



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

Suzan DeBusk Paiva  
Associate General Counsel  
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February 17, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Filing Room (2 North)  
Harrisburg, PA 17120

**Re:** Lawrence H. Dombek v. Verizon Pennsylvania LLC;  
Docket No. C-2022-3030600

**PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Preliminary Objections to the Complaint of Lawrence H. Dombek in connection with the above-referenced case, which is being 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  
Lawrence H. Dombek

**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 17<sup>th</sup> day of February, 2022.

**VIA USPS FIRST CLASS MAIL**

Lawrence H. Dombek  
4160 Bearbrook Road  
Madison Township, PA 18444-6602



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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**

LAWRENCE H. DOMBEK,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030600
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

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**NOTICE TO PLEAD**

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TO: Lawrence H. Dombek  
4160 Bearbrook Road  
Madison Township, PA 18444-6602

Pursuant to 52 Pa. Code §§5.101 *et seq.* you are hereby notified that Verizon Pennsylvania LLC (“Verizon PA”) has filed Preliminary Objections, 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: February 17, 2022

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Suzan DeBusk Paiva, I.D. No. 53853  
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*Counsel for Respondent  
Verizon Pennsylvania LLC*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LAWRENCE H. DOMBEK,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3030600
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS AND MOTION TO STRIKE  
DAMAGES CLAIM OF LAWRENCE H. DOMBEK**

Pursuant to 52 Pa. Code §5.101(a)(1), Verizon Pennsylvania LLC (“Verizon PA”) submits the following Preliminary Objection to the Complaint filed by Lawrence H. Dombek (“Mr. Dombek” or “Complainant”) on the ground that the Commission has no authority to award the damages he seeks.<sup>1</sup> In support thereof, Verizon represents as follows:

**BACKGROUND**

1. On January 28, 2022, the Commission electronically served a Formal Complaint that had been filed by Lawrence H. Dombek on or about January 5, 2022, relating to damage to a tree on or near his property that he states occurred as a result of Verizon PA changing a pole in his yard. As relief he requests to be compensated for “the cost for the tree removal, tree replacement cost and landscape/ property value of the original 70 + year old tree.

**PRELIMINARY OBJECTIONS**

2. 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

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<sup>1</sup> In the alternative, Verizon PA moves to strike all claims and requests for relief that are outside this Commission’s authority, including requests for damages.

procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>2</sup>

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.<sup>3</sup> The Commission has adopted this standard.<sup>4</sup>

4. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.<sup>5</sup> 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.<sup>6</sup>

5. Alternatively, Verizon PA requests that this pleading be treated as a motion to strike pursuant to 52 Pa. Code § 5.103 because the Complainant's requests for compensation for the costs of tree removal, tree replacement, landscaping and diminished property value are outside this Commission's authority to grant.

6. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Commission must act within, and cannot exceed its jurisdiction.<sup>7</sup>

7. Jurisdiction cannot be conferred by the parties where none exists.<sup>8</sup>

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<sup>2</sup> See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>3</sup> *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).

<sup>4</sup> *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

<sup>5</sup> *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

<sup>6</sup> *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

<sup>7</sup> *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).

8. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>9</sup>

9. The Commission does not have the authority or jurisdiction to order utilities to pay monetary damages. As the Pennsylvania Supreme Court explained:

. . . the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award such damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

*Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791, 794 (Pa. 1977). See also *Elkin v. Bell Telephone Co. of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980) (“the legislature . . . withheld from the PUC the power to award damages.”)<sup>10</sup> Accordingly, the Commission cannot entertain the request for compensation for the costs of removing the tree, replacing the tree, landscaping and alleged diminished property value.

10. The Commission “may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.”<sup>11</sup> Accordingly, the Commission should dismiss the complaint or at a minimum strike or dismiss all claims for compensation for damages because it has no authority to award damages.

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

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

<sup>10</sup> See also *Poorbaugh v. Pa. P.U.C.*, 666 A.2d 744 (Pa. Cmwlth 1995) (“in *Feingold*, our Supreme Court further stated that it was clear that the remedial and enforcement powers vested in the PUC by the Utility Code were designed to allow the PUC to enforce its orders and regulations, but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a complainant.”); *Suburban East Tires, Inc. v. Pa. PUC*, 582 A.2d 727 (Pa. Cmwlth. 1990).

<sup>11</sup> 66 Pa. C.S. § 703(b)

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-2022-3030600 be dismissed or denied in its entirety.

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

Date: February 17, 2022

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Suzan DeBusk Paiva, I.D. No. 53853  
Verizon  
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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