

Suzan DeBusk Paiva
Associate General Counsel



900 Race Street, 6th Floor
Philadelphia, PA 19107

December 26, 2019

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: Robert Serlin v. Verizon Pennsylvania LLC
Docket Number: C-2019-3014818; **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".

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/slb
Enclosures

Via U.S First Class Mail
cc: Office of Administrative Law Judge
Cynthia Lehman, Mediator
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT SERLIN,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2019-3014818
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Robert Serlin
18 Penarth Road
Bala Cynwyd, PA 19004

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: December 26, 2019

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**

ROBERT SERLIN,	:	
	:	
Complainant,	:	
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v.	:	Docket No. C-2019-3014818
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF ROBERT SERLIN**

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 Robert Serlin (“Complainant”). In support thereof, Verizon PA avers and represents as follows:

BACKGROUND

1. Complainant filed a Formal Complaint on December 4, 2019 alleging that he experienced long hold times when attempting to speak with a Verizon representative in early November 2019. Mr. Serlin subscribes to a Verizon double play service bundle consisting of Fios Internet service and Fios Digital Voice.

2. Fios Digital Voice is a voice over Internet protocol (VoIP) service.

PRELIMINARY OBJECTIONS

3. 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

4. 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

5. 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

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

7. The Complaint relates to a Voice over Internet Protocol voice service known as Fios Digital Voice.

8. This Commission lacks jurisdiction to address the issues relating to Complainant's service based on the Voice Over Internet Protocol Freedom Act. Under that statute, the Commission's authority over VoIP service as defined in 73 P.S. § 2251.3

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).

is limited. 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.”

9. 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.”

10. The VoIP Freedom Act preserves Commission jurisdiction only over the following limited issues: (i) the provision and administration of enhanced 911 service and nondiscriminatory enhanced 911 fees; (ii) telecommunications relay service fees; (iii) universal service fund fees; (iv) switched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company; and (v) rates, terms or conditions of protected services provided under tariffs which are subject to approval by the Pennsylvania Public Utility Commission. 73 P.S. § 2251.6. Mr. Serlin’s complaint does not relate to any of these limited exceptions.

11. 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.”

12. 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).

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

14. The Commission also lacks jurisdiction over an issues relating to the Internet portion of the service bundle. *See, e.g., A. Moses, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259 (Opinion and Order entered November 4, 2011) (“We also agree that the allegations regarding the extended service outage of the Complainant's retail Internet service should be dismissed for lack of subject matter jurisdiction. In general, this Commission does not have jurisdiction over the provision of retail Internet services.”)

15. 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-2019-3014818 be dismissed or denied in its entirety.

⁷ 66 Pa. C.S. § 703(b)

Suzan D. Paiva

Date: December 26, 2019

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900 Race Street, 6th Floor
Philadelphia, PA 19107
Phone: (267) 768-6184

*Counsel for Respondent
Verizon Pennsylvania LLC*

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 26th day of December, 2019.

VIA USPS FIRST CLASS MAIL

Robert Serlin
18 Penarth Road
Bala Cynwyd, PA 19004



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