

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Robert Adams

v.

Zito Media Voice, LLC

Public Meeting November 9, 2023

3032837-OALJ

Docket No. C-2022-3032837

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

On July 17, 2023, the Commission issued an Initial Decision (ID) involving a formal complaint filed by Robert Adams against Zito Media Voice, LLC (Zito Media) at the above-captioned docket. In his complaint, Mr. Adams alleged that he has lost internet, telephone and television service numerous times. In part, Mr. Adams wrote that “in emergency situations my telephone and internet for my cellular telephone are essential to save a life” and referenced a fire he had in his basement in August 2020. Mr. Adams requested that the Commission order Zito Media to fix the problem he is having with his services.

In response to the complaint, Zito Media filed preliminary objections that the Commission lacks jurisdiction to hear the complaint. In doing so, Zito Media alleged the entity that serves Mr. Adams is a cable television company called “Zito Central PA, LLC,” which is not Commission-jurisdictional. Zito Media then argued that the complaint should be dismissed.

Mr. Adams filed an answer to the preliminary objections in support of his complaint. In his answer, Mr. Adams averred the following regarding the identity of his service provider: “In addition to providing television services, Zito Media also provides telephone service to my residence.” Answer, ¶ 1. This averment is consistent with the averments in Mr. Adams’ Complaint in which he identifies Zito Media as his provider of telephone services.

At a prehearing conference before the presiding officer, an argument was held regarding the jurisdictional issues raised in the preliminary objections. Also at the prehearing conference, it was noted that Zito Media was no longer certificated to operate in Pennsylvania.

Following the prehearing conference, an ID was issued dismissing the complaint without a hearing. The ID determined that “the Commission does not have jurisdiction to hear complaints about internet-based service, nor does the Commission have the jurisdiction to hear a case involving an entity which no longer holds operating authority from the Commission.” The ID noted that “based on Complainant’s comments and descriptions in his pre-hearing filings, Zito Media did not provide land-line telecommunications service to Complainant as what Complainant is describing is internet-based service over which the Commission has no jurisdiction as is contended by Zito Media in its preliminary objections.”

Upon review of the pleadings and applicable law, the ID should be reversed, and this matter should be remanded to the Office of Administrative Law Judge (OALJ) for further proceedings.

A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979) (*Interstate*). The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the motion, all well-pleaded material facts of the other party, as well as every inference fairly deducible from those facts. *Cnty. of Allegheny v. Commonwealth*, A.2d 402 (Pa. 1985). The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994); *see also Interstate*.

According to the ID, a hearing to ascertain the factual status of telephone service to Complainant is moot because Zito Media is no longer a Commission-jurisdictional public utility in Pennsylvania. I disagree. The fact that Zito Media no longer is certificated to operate in Pennsylvania may not preclude Mr. Adams from having his complaint heard. Whereas the Commission approved Zito Media's abandonment of service in Pennsylvania via order effective January 12, 2023,¹ this approval was granted after Mr. Adams filed his complaint on May 20, 2022. Consequently, the allegations giving rise to the complaint occurred while Zito Media was still a certificated public utility in Pennsylvania. Moreover, for purposes of the preliminary objections, Zito Media must accept as true the facts plead by Mr. Adams. This includes the facts plead by Mr. Adams that Zito Media is his provider of telephone service. For these reasons, it is not clear and free from doubt that the Commission is precluded from hearing the complaint as a matter of law, and it is also not clear that the Complainant is not entitled to relief under any circumstances.²


¹ *See Application of Zito Media Voice, LLC for Approval of the Discontinuance and Abandonment of Competitive Local Exchange Carrier and Competitive Access Provider Services to the Public In the Commonwealth of Pennsylvania*, Docket No. A-2022-3036219 (Order entered Jan. 12, 2023). We note that Zito Media in its abandonment filings did not disclose the existence of the above-captioned complaint. Ideally, the application for abandonment should have disclosed the above-captioned complaint so it could have been considered to determine if abandonment was yet proper.

² In addition, the ID fails to consider the potential application of the VOIP Freedom Act in this case. The Act generally prohibits the Commission from regulating the rates, terms, and conditions of VOIP service. 73 P.S. §§ 2251.1, *et seq.* However, the Act also preserves the Commission's authority over, *inter alia*, enhanced 911 service provided using VOIP. 73 P.S. § 2251.6(1)(i); *Eileen Floyd v. Verizon Pennsylvania, LLC*, Docket No. C-2012-2333157 (Opinion and Order entered April 30, 2013). Thus, despite the provision of telephone service to Mr. Adams using VOIP, the Commission appears to have authority to adjudicate any claims involving emergency services raised in the complaint.

THEREFORE, I MOVE THAT:

1. The Initial Decision issued at the above-captioned docket is reversed and this matter be remanded to the Office of Administrative Law Judge for further proceedings consistent with this Motion.

2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

A handwritten signature in black ink, appearing to read "J.F. Coleman, Jr.", written over a horizontal line.

Date: November 9, 2023

**JOHN F. COLEMAN, JR.
COMMISSIONER**