

Suzan DeBusk Paiva
Associate General Counsel



900 Race Street, 6th Floor
Philadelphia, PA 19107

December 30, 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: Rasheed Clark v. Verizon Pennsylvania LLC
Docket Number: C-2019-3014882; **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

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 30th day of December, 2019.

VIA USPS FIRST CLASS MAIL

Rasheed Clark
1240 W. Hilton Street
Philadelphia, PA 19140



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RASHEED CLARK,	:	
	:	
Complainant,	:	
	:	
V.	:	Docket No. C-2019-3014882
	:	
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Rasheed Clark
1240 W. Hilton St.
Philadelphia, PA 19140

Pursuant to 52 Pa. Code §§5.101 *et seq.* you are hereby notified that Verizon Pennsylvania Inc. (“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 30, 2019

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RASHEED CLARK,	:	
	:	
Complainant,	:	
	:	
V.	:	Docket No. C-2019-3014882
	:	
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF RASHEED CLARK**

Pursuant to 52 Pa. Code §5.101(a)(1), Verizon Pennsylvania LLC (“Verizon PA”) submits the following Preliminary Objection to the Complaint filed by Rasheed Clark (“Complainant”), on the ground that the Commission has no subject matter jurisdiction to adjudicate private right-of-way issues. In support thereof, Verizon PA represents as follows:

BACKGROUND

1. Mr. Clark is a customer of Verizon PA, subscribing to a service bundle of Fios Digital Voice, Internet and TV services, which are not regulated by this Commission. His complaint does not relate to his service, however, but rather concerns a right-of way easement for facilities located in the alley at the rear of his property. Mr. Clark states that he never granted access for the placement of these lines as a homeowner and has not been compensated, and requests that the wires be removed.

PRELIMINARY OBJECTIONS

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §5.101(a)(2). 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. 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 well as every inference fairly deducible from those facts.⁴ The motion may be granted only if the moving party prevails as a matter of law.⁵ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁶

5. As noted above, Mr. Clark's Complaint is his contention that he did not grant permission for Verizon PA to place its facilities and has not been compensated, and his request that Verizon PA remove its facilities.

¹ See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

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 *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).

⁵ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

⁶ *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)).

6. The Commission must act within, and cannot exceed its jurisdiction.⁷ Jurisdiction may not be conferred by the parties where none exists.⁸ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.⁹

7. The Commission has no jurisdiction to adjudicate the issue of whether Verizon PA's facilities are located pursuant to a proper and valid right-of-way or easement. It is well established that the Commission does not have subject matter jurisdiction over private contractual disputes.¹⁰ It is equally well established that the Commission does not have jurisdiction over disputes that require interpretations of a validity of a right-of-way or easement. Such matters are properly within the jurisdiction of the Courts of Common Pleas of the Commonwealth.¹¹ The interpretation of legal instruments related to property rights, such as those granting easements and rights-of-way, are a matter for a court of general jurisdiction.¹²

⁷ *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁸ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

⁹ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

¹⁰ *Sowers v. PPL Gas Utilities Corp.*, 2007 WL 519687 (Pa. P.U.C.) (PUC Docket No. C-2006-6530, Order entered January 27, 2007); *Adams v. Pa. P.U.C.*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Litman v. Peoples Natural Gas Company*, 449 A.2d 720 (Pa. Supra. 1982).

¹¹ *Fairview Water Co. v. Pa. Pub. Util. Comm'n.*, 502 A.2d 162 (Pa. 1985) (the Commission does not have jurisdiction to determine the scope and validity of an easement.)

¹² *Fiorello v. PECO Energy Company*, Docket No. C-00971088 (Order entered September 14, 1999)(the Commission found a valid right-of-way and the interpretation of that agreement was held to be a substantive property rights issues within the court of common pleas' jurisdiction); *Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, Docket C-00945872 (Order entered October 25, 1996)(the Commission does not have subject matter jurisdiction over questions of trespass and the scope and validity of a utility's right-of-way); *Edward Boczar v. PPL Electric Utilities Corporation*, Docket No. C-20016332 (Order entered February 10, 2003) (the Commission does not have jurisdiction to determine if utility's facilities are situated within a valid right-of-way; such matters are within the exclusive jurisdiction of the Court of Common Pleas); *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003) (the Commission does not have jurisdiction to determine the true location of the utility's right-of-way); *Stefanoski v. Pennsylvania-American Water Co.*, Docket No. C-20078219 (Order entered September 22, 2008) (The commission does not have jurisdiction to interpret a right-of-way) .

8. The Commission “may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”¹³ As the Commission lacks subject matter jurisdiction over the validity of the easement or right-of-way pursuant to which Verizon PA’s facilities are located, holding a hearing would be a fruitless exercise and a waste of resources.

9. Accordingly, because the instant complaint involves a dispute over the location of Verizon PA’s facilities within an existing right-of-way, the Commission should dismiss the Complaint because it has no subject matter jurisdiction over the issue.

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 C-2019-3014882 be dismissed or denied in its entirety.

Respectfully submitted,



Date: December 30, 2019

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

*Counsel for Respondent
Verizon Pennsylvania LLC*

¹³ 66 Pa. C.S. § 703(b)