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December 7, 2010

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, LLC
v. Verizon North LLC and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary Chiavetta:

Enclosed please find Verizon's Prehearing Memorandum, being filed on behalf of Verizon Pennsylvania Inc. and Verizon North LLC (collectively, "Verizon") in the above captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,

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

Suzan D. Paiva

SDP/slb

Via E-Mail and First Class U.S. Mail
cc: The Honorable Cynthia W. Fordham
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Verizon's Prehearing Memorandum, 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 7th day of December, 2010.

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AT&T Communications of Pennsylvania, LLC	:	
	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon Pennsylvania Inc. and Verizon North LLC.	:	

**PREHEARING MEMORANDUM OF
VERIZON PENNSYLVANIA INC. AND VERIZON NORTH LLC**

Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North LLC (“Verizon North”)¹ (together “Verizon”) submit this Prehearing Memorandum for purposes of the prehearing conference scheduled for December 8, 2010.

I. BACKGROUND AND GENERAL POSITION

On December 30, 2002, Verizon opened a proceeding to adopt statewide access rates for Verizon PA and Verizon North pursuant to a commitment from the Bell Atlantic/GTE merger. This case was later consolidated with an AT&T formal complaint seeking to reduce Verizon North’s access charges to Verizon PA’s level. The Commission resolved those matters by approving a settlement on July 28, 2004 that reduced Verizon’s access revenues by approximately \$50 million, offset with retail rate increases to Verizon basic exchange customers. As part of the approved settlement, Verizon North’s access rates were reduced to Verizon PA’s level and both were set at statewide levels. The July 28, 2004 Order also remanded “for the further development of the record and the issuance of a

¹ Verizon North LLC is the successor to Verizon North Inc. See *Application of Verizon North Inc. for any approvals required under the Public Utility Code for transactions related to the restructuring of the company to a Pennsylvania-only operation and notice of an affiliate transaction*, Docket Nos. A-2009-2111330, etc. (Opinion and Order entered November 19, 2009); *Application of Verizon North Retain Company for approval of a corporate restructuring whereby Verizon North Retain Company will merge with and into Verizon North LLC*, A-2010-2193749 (Secretarial Letter dated November 8, 2010).

recommended decision” on the question of whether there should be further access rebalancing.

On December 7, 2005, Administrative Law Judge (“ALJ”) Cynthia Williams Fordham issued a Recommended Decision on Remand (“Remand RD”) recommending an additional phased-in rate rebalancing based on an evidentiary record developed and applied in 2005. The Commission, however, never addressed the Remand RD because it stayed this proceeding pending the outcome of related proceedings before the Federal Communications Commission (“FCC”), a stay that continued for several years. During that time the Commission also stayed its separate investigation of the access charges of the rural incumbent local exchange carriers (“RLECs”), whose access rates are generally many multiples higher than Verizon’s rates.

On August 5, 2009, in response to a series of formal complaints against the RLECs’ access rates filed by AT&T, the Commission lifted its stay of the RLEC case and set it for evidentiary hearings with a one-year deadline for a recommendation. On August 3, 2010, following highly contested litigation with voluminous written testimony from a number of different parties and three days of hearings presenting diverse views on how the matter should be resolved, ALJ Kandace Mellilo recommended that the RLECs’ access rates be reduced to their interstate levels. If adopted, her recommendation would result in an average RLEC rate of 1.9 cents per-minute following the reductions, as compared to Verizon PA’s *current* rate of approximately 1.7 cents. These phased-in access reductions would be off-set by increases to rates for other noncompetitive services (primarily basic residential and business local service rates) over a period of time, with no revenue replacement from the

state universal service fund (“USF”). Exceptions and replies were completed on September 17, 2010 and this recommendation is pending before the Commission for a decision.

Meanwhile, by order entered May 11, 2010, the Commission also lifted the stay of this Verizon access charge investigation and reassigned the matter to the Office of ALJ “for the development of the appropriate evidentiary record and the issuance of a Recommended Decision.” (5/11/10 Order at Ordering ¶ 3). The Commission noted that “it is apparent that the record in this investigation needs to be updated,” due to the time that has passed since the record was developed and the Remand RD issued in 2005. (*Id.* at 21). The Commission therefore reopened the record to “afford the participating parties due process opportunities to supplement the evidentiary record.” (*Id.*). The Commission did not set a deadline for litigation or a recommendation in this case.

Because the prior phase of this case was resolved through a partial settlement, the Commission has not yet decided many of the most fundamental questions of access pricing law and policy. For example, the Commission has never specifically decided the proper level for access rates, including the extent to which they should provide support to other operating costs and how revenues should be rebalanced in compliance with Chapter 30’s revenue neutrality requirement. The Commission will make a decision for the first time on some or all of these issues when it addresses ALJ Melillo’s recommendation in the RLEC case.

Accordingly, the most efficient way to handle the litigation of this case would be to set a schedule where the first testimony due date is triggered by the Commission’s order in the RLEC case. Otherwise, party and Commission resources may be wasted by the preparation and filing of complex and voluminous testimony disputing issues that the

Commission's RLEC order is likely to clarify. Since the law and policy regarding switched access rates must apply equally and fairly to all ILECs, testimony submitted regarding Verizon's access rates could be rendered irrelevant and useless to the Commission if it conflicts with decisions made in the RLEC order. And the potential financial impact to Verizon of any proposed changes to its access charges will be a key focus of this proceeding. That impact cannot be examined properly until the Commission rules on the arguments raised by certain parties in the RLEC case that RLEC access revenue be replaced by revenue from a state USF funded in large part by Verizon. In other words, it is necessary to the proper presentation of Verizon's testimony in this case to know whether the Commission will uphold ALJ Mellilo's well-reasoned rejection of those arguments.

In short, a rush to file testimony would serve no purpose and would be wasteful and counterproductive in the long run. The Commission did not require an expedited proceeding here, and will provide meaningful guidance when it issues an order in the RLEC access case. The orderly filing of testimony after the parties have had a chance to review the Commission's RLEC order will result in a more efficient process and a more useful record to present to the Commission for decision.

Instead of allowing time to develop a record that will be useful to the Commission, AT&T proposes an unprecedentedly truncated litigation schedule, with two rounds of testimony and hearings occurring in a span of six weeks. There is simply no basis to adopt such a draconian schedule more fit for an emergency proceeding. Indeed, in the recently litigated RLEC case ALJ Mellilo – who was under a strict one-year deadline to expedite the case – scheduled the RLECs' direct testimony five months after the prehearing conference, with rebuttal, surrebuttal and rejoinder to follow, and evidentiary hearings eight months after

the prehearing conference.² AT&T has provided no reason that this case, where the Commission has not set a deadline, must proceed on a faster and truncated track, particularly where, for the reasons discussed above, the record would benefit from allowing time for the Commission to issue its RLEC decision and an orderly testimony schedule following that order. AT&T argues that the Commission should provide only the barest minimum opportunity for Verizon to present evidence because, according to AT&T: “[n]othing has changed in the intervening five years” since the Remand RD. That is just wrong. As AT&T’s own witnesses testified in the RLEC case, since 2003 (the last time the Commission entered an order on the RLECs’ access rates) “[t]he manner in which consumers communicate has completely changed” with an explosion of intermodal options such as wireless, Internet, cable telephone and the like.³ Verizon intends to submit evidence here to show that these threshold changes directly affect the issues the Commission must address in order to arrive at a just and lawful result in this case. Anxious to pursue its own financial self-interest, AT&T urges a “fairly limited” opportunity for Verizon to present testimony in this case. (AT&T Prehearing Memo at 3). Yet the Commission has directed that the parties be “afford[ed] . . . due process opportunities to supplement the evidentiary record”; such due process opportunities require that a reasonable schedule be set to allow these facts to be presented. (5/11/10 Order at 21).

Although AT&T ignores the procedural schedule used in the RLEC access case, it selectively quotes Verizon’s testimony in that case about the benefits of reducing the RLECs’ access rates. But AT&T fails to point out that Verizon argued in that case that

² The prehearing conference occurred on August 19, 2009, the RLECs’ direct was due January 20, 2010 and the hearings occurred April 14-16, 2010.

³ AT&T St. 1.0 at 25.

RLEC access rates – which average five cents per-minute with some as high as 10 cents per minute – should be lowered to the level of Verizon’s access rates. Indeed, even if ALJ Melillo’s recommended rate reduction is fully implemented, the RLECs’ rates on average will remain higher than Verizon’s *current* access rates. In short, the quotes from Verizon’s testimony explain why it is necessary to bring the RLECs’ rates closer to Verizon’s. It does not follow that there is any need for urgency that would preclude an orderly and efficient litigation of this case or that would compel further access reductions here.

II. ISSUES

The ultimate issue to be decided is how the pricing of Verizon’s intrastate switched access service will best serve the public interest in a lawful fashion. The answer to that question is not necessarily the same in 2011 as it was the last time the presiding ALJ reviewed this issue in 2005. That is, of course, why the Commission reopened the record to take new evidence. The market for communications services and Verizon’s own competitive and financial situation were completely transformed over the past five years, facts the Commission must consider in any decision it makes here. Accordingly, the Commission must provide the opportunity to develop a complete and current evidentiary record on all issues pertinent to this decision. At a minimum, those issues must include:

1. Whether the Commission should refrain from taking any action on Verizon’s comparatively low access rates until RLEC rates are reduced to Verizon’s level.
2. Whether, in light of current market conditions, Verizon’s current financial condition, and the regulatory framework in Pennsylvania, Verizon’s access rates can lawfully be reduced.
3. Whether, if the Commission decides such reductions would be lawful, as a policy matter they would be in the public interest.

4. Whether and how the Commission can ensure that the Verizon ILECs are able to cover their costs of providing regulated services along with a reasonable return, which the Commission is legally required to do to comport with statutory rate rebalancing and constitutional ratemaking mandates and to avoid harm to consumers. In this regard, Verizon intends to submit relevant cost studies and other evidence so that the Commission may make a fully informed decision on these issues.⁴
5. How the dramatic explosion in competition from cable, VoIP and wireless carriers in Pennsylvania over the past few years affects Verizon's ability to absorb a rebalancing of revenue to regulated retail rates.
6. How the disproportionate costs and burdens of regulatory mandates that the Verizon ILECs continue to absorb, and that do not apply equally to the non-regulated competitors that are rapidly gaining market share in Pennsylvania, affect Verizon's ability to absorb a rebalancing of revenue to retail rates. Among many others, these burdens include the diversion of Verizon revenue to the RLECs through access rates and the state USF, both of which are at issue in the RLEC investigation pending before the Commission.
7. Other issues set forth in the Commission's May 11, 2010 Order.

III. SERVICE LIST

Please include the following counsel for Verizon on the service list for this matter:

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⁴ AT&T and others criticized the RLECs extensively for failing to support their arguments with financial or cost evidence. *See, e.g.*, Sprint Reply Brief at 41; AT&T Reply Brief at 13.

IV. DISCOVERY

The parties have had the opportunity to take discovery since the case was reopened in May of 2010. Verizon has already answered discovery from AT&T in this phase of the proceeding. The Commission's standard discovery regulations should continue to be followed without modification. AT&T's request to modify the standard discovery rules should be rejected and this case should proceed with a reasonable schedule and standard discovery response times.

V. PROTECTIVE ORDER

On June 9, 2003, ALJ Fordham entered a protective order in this docket. That order should continue to govern the production and filing of proprietary and highly confidential information in this phase of the proceeding.

VI. SCHEDULING

Verizon proposes the following schedule in this matter:

60 days after entry of PUC order in RLEC case	Verizon Direct Testimony, including cost studies
60 days later	Other Parties' Direct
45 days later	All Parties' Rebuttal
30 days later	All Parties' Surrebuttal
Dates to be scheduled	Hearings

Verizon suggests that a telephonic prehearing conference be scheduled promptly after the entry of the RLEC order to set the precise dates.

VII. WITNESSES

Verizon expects to call a panel consisting of the following witnesses in this matter:

Don Price, Director - State Regulatory Policy (policy issues)
Verizon
701 Brazos, Suite 600
Austin, TX, 78701

Thomas J. Mazziotti, Cost Senior Staff Consultant (cost issues)
Verizon
240 E. 38th Street, Room 1216
New York, New York 10016

Verizon reserves the right to supplement and/or modify its witness list and identify additional witness to provide testimony in this proceeding.



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Date: December 7, 2010

Attorney for Verizon