service  
James J. McNulty (without enclosure)

2007 MAR 16 PM 12:13  
SECRETARY'S BUREAU

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

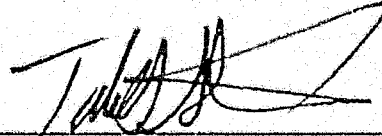
BA

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, **OBJECTION TO INTERROGATORY NO. 1 OF COMPLAINANT**, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA EMAIL AND FIRST CLASS MAIL

John Spiesberger  
6 Derringdale Road  
Wayne, PA 19087



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Todd S. Stewart

Dated this 16<sup>th</sup> day of March, 2007.



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
March 20, 2007

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20077284

(SEE LETTER OF 2-21-07)

DOCUMENT  
FOLDER

John Spiesberger v. Verizon Pennsylvania Inc.

Service Dispute

JUDGE CHANGE & Hearing Cancellation/Reschedule Notice

This is to inform you that the Administrative Law Judge in the above captioned case has been changed from Administrative Law Judge Angela T. Jones to Administrative Law Judge Marlane R. Chestnut.

This is also to inform you that the initial telephonic hearing on the above-captioned case previously scheduled for Thursday, April 5, 2007 has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Telephonic Hearing  
Date: Tuesday, June 26, 2007  
Time: 10:00 a. m.  
Presiding: Administrative Law Judge Marlane R. Chestnut  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215.560.2105  
Fax: 215.560.3133

Please mark your records accordingly.

DOCUMENT  
MAR 26 2007

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

At the above date and time, the Presiding Officer will contact the parties as follows:

|                          |              |
|--------------------------|--------------|
| John Spiesberger         | 610.293.0834 |
| Todd S. Stewart, Esquire | 717.236.1300 |

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 5 days before the hearing.

*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Chestnut  
Judge Jones  
Ona Lester  
Beth Plantz  
Docket Section  
Calendar File