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March 10, 2010

**Via Federal Express**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Buffalo-Lake Erie Wireless Systems Co., LLC  
v. Verizon Pennsylvania Inc. and Verizon North Inc.  
Docket Nos. C-2010-2158408 and C-2010-2158409

Dear Secretary McNulty:

Enclosed please find the original and three copies of the Preliminary Objections of Verizon Pennsylvania Inc. and Verizon North Inc. to the Complaint of Buffalo – Lake Erie Wireless Systems Co., LLC, in the above referenced matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb  
Enc.

**Via E-Mail and Federal Express**  
cc: The Honorable Susan Colwell

**Via E-Mail and First Class Mail**  
cc: Attached Certificate of Service

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MAR 10 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Buffalo- Lake Erie Wireless Systems Co., LLC. :

Complainant, :

v. :

Verizon Pennsylvania Inc. and  
Verizon North Inc. :

Respondents. :

Docket Nos. C-2010-2158408  
C-2010-2158409

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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**NOTICE TO PLEAD**

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TO: Deanne M. O'Dell  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101

You are hereby notified that Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") has filed, pursuant to 52 Pa. Code §§5.101 *et seq.*, Preliminary Objections to the Formal Complaint in the above-captioned proceeding. You may submit a response to the Preliminary Objections within ten (10) days pursuant to 52 Pa. Code § 5.101(f). If no response is submitted, the presiding officer may rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings, such as a response to the Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon.



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*Counsel for Respondents  
Verizon Pennsylvania Inc. and Verizon  
North Inc.*

Dated: March 10, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Buffalo- Lake Erie Wireless Systems Co., LLC.	:	
	:	
Complainant,	:	
	:	
v.	:	Docket Nos. C-2010-2158408
	:	C-2010-2158409
Verizon Pennsylvania Inc. and	:	
Verizon North Inc.	:	
	:	
Respondents.	:	

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**PRELIMINARY OBJECTIONS  
OF VERIZON**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”) (together, “Verizon”) hereby submit the following preliminary objections, pursuant to 52 Pa. Code § 5.101, to the complaint filed by Buffalo – Lake Erie Wireless Systems Co., Inc. (“BLEW”).<sup>1</sup> In support of its preliminary objections, Verizon avers and represents as follows:

**A. Introduction and Background**

1. BLEW is a wireless carrier that, according to its complaint, provides wireless service to approximately 1,858 customers in certain parts of Pennsylvania. (Complaint ¶1).
2. BLEW has entered into interconnection agreements (“ICAs”) with Verizon PA and Verizon North governing the terms by which BLEW is permitted to interconnect with

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<sup>1</sup> In the alternative, Verizon respectfully requests that the Commission issue partial summary judgment in Verizon’s favor pursuant to 52 Pa. Code § 5.102, based on the allegations of the Complaint and the sworn witness testimony and record evidence from the emergency hearing on February 24, 2010.

Verizon's network to terminate traffic and to "transit" traffic to or from third party carriers with whom it is not directly interconnected by using Verizon's tandem switches.<sup>2</sup>

3. Over six months ago, BLEW stopped paying Verizon anything at all for its use of Verizon's network, and before that it had been paying only a fraction of its monthly billings since at least late 2007. Repeated attempts to reach acceptable payment arrangements failed. In October of 2009, Verizon sent BLEW notices of default and termination under the ICAs due to BLEW's longstanding failure to pay Verizon's bills. The notices demanded payment of the outstanding amount of \$179,947.10 on or before December 28, 2009 (a date that was extended by agreement to January 5, 2010).<sup>3</sup>

4. On December 30, 2009 BLEW filed a petition for an emergency order to prevent Verizon from disconnecting its services for non-payment under the terms of the ICAs that govern the contractual relationship between the parties. The Commission granted that petition in part on January 8, 2010, granting BLEW a 30-day stay of disconnection to allow the parties to resolve the matter, or for BLEW to notify its customers of a pending termination of service, but requiring BLEW to place \$122,405.93 in escrow (which BLEW did) and to pay Verizon's current charges for services rendered.

5. Since the Commission's emergency relief expired after 30 days, BLEW filed a formal complaint and petition for interim emergency order on February 16, 2010, requesting

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<sup>2</sup> The Verizon PA/BLEW and Verizon North/BLEW ICAs were entered into the record at the February 24, 2010 emergency hearing as Verizon Exhibits 1 and 2 and are also available at <http://www.puc.state.pa.us/PcDocs/516289.pdf> and <http://www.puc.state.pa.us/PcDocs/516110.pdf>.

<sup>3</sup> Because BLEW has continued to use Verizon's network without payment since the October default notices, BLEW currently owes Verizon a total of approximately \$230,910.04, \$221,220.91 of which is past due. (February 24, 2010 Emergency Hearing, Tr. at 113-114). A settlement in principle to resolve the pending material question on the ALJ's order denying interim emergency relief is expected to result in BLEW's payment of a portion of this overdue amount.

a further stay of Verizon's termination for non-payment. The presiding officer denied BLEW's petition for interim emergency relief on March 2, 2010.

6. BLEW's formal complaint contends that Verizon owes it money for three separate reasons: (1) to pay for BLEW's termination of traffic originated by Verizon's customers and destined to BLEW's customers; (2) because BLEW alleges Verizon should have charged it a lower per-minute rate for transiting BLEW's traffic exchanged with third-party carriers through BLEW's tandem; and (3) to compensate BLEW for costs of transporting traffic originated by Verizon's customers from the point of interconnection at Verizon's tandem switch to BLEW's switch in New York. The first and third of these contentions fails to state a claim upon which relief may be granted and should therefore be dismissed preliminarily pursuant to 52 Pa. Code § 5.101.<sup>4</sup>

## **B. Preliminary Objections**

7. The Commission's regulations permit the filing of preliminary objections in the nature of a motion to dismiss a complaint on the ground of legal insufficiency where the complaint fails to state a claim upon which relief may be granted. 52 Pa. Code §5.101(a)(4). For purposes of disposition of such a motion, all well-pleaded material facts of the non-moving party must be accepted as true. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (Pa. 1977). The motion will be granted only if the moving party prevails as a matter of law.

8. Alternatively, the Commission's regulations permit the filing of a motion for summary judgment where there is no genuine issue as to a material fact and that the moving

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<sup>4</sup> BLEW's second contention is also baseless, because BLEW is required to pay the rates for transit set forth in its ICA and BLEW may not rely upon a tariff to change the rate and thus alter the contract – particularly where, as here, the tariff does not even apply to the service being provided to BLEW. *See Qwest Corp. v. Ariz. Corp. Comm'n*, 394 F. Supp. 2d 1228, 1231 (D. AZ 2004) (“an interconnection agreement constitutes a ‘binding agreement,’” and “Qwest was contractually required to charge” the rates contained therein). Verizon reserves the right to move for summary judgment or judgment on the pleadings on this claim at a later time.

party is entitled to a judgment as a matter of law. 52 Pa. Code § 5.102. In this case both parties submitted witnesses to testify under oath regarding the matters raised in the complaint at an emergency hearing on February 24, 2010. Accordingly, if the complaint is not found to be deficient as a matter of law under 52 Pa. Code § 5.101(a)(4), then Verizon respectfully requests that summary judgment be granted pursuant to 52 Pa. Code § 5.102 on the issues addressed in these preliminary objections.

**First Preliminary Objection: BLEW's demand that the Commission require Verizon to pay BLEW for "all amounts outstanding for BLEW's termination of [Verizon's] traffic" (Complaint ¶ 28) fails to state a claim upon which relief may be granted**

9. Paragraphs 8 through 12 of BLEW complaint contend that Verizon owes BLEW \$16,649.35 for termination of traffic sent by Verizon's customers to BLEW's customers between March 17, 2008 and October 17, 2009.

10. BLEW admits that it "did not bill Verizon" for this traffic termination. (Complaint at 5, note 6).

11. The ICAs are quite clear that Verizon is only required to pay amounts that are "billed." (Verizon PA/BLEW ICA § 26.8; Verizon North/BLEW ICA § 9.3.1).

12. Therefore, since BLEW did not bill Verizon, Verizon does not at this time "owe" BLEW any payment for traffic termination during this period.

13. Under the terms of the ICAs, Verizon has the right to inspect bills before it pays for services, and it has no obligation to pay a bill before its due date, which is 30 days after the invoice is issued.<sup>5</sup> Further, Verizon has the right to demand sufficient detail to

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<sup>5</sup> "Except as may otherwise be provided in this Agreement, each Party shall submit on a monthly basis an itemized statement of charges incurred by the other Party during the preceding month(s) for services rendered hereunder." VA PA/BLEW ICA § 26.8. "Except as may be otherwise provided in this Agreement, each Party shall submit on a monthly basis a statement, itemized by category, of charges

enable it to validate the bills (for example, a monthly break-down of the minutes-of-use upon which the alleged charges are based) and also has the right to enforce the contractual limitations on back-billing.

14. Verizon has never expressed an unwillingness to pay BLEW for traffic termination, once a bill is properly issued with sufficient detail to allow Verizon to validate the amounts billed and consistent with the ICA's backbilling limitations. If Verizon is properly billed for services due under the ICAs it will pay the amounts rightfully due subject to the above limitations.

15. However, BLEW's complaint does not allege that Verizon has failed to pay any properly issued bill under the ICA.

16. As the presiding officer concluded in the March 2, 2010 order denying interim emergency relief, "[u]ncontradicted evidence showed that Verizon had paid billed amounts and that BLEW stopped billing Verizon [for traffic termination] after April 2008." Further, she found that "the bill BLEW relies upon was never sent for payment but was e-mailed to Verizon's counsel on February 15, 2010," had not come due as of the date of the order, and thus could not be over due. (3/2/10 Order at 15).

17. Accordingly, BLEW's claim that Verizon "owes" it \$16,649.35 for traffic termination between March 17, 2008 and October 17, 2009 is premature at best and fails to state a claim upon which relief may be granted.

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incurred by the other Party during the preceding month(s) for Services rendered hereunder." VZN/BLEW ICA § 9.1.

**Second Preliminary Objection: BLEW's demand that the Commission require Verizon to pay BLEW "\$125,000 in transport costs incurred by BLEW to deliver Verizon's traffic from the Verizon tandem to BLEW's switch" (Complaint ¶ 30) fails to state a claim upon which relief may be granted**

18. Paragraphs 21 through 27 of BLEW's complaint allege that the Commission should require Verizon to pay BLEW \$125,000 to reimburse BLEW for "the costs to transport Verizon's traffic from Verizon's tandem to BLEW's switch since the adoption of the interconnection agreement through the current dispute." (Complaint ¶ 25).

19. BLEW's claim that Verizon must pay it for the costs of transporting Verizon's traffic to BLEW's switch in New York is contrary to the ICAs and applicable law.

20. BLEW contends that under the ICAs it has the right to select any "interconnection point" or "IP" for purposes of billing – including in this instance a point in another state – and by unilaterally picking a distant, out-of-state "IP," it is then entitled to charge Verizon for the "cost" of transporting Verizon's terminating traffic to that distant point. But BLEW is wrong.

21. Under the Telecommunications Act, Verizon PA and Verizon North, as ILECs, have the duty to provide BLEW with interconnection "at any technically feasible point within the carrier's [i.e., Verizon PA's or Verizon North's] network." 47 U.S.C. § 251. The "networks" of the ILECs Verizon PA and Verizon North do not extend out of Pennsylvania into New York. The FCC "has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA" and has recognized that "[i]n such situations, the originating carrier bears the cost of interconnection to the single POI selected by the competitive LEC in addition to

paying reciprocal compensation for the termination of traffic.”<sup>6</sup> In other words, the ILEC can only be required to transport its traffic to a geographically relevant point in the same LATA in which the traffic originated – which by definition must be a point in Pennsylvania because the LATA is wholly within Pennsylvania. BLEW may then choose to transport the traffic to a point out of state, but it cannot charge Verizon for that transport and is limited to ordinary reciprocal compensation.

22. Not only is BLEW’s claim that it is free to choose its switch in New York as its “IP” contrary to the Act, it is also contrary to express language in the ICAs.

23. The BLEW/Verizon PA ICA states that the “[a]s of the effective date, [BLEW’s] IPs shall be the physical [BLEW] locations where Verizon is currently delivering traffic to [BLEW].” (VZ PA/BLEW ICA Schedule 4.1). The point where traffic is physically delivered is referred to by the ICA as the “point of interconnection” or POI. As BLEW concedes, the POI is at Verizon’s tandem switch. (BLEW Complaint ¶ 25). The ICA goes on to state that “each Party’s existing IPs as of the Effective Date of this Agreement shall be retained, and “[i]n the case of [BLEW] as a receiving Party, if Verizon requests that [BLEW] establish a geographically relevant [BLEW]-IP at a Verizon Tandem, [BLEW] shall do so within a commercially reasonable period of time.” (VZ PA/BLEW ICA § 4.2.1).

24. Similarly, the Verizon North/BLEW ICA states that “[t]he Parties will mutually designate at least one POI on GTE's network *within each GTE Tandem* for the routing of Local Traffic except as provided in Section 5 of Article IV (addressing indirect interconnection, not applicable here).” (VZN/BLEW ICA § 4.1.3) (emphasis added). This

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<sup>6</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92,20 FCC Rcd 4685, 4728, ¶¶ 87 and 91, 2005 FCC LEXIS 1390 (Rel. March 3, 2005).

ICA does not address the concept of an “IP” for billing separate from the “POI.” Further, the agreement makes clear that “the Parties will extend certain arrangements to one another *within each area in which they both operate within the State* for purposes of interconnection and the exchange of traffic between their respective end-user customers.” (VZN/BLEW ICA, Article I) (emphasis added).

25. Accordingly, there is no reasonable basis for BLEW to assert that it is entitled to bill Verizon for the cost of transporting its traffic to BLEW’s out-of-state switch in New York.

26. Moreover, BLEW concedes that it has never issued a bill to Verizon for this alleged transport to BLEW’s switch. (February 24, 2010 Emergency Hearing, Tr. at 46, 85, 100). For the same reasons discussed with regard to BLEW’s failure to bill Verizon for traffic termination, above, even if BLEW had a valid basis to bill for this activity – which it does not – Verizon has no obligation to pay charges for which it has never received a bill.

WHEREFORE, Verizon, for the foregoing reasons, requests that the Commission dismiss the portions of BLEW’s complaint discussed above and grant such other relief that the Commission deems just and proper.

Respectfully submitted,

  
Suzan D. Paiva (Atty ID No. 53853)

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Dated: March 10, 2010

Counsel for Verizon Pennsylvania Inc.  
and Verizon North Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of Verizon's Preliminary Objections, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 10<sup>th</sup> day of March, 2010.

**VIA E-MAIL and FIRST CLASS U.S.MAIL**

Deanne M. O'Dell, Esquire\*  
Eckert Seamans Cherin & Mellott, LLC  
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\*via Federal Express in lieu of US Mail



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Attorney for Verizon

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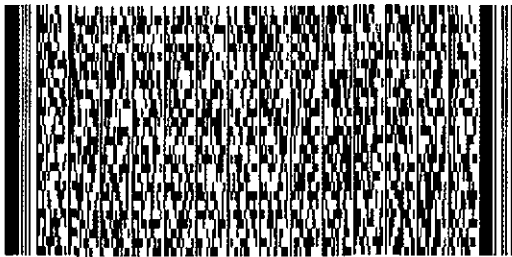
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**James J. McNulty, Secretary**  
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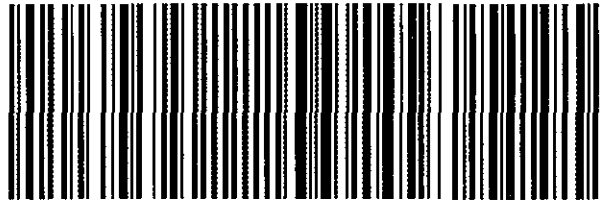


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