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May 3, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Kathleen C. Babyak v. Full Service Network, LP
Docket No. C-2021-3024569

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Full Service Network, LP's ("FSN") Preliminary Objections in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Kristine E. Marsilio

Kristine E. Marsilio

KEM/lww

Enclosure

cc: Cert. of Service w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen C. Babyak,	:	
	Complainant	: Docket No. C-2021-3024569
	:	
v.	:	
	:	
Full Service Network, LP,	:	
	Respondent	:

NOTICE TO PLEAD

To: Kathleen C. Babyak
149 Oak Ridge Road
Acme, PA 15610

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Full Service Network, LP (“FSN”) is due within 10 days of the date of service pursuant to 52 Pa. Code § 5.101(b).

All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for FSN and the Office of Administrative Law Judge.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
<https://efiling.puc.pa.gov/>

With an electronic copy to:

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Kristine E. Marsilio

Kristine E. Marsilio, Esquire

Date: May 3, 2021

Counsel for *Full Service Network, LP*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen C. Babyak,	:	
	Complainant	: Docket No. C-2021-3024569
	:	
v.	:	
	:	
Full Service Network, LP,	:	
	Respondent	:

**PRELIMINARY OBJECTIONS
OF FULL SERVICE NETWORK, LP**

TO: CHIEF ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR.:

Pursuant to 52 Pa. Code § 5.101(a) of the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), Full Service Network, LP (“FNS”) submits the following Preliminary Objections to the Complaint filed by Kathleen C. Babyak (“Complainant” or “Ms. Babyak”), respectfully requesting dismissal of the Complaint. As required by 52 Pa. Code §§ 5.61 and 5.101(d), FSN filed its Answer and New Matter to the Complaint on this same date. In support of these Preliminary Objections, FSN states as follows:

I. INTRODUCTION

1. FSN is a certificated Competitive Local Exchange Carrier, authorized by the Pennsylvania Public Utility Commission (“Commission”) to provide local exchange telecommunications services to customers within the Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively, “Verizon”) service areas in Pennsylvania.¹ FSN is also a wholesale

¹ *Application of Full Service Network LP for approval to offer, render, furnish or supply telecommunication services as a Competitive Local Exchange Carrier reseller to the public in the service territories of Verizon Pennsylvania Inc. and Verizon North Inc. within the Commonwealth of Pennsylvania, Docket No. A-311406.*

customer of Verizon and purchases the competitive services set forth in Verizon's Price List and Product Guide at a wholesale discount and then resells them to FSN's retail customers.

2. FSN resells the competitive services *provided by Verizon* to Complainant, a residential customer, at 149 Oak Ridge Road, Acme, Pennsylvania 15610.

3. Complainant asserts: 1) that she has had repeated service outages; 2) that she is being forced to switch from a National Plan to a Nationwide Calling Plan; 3) that "upper management" has ordered the dropping of Auto-Pay on her account, and Auto-Pay was dropped without prior notice resulting in FSN issuing her a suspension notice; and 4) poor customer service.

4. In her Formal Complaint, Complainant refers to nothing in the Public Utility Code, Commission regulations or Commission orders that FSN is alleged to have violated.

5. Even if all of the material factual averments in the Complaint are accepted as true, the Formal Complaint constitutes an insufficient specificity of pleading and/or a legal insufficiency of pleading.

6. FSN should not be required to devote any additional resources to defend the Complaint, which fails to raise a claim upon which relief can be granted.

7. Therefore, FSN respectfully requests that the Commission dismiss the Complaint.

II. ARGUMENT

A. Applicable Legal Standards.

8. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.² The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.³

² 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

³ *Id.*

9. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

10. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.⁴ However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.⁵

11. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁶

⁴ *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

⁵ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁶ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

12. While the filing of a formal complaint generally entitles the complainant to a formal hearing, “the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”⁷

B. Dismissal Based on Insufficient Specificity of a Pleading and/or Legal Insufficiency of a Pleading, 52 Pa. Code § 5.101(a)(3)-(4).

13. Paragraphs 1-12 are incorporated herein.

14. Under Sections 5.101(a)(3) and (4) of the Commission’s regulations, preliminary objections may be filed against a complaint alleging insufficient specificity of a pleading or legal insufficiency of a pleading.⁸

15. Under Section 5.22 of the Commission’s regulations, a complaint must contain a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief sought.⁹

16. To withstand a preliminary objection alleging insufficient specificity, a pleading must contain averments of all the facts that the complaining party will have to prove in order to prevail and enable the responding party to prepare a defense.¹⁰

17. In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.”¹¹

18. Accepting the factual averments set forth in the Complaint as true, they do not provide a basis upon which the Commission can conclude that FSN has violated the Public Utility

⁷ 52 Pa. Code § 5.21(d).

⁸ 52 Pa. Code § 5.101(a)(3)-(4).

⁹ 52 Pa. Code § 5.22(a)(4).

¹⁰ *Podolak v. Tobyhanna Tp. Bd. of Supervisors*, 37 A.3d 1283, 1288-89 (Pa. Cmwlth. 2012).

¹¹ 66 Pa. C.S. § 701.

Code, Commission regulations or a Commission order. Indeed, Complainant does not even allege a violation of any of those provisions.

19. The Complaint in this proceeding does not contain sufficient allegations of wrongdoing by FSN. Specifically, while the Complainant alleges service outages, the Complaint does not allege that FSN has the responsibility or authority to respond to these outages. In fact, Verizon owns the utility poles and wires and has the legal responsibility for responding to service outages. FSN does not have access or permission to address a problem pertaining to Verizon's telephone poles or wires.¹² The Complaint does not allege that FSN failed to communicate this issue to Verizon or that FSN otherwise prevented Verizon from addressing this issue in a timely manner.

20. Additionally, while the Complaint contains a general statement that Complainants experienced "harassment" because she insisted that her repeated outages be investigated, the Complaint does not provide any specific information or examples pertaining to this allegation. To that end, the Complaint does not even specify who allegedly engaged in the harassing behavior. As such, Ms. Babyak's complaint pertaining to service outages should be dismissed for insufficient specificity of pleading and/or legal insufficiency.

21. Similarly, Ms. Babyak's complaint that she is being forced to switch from a National Plan to a Nationwide Calling Plan constitutes an insufficient specificity of pleading and/or a legal insufficiency. FSN filed a tariff supplement, which was approved by the Commission, in which FSN discontinued certain residential pricing packages, including its

¹² See 47 U.S.C. §§ 251(b)(1) and (c)(4). Federal law imposes on incumbent local exchange carriers, like Verizon, the duty to offer for "resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers [...]." *Id.* The current wholesale rates for the resale of Verizon's competitive services were established in 2005. *Wholesale Rate for Resale of Telecommunications Provided by Verizon Pennsylvania Inc. and Verizon North Inc.*, Docket No. R-00038516, Final Order (March 4, 2005).

“National Plan.”¹³ As evidenced by the Notice attached to Ms. Babyak’s Formal Complaint, FSN provided Ms. Babyak notice that her Plan was being discontinued and indicated that she would be placed on FSN’s Nationwide Calling Plan at a price of \$59.95/month beginning with Ms. Babak’s February 13, 2021 invoice. As such, even if true, Ms. Babyak’s complaint pertaining to her calling plan should be dismissed for insufficient specificity of pleading and/or legal insufficiency.

22. In addition, Ms. Babyak’s Complaint pertaining to the alleged discontinuance of Auto-Pay fails to specify any actions on the part of FSN that would constitute a violation of the Public Utility Code, Commission regulations, or a Commission order. As such, even if true, Ms. Babyak’s complaint pertaining to the discontinuance of Auto-Pay should be dismissed for insufficient specificity of pleading and/or legal insufficiency.

23. Finally, Ms. Babyak’s complaint pertaining to customer service is wholly insufficient. Ms. Babyak’s claims are general and fail to identify any specific provisions of the Public Utility Code, Commission regulations, or Commission to which FSN allegedly violated. While Ms. Babyak claims that FSN employees had an “I don’t care” attitude and implies that she had difficulty reaching customer service representatives, her Complaint actually establishes the opposite: Her complaints were fully addressed by FSN. Specifically, the Complaint states that related to the service outages, Ms. Babyak spoke with an FSN supervisor, who advised her that if she switched her primary care provider to Verizon, she may be able to be more forceful in getting them to resolve her service outage issues. Further, Ms. Babyak states that she received credit for days in which she was out of service. The Formal Complaint establishes that the service outage problem was fixed in December 2020. *See* Formal Complaint at pdf page 9. Similarly, the Formal

¹³ *See Full Service Network LP Revisions to Competitive Local Exchange Service Tariff*, Docket No. R-2020-3023436, Secretarial Letter (Feb. 11, 2021).

Complaint indicates that Ms. Babyak spoke with an FSN supervisor regarding her change in service plans, and the FSN supervisor “advised” her of information pertaining to the switch. Formal Complaint at pdf page 10. Additionally, the Formal Complaint establishes that Ms. Babyak spoke with an FSN supervisor regarding her issue with Auto-Pay, and the supervisor returned her account to Auto-Pay and adjusted the late payment charges. Formal Complaint at pdf page 13. As such, even if true, Ms. Babyak’s complaint pertaining to service outages should be dismissed for insufficient specificity of pleading and/or legal insufficiency.

24. Finally, while not identified as an issue in her Formal Complaint, Ms. Babyak expresses some confusion over the charges in her December 2, 2020 Billing Statement. *See* Formal Complaint at pdf pages 14-17. As, indicated in the Billing Statement provided in the Formal Complaint, the late payment fees of \$10 and \$0.32 come directly from FSN’s Facilities-Based Interexchange Tariff (“FBIT Tariff”) and Competitive Local Exchange Carrier Reseller and Facilities Based Tariff (“Local Tariff”), respectively. FBIT Tariff at 17; Local Tariff at 10.

25. For the reasons explained above, the Complaint does not contain a clear and concise statement of an act or omission by FSN and does not contain factual or legal averments enabling FSN to prepare a defense.

26. Even if the factual averments established in the Formal Complaint are accepted as true, the Complainant fails to establish a claim upon which relief can be granted. This is exactly the type of situation contemplated by the regulations, in which the Commission should exercise its discretion to dismiss the Complaint without a hearing.¹⁴ It would not be in the public interest to permit the Complainant to continue pursuing meaningless litigation initiated by the filing of the

¹⁴ 52 Pa. Code § 5.21(d).

Complaint, which would do nothing other than to consume valuable resources of the Commission and FSN.

27. As such, the Complaint should be dismissed outright and in its entirety.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, Full Service Network, LP, respectfully requests that the Commission sustain its preliminary objections, dismiss the Complaint filed by Kathleen C. Babyak, and provide such other relief as may be deemed appropriate.

Respectfully submitted,

Kristine E. Marsilio

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Attorney ID #316479

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Date: May 3, 2021

Attorneys for Full Service Network, LP

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Federal Express

Kathleen C. Babyak
149 Oak Ridge Road
Acme, PA 15610

Via Email Only

Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, L-M West
400 North Street
Harrisburg, PA 17120
bobbwillia@pa.gov

Date: May 3, 2021

Kristine E. Marsilio

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Attorney for the Full Service Network, LP