

Suzan DeBusk Paiva
Associate General Counsel



900 Race Street, 6th Floor
Philadelphia, PA 19107

July 10, 2020

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: Tenny Journal Communications v. Verizon Pennsylvania LLC;
Docket No. **C-2020-3016895; MOTION OF VERIZON PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Motion to Dismiss or to hold the case in abeyance and cancel the August 12, 2020 hearing scheduled 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

Email
cc: Honorable Dennis Buckley

US First Class Mail
cc: Tenny Journal Communications

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENNY JOURNAL COMMUNICATIONS,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3016895
	:	
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Tenny Journal Communications
650 E. Palisade Ave # 101
Englewood Cliffs, NJ 07632-1830

You are hereby notified that Verizon Pennsylvania LLC (“Verizon PA”) has filed pursuant to 52 Pa. Code §5.62(b), a Motion to Dismiss in the above-captioned proceeding. You may submit a response to the Motion within twenty (20) days pursuant to 52 Pa. Code § 5.63. If no response is submitted, the presiding officer may rule on the Motion without a response from you, thereby requiring no other proof. All Pleadings, such as a response to the Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.



Date: July 10, 2020

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**

TENNY JOURNAL COMMUNICATIONS,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3016895
	:	
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

**MOTION TO DISMISS THE COMPLAINT OR,
IN THE ALTERNATIVE, TO HOLD THE CASE IN
ABEYANCE AND CANCEL THE AUGUST 12, 2020 HEARING**

Verizon Pennsylvania LLC (“Verizon PA”) moves to dismiss the formal complaint of Tenny Journal Communications (“Tenny”), or, in the alternative, requests that that the evidentiary hearing currently scheduled for August 12, 2020, be cancelled and the case held in abeyance pending resolution of the issues discussed below. In support of this motion, Verizon PA avers as follows:

A. Background

1. On January 28, 2020, the Commission served Verizon PA with a formal complaint by Tenny Journal Communications. Verizon PA filed its answer and new matter on February 18, 2020. Tenny did not respond to the new matter.

2. Tenny is a competitive local exchange carrier (“CLEC”) originally certified by this Commission by order entered December 22, 2016 at Docket A-2016-2562453. On May 4, 2017 the Commission approved an interconnection agreement (“ICA”) between Verizon PA and Tenny allowing for Tenny to resell Verizon services.¹ Verizon PA believes that Tenny resells

¹ *Joint Petition of Verizon Pennsylvania LLC and Tenny Journal Communications for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996, Docket No. A-2017-*

Verizon PA service to a provider of payphones that is related or under common ownership with Tenny. Verizon PA's records show that Tenny has approximately 250 resale lines in Pennsylvania.

3. In the formal complaint Tenny asks the Commission to require Verizon PA to restore service to seven payphone lines that were disconnected at various times and for various reasons since 2016. Verizon PA explained in its answer that these lines were properly disconnected for non-payment or for failure to respond to fiber migration notices in copper retirement areas.²

4. After an unsuccessful mediation, the case was scheduled for an initial evidentiary hearing on August 12, 2020.

B. The Case Should Be Dismissed Because Tenny Is A Corporation And Is Not Represented By An Attorney In This Contested Case.

5. When it certified Tenny to operate as a reseller in Pennsylvania the Commission recognized that Tenny "is a domestic corporation."³ In the ICA that the Commission approved, Tenny represents that it is a corporation organized under the laws of New Jersey.⁴

2589757 (Opinion and Order entered May 4, 2017). A copy of the ICA is available on the Commission's website at <http://www.puc.state.pa.us/pcdocs/1510170.pdf>

² One location was a repair issue originally, but now copper has been retired and fiber is the only medium available if Tenny wishes to reestablish service.

³ *Application of Tenny Journal Communications, Inc. for Approval to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Commonwealth of Pennsylvania in the Service Territories of Verizon Pennsylvania LLC and Verizon North LLC*, Docket No. A-2016-2562453 (Opinion and Order entered December 22, 2016) at 2.

⁴ "Tenny Journal represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey." ICA Section 8.2

6. The Commission's regulation at 52 Pa. Code § 1.21(b) provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. The regulation at 52 Pa. Code § 1.8 defines an adversarial proceeding as one that is contested and will be decided on the basis of a formal record. This proceeding is an adversarial proceeding as defined by 52 Pa. Code § 1.8.

7. As a corporation, Tenny is required by this Commission's regulations to be represented by an attorney in a contested formal complaint proceeding. 52 Pa. Code § 1.21 and 1.22. It is well established that, although a corporate officer may file a complaint on behalf of a corporation, the corporation must be represented by an attorney once an adversarial answer is filed, and certainly before any contested formal evidentiary hearing of the matter is scheduled. Failure to have a licensed attorney enter an appearance requires dismissal of the complaint.⁵

8. Verizon PA pointed out the requirement for attorney representation in its new matter filed in February of 2020, which Tenny did not answer.

9. Almost 6 months after the complaint was filed, no attorney has entered an appearance to represent Tenny in this case.

10. Unless an attorney admitted to practice in Pennsylvania enters an appearance to represent Tenny in this case, the complaint must be dismissed.

⁵ *Peter Coppola v. PECO Energy Company*, Docket No. C-2010-2186754, 2011 Pa. PUC LEXIS 156 (Opinion and Order entered October 14, 2011), *See also Cars R Us c/o Holman Copeland v. Philadelphia Gas Works*, Docket No. C-2008-2033437 (Opinion and Order entered February 4, 2010); *Torino Incorporated v. PECO Energy Co.*, Docket No. C-2008-2034595 (Opinion and Order entered February 2, 2010); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Opinion and Order entered June 24, 2009).

11. If the case is not immediately dismissed then Verizon PA requests that the hearing scheduled for August 12, 2020 be cancelled because Verizon PA should not be required to incur the expense of preparing for the evidentiary hearing unless and until a licensed attorney enters an appearance for Tenny.

C. The Case Should Be Dismissed Because The Commission Has Revoked Tenny's Operating Authority.

12. Verizon PA pointed out in its answer and new matter that the Commission had tentatively revoked Tenny's Certificate of Public Convenience ("CPC") and that Verizon PA did not know at the time of the answer whether Tenny had a valid CPC.⁶ Tenny did not respond to this allegation.

13. However, according to a Secretarial Letter dated June 1, 2020 located on the Commission's website and attached hereto as Exhibit A, the Commission has since explicitly revoked Tenny's CPC and Tenny no longer has authority to provide service as a reseller in Pennsylvania.

14. The Secretarial Letter states:

On July 11, 2019, the Commission entered a Tentative Order in the above captioned proceeding to initiate a process to cancel the Certificate of Public Convenience (CPC) of telecommunications public utilities that have reported zero gross intrastate revenue for the past three years. The Tentative Order was mailed to each telecommunications public utility in question via United States Postal Service on or around July 11, 2019 and was published in the Pennsylvania Bulletin on September 14, 2019. 49 Pa. B. 5388. Affected utilities were given 20 days from the September 14, 2019 publication (October 4, 2019) to challenge the cancellation of their respective CPC or file a conforming Assessment Report.

Tenny Journal Communications Inc did not respond by the deadline of October 4, 2019. By this Secretarial Letter, the operating authority conferred on Tenny Journal

⁶ *Cancellation of Certificates of Public Convenience for Telecommunications Public Utilities; Reporting Zero Intrastate Operating Revenue*, Docket No. M-2019-3010251(Tentative Order entered August 1, 2019).

Communications Inc through its CPC is hereby cancelled and may no longer be used to provide public utility service in Pennsylvania.

15. Docket No. M-2019-3010251 shows a letter from Tenny asking the Commission to reinstate its CPC, but unless and until the Commission does so Tenny is without authority to operate as a telecommunications provider by reselling Verizon PA's services to its payphone provider end user.

16. Both the parties' ICA and the Commission's order approving that agreement make clear that Verizon PA's obligation to serve Tenny is contingent on Tenny having a valid CPC authorizing it to serve its own end users. The Commission stated that "regardless of the types of services covered by this Interconnection Agreement, it would be a violation of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, if Tenny Journal began offering services or assessing surcharges to end users, where it has not been authorized to provide such services and for which tariffs have not been authorized."⁷ The ICA states that:

8.3 Tenny Journal Certification.

Notwithstanding any other provision of this Agreement, Verizon shall have no obligation to perform under this Agreement until such time as Tenny Journal has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting its business in the Commonwealth of Pennsylvania. Tenny Journal shall not place any Orders under this Agreement until it has obtained such authorization. Tenny Journal shall provide proof of such authorization to Verizon upon request.

17. Since Tenny does not have authorization from this Commission to operate as a reseller of Verizon PA services in Pennsylvania this complaint should be dismissed.

⁷ *Joint Petition of Verizon Pennsylvania LLC and Tenny Journal Communications for Approval of an Interconnection Agreement under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-2017-2589757 (Opinion and Order entered May 4, 2017) at 3, n. 1.

18. If the case is not immediately dismissed, then Verizon PA requests that the hearing scheduled for August 12, 2020 be cancelled because Verizon PA should not be required to incur the expense of preparing for the evidentiary hearing unless and until Tenny is able to demonstrate that it has authority to operate in Pennsylvania.

D. If The Case Proceeds On The Merits At Any Point Then A Prehearing Conference Should Be Scheduled.

19. This case was scheduled for the same type of hearing as a regular consumer complaint, but Tenny is not a consumer. It is a telecommunications provider and the issues raised are more complex than an ordinary consumer complaint.⁸ Additionally, Tenny's payment status for the resale services it is purchasing from Verizon PA is not in good standing. Verizon PA averred in its new matter (which Tenny failed to deny) that Tenny's past due balance at that time was over \$100,000, representing about a year's worth of service at the current monthly rate. At this time the past due balance is over \$135,000. The ICA does not require Verizon PA to continue to serve Tenny when Tenny is in default of its payment obligations under that agreement.⁹

20. Even if Tenny is able to resolve the issues of attorney representation and lack of operating authority, before any evidentiary proceeding occurs a prehearing conference should be

⁸ For example, Tenny challenges Verizon's right to retire copper, a matter that is detailed in FCC regulations at 47 C.F.R. § 51.325, et seq. This Commission has recognized that Verizon is entitled to retire copper and provide all of its services over fiber because "there are no Commission laws, regulations or Orders regarding copper line availability or migration upon which to order Verizon PA to continue to provide . . . landline telephone service that is based on a copper line." *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Opinion and Order entered July 12, 2018) at 9. Also, the ICA specifically allows Verizon PA to migrate services to fiber optic facilities, stating that "[n]otwithstanding any other provision of this Agreement, Verizon shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate Tenny Journal's ability to provide service using certain technologies. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise. Tenny Journal shall be solely responsible for the cost and activities associated with accommodating such changes in its own network." ICA, Section 42

⁹ See, e.g., ICA Section 12.

scheduled to determine the proper process and schedule for discovery, submission of evidence and dispositive motions.

21. Accordingly, the case should be dismissed and the scheduled August 12, 2020 evidentiary hearing cancelled. If the case goes forward on the merits at some point in the future, then a prehearing conference should be scheduled to determine a process for discovery, dispositive motions and/or written testimony before any evidentiary hearing occurs.

WHEREFORE, for the reasons stated above, Verizon PA requests that the formal complaint of Tenny Journal Communications at Docket No. C-2020-3016895 be dismissed or that the alternative relief described in this motion be granted.

Respectfully submitted,



Date: July 10, 2020

Suzan DeBusk Paiva, I.D. No. 53853
Verizon
900 Arch Street, 6th Floor
Philadelphia, PA 19103
Phone: (267) 768-6184

*Counsel for Respondent
Verizon Pennsylvania LLC*



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PO BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
M-2019-3010251
A-2016-2562453

June 1, 2020

John Cory
Tenny Journal Communications Inc
PMB 101, 650 E Palisade Avenue, Ste 2
Englewood Cliffs, NJ 07632
ppoltd@nj.rr.com

Re: Cancellation of Telecommunication Public Utilities that have reported zero gross intrastate operating revenue and did not file comments in Response to Tentative Order at Docket No. M-2019-3010251

John Cory:

On July 11, 2019, the Commission entered a Tentative Order in the above captioned proceeding to initiate a process to cancel the Certificate of Public Convenience (CPC) of telecommunications public utilities that have reported zero gross intrastate revenue for the past three years. The Tentative Order was mailed to each telecommunications public utility in question via United States Postal Service on or around July 11, 2019 and was published in the Pennsylvania Bulletin on September 14, 2019. 49 Pa. B. 5388. Affected utilities were given 20 days from the September 14, 2019 publication (October 4, 2019) to challenge the cancellation of their respective CPC or file a conforming Assessment Report.

Tenny Journal Communications Inc did not respond by the deadline of October 4, 2019. By this Secretarial Letter, the operating authority conferred on Tenny Journal Communications Inc through its CPC is hereby cancelled and may no longer be used to provide public utility service in Pennsylvania.

Sincerely,

Rosemary Chiavetta
Secretary

cc: David E. Screven, Law Bureau

VERIFICATION

I, Douglas R. Smith, Director – External Affairs of Verizon, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, (relating to unsworn falsifications to authorities).



DOUGLAS R. SMITH
Director – External Affairs

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Motion to Dismiss or Held in Abeyance and Hearing Cancellation Request of Verizon Pennsylvania LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 10th day of July, 2020.

VIA Email

Honorable Dennis Buckley (debuckley@pa.gov)
PA Public Utility Commission
400 North Street, 2nd Floor West
Harrisburg, PA 17120

VIA US Mail

Tenny Journal Communications
650 E. Palisades Avenue, #101
Englewood Cliffs, NJ 07632



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