

Suzan DeBusk Paiva
Assistant General Counsel
Pennsylvania



1717 Arch Street, 3 East
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

June 27, 2011

Via Electronic Filing

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

Re: Complaint of the Pennsylvania Telephone Association for Suspension and Cancellation of Verizon North LLC's Tariff Telephone – PA P.U.C. No. 10, Section 1- Services for Other Telephone Companies (Transit) filed April 5, 2011 Docket No. C-2011-2237496

Dear Secretary Chiavetta:

Enclosed please find the Prehearing Memorandum of Verizon North LLC, in the above captioned 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 First Class U.S. Mail
cc: The Honorable Dennis J. Buckley
Herbert Nurick, Mediation Coordinator
Attached Certificate of Service

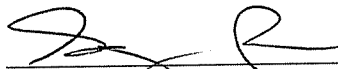
CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Prehearing Memorandum of Verizon North LLC, 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 27th day of June, 2011.

VIA E-MAIL and FIRST CLASS MAIL

Norman J. Kennard, Esquire
Patricia Armstrong, Esquire
Charles E. Thomas, III, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108



Suzan D. Paiva
Pennsylvania Bar ID No. 53853
1717 Arch Street, 3 East
Philadelphia, PA 19103
(215) 466-4755

Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
v.	:	R-2011-2234464
Verizon Pennsylvania Inc.	:	
	:	
	:	
Pennsylvania Telephone Association	:	
v.	:	C-2011-2237456
Verizon Pennsylvania Inc.	:	
	:	
	:	
Pennsylvania Public Utility Commission	:	
v.	:	R-2011-2234462
Verizon North LLC	:	
	:	
	:	
Pennsylvania Telephone Association	:	
v.	:	C-2011-2237496
Verizon North LLC	:	

VERIZON'S PREHEARING MEMORANDUM

Verizon Pennsylvania Inc. and Verizon North LLC (together, "Verizon"), pursuant to 52 Pa. Code § 5.222, respectfully submit this prehearing memorandum for purposes of the prehearing conference scheduled for June 29, 2011.

I. BACKGROUND

Verizon's tariffs filed April 5, 2011 establish rates, terms and conditions for carriers that utilize Verizon's network to send their own local traffic to a local service provider other than Verizon — known as transit service. For years, the rural incumbent local exchange carriers ("RLECs") have been using Verizon's tandem and end office switches for this purpose without compensating Verizon for the use of its network. Other providers that compete directly with the RLECs to provide local service (wireless carriers and CLECs) pay Verizon for transit service under Commission-approved rates, terms and

conditions, and the Commission should require the RLECs to pay as well. Verizon has been unsuccessful in its attempts to secure the RLECs' agreement to pay, and therefore filed these tariffs to bring to an end the RLECs' free use of Verizon's network to transit their local traffic to other providers.

Verizon's "tandem" switches are "super" switches that connect other switches to each other. A carrier connected to a Verizon tandem is able to originate a local call on its own network and send the call through a Verizon tandem or end office switch to be terminated to another local carrier (CLEC, ILEC or wireless) other than Verizon, without the requirement for the two carriers exchanging the local call to be directly interconnected with each other. Verizon cannot stop an RLEC that is connected to Verizon's network for purposes of sending traffic to Verizon from also sending local traffic destined to another local service provider through the same interconnection facilities, and Verizon does not and is not able to block that traffic even though the RLECs currently refuse to pay Verizon to transit this traffic through Verizon's network.¹

Verizon's tariffs (Verizon PA's Tariff PA PUC No. 219 and Verizon North Tariff PA PUC No. 10) do nothing more than require RLECs using Verizon's tandem and end office switches to transit local traffic originated by their customers and destined to other competitive wireline and wireless local service providers to pay for their use of Verizon's

¹ Before the advent of local competition in Verizon and RLEC service areas, existing agreements governed RLEC interconnection with Verizon to exchange traffic with Verizon, other RLECs and IXCs, including compensation. But when CLECs and wireless carriers began serving customers within Verizon and RLEC local calling areas, the RLECs started to send calls destined to these new entrants to Verizon's network over the same interconnection facilities without paying for such transit. The interconnection agreements between Verizon and the CLECs and wireless carriers require those new entrants to pay for transit. In other words, when a CLEC or wireless customer places a local call to an RLEC customer, the originating carrier pays Verizon to transit the call through Verizon's network facilities. But when the call goes the other way – when the RLEC customer places a local call to a wireless or CLEC customer – the RLECs have steadfastly resisted paying for their use of Verizon's network facilities.

network. The rates included in these tariffs have been approved by this Commission many times. Verizon PA's transit service rate of \$0.001362 per minute-of-use was approved by this Commission as the TELRIC rate for Verizon PA's provision of tandem transit service to CLECs, and therefore is the applicable rate under Commission-approved CLEC interconnection agreements.² Similarly, Verizon North's rate of \$0.0047856 has been incorporated without question or complaint into dozens of Commission-approved interconnection agreements with CLECs and wireless providers, including affiliates of the very RLECs who are complaining here.³

On April 22, 2011 the Pennsylvania Telephone Association ("PTA"), a trade association comprised of all of the RLECs operating in Pennsylvania, filed complaints against the tariffs on behalf of some, but not all, of its members.⁴ Pursuant to 52 Pa. Code § 53.59(f)(6), the Commission issued Secretarial Letters on April 25, 2011 extending the review period by 30 days, to June 4, 2011. By orders entered May 19, 2011, the tariffs were suspended by operation of law until December 4, 2011, unless otherwise directed by order of the Commission.

² *Generic Investigation Re: Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683 (Opinion and Order on Compliance entered July 16, 2004). In recent interconnection agreements the transit rate is commonly broken down into \$0.001146 per MOU for tandem switching and \$0.000206 per MOU and \$0.000010 per MOU/mile for switched transport, which add up to the rate of \$0.001362.

³ *See, e.g., Joint Petition of Verizon North, Inc. and NEP Cellcorp, Inc. d/b/a NEP Wireless for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996*, Docket No. A-311419F7001 (Opinion and Order entered November 15, 2007) (approving agreement with wireless affiliate of North Eastern Pennsylvania Telephone Co. containing transit terms and rate of \$0.0047856); *Joint Petition for Approval of an Interconnection Agreement and Amendment No. 1 Between Verizon North, Inc., and Armstrong Telecommunications, Inc., under Section 252(e) of the Telecommunication Act of 1996*, Docket No. A-311014F7001 (Opinion and Order entered August 30, 2005 (approving agreement with CLEC affiliate of Armstrong Telephone Company – Pennsylvania and Armstrong Telephone Company - North containing transit terms and rate of \$0.0047856).

⁴ On April 29, 2011 the PTA notified the Commission that the United Telephone Company of Pennsylvania, LLC d/b/a CenturyLink is not a party to the complaints, notwithstanding its listing in footnote 1. Additionally, the Windstream companies are not parties to the complaint.

The baseless complaints of a subset of the PTA companies against these reasonable tariffs continue their resistance and stall tactics, without raising any legitimate substantive issue with the pending tariffs. The tariffs should be permitted to go into effect and the RLECs' complaints should be dismissed.

Allowing the tariffs to take effect would not foreclose any RLEC from negotiating an agreement with Verizon if it wished to do so, because the tariff provisions do not apply where transit service is provided by Verizon pursuant to an agreement.⁵ Such agreements are what Verizon has sought all along. Verizon has been trying for years to secure voluntary agreements from RLECs to pay for transit service, to no avail. To this end, Verizon has agreed to participate concurrently in the Commission's mediation process to attempt to secure such agreements with the PTA companies, but in the event no agreement is reached the Commission should proceed expeditiously to resolve this matter on or before the December 4, 2011 statutory deadline, to bring to a halt the intolerable and anti-competitive practice of the RLECs transiting their local traffic through Verizon's network without compensating Verizon.

Moreover, the RLECs' continued use of Verizon's tandem transit service without paying for it presents a classic case of unjust enrichment.⁶ Accordingly, on June 27, 2011, Verizon amended its answer to assert a new matter in the nature of a counter-claim to recover payment from the RLECs for their use of Verizon's network for transit under the doctrine of unjust enrichment.

⁵ Verizon PA Tariff PA PUC 219 § 1.3; Verizon North Tariff PA PUC 10 § 1.3.

⁶ *See, e.g., Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121 (Pa. Super. Ct. 2011) ("The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.")

II. BURDEN OF PROOF

The burden of proof in a Commission complaint proceeding relating to rates is governed by the Public Utility Code. In this case, 66 Pa. C.S. § 315(a) places the burden of proof on Verizon, as the “public utility,” “to show that the rate involved is just and reasonable.”⁷ However, the statute is carefully worded so as to be clear that it is not placing the burden of proof as to *all* issues that may be raised in a complaint against a pending tariff upon the public utility. For any issues other than the question of whether “the rate involved is just and reasonable,” the burden of proof is governed by 66 Pa. C.S. § 332(a). That statutory provision states that “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.” 66 Pa. C.S. § 332(a). Having filed the complaints, the PTA is the “proponent of a rule or order” with respect to any issues it wishes to raise regarding the non-rate terms and conditions of the proposed tariffs. Therefore, the burden of proof with regard to any *non-rate* issues raised in the complaints rests with the PTA. Pursuant to 66 Pa. C.S. § 332(a), Verizon is the “proponent of a rule or order” with respect to its new matter in the nature of a counterclaim for unjust enrichment, and bears the burden of proof as to that issue.

Each party should file simultaneous direct testimony as to the issues on which it has the burden of proof, with simultaneous rebuttal and surrebuttal to follow. *See* 52 Pa. Code § 5.242 (“the party having the burden of proof, shall open and close”). Verizon has accounted for such a procedure in the schedule proposed below.

⁷ 66 Pa. C.S. § 315(a) (“In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof *to show that the rate involved is just and reasonable* shall be upon the public utility.”)

III. ISSUES

1. Whether the rates set forth in Verizon's proposed tariffs (Verizon PA's Tariff PA PUC No. 219 and Verizon North Tariff PA PUC No. 10) for transit service are just and reasonable. Suggested Answer: Yes.
2. Whether the Commission's prior approval of Verizon's transit service rates is prima facie evidence of their justness and reasonability pursuant to 66 Pa. C.S. § 316. Suggested Answer: Yes.
3. Whether some or all of the Complainants are collaterally estopped from challenging the justness and reasonability of Verizon PA's transit service rates due to participation in the proceeding in which the Commission approved those rates. Suggested Answer: Yes.
4. Whether the rules and regulations set forth in Verizon's proposed tariffs (Verizon PA's Tariff PA PUC No. 219 and Verizon North Tariff PA PUC No. 10) for transit service are just and reasonable. Suggested Answer: Yes.
5. Whether Verizon's proposed tariffs (Verizon PA's Tariff PA PUC No. 219 and Verizon North Tariff PA PUC No. 10) for transit service should be permitted to go into effect on or before December 4, 2011. Suggested Answer: Yes.
6. Whether the Complainants have been unjustly enriched by their use of Verizon's network to transit their local traffic to other carriers under such circumstances that it would be inequitable for Complainants to retain the benefit without payment of value. Suggested Answer: Yes.
7. Whether the Complainants should be required to reimburse Verizon at the rates set forth in the proposed tariffs for their use of Verizon's network to transit their local traffic to other carriers from June 27, 2007 through the date that the proposed tariffs take effect, under the doctrine of unjust enrichment. Suggested Answer: Yes.

IV. WITNESSES

Verizon's witness in this matter, who will provide testimony relating to the issues identified in sections III (1) through (7) above, will be:

Peter J. D'Amico
Senior Consultant Product Management/Product Development
416 7th Ave., 19th Floor
Pittsburgh, PA 15219
412-633-8424

Verizon reserves the right to identify new or different witnesses, including but not limited to in response to issues raised by PTA in its testimony.

V. PROCEDURAL SCHEDULE

Verizon proposes the following procedural schedule.

July 13, 2011	Verizon Direct Testimony (reasonableness of rates and unjust enrichment) PTA Direct Testimony (all other non-rate issues)
July 29, 2011	Verizon Rebuttal to PTA PTA Rebuttal to Verizon
August 5, 2011	Verizon Surrebuttal to PTA PTA Surrebuttal to Verizon
August 10, 2011	Hearing
August 24, 2011	Main Briefs
September 7, 2011	Reply Briefs
October 7, 2011	Recommended Decision ⁸

Verizon proposes that service of all testimony, briefs and other pleadings may be made by electronic mail before 5:00 p.m. on the due date, followed by a hard copy by first class or overnight mail.

Verizon is currently in negotiations with its labor unions and the contracts expire at midnight on August 6, 2011. Accordingly, there is the possibility of a work stoppage

⁸ In light of the December 4, 2011 statutory deadline for a Commission decision in this case, Verizon understands that a recommended decision must be issued on or before October 7, 2011.

that would affect the availability of Verizon's witnesses and counsel. In the event of a work stoppage, Verizon will contact the presiding officer and parties to discuss whether any modification of the schedule is required.

VI. DISCOVERY

Under the Commission's rules for rate cases, answers to interrogatories are due in 15 days, objections to interrogatories are due in 10 days, answers and objections to document requests are due in 10 days, and answers and objections to requests for admission are due in 20 days. 52 Pa. Code § 5.342(d) and (e), 5.349(d), 5.350. In light of the statutory deadline in this case, Verizon proposes that the standard rules be modified so that answers and objections to interrogatories, document requests or requests for admission are all due 7 calendar days from service. Verizon further proposes that service of discovery requests may be made by electronic mail, but that if discovery is served after 12:00 p.m. on a Friday or the day before a holiday it is considered served the next business day.

VII. PROTECTIVE ORDER

Discovery and/or testimony in this matter may call for the disclosure of information that the parties view as competitively sensitive or otherwise proprietary. Attached hereto is a form of protective order that is identical in substance to the order recently entered in the matter of *Armstrong Telecommunications, Inc. v. Verizon Pennsylvania Inc.*, Docket No. C-2010-2216205, etc. Verizon respectfully requests that this or a similar form of protective order be entered in this case.

VIII. CONSOLIDATION

Verizon agrees that the above-captioned dockets should be consolidated.

IX. SERVICE LIST


Pursuant to 52 Pa. Code § 1.55, Verizon's representative for the service list in this proceeding is as follows:

Suzan D. Paiva
Assistant General Counsel
Verizon
1717 Arch St., 3rd Floor
Philadelphia, PA 19103
Phone: (215) 466-4755
Fax: (215) 563-2658
Suzan.d.paiva@verizon.com

X. SETTLEMENT

Verizon and the PTA are concurrently participating in mediation before the mediation unit of the Office of Administrative Law Judge. Verizon continues to be open to the amicable resolution of this matter.

Respectfully submitted,



Suzan D. Paiva (Atty ID No. 53853)
Verizon
1717 Arch Street, 3rd Floor
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail:
Suzan.D.Paiva@verizon.com

Counsel for Verizon

Dated: June 27, 2011