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**Suzan DeBusk Paiva
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April 15, 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: James Hill v. Verizon Pennsylvania LLC;
Docket No. C-2021-3028645;
MOTION TO DISMISS OF VERIZON PENNSYLVANIA LLC**

Dear Secretary Chiavetta:

Enclosed please find Verizon Pennsylvania LLC's Motion to Dismiss the Complaint of James Hill 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,

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

Suzan D. Paiva
Counsel for Verizon Pennsylvania LLC

SDP/sau
Enclosure

cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

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

Dated at Philadelphia, Pennsylvania, this 15th day of April, 2022.

VIA EMAIL & FEDEX

James F. Hill
387 Autumn Leaves Road
Starlight, PA 18461
jamesfrancishill@gmail.com

Administrative Law Judge Erando Vero
evero@pa.gov
pmcneal@pa.gov



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------------|---|---------------------------|
| JAMES HILL, | : | |
| | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2021-3028645 |
| | : | |
| VERIZON PENNSYLVANIA LLC, | : | |
| | : | |
| Respondent | : | |

NOTICE TO PLEAD

TO:

You are hereby notified that Verizon Pennsylvania LLC (“Verizon”) has filed pursuant to 52 Pa. Code §5.103, 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 § 5.103(c). 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: April 15, 2022

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Verizon
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*Counsel for Respondent
Verizon Pennsylvania LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------------|---|---------------------------|
| JAMES HILL, | : | |
| | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2021-3028645 |
| | : | |
| VERIZON PENNSYLVANIA LLC, | : | |
| | : | |
| Respondent | : | |

MOTION TO DISMISS

Pursuant to 52 Pa. Code § 5.103, Verizon Pennsylvania LLC (“Verizon PA”) moves to dismiss the above-captioned formal complaint of James Hill for lack of subject matter jurisdiction.¹ In support of this motion, Verizon PA states as follows:

A. Background

1. On September 23, 2021, the Commission electronically served a formal complaint that had been filed by James F. Hill on or about August 23, 2021 (based on the Secretary’s Bureau “Received” stamp). This was the second of three complaints that Mr. Hill filed against Verizon PA in 2021.

2. The complaint states as follows: “The Verizon internet service failed mid-day July 14, 2021. At least 5 recorded calls were made to Verizon, with no results as of July 16.”

3. Verizon PA answered the formal complaint on October 13, 2021 and requested mediation.

¹ In the alternative, Verizon PA requests that this motion be treated as a motion for judgment on the pleadings or summary judgment pursuant to 52 Pa. Code § 5.102.

4. By Interim Order dated October 14, 2021, Chief Administrative Law Judge Rainey referred the case to mediation and directed the parties “to attempt to resolve this matter themselves” and that “Complainant shall cooperate in this effort.”

5. Despite numerous attempts by Verizon PA representatives to contact Mr. Hill via telephone and email, he never responded and the mediation was ultimately terminated and the case referred for hearing together with the other two complaints.

6. On April 11, 2022, a telephonic hearing was convened and Mr. Hill appeared along with representatives of Verizon PA.

7. Because Mr. Hill expressed difficulty understanding the proceedings over the telephone and an inability to drive to an in-person hearing at one of the Commission’s offices, he requested and was granted permission to submit his complaints and any attachments as his written testimony in the cases. For the same reason, it was agreed that Verizon PA would submit its responsive testimony and this motion to dismiss in writing, rather than orally at the telephonic hearing. A later hearing date will be convened for any cross-examination or questioning by the presiding officer based on the written submissions.

B. Legal Standards

8. 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.²

9. Jurisdiction cannot be conferred by the parties where none exists.³

² *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).

³ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

10. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.⁴

11. It is well-settled that “retail broadband access services to the Internet are generally under the regulatory purview of the FCC” and outside the jurisdiction of this Commission. *Daskalakis v. Verizon Pennsylvania, Inc.*, No. C-2010-2172222, 2011 Pa. PUC LEXIS 2042 (Opinion and Order entered April 4, 2011). *See also MilleniaNet Corporation v. Verizon Pennsylvania Inc.*, Docket No. C-20055173 (Opinion and Order entered May 2, 2008), *affirmed, MilleniaNet Corporation v. Pennsylvania Public Utility Commission*, Docket No. 990 CD 2008 (Commonwealth Court, Memorandum Opinion by Judge Butler filed April 30, 2009) (this Commission “has no jurisdiction” over the disputes at issue because “both the Pennsylvania General Assembly and Congress have indicated that the [Commission’s] authority does not . . . extend to internet services.”)

12. Therefore, the Commission has held that “allegations regarding the extended service outage of . . . retail Internet service should be dismissed for lack of subject matter jurisdiction. In general, this Commission does not have jurisdiction over the provision of retail Internet services.” *A. Moses, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2205259, 2011 Pa. PUC LEXIS 310 (Opinion and Order entered November 4, 2011).

C. This Complaint Should Be Dismissed

13. The only allegations made in Mr. Hill’s complaint relate to an outage of his Verizon internet service.

14. The Commission lacks subject matter jurisdiction over claims relating to retail internet services, including internet outages.

⁴ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

15. Accordingly, this complaint should be dismissed for lack of subject matter jurisdiction

WHEREFORE, for the reasons stated above, the formal complaint at Docket No. C-2021-3028645 should be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

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

Date: April 15, 2022

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