



900 Race Street  
6<sup>th</sup> Floor  
Philadelphia, PA 19107

Suzan DeBusk Paiva  
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July 7, 2021

**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:** Ronnie Cropper v. Verizon Pennsylvania LLC;  
Docket No. C-2021-3026601; **MOTION OF VERIZON PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Motion for Judgment on the Pleadings and dismissal of the formal complaint filed in 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,

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  
Ronnie Cropper

**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Motion for Judgment on the Pleadings of Verizon Pennsylvania LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 7<sup>th</sup> day of July, 2021.

**VIA USPS FIRST CLASS MAIL**

Ronnie Cropper  
5615 W. Diamond Street  
Philadelphia, PA 19131



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONNIE CROPPER,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3026601
	:	
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

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**NOTICE TO PLEAD**

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TO: Ronnie Cropper  
5615 W. Diamond St.  
Philadelphia, PA 19131

You are hereby notified that Verizon Pennsylvania LLC (“Verizon”) has filed pursuant to 52 Pa. Code §5.102, a Motion for Judgment on the Pleadings in the above-captioned proceeding. You may submit a response to the Motion within twenty (20) days pursuant to 52 Pa. Code § 5.102(b). 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.



Date: July 7, 2021

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Suzan DeBusk Paiva, I.D. No. 53853  
Verizon  
900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
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*Counsel for Respondent  
Verizon Pennsylvania LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONNIE CROPPER,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3026601
	:	
VERIZON PENNSYLVANIA LLC	:	
	:	
Respondent	:	

**MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to 52 Pa. Code § 5.102, Verizon Pennsylvania LLC (“Verizon PA”) moves for judgment on the pleadings and dismissal of the formal complaint filed by Ronnie Cropper (“Complainant”).<sup>1</sup> In support of this motion, Verizon PA states as follows:

**A. Background**

1. On or about May 13, 2021, Mr. Cropper filed a formal complaint against Verizon PA. The Commission served the complaint upon Verizon PA’s counsel electronically on June 17, 2021.
2. Verizon PA is today filing an answer and new matter to the formal complaint.
3. Mr. Cropper’s formal complaint objects to the future migration of his telephone service from copper to fiber optic facilities.
4. Mr. Cropper lives at 5615 W. Diamond St., Philadelphia PA. He subscribes to telephone service at that location provided by Verizon PA.
5. Mr. Cropper’s telephone service is currently provided over copper facilities.
6. In terms of Verizon PA’s network, Mr. Cropper is in the Trinity wire center.

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<sup>1</sup> In the alternative, Verizon PA requests that this motion be treated as a motion for summary judgment.

7. Verizon PA has deployed fiber optic facilities in the Trinity wire center and fiber is available to serve Mr. Cropper.

8. Verizon's copper network in the Trinity wire center has been retired pursuant to the FCC's regulations at 47 C.F.R. § 51.325, *et seq.*, and all customers and services are in the process of being migrated to fiber optic facilities so that the copper switching equipment can be shut down and decommissioned.

9. The complaint states that in March of 2021 Mr. Cropper experienced a service issue and refused to allow Verizon PA to repair service by migrating it from copper to fiber.

10. The complaint states that, following Mr. Cropper's filing of an informal complaint with the Bureau of Consumer Services ("BCS"), Verizon PA made repairs to the existing copper line and the service is currently working on copper.

11. The complaint also states that BCS informed Mr. Cropper that "the company reported advising you that future repairs would require the company to migrate your service to fiber optic equipment. Please be aware that the PUC does not have jurisdiction to dictate whether a public utility chooses to upgrade a customer from copper facilities to fiber optic facilities."

12. Mr. Cropper objects to BCS's conclusion. As requested relief Mr. Cropper's complaint asks that "[t]he PUC should order Verizon that as long as there are other customers who are currently being provided services on the existing copper cable, Verizon cannot single out and deny repair and/or services to an existing user for refusing to switch to fiber."

13. As discussed below, Mr. Cropper's request for relief is beyond this Commission's authority to grant. If Mr. Cropper wishes to retain Verizon telephone service, then he must allow access to migrate the serving facilities from copper to fiber. This will be required in the near

future, either then next time a repair is required or when Verizon reaches Mr. Cropper in its rolling process of migrating customers in the Trinity wire center, whichever occurs first. If Mr. Cropper refuses to allow access for fiber migration then Verizon PA will provide any notices required by Chapter 64 of the Commission's regulations and then will terminate service.

**B. Legal Standards for Judgment on the Pleadings**

14. The Commission's regulations permit a party to move for summary judgment or judgment on the pleadings after the pleadings are closed. 52 Pa. Code § 5.102(a).

15. The motion will be granted "if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law." 52 Pa. Code § 5.102(d)(1).

16. Even if all of the issues in a case cannot be resolved by the motion, the rule allows a partial grant of judgment on the pleadings if "the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues." 52 Pa. Code § 5.102(d)(2).

17. Judgment on the pleadings is appropriate where no material facts on a particular issue remain in dispute. *Williams v. Lewis*, 466 A. 2d 682, 683 (Pa. Super. Ct. 1983), *citing Pa. Ass'n of State Mental Hosp. Physicians, Inc. v. State Employee Ret. Bd.*, 399 A.2d 93 (Pa. 1979). A fact is "material" if "its resolution could affect the outcome of the case under the governing law." *Farabaugh v. Pa. Tpk. Comm'n.*, 911 A.2d 1264, 1267 (Pa. 2006).

18. A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593 (Pa. Cmwlt. 2003).

19. Here, there are no disputed material facts relating to the relief requested in the formal complaint. Verizon PA is entitled to judgment as a matter of law because, in locations where Verizon has retired copper, customers who wish to retain Verizon service must allow Verizon to migrate their serving facilities from copper to fiber. The Commission does not have authority to provide the relief Mr. Cropper requests.

**C. Verizon has Retired Copper in the Trinity Wire Center and the Commission Cannot Award Mr. Cropper's Requested Relief**

20. The Commission has recognized that “that the retirement of copper telephone lines is regulated primarily by the FCC.”<sup>2</sup>

21. The FCC’s copper retirement rules are set forth at 47 C.F.R. § 51.325, *et seq.*, and the process was discussed in FCC orders released in 2015 and 2017.<sup>3</sup>

22. On April 10, 2019 Verizon PA filed a Public Notice of Copper Retirement with the FCC under 47 C.F.R. § 51.333 for specific addresses within a number of Verizon PA wire centers, including Trinity. Mr. Cropper’s address of 5615 W. Diamond St. was listed as one of the addresses to which copper is being retired.<sup>4</sup>

23. Under the FCC’s rules, a copper retirement filing is “deemed final on the 90th day after the release of the [FCC’s] public notice of the filing, unless an objection is filed” by “an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network.” 47 C.F.R. §51.333(b) and (c).

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<sup>2</sup> *Fox v. Verizon Pennsylvania LLC*, Docket No. C-2016-2576094 (Opinion and Order entered July 12, 2018) (“*Fox Order*”) at 9.

<sup>3</sup> *In the Matter of Technologies Transitions, et. al*, GN Docket No. 13-5, et. al, 30 FCC Rcd 9372; 2015 FCC LEXIS 2000, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. Aug. 7, 2015) (“*Technology Transitions Order I*”); *In re Deployment*, 32 FCC Rcd 11128, 11144, 2017 FCC LEXIS 3763 (rel. November 29, 2017) (“*Technology Transitions Order II*”).

<sup>4</sup> Verizon PA’s copper retirement filing is attached as Exhibit 1 to Verizon PA’s answer and new matter and is incorporated in this motion. Mr. Cropper’s address appears on Exhibit A to the Public Notice at page 107.

24. The FCC published its own public notice of Verizon’s copper retirement filing on January 10, 2020.<sup>5</sup>

25. As indicated on the FCC docket, no objections were filed and the copper retirement became final for Mr. Cropper’s address in the Trinity wire center as of April 10, 2020.<sup>6</sup>

26. Both this Commission and the FCC permit Verizon PA to retire copper and to disconnect services of customers that refuse to migrate to fiber following the required notices. The same service provided over fiber remains available in these areas.

27. The Commission has recognized that “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.”<sup>7</sup> Verizon PA is permitted to suspend and then disconnect service, following applicable notifications, if the customer does not allow Verizon PA to perform a fiber migration.

28. The Commission has held that “if a customer refuses to allow Verizon access to migrate its network serving lines from copper to fiber, then pursuant to Section 64.61(3) of the Commission’s Regulations, a telephone company may suspend telephone service for “[un]reasonable refusal to permit access to service connections, equipment and other property of the LEC for maintenance or repair” and then terminate service.”<sup>8</sup>

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<sup>5</sup> The FCC’s public notice is attached as Exhibit 2 to Verizon PA’s answer and new matter and is incorporated in this motion.

<sup>6</sup> A copy of the FCC’s docket showing the lack of objection is attached as Exhibit 3 to Verizon PA’s answer and new matter and is incorporated in this motion. Verizon PA also filed with the FCC for copper retirement for all of the remaining addresses in the Trinity wire center on September 16, 2019 and that filing was deemed approved and became final as of September 16, 2020.

<sup>7</sup> *Fox Order* at 9.

<sup>8</sup> *Id.* at 6-7.

29. The FCC has confirmed that a service provider can require fiber migration in a repair situation and customers cannot insist on retaining service on copper and having the copper repaired where fiber is available. “If copper deterioration is causing service quality issues . . . incumbent LECs are free to resolve those issues by migrating the customer to fiber, as long as the nature of the service being provided to the customer remains the same,” and even if a copper retirement filing had not yet been made.<sup>9</sup>

30. In the *Fox* case, the Commission adopted the decision of Administrative Law Judge Conrad A. Johnson, which explained that “Verizon PA made a business decision to transition to fiber in order to provide better quality and reliable service to its customers,” and “the Commission lacks the power to intervene with Verizon PA’s business decision to transition from copper to fiber.”<sup>10</sup>

31. The Commission adopted the ALJ’s holding that “the FCC’s regulation permits Verizon PA to retire copper facilities and further permits the company to suspend service if a customer denies the company’s access to transition the service to fiber” and that “the Commission cannot grant the Complainant the remedy he is seeking” of requiring Verizon to keep his line on copper “because the Complainant ‘holds the key to the resolution for his Complaint. He can elect to convert his telephone service to fiber or he can resign himself to the eventual suspension of his service.’”<sup>11</sup> The answer is the same for Mr. Cropper as it was for Mr. Fox.

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<sup>9</sup> *Technology Transitions Order* II ¶ 38.

<sup>10</sup> *Fox Order* at 6.

<sup>11</sup> *Fox Order* at 7.

32. Accordingly, judgment on the pleadings should be entered in Verizon PA's favor because the relief Mr. Cropper requests of an order requiring Verizon PA to repair has service on copper in the future is not within this Commission's authority to provide.

**WHEREFORE**, for the reasons stated above, judgment on the pleadings should be entered in Verizon PA's favor and the formal complaint should be dismissed.

Respectfully submitted,

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

Date: July 7, 2021

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*Counsel for Respondent  
Verizon Pennsylvania LLC*

## 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).



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DOUGLAS R. SMITH  
Director – External Affairs