

Suzan DeBusk Paiva
Associate General Counsel



900 Race Street, 6th Floor
Philadelphia, PA 19107

September 20, 2018

Via Electronic Filing

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

Re: Michael Steven Sherman, P.C. v. Verizon Pennsylvania LLC;
Docket No. **C-2018-3004072; PRELIMINARY OBJECTIONS OF VERIZON
PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Preliminary Objections in connection with the above-referenced case, which was electronically filed today.

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

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva/sau".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/sau
Enclosures

Via U.S First Class Mail
cc: Office of Administrative Law Judge
Cynthia Lehman, Mediator
Michael Steven Sherman, P.C.

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Preliminary Objections of Verizon Pennsylvania LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 20th day of September, 2018.

VIA USPS FIRST CLASS MAIL

Michael Steven Sherman, P.C.
429 4th Avenue, Suite 1002
Pittsburgh, PA 15219



Suzan D. Paiva
Verizon Pennsylvania LLC
900 Race Street, 6th Floor
Philadelphia, PA 19107

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL STEVEN SHERMAN, P.C.	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3004072
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Michael Steven Sherman, P.C.
429 4th Avenue, Suite 1002
Pittsburgh, PA 15219

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania LLC (“Verizon PA”) has filed Preliminary Objections to which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings such as a reply to these Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.



Date: September 20, 2018

Suzan DeBusk Paiva, I.D. No. 53853
Verizon Pennsylvania LLC
900 Race Street, 6th Floor
Philadelphia, PA 19107
Phone: (267) 768-6184

*Counsel for Respondent
Verizon Pennsylvania LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL STEVEN SHERMAN,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2018-3004072
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF MICHAEL STEVEN SHERMAN, P.C.**

Verizon Pennsylvania LLC (“Verizon PA”) hereby submits the following Preliminary Objections pursuant to 52 Pa. Code § 5.101(a)(1), to the Complaint filed by Michael Steven Sherman P.C. (“Complainant”). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainant filed a Formal Complaint on August 17, 2018 seeking an order against Verizon PA requesting Verizon PA provide new telephone equipment or to release him from a contract which expires in November, 2019, and alleging billing errors.

PRELIMINARY OBJECTIONS

2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections for lack of jurisdiction. 52 Pa. Code §5.101(a)(1).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.¹

3. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.² The Commission has adopted this standard.³

4. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁴ For testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts. The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer.⁵

5. The Commission must act within, and cannot exceed its jurisdiction.⁶

6. The Complaint relates to a Voice over Internet Protocol voice service known as Business Digital Voice.

7. This Commission lacks jurisdiction to address any disputes relating to Complainant's service based on the Voice Over Internet Protocol Freedom Act. Under that statute, the Commission does not have subject matter jurisdiction over VoIP service

¹ See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). In the alternative, Verizon PA requests the Commission to treat this filing as a motion for judgment on the pleadings pursuant to 52 Pa. Code §5.102 based on lack of Commission jurisdiction.

² *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

³ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁴ *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

⁵ *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

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

as defined in 73 P.S. § 2251.3. Under 52 Pa. Code § 5.1.1(a)(1), a party may file a preliminary objection to dismiss a pleading for “lack of commission jurisdiction.”

8. The Commission does not have jurisdiction over the provision of VOIP services pursuant to the Voice Over Internet Protocol Freedom Act [73 P.S. § 2251.1 (2008) et seq.], which provides at §2251.4: “...no department, agency, commission or political subdivision of the Commonwealth may enact or enforce, either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of regulating, the rates, terms and conditions of VoIP service or IP-enabled service.”

9. This Commission confirmed in *Brown v. Armstrong Digital Services*, Docket No. C-2008-2079810 (Final Order entered May 12, 2009) that “VoIP [is a] telephone service that this Commission does not regulate.”

10. In *Wildman v. Verizon Pennsylvania LLC*, Docket No. C-2013- 2342700 (Recommended Decision of ALJ Barnes dated February 25, 2013; Final Order entered April 9, 2013) the Commission confirmed that Fios Digital Voice is a VoIP service that the Commission does not have authority to regulate and dismissed the complaint on preliminary objections. *See also Silvestri v. Comcast Phone of Pennsylvania, LLC*, Docket No C-2011-2241959 (Order entered October 7, 2011).

11. The Commission does not have the authority or jurisdiction over the services to which the Complainant subscribes. Verizon will work with the Complainant to resolve the issues.

12. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.⁷ As the Commission lacks subject matter jurisdiction over the Complainant's services, the Complainant should be dismissed.

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code and the Commission's regulations, Verizon PA respectfully requests that the Formal Complaint Docket No. C-2018-3004072 be dismissed or denied in its entirety.

A handwritten signature in blue ink that reads "Suzan D. Paiva".

Date: September 20, 2018

Suzan DeBusk Paiva, I.D. No. 53853
Verizon Pennsylvania LLC
900 Race Street, 6th Floor
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Phone: (267) 768-6184

*Counsel for Respondent
Verizon Pennsylvania LLC*

⁷ 66 Pa. C.S. § 703(b)