

July 21, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
Harrisburg, PA 17105-3265

Re: Robert Adams v. Zito Media Voice, LLC
Docket No. C-2022-3032837
PRELIMINARY OBJECTIONS OF ZITO MEDIA VOICE, LLC

Dear Secretary Chiavetta:

Enclosed please find Zito Media Voice, LLC's Preliminary Objections to Formal Complaint in connection with the above-referenced case, which was electronically filed today.

If you have any questions regarding this filing, please direct them to me. Thank you for your attention to this matter.

Sincerely

DAVIS WRIGHT TREMAINE LLP



Maria Browne

cc: Certificate of Service (w/ encl.)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Zito Media Voice, LLC's Preliminary Objections to Formal Complaint upon the person listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Electronic and First-Class Mail

Robert Adams
514 Julian Pike
Julian, PA 16844
Radams223@yahoo.com

Date: July 21, 2022

_____/s/
Maria Browne
Davis Wright Tremaine LLP
1301 K Street NW, Suite 500 East
Washington, DC 20005
(202) 973-4200
(202) 973-4499 (facsimile)
MariaBrowne@dwt.com

Counsel for Zito Media Voice, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------|---|----------------|
| Robert Adams | : | |
| | : | |
| Complainant | : | |
| | : | |
| v. | : | C-2022-3032837 |
| | : | |
| Zito Media Voice, LLC | : | |
| | : | |
| Respondent | : | |

NOTICE TO PLEAD

Robert Adams
514 Julian Pike
Julian, PA 16844
Radams223@yahoo.com

You are hereby notified that a written response to the enclosed Zito Media Voice, LLC's Preliminary Objections to Formal Complaint is due within ten (10) days of the date of service pursuant to 52 Pa. Code § 5.101(b) or a judgment may be entered against you.

Date: July 21, 2022

_____/s/
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Davis Wright Tremaine LLP
1301 K Street NW, Suite 500 East
Washington, DC 20005
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| | : | |
| Respondent | : | |

**ZITO MEDIA VOICE, LLC’S PRELIMINARY OBJECTIONS TO FORMAL
COMPLAINT**

Pursuant to 52 Pa. Code § 5.101(a)(1), respondent Zito Media Voice, LLC (“Respondent” or “Zito”) files its Preliminary Objection to the above-captioned Formal Complaint filed by complainant Robert Adams (“Complainant” or “Mr. Adams”), and in support thereof, states as follows:

BACKGROUND

1. Mr. Adams filed a Formal Complaint on May 20, 2022 requesting that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issue an order requiring Zito to: (1) “fix” Mr. Adams’s “unreliable” “internet, telephone, and television” services; (2) contact Mr. Adams and set up a plan to rectify his connectivity issues and for the Commission to impose a deadline on such; and (3) issue Mr. Adams a refund for his services for the last nine (9) months. (Formal Compl. at 3.)

PRELIMINARY OBJECTION

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections for, *inter alia*, lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

3. Commission preliminary objections practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, *2-3, Docket No. C-00935435 (July 18, 1994). A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer, and, as such, the Commission must accept as true all well-pleaded, material, relevant facts, and every reasonable inference fairly deducible from those facts in assessing the objection. *Cnty. of Allegheny v. Commw. of Pa.*, 490 A.2d 402, 408 (Pa. 1985); *Commw. of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602, 604 (Pa. Commw. Ct. 1988). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Jamieson v. Pa. Bd. of Probation and Parole*, 478 A.2d. 152, 153 (Pa. Commw. Ct. 1984); *Cnty. of Allegheny*, 490 A.2d at 408.

4. The Commission must act within and not exceed its jurisdiction. *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 424, 430 (Pa. Commw. Ct. 1996).

5. Pursuant to the Responsible Utility Customer Protection Act, 66 Pa. Stat. and Cons. Stat. Ann. § 1401 *et seq.*, the Commission has jurisdiction over certain "public utilit[ies]" including, "electric distribution utilit[ies], natural gas distribution utilit[ies], small natural gas distribution utilit[ies], steam heat utilit[ies], wastewater utilit[ies] or water distribution utilit[ies]." 66 Pa. Stat. and Cons. Stat. Ann. § 1403; *see also What the Pennsylvania Public Utility Commission Regulates*, Pennsylvania P.U.C. website, https://www.puc.pa.gov/General/consumer_ed/pdf/What_PUC_Regulates.pdf.

6. The entity named in the Formal Complaint, “Zito Media Voice, LLC,” does not serve complainant, Mr. Adams. The entity that serves Mr. Adams is a cable television company called “Zito Central PA, LLC.”

7. The Commission does not have jurisdiction over cable television companies. *See, e.g., Not Regulated by the PUC*, Pennsylvania P.U.C. website, <https://www.puc.pa.gov/telecommunications/#:~:text=Not%20Regulated%20by%20the%20PUC,companies%20or%20long%2Ddistance%20companies>. (“The Commission does not regulate cellular and wireless phone companies, cable TV companies or long-distance companies.”); *What the Pennsylvania Public Utility Commission Regulates*, Pennsylvania P.U.C. website, https://www.puc.pa.gov/General/consumer_ed/pdf/What_PUC_Regulates.pdf. (“The Commission does not regulate broadband, wireless, or cable TV companies”).

8. Zito Central PA, LLC is a cable television company and thus not governed by the Responsible Utility Customer Protection Act, and also not subject to the Commission’s jurisdiction. Consistent with federal law, 47 U.S.C. § 541 *et seq.*, Zito’s cable operations are governed by a franchise agreement with Huston Township in which Complainant’s residence is located.

9. A person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. 52 Pa. Code § 5.21(a). Accordingly, a complaint may properly be dismissed when no relief or recovery is possible. *See P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105, 1108 (Pa. Commw. Ct. 1996).

10. Zito will work with Mr. Adams to resolve the issues in the Formal Complaint.

11. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. Stat. and Cons. Stat. Ann. § 703(b). As the Commission lacks jurisdiction over the Respondent, the Formal Complaint should be dismissed.

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code and the Commission's regulations, Zito respectfully requests that the Formal Complaint Docket No. C-2022-3032837 be dismissed or denied in its entirety.

Respectfully submitted,

Date: July 21, 2022

_____/s/
Maria Browne
Davis Wright Tremaine LLP
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