

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 7, 2010

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Prehearing Memorandum, in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel H. Cheskis".

Joel H. Cheskis
Assistant Consumer Advocate
Pa. Attorney I.D. # 81617

Enclosures

cc: All parties of record
Hon. Cynthia Fordham, ALJ

135231

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SECOND PREHEARING MEMORANDUM ON REMAND
OF THE
OFFICE OF CONSUMER ADVOCATE**

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Order #5 on Remand of Administrative Law Judge (“ALJ”) Cynthia Williams Fordham dated December 3, 2010, the Pennsylvania Office of Consumer Advocate (“OCA”) hereby submits this Second Prehearing Memorandum on Remand:

I. INTRODUCTION

On December 30, 2002, Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North, Inc. (“Verizon North”)(collectively referred to as “Verizon”) filed a Joint Petition regarding the reduction of their access charges pursuant to the Bell Atlantic-Pa.-GTE Merger Order,¹ the Global Order of 1999,² and the generic access charge investigation at M-00021596. The Joint Petition was consolidated with a formal complaint filed by AT&T Communications of

¹ Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002, (November 4, 1999) (Merger Order).

² Re Nextlink Pennsylvania, Inc., Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999) (Global Order); 196 P.U.R. 4th 172, *aff’d sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlt. 2000), alloc. granted.

Pennsylvania, Inc. ("AT&T") on March 21, 2002 and docketed at C-20027195 against Verizon-North wherein AT&T sought to have Verizon-North's access charges reduced to Verizon-PA's levels pursuant to the requirements in the Commission's Merger Order.

The ensuing proceeding culminated in a Commission Opinion and Order dated July 28, 2004 granting a Joint Petition for Resolution of Litigation filed by Verizon PA, Verizon North, the OCA and the Office of Small Business Advocate ("OSBA"). The July 28th Order, among other things, permitted Verizon to reduce and restructure its access charges by allowing them to file a revenue-neutral, rate rebalancing filing in which the net revenue reductions from access charge increases and decreases are offset with revenue increases from monthly dial tone line rates for residential and business local exchange customers. However, the Commission stated that those policy issues and other access charge concerns that were raised by interexchange carriers ("IXCs") AT&T, Qwest Communications Corporation ("Qwest") and MCI WorldCom, Inc. ("MCI") in their Exceptions, but which were not specifically resolved by a recommendation from the ALJ in her Recommended Decision, would be remanded to the ALJ for the further development of the record and the issuance of a further Recommended Decision.

Additionally, the Commission directed that the scope of the remanded proceeding be expanded to consider any activity before the Federal Communications Commission ("FCC") concerning intrastate access charge issues raised in the proposal submitted by the Intercarrier Compensation Forum ("ICF") on October 5, 2004. The Commission further directed that the impact that any FCC action may have on the Commission's jurisdictional responsibilities, as well as its relationship to the final Recommended Decision on access rates arising from the remand proceeding, be addressed to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.

On December 7, 2005, a Recommended Decision on Remand was issued. The Recommended Decision on Remand directed that Verizon PA and Verizon North eliminate their carrier charges between six months to one year after a final Commission Order in this matter. Such lost revenue was then to be recovered from Residential basic local service rate increases on a combined Verizon PA and Verizon North basis with the increase to the residential rate being \$1 or less. The remaining lost revenue was to be recovered from Business line rate increases on a combined Verizon PA and Verizon North basis.

By Order entered January 8, 2007, the Commission modified the ALJ's Recommended Decision on Remand by staying the proceeding pending the outcome of the FCC's intercarrier compensation proceeding, or for a period of 12 months. The stay of this proceeding, however, was extended by the Commission in response to a motion filed by several parties. A second motion to extend the stay, however, was denied by Commission Order entered May 11, 2010. Instead, in its May 11, 2010 Order, the Commission directed that the investigation be assigned to the Office of Administrative Law Judge for the development of the appropriate evidentiary record and the issuance of a Recommended Decision. The May 11, 2010 Order further provided all parties the opportunity to supplement the evidentiary record including any issues that were not adjudicated at the time of the Remand.

In response to the May 11, 2010, Order, a prehearing conference was set for December 8, 2010 before ALJ Fordham. ALJ Fordham issued Prehearing Order #5 on Remand on December 3, 2010 directing the parties to file prehearing memorandum addressing certain agenda items. The OCA submits this prehearing memorandum in response to ALJ Fordham's Prehearing Order #5 on Remand.

II. ISSUES

In its May 11, 2010 Order, the Commission specifically directed:

5. That the participating parties shall be afforded due process opportunities to supplement the evidentiary record including any issues that were not adjudicated at the time of the Remand before Administrative Law Judge Cynthia Williams Fordham at this docket.

6. That in addition to any supplemental issues raised per Ordering Paragraph No. 5, above, the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; and, c) the potential effects on rates for Verizon's basic local exchange services.

In addition, the Commission noted that the FCC issued its National Broadband Plan ("NBP") on March 16, 2010 which includes a recommendation that intercarrier compensation be reformed over the next ten years. The Commission stated that the NBP is a "notable development" that "may have a profound effect on intrastate switched access charges."

The OCA intends to address the issues articulated in the Commission's May 11, 2010 Order including the impact of the NBP on Verizon's intrastate access charges. More specifically, the OCA may raise the following issues:

- Is it appropriate for the PUC to further reduce access charges without Pennsylvania consumers being "double charged" given the FCC's consideration of the intercarrier compensation proposals that would allow the FCC to determine the proper level of access charges? Is it worthwhile to continue local rate rebalancing as the FCC considers doing the same on a national basis?
- To what extent will the FCC's National Broadband Plan impact Verizon's intrastate access rates in Pennsylvania?

- To what extent is it reasonable to reduce intrastate access charges given changes in the telecommunications industry? What consumer benefit, if any, is likely to flow from further access reductions?
- To what extent should joint and common network costs be shifted from access rates to local rates?
- What is the reasonable and appropriate level of access charges in Pennsylvania?

The OCA will also respond to whatever issues may be raised by other parties in this proceeding. In particular, the OCA is aware that Verizon intends to issue a cost study related to their level of access rates. The OCA anticipates fully examining that cost study and responding where appropriate.

III. PROPOSED SCHEDULE

The OCA will cooperate with the ALJ and other parties in establishing a schedule for this proceeding. The schedule for this case should allow for sufficient time for parties to review and analyze the anticipated cost study issued by Verizon once it is released. Such review and analysis must include, at a minimum, the opportunity to serve discovery on the cost study, receive responses to the discovery and perform an analysis on the model. As such, the OCA would need approximately ten (10) weeks following Verizon's release of its cost study before being required to file responsive testimony.

The OCA notes that the Commission has allowed for up to one year for the development of an evidentiary record and issuance of a Recommended Decision in cases examining the intrastate access charges of the non-Verizon incumbent telephone companies in Pennsylvania. A similar time-period should be adopted for this proceeding to adequately develop an evidentiary record, including hearings and the filing of briefs. The Commission should also carefully consider proposed FCC activity on the ICF matter so as to avoid any possible "double-charging"

of consumers, particularly in light of the March 16, 2010 release of the NBP. In particular, the FCC has indicated its intent to release a further Notice in its intercarrier compensation proceeding in the very near future. To the extent that additional information is filed in that proceeding that may inform the Commission in this proceeding, this schedule should allow the parties adequate time to incorporate that information in to their testimony.

As such, the OCA proposes the following schedule to govern this proceeding:

<u>Activity</u>	<u>Date</u>
Verizon Cost study	February 1, 2011
All Parties' Direct Testimony	April 15, 2011
All Parties' Rebuttal Testimony	June 1, 2011
All Parties' Surrebuttal Testimony	July 1, 2011
Hearings	July 12-14, 2011
Main Briefs	September 1, 2011
Reply Briefs	October 3, 2011

IV. PROPOSED SCHEDULE FOR DISCOVERY

The OCA recommends that the Commission's discovery rules be shortened to allow for a more expeditious exchange of discovery. In particular, the OCA recommends that all discovery be responded to in ten (10) days and objections to discovery be filed within five (5) days. The OCA further requests that discovery responses be provided in their original electronic format (i.e., Excel spreadsheets be provided in Excel format). In particular, any cost study provided by Verizon as part of this proceeding should be provided in its original electronic format, including underlying formulas.

V. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witness in this proceeding:

Dr. Robert Loube
Rolka Loube Saltzer Associates
10601 Cavalier Drive
Silver Spring, Maryland 20901

Telephone Number: 301-681-0338
E-mail Address: bobloube@earthlink.net

Dr. Loube may present testimony in written form and may also attach various exhibits, documents, and explanatory information that will assist in the presentation of the OCA's case. Dr. Loube will address the issues articulated above as well as any other issues that may arise throughout this proceeding. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be served directly upon Dr. Loube, as well as serving a copy to counsel for the OCA. In order to expedite the resolution of this proceeding, the OCA also requests that discovery questions and responses should also be sent by e-mail to the e-mail address listed above as well as the OCA counsel e-mail listed below.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified. The OCA is unable to assess at this time the amount of hearing time it will need.

VI. SERVICE ON THE OCA

The OCA will be represented in this case by Assistant Consumer Advocate Joel H. Cheskis. The OCA requests that two copies of all documents be served on the OCA as follows:

Joel H. Cheskis, Assistant Consumer Advocate
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VII. SETTLEMENT

The OCA is amenable to settlement discussions and will participate in whatever settlement discussions are scheduled. The OCA notes that it has previously entered into a settlement at this docket and is amenable to a settlement pertaining to the remaining issues.

VIII. HEARING TIME

At this early stage, the OCA is unable to identify with much specificity the amount of hearing time that may be needed for this matter. Given past experience with this case, and other related cases, as well as the current size of the service list, the OCA suggests that the Commission reserve three (3) days for hearings in this matter.

Respectfully submitted,



Joel H. Cheskis, Esquire
Pa. Atty I.D. # 81617
Assistant Consumer Advocate

For: Irwin A. Popowsky
Consumer Advocate

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Dated: December 7, 2010
136509

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7th day of December 2010.

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