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March 12, 2026

**Via Electronic Filing**

Matthew Homsher, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Frank Bankowski v. Fidium Enterprise Services, LLC  
Docket No. C-2024-3049217

Dear Secretary Homsher:

Enclosed for electronic filing please find the Preliminary Objections of Fidium Enterprise Services, LLC with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Bryce R. Beard*  
Bryce R. Beard

BRB/red  
Enclosure

cc: Administrative Law Judge Jeffrey A. Watson (via email [jeffwatson@pa.gov](mailto:jeffwatson@pa.gov))  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Fidium Enterprise Services, LLC's **Preliminary Objections** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email**

Frank Bankowski  
3151 Seneca Court  
Gibsonia, PA 15044  
[bankhpi@consolidated.net](mailto:bankhpi@consolidated.net)

Date: March 12, 2026

/s/ *Bryce R. Beard*

Bryce R. Beard, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Bankowski,	:	
	Complainant,	:
	:	
v.	:	Docket No. C-2024-3049217
	:	
Fidium Enterprise Services, LLC,	:	
	Respondent.	:

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**NOTICE TO PLEAD**

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**To:** Frank Bankowski  
3151 Seneca Court  
Gibsonia, PA 15044  
[bankhpi@consolidated.net](mailto:bankhpi@consolidated.net)

You are hereby notified that a reply to the **Preliminary Objections** of Fidium Enterprise Services, LLC must be filed within 10 days of the date of service. All pleadings, such as a reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Fidium Enterprise Services, LLC, and, where applicable, the Administrative Law Judge (“ALJ”) presiding over this proceeding.

File with:

Matthew Homsher, Secretary  
Pennsylvania Public Utility  
Commission  
400 North Street  
Harrisburg, PA 17120  
<https://efiling.puc.pa.gov/Login>

With a copy to:

Norman J. Kennard, Esquire  
Bryce R. Beard, Esquire  
Stephen M. Pemberton, Esquire  
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Bryce R. Beard, Esquire  
*Counsel for Fidium Enterprise Services, LLC*

Date: March 12, 2026

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Bankowski, :  
Complainant, :  
v. : Docket No. C-2024-3049217  
Fidium Enterprise Services, LLC, :  
Respondent. :

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**FIDIUM ENTERPRISE SERVICES, LLC’S  
PRELIMINARY OBJECTION *NUNC PRO TUNC* TO  
COMPLAINT**

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Pursuant to 52 Pa. Code § 5.101, Fidium Enterprise Services, LLC f/k/a Consolidated Communications Enterprise Services, Inc. (“FES”) submits the following Preliminary Objections *nunc pro tunc* to the Complaint of Frank Bankowski (“Complainant” or “Mr. Bankowski”), which was served on FES by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on January 6, 2026. Pursuant to 52 Pa. Code §§ 5.61, 5.62, FES is also filing an Answer and New Matter to the Complaint.

Please note that while the Commission served a copy of the Complaint on Consolidated Communications / Fidium, the correct entity involved in the factual matters contained in Mr. Bankowski’s complaint is Fidium Enterprise Services, LLC (Utility Code 3110401), a Competitive Local Exchange Carrier (“CLEC”) that was engaged in non-jurisdictional fiber broadband deployment which damaged Mr. Bankowski’s Comcast cable service line during the deployment on or around September 2023.

As discussed FES’s Answer and New Matter, FES is regulated on a limited basis for its Competitive Local, Competitive Access, and Intrastate Access CLEC services. Mr. Bankowski’s complaint does not involve any of those jurisdictional activities. As such, FES’s non-jurisdictional

fiber broadband deployment was not and is not “public utility service” subject to the Commission’s jurisdiction and is rather subject to the preemptive jurisdiction of the Federal Communications Commission (“FCC”) for some of the fiber-based service, or is simply unregulated.

Further, as discussed in these Preliminary Objections, even if the Commission did regulate fiber broadband deployment under the Public Utility Code (it does not), the subject matter and relief requested by Mr. Bankowski is, as a matter of fact and law, beyond the Commission’s jurisdiction. Mr. Bankowski’s entire complaint involves matters of property law, tort, damages, and warranties that do not fall within the Public Utility Code or the Commission’s regulations. As such, his complaint must be dismissed.

In support of these Preliminary Objections, FES avers as follows:

## **I. INTRODUCTION**

1. As discussed in FES’s Answer and New Matter, FES is regulated on a limited basis for its Competitive Local, Competitive Access, and Intrastate Access CLEC services at Utility Code 3110401.

2. FES struck Mr. Bankowski’s Comcast service line in September of 2023 during non-regulated fiber line installation which is not telecommunication service regulated by the Commission.

3. FES’s non-regulated fiber broadband deployment is not service it provides to the public pursuant to the Public Utility Code or the Commission regulations or FES’s certificate of public convenience. As such, the Commission has no jurisdiction over this matter.

4. Notwithstanding the Commission’s lack of jurisdiction over FES’s fiber broadband deployment, Mr. Bankowski’s complaint involves issues he experienced with the reinstallation of his Comcast cable service by Comcast after FES damaged Comcast’s cable line serving Mr.

Bankowski during fiber optic installation in September of 2023. To the best of FES's information and belief, Comcast repaired its cable service promptly, and FES has no control over Comcast or its cable facilities and no obligation to replace or repair such facilities.

5. Even if FES's fiber broadband deployment was regulated by the Commission (it is not) Mr. Bankowski's complaint raises matters exclusively involving alleged property law, torts and warranty.

6. Complainant expressly seeks as relief for the Commission to order FES to: 1) reinstall Mr. Bankowski's Comcast cable services; 2) reinstall Mr. Bankowski's Comcast cable services "12" under my lawn and connect to my service mounted on my outside wall"; 3) "compensate [Complainant] for theft of [his Comcast cable] service"; 4) "compensate [Complainant] for . . . use of my property for reinstallation"; and 5) guarantee his Comcast cable service "for any future problems." Complaint at ¶ 5

7. Looking only at the pleading, allegations, and relief requested by Mr. Bankowski, the law is clear that the Commission lacks jurisdiction over FES's fiber broadband deployment and Mr. Bankowski can be granted no relief from this Commission.

8. Moreover, even if FES's fiber broadband deployment was regulated by the Commission (it is not), the Commission does not have jurisdiction over Mr. Bankowski's claims regarding property, tort, warranty or damages he requests be found against FES. Additionally, each of these claims are legally insufficient as there is no remedy available at law to require FES to either replace, guarantee, or reinstall Comcast's facilities, or otherwise grant Complainant the damages he alleges. As such, the complaint must be dismissed as a matter of law.

## II. PRELIMINARY OBJECTIONS

### A. Applicable Legal Standards

9. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a).

10. Under Section 5.101(a) of the Commission's regulations, 52 Pa. Code § 5.101(a)(1)-(7), preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

11. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>1</sup> However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>2</sup>

12. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.<sup>3</sup>

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<sup>1</sup> *Cty. of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

<sup>2</sup> *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>3</sup> *Dept. of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

**B. Dismissal Based on Lack of Commission Jurisdiction over the Complaint, 52 Pa. Code § 5.101(a)(1) – Fidium Enterprise Services, LLC’s fiber broadband deployment is not a public utility service and is not regulated by the Commission.**

13. Under Section 5.101(a)(1) of the Commission’s regulations, preliminary objections may be filed against a complaint alleging lack of Commission jurisdiction.

14. The Commission is a creation of the General Assembly and only has the powers and authority granted to it by the legislature that are contained in the Public Utility Code.<sup>4</sup> The Commission must act within and cannot exceed its jurisdiction.<sup>5</sup> Jurisdiction cannot be conferred by the parties where none exists.<sup>6</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>7</sup>

11. Mr. Bankowski’s complaint seeks relief against FES’s fiber broadband deployment activities. FES’s non-jurisdictional fiber broadband deployment was not and is not “public utility service” subject to the Commission’s jurisdiction and is rather subject to the preemptive jurisdiction of the Federal Communications Commission (“FCC”) for some of the fiber-based service, or is simply unregulated. As a matter of law, FES’s fiber broadband deployment that damaged Mr. Bankowski’s Comcast cable line in September 2023 is not regulated by the Commission.

12. Like all other unregulated fiber broadband deployment in Pennsylvania, the Commission has no jurisdiction whatsoever over FES’s fiber deployment. That FES impacted Mr. Bankowski’s Comcast cable service temporarily in September 2023 is not justiciable by this Commission.

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<sup>4</sup> *Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>5</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>6</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>7</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

13. As FES's fiber broadband deployment activities in September 2023 were unrelated to any public utility service, they are beyond the Commission's jurisdiction. Thus, granting the preliminary objections here when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy.

**C. Dismissal Based on Lack of Commission Jurisdiction over the Complaint, 52 Pa. Code § 5.101(a)(1) – Assuming, *arguendo*, that Fidium Enterprise Services, LLC's fiber broadband deployment was subject to the Commission's jurisdiction, none of the relief sought in the Complaint able to be granted under the public utility code or Commission regulation.**

14. Assuming, *arguendo*, that FES's fiber broadband deployment was somehow regulated by the Commission (it is not), Mr. Bankowski's complaint seeks relief related to property, tort, warranty and damages - all of which are matters outside the Commission's jurisdiction. None of his requested remedies fall within the Commission's authority to grant relief.

15. As a matter of law and fact, FES is not responsible for maintaining or reinstalling Comcast's cable services to Mr. Bankowski. The requested relief directing **FES** to reinstall Comcast's facilities and to do so according to Complainant's specifications, that being "12" under his lawn," is not relief the Commission can order. Even if the Commission had regulatory authority over FES's fiber broadband deployment, FES has no authority or control over Comcast's facilities or the cable services to Mr. Bankowski.

16. Additionally, to the extent Mr. Bankowski is requesting "compensation" or damages for the use of any of his property or other considerations potentially regarding utility easements, such matters of property law are not within the Commission's jurisdiction.<sup>8</sup>

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<sup>8</sup> In *Fairview Water Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. Various Commission decisions reiterate this principle. See *Lasko v. Windstream PA, LLC*, Docket No. C-2010-2217869 (Final Order dated Apr. 1, 2011); *Perrige v. Metro. Edison Co.*, Docket No. C00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered Sept. 15, 1999); *Baker and Blume v. SPLP*, Docket No. C-2020-3022169 (Initial Decision entered Dec. 8, 2020), at 10–11 (Barnes, J).

17. The Commission also has no jurisdiction to adjudicate allegations of trespass or “theft of service.” Property right controversies are for courts of general jurisdiction, not the Commission. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999). *See also Stabler v Verizon Pennsylvania, Inc.*, Docket No. C-2012-2284222 (Order entered June 1, 2012).

18. As each of these matters are beyond the Commission’s jurisdiction, granting preliminary objections when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy.

**D. Dismissal Based on Legal Insufficiency of a pleading of the Complaint, 52 Pa. Code § 5.101(a)(4).**

19. In addition to FES’s fiber broadband deployment and the relief requested by Mr. Bankowski falling beyond the Commission’s jurisdiction, the Complaint must be dismissed for being legally insufficient. Specifically, Mr. Bankowski’s complaint is legally insufficient because it fails to state any law or regulation for which the complaint is based and fails to set forth a valid cause of action against under the Public Utility Code, Commission’s regulations, or any Commission order. As a matter of law, his complaint is legally insufficient.

20. As stated above, Mr. Bankowski asks the Commission to Order FES to “compensate” him for “theft of service” and to “guarantee [his Comcast service] from any future problems.” Complaint at 5.

21. It is fundamental that the Commission lacks the statutory authority to hear claims on or award damages for such items.<sup>9</sup> Pennsylvania law has long held that damages are a question

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<sup>9</sup> *Byer v. Peoples Nat. Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977); *DeFrancesco v. W. Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (1980)

for the trial courts.<sup>10</sup> The Commission has consistently dismissed claims for alleged monetary damages and compensation for lack of jurisdiction.<sup>11</sup>

22. Additionally, the Commission has no jurisdiction or authority to require FES to guarantee the serviceability or quality of an unrelated entity's (here Comcast's) cable services and facilities as a matter of law. There exists no provision in the Public Utility Code to support granting this relief or requiring FES to ensure the service quality of a non-jurisdictional cable television/broadband provider.

23. The Pennsylvania courts have explained that, while permissive, the test for a demurrer calls upon the Court to carefully scrutinize the adequacy of the plaintiff's pleading:

In ruling on a demurrer, the court may consider only such matters as arise out of the complaint itself; it cannot supply a fact missing in the complaint.

Where the complaint fails to set forth a valid cause of action, a preliminary objection in the nature of a demurrer is properly sustained. *Lerner v. Lerner*, 954 A.2d 1229, 1234–35 (Pa. Super. 2008) (emphasis in original) (internal citations omitted).

When analyzing a demurrer, the court “need not consider the pleader’s conclusions of law, unwarranted inferences from facts, opinions, or argumentative allegations.” *Wiernik v. PHH U.S. Mortg. Corp.*, 736 A.2d 616, 619 (Pa. Super. 1999), *appeal denied*, 561 Pa. 700, 751 A.2d 193 (2000). To determine if the trial court properly sustained preliminary objections, this Court examines the averments in the complaint and the documents attached to the complaint to evaluate the adequacy of the facts averred and to assess the legal sufficiency of the complaint. *Clemleddy Const., Inc. v. Yorston*, 810 A.2d 693, 696 (Pa. Super. 2002), *appeal denied*, 573 Pa. 682, 823 A.2d 143 (2003)...“Where the complaint fails to set forth a valid cause of action, a preliminary objection in the nature of a *demurrer* is properly sustained.” [*Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. 2011)].

*Am. Express Bank, FSB v. Martin*, 200 A.3d 87, 93 (Pa. Super. 2018).

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<sup>10</sup> See *Miller Oral Surgery, Inc. v. Dinello*, 416 Pa. Super. 310, 611 A.2d 232 (1992) (finding award of lost profits as damages); see also *Delahanty v. First Pa. Bank, N.A.*, 464 A.2d 1243, 1261 (1983).

<sup>11</sup> See e.g. *Carlson v. Equitable Gas Co.*, Docket No. C-20078025, (Opinion and Order Entered June 10, 2008) (holding that complainant’s claims of lost income, property damage, and mental stress were “monetary damages” that the Commission lacks authority to award (citing *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (1982))).

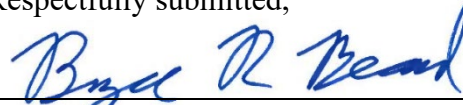
24. Complainant fails to set forth a cause of action against FES based on sufficient facts to adequately explain the nature of the claims as they relate to the Public Utility Code or the Commission's regulations. Without such causes of action set forth based on the Public Utility Code and the Commission's Regulations, the Complaint is legally insufficient.

25. Granting preliminary objections on legally insufficient claims when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy. No reason exists for going to hearing when the Commission lacks jurisdiction over FES's fiber broadband deployment or statutory authority to award damages to Mr. Bankowski or to require FES to "guarantee" Comcast's cable services, and when Complainant has not articulated any facts as to how his claims relate to the Public Utility Code or the Commission's regulations. Accordingly, the Complaint should be dismissed.

### CONCLUSION

WHEREFORE, Fidium Enterprise Services, LLC, respectfully requests that the Commission: (a) grant these Preliminary Objections so as to dismiss the Complaint against Fidium Enterprise Services, LLC; and (b) grant any other relief deemed appropriate.

Respectfully submitted,



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Norman J. Kennard, Esquire (I.D. 29921)  
Bryce R. Beard, Esquire (I.D. 325837)  
Stephen M. Pemberton, Esquire (I.D. 336783)  
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Date: March 12, 2026

*Counsel Fidium Enterprise Services, LLC*

**Verification**

I, Kevin Kastor, am the Senior Director – Government Affairs for Fidium Enterprise Services, LLC and I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect Fidium 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 falsification to authorities).

Date: March 12, 2026

/s/ Kevin Kastor  
Senior Director – Government Affairs  
Fidium Enterprise Services, LLC