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August 16, 2011

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

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

Dear Secretary Chiavetta:

Enclosed please find Sprint's Main Brief in the above-captioned matter. The Brief was electronically filed today.

Copies of the Brief have been served in accordance with the Certificate of Service. Thank you and please contact me if you have any questions.

Best regards,

STEVENS & LEE


Michael A. Gruin

Enclosure

cc: Certificate of Service
Honorable Cynthia Fordham, Administrative Law Judge

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

SPRINT'S MAIN BRIEF

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Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel"), hereby submit this Main Brief. At the hearings, conducted on June 14 - 15, 2011, and presided over by the Pennsylvania Public Utility Commission's ("Commission") Administrative Law Judge Fordham ("ALJ Fordham"), a comprehensive, voluminous record was developed on the numerous issues identified for inclusion in this docket. As discussed below, that record compels only one reasonable outcome. The Commission should immediately order Verizon North LLC and Verizon Pennsylvania, Inc. (collectively "Verizon") to eliminate their Carrier Charge and reduce their intrastate switched access rates to mirror the level and structure of their interstate switched access rates.

In today's telecommunications world, the lines between local and long distance are blurred as customers are using wireless, wireline, interconnected VoIP, texting, emailing, blogging, Internet social networking sites, and other methods to communicate with each other. As the telecommunications industry moves forward in technology and scope, it makes little sense to continue to apply antiquated compensation regimes developed long-ago to the all-distance communications prevalent today. In today's competitive world, there is no rational basis to maintain Verizon's monopoly revenue streams by forcing competing carriers to pay substantially higher rates for terminating switched access calls to customers that must traverse the same telecommunications facilities to reach their destination as other calls for which lower rates apply. Conversely, there are compelling reasons to reform intrastate switched access rates. Inflated access

rates impair competition, increase administrative costs, encourage arbitrage, and deprive customers of retail price reductions and other benefits.

Federal and state law and regulatory decisions have consistently recognized the harm done by the continuation of a system where a carrier and its customers, such as Sprint and its wireless and long distance customers, artificially subsidize their competitors. The Federal Communications Commission (“FCC”) has been working since the passage of the Telecommunications Act of 1996 (the “Act”) to encourage competition and has recognized the harms of maintaining differences in intercarrier compensation based upon artificial regulatory distinctions. For example, the FCC stated in 2005,

These [artificial regulatory] distinctions create both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions. The record in this proceeding makes clear that a regulatory scheme based on these distinctions is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition.¹

To that end, the FCC has reduced interstate access rates consistently since the passage of the Act. Notwithstanding reductions to its interstate access rates, Verizon has not challenged the FCC imposed interstate switched access reductions. To the contrary, in Verizon’s advocacy before the FCC it has been a proponent of substantial additional access reductions; and in states where Verizon is not an incumbent local exchange carrier (“ILEC”), Verizon has consistently advocated for access reductions.

Despite access reform efforts at the federal level, access rates in Pennsylvania are still inflated and in need of reform. The record shows that Verizon’s intrastate switched access rates are inflated when compared to its interstate switched access rates

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket 01-92, FCC Docket 05-33, 20 FCC Rcd 4685, 4687 (March 3, 2005) (“FCC 2005 FNPR”).

charged for calls using the same network and involving the same functionality. In order to foster the development of a fully competitive telecommunications market in Pennsylvania, intrastate switched access rates must be reformed. High intrastate switched access rates inflate the price for all retail voice services which rely on access services as an input. The record shows that reductions to intrastate switched access rates will result in corresponding retail price reductions and other benefits for Pennsylvania consumers. Having carriers compete on equal footing rather than enabling certain carriers to extract excessive profits for use of essential, monopoly-controlled network elements is the correct approach to reform.

Much evidence has been presented establishing the consumer benefits that will result from requiring Verizon to mirror its interstate access rates. With respect to the customer benefit of lower prices, the record establishes that access rate reductions will flow through to end users. Access rate reductions can lead not only to reduced retail long distance rates but to numerous other competitive and consumer benefits, including allowing Sprint and other carriers to have more resources to expand wireless service coverage, enhance service quality and develop new, innovative service offerings. These benefits cannot be seriously disputed and are consistent with the codified policies of the Commonwealth.

Nevertheless, Verizon continues to be unduly enriched by Sprint and its customers, and other companies and their customers, via access charge revenues. The day has come for the Commission to reform intrastate switched access rates in Pennsylvania so Verizon's competitors and their customers are not burdened by subsidy

payments that have no place in a competitive marketplace. In a true competitive market, carriers compete for customers rather than for continued unjustified subsidy streams.

Sprint urges the Commission to bring Verizon's intrastate access rates to parity with its interstate access rates without any further delay.

I. BACKGROUND²

On September 30, 1999, the Commission entered its *Global Order*,³ directing all local incumbent exchange carriers operating in Pennsylvania to reduce their access charges. The *Global Order* also directed that a subsequent access charge proceeding be instituted in January 2001 to examine additional access charge reductions and the elimination of the Carrier Charge. In January 2002, the Commission initiated an access charge investigation, at Docket No. M-00021596, to initiate the access charge investigation described in the *Global Order*.

AT&T filed a Formal Complaint, on March 22, 2002, at Docket No. C-20027195, seeking to have Verizon North's access charges reduced to Verizon PA's levels pursuant to the requirements announced by the Commission in its order approving the Bell Atlantic-GTE merger.⁴ AT&T's Formal Complaint was initially dismissed, but was later reinstated by an Order entered December 24, 2002. That order also bifurcated the access charge investigation so that all Verizon access charge reform matters would be litigated in Docket No. C-20027195. The Commission subsequently assigned the matter of

² This discussion of the background of this proceeding draws extensively from and relies heavily on summaries contained in the Commission's own orders.

³ *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 Pa PUC 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. Commonwealth 2000), vacated in part *MCI WorldCom Inc. v. Pa. PUC*, 577 Pa. 294, 844 A.2d 1239 (2004).

⁴ See *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, et al., (Opinion and Order entered November 4, 1999) (Merger Order).

reforming Verizon's access charges to the Office of Administrative Law Judge for an evidentiary hearing and recommended decision within six months from the date of entry of that Order.

On November 18, 2003, a Recommended Decision by ALJ Fordham was issued wherein she recommended the adoption of a Joint Proposal by Verizon and the OCA for further reductions to access charges. Prior to the Commission's disposition on ALJ Fordham's Recommended Decision, Verizon PA, Verizon North, OCA and OSBA filed a Joint Petition for Resolution of Litigation which modified the Verizon/OCA Joint Proposal.⁵

In a July 28, 2004 Opinion and Order (*July 2004 Order*), the Commission reversed ALJ Fordham's Recommended Decision and adopted the Joint Petition for Resolution of Litigation. The *July 2004 Order* permitted Verizon to reduce and restructure its access charges by allowing Verizon to offset access reductions with revenue neutral increases to monthly dial tone line rates for residential and business local exchange customers. The Commission remanded the case to the Office of Administrative Law Judge for the further development of a record, and issuance of a Recommended Decision on policy issues and other access charge concerns that were raised by the IXCs in their Exceptions. The issues on remand included, but were not limited to, the removal of implicit subsidies from access charges and the reduction or elimination of the Carrier Charge.

ALJ Fordham's Recommended Decision on Remand ("RD on Remand") was issued on December 7, 2005. Therein, ALJ Fordham found, among other things, that (1)

⁵ The OSBA was not a party to the Joint Proposal of Verizon and the OCA which formed the basis for ALJ Fordham's Recommended Decision, but was added as a joint petitioner in the later filed Joint Petition for Resolution.

“[t]he IXCs have proven that the carrier charge is no longer a valid way to address [loop costs recovery]. Consequently, the cost must be paid by the end user”;⁶ and (2) that Verizon should reduce its intrastate switched access charges to mirror interstate levels within one to two years.⁷

By Order entered January 8, 2007, the Commission stayed the proceeding pending the outcome of the FCC’s *Unified Intercarrier Compensation* proceeding, or for a period of twelve months from the date of entry of the Order, unless extended by Commission Order, whichever was earlier. The Commission continued its stay of the docket for several years before announcing in its Opinion and Order entered May 11, 2010 (“Reopening Order”) that the docket would be reopened. Therein, the Commission stated that it rejected Verizon’s request for further delay

in order to resolve the outstanding issues with regard to access charges and the way they hampered competition in the telecommunications market that persisted at the time of the *Global Order*, supplemented by the need for a resolution of access charge issues concurrently with the other ILECs rather than on a piecemeal basis. As Sprint has reminded us, an entire decade has passed since the Commission began reforming access charges in the *Global Order* and many of the same areas of concern may still persist. This Commission cannot forgo such an opportunity to effectuate industry-wide access reform any longer. By reopening Verizon’s access charge investigation we will be in a position to ensure consistency in addressing the outstanding access rate issues.⁸

The Commission also specifically considered the propriety of waiting for a decision to be reached in the rural access charge reform docket, or for further action by the FCC. The Commission concluded that it would briefly delay the instant docket in order for the parties not to be required to litigate the rural local exchange carrier (“RLEC”) and Verizon access dockets simultaneously, but declined to extend the stay any longer than

⁶ RD on Remand at 63.

⁷ *Id.* at 66.

⁸ Reopening Order at 18-19.

the date ALJ Melillo's Recommended Decision ("RLEC Recommended Decision") was released or to wait for the FCC to act.

II. BURDEN OF PROOF

In the Commission's January 8, 2007 Order, the Commission settled this issue with finality by stating definitively that the burden of proof is squarely on Verizon despite the caption of the case bearing a complaint designation:

Notwithstanding that the instant docket bears a "C" designation, signaling a formal complaint by a participant, Verizon's rates, while existing rates, have not been endorsed by this Commission as the final stage in the access charge reform process that began years ago. Substantially similar to this Commission's development of unbundled network element (UNE) rates, pursuant to the federal Telecommunications Act of 1996 (TA-96), 47 U.S.C. § 252(d), we have not closed the Commission-initiated investigation that began the inquiry. *See Generic Investigation Re Verizon . . . Unbundled Network Element Rates*, Docket No. R-00016683.⁹

The Commission's pronouncement was occasioned by Qwest's exception alleging that the burden of proof was squarely upon Verizon – an exception the Commission granted.¹⁰

The Commission's decision was not appealed and remains binding.

III. AREAS OF AGREEMENT

Despite the fact that Verizon continue to oppose access reform, there are substantial areas of agreement between Sprint and Verizon. Verizon agrees that: access reform is desirable;¹¹ it is appropriate for carriers to recover their needed revenues from their own end users rather than via subsidy charges;¹² line loss is likely to continue regardless of access reform;¹³ inflated access rates impede competition in the

⁹ January 28, 2007 Order at 21.

¹⁰ *Id.* at 20-21.

¹¹ Transcript at pgs. 128, line 6 – 129, line 13; *see also* AT&T Statement No. 1 at Exhibit E.

¹² Transcript at pg. 134, line 3 – 13.

¹³ Transcript at pgs. 148, line 21 – 149, line 9.

marketplace;¹⁴ access reform in Pennsylvania is needed;¹⁵ switched access is not subject to competitive forces;¹⁶ the cost of the loop would exist in order to serve the local customer regardless of whether switched access service is provided, so loop cost is properly recovered through local service rates;¹⁷ there is no material difference in the functionality involved in terminating interstate and intrastate calls;¹⁸ and revenue neutrality requires only that a carrier have a reasonable opportunity to maintain the status quo.¹⁹

Not only do the parties agree on those fundamental issues described above, but Verizon also largely agrees with Sprint that Verizon's own intrastate access rates should be reformed; the disagreement between Verizon and Sprint is merely over the timing of reform and whether the satisfaction of certain Verizon enunciated "preconditions" is a prudent condition precedent to access reform. Verizon's position is that before Verizon's intrastate switched access rates should be made to mirror interstate levels a series of steps should occur first – some of which the Commission can accomplish on its own while others would require statutory changes. The conclusion has already been reached *in this docket* that Verizon's access charges should be reduced without delay,²⁰ and nothing in the record has provided any plausible support for changing that conclusion. As stated below, Verizon's intrastate switched access rates should be reduced to mirror the level and structure of Verizon's interstate rates.

¹⁴ Transcript at pg. 171, lines 19 – 24.

¹⁵ Transcript at pgs. 171, line 25 – 172, line 12.

¹⁶ Transcript at pgs. 172, line 21 – 173, line 4.

¹⁷ Transcript at pgs. 175, line 9 – 176, line 1.

¹⁸ Transcript at pg. 176, lines 5 – 9; *see also* AT&T Statement No. 1 at Exhibit E.

¹⁹ Transcript at pgs. 176, line 14 – 177, line 10.

²⁰ RD on Remand at 63 and 66.

IV. VERIZON'S INTRASTATE SWITCHED ACCESS RATES SHOULD BE REDUCED

A. Reducing Verizon's Switched Access Rates is Pro-Competitive and Good for Pennsylvania Consumers

1. Excessive Access Rates Harm Consumers by Forcing Carriers to Subsidize Their Competitors

Switched access is fundamentally a monopoly function.²¹ All carriers that compete against Verizon in the retail market must use Verizon's switched access to terminate non-local calls to the Verizon's customers.²² This includes traffic originated by wireless providers who are assessed terminating intrastate access on wireless calls made to Verizon customers when such calls cross any Major Trading Area ("MTA") boundaries, but originate and terminate within Pennsylvania.²³ Competing carriers cannot compete on equal footing with Verizon if Verizon is permitted to impose on its competitors inflated input costs for use of monopoly-controlled, bottleneck facilities that are priced far above the actual cost of providing those functions.

Access prices were historically inflated as a mechanism to subsidize the price of basic local service in a regulated monopoly environment. But this interplay between local service rates and intrastate access services rates was established long before Verizon developed the ability to collect revenues from numerous other services provisioned over the same network on which they provide local exchange and exchange access services

²¹ See Transcript at p. 172, line 21 – p. 173, line 4; Sprint Statement No. 1 at p. 3, lines 6-14, and p. 5, line 10 – p. 6, line 9; see also Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

²² See Sprint Statement No. 1 at p. 3, lines 6-14; see also *Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd. 12962, 12966 (2000) ("CALLS Order")("IXCs were dependent on the BOCs and the independent LECs to complete the long-distance call to the end user").

²³ See Sprint Statement No. 1 at page 3, lines 8-10; AT&T Panel Direct Testimony at 12; and see generally 47 C.F.R. § 51.701(b).

(e.g., wireline long distance, numerous calling features, and broadband services).²⁴ Verizon's current and potential revenue growth from non-regulated services makes the collection of subsidies from competing carriers in the form of inflated access rates unnecessary and anti-competitive. As stated above, all carriers providing voice communication services in Pennsylvania must use Verizon's switched access lines to terminate non-local calls to Verizon's local customers. Because provision of switched access services involves monopoly controlled network elements, other carriers' service costs are increased by Verizon's inflated access rates. As the Virginia Corporation Commission noted in its Order resolving Sprint's petition challenging ILEC access charges,

The subsidies contained in intrastate access charges distort the true cost of providing service, the true value of such service, and the development of the market for telephone services.²⁵

Accordingly, Verizon's inflated access rates merely increase the cost of the services provided by competing carriers. The FCC has identified as problematic compensation regimes under which a carrier relies not on its own customers to recover its costs, but on its competitors and their customers. As the FCC noted, "...if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers."²⁶ Verizon, and indeed all carriers, should collect the costs of providing retail services from the customers purchasing those retail services instead of imposing a portion of those costs on competitors by charging inflated

²⁴ See Sprint Statement No. 1 at p. 3, line 18 – p. 4, line 14.

²⁵ Order on Intrastate Access Charges, *Petition of Sprint Nextel for reductions in the intrastate carrier access rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Case No. PUC-2007-00108, at 6 (May 29, 2009) ("Virginia Order").

²⁶ FCC 2005 FNPR at 4696.

rates for monopoly switched access. This change is essential to developing a level competitive playing field for all service providers.

Consumers now have more choices for their voice communications needs than in years past when an ILEC was the only provider of service within its service territories.²⁷ Today, most consumers have a choice between alternative carriers providing bundles of local and long distance service. But each of these carriers pay inflated access rates to a Verizon to complete its customers' non-local calls to Verizon's local customers.²⁸ Because all carriers strive to cover their costs and to earn a profit, these inflated input costs are impeding the retail offers available in the market.²⁹ Consumers are not receiving the best offers that could be made available in the market because high switched access rates, originally intended to allow below-cost local service, are now inflating the rates for all alternative services, or are limiting or dampening the entrance of competitors in these markets.³⁰

2. Consumers Benefit From Access Reductions and Increased Competition

If Verizon's access rates are reduced, consumers will surely benefit from reduced prices for competitive retail service offerings. Experience shows that when there is a reduction in input cost and one company passes that cost savings through to its customers while others do not, the company that dropped its prices will gain market share at the expense of the market share of any company or companies that do not pass the input cost

²⁷ Sprint Statement No. 1 at p. 6, line 15 – p. 7, line 12.

²⁸ Sprint Statement No. 1 p. 7, lines 18-22.

²⁹ Sprint Statement No. 1, p. 10, line 22 – p. 11, line 1.

³⁰ *Id.*

savings through to their customers. This presses other competitors to follow suit and reduce prices as a basic tenet of competitive markets.³¹

Consumers also benefit from access reductions above and beyond the limited scope of flow-through reductions in standalone long distance toll rates, and it is easy to demonstrate that wireless customers have already enjoyed significant consumer benefits as a result of reduced access rates that have in turn contributed to a decrease in wireless providers' costs of providing service. Access cost savings are one of the factors driving down the price of wireless service.³² Other consumer benefits will also accrue when LEC access rates are reduced. When access bills are lowered, and subsidies are removed, carriers will have more resources to subsidize handsets, expand service coverage, enhance service quality, or develop new and innovative service offerings.³³

Furthermore, because all Pennsylvania consumers are impacted by Verizon's high access rates reflected in higher prices for all retail telecommunications services, the benefits to all Pennsylvanians purchasing various services must be considered, not just the alleged impact on each Verizon's local service customers. The record shows that at least 10.9 million Pennsylvanians have wireless phones;³⁴ the record also shows that 26.6% of adults live in households with *only* wireless phones;³⁵ and the record shows that a substantial percentage of of households with both wireless phones and wireline phones use their wireless phones exclusively or almost exclusively.³⁶ Thus, it is no longer particularly relevant to segregate Pennsylvania consumers into neat categories of local

³¹ Transcript at p. 414, lines 10-22; *see also* AT&T Surrebuttal Testimony at Exhibit D.

³² Transcript at p. 414, lines 10-22.

³³ Sprint Statement No. 1, p. 11, lines 8-14.

³⁴ Verizon Statement No. 1 at p. 37 (the associated report provides data only through the end of 2009, and growth trends in wireless would tend to indicate that there the number of wireless subscribers has grown in the interim.

³⁵ Verizon Statement No. 1 at p. 38.

³⁶ Verizon Statement No. 1 at p. 38.

customers or wireless customers. The fact is that the many Pennsylvania local service consumers are also wireless phone consumers. As Pennsylvania consumers today overwhelmingly have wireless phones (over 10.9 million customers statewide) any decision made to protect and prolong Verizon's access subsidy will prevent competitive benefits from being realized by Pennsylvania customers.

One factor in Verizon's customers continued consumption of Verizon provisioned basic local service undoubtedly is that given the artificially suppressed rates, they have not had to evaluate whether to obtain like services from another provider, whether cellular, cable telephone, VOIP or otherwise. The artificially suppressed rates have allowed these customers to continue consuming the same service – telephony – from multiple providers. Verizon itself freely admits that other service providers are fully capable of providing affordable, reliable telephone service.³⁷ The question must be asked by the Commission: in light of consumers' overall monthly expenditure on all communications services, is it appropriate to continue a subsidy system that suppresses rates and leads to duplicative consumption? The Commission must consider whether an undesirable side-effect of forcing competitors to subsidize Verizon is to enable those consumers to engage in duplicative consumption rather than responding to appropriate price signals and more rationally consuming the suite of products and services that are most valuable to them.

The Commission should also note that it has considered and specifically rejected arguments that competitive pressures and the need to deploy broadband networks creates

³⁷ Verizon Statement No. 1 at p. 38.

a need for continued access subsidies³⁸, stating: "We do not, however, reach the conclusion that such market realities created by, *inter alia*, intermodal competition and the necessity for ILECs to increase revenues to meet an accelerated broadband deployment commitment to insinuate a movement toward the return to implicit subsidies in access rates."³⁹ To the contrary, the Commission consistently has held that its policy is the reduction and removal of access subsidies from the Pennsylvania marketplace, and that intention was expressed by the Commission as a reason for reopening this very docket.

[A]n entire decade has passed since the Commission began reforming access charges in the *Global Order* and many of the same areas of concern may still persist. This Commission cannot forgo such an opportunity to effectuate industry-wide access reform any longer. By reopening Verizon's access charge investigation we will be in a position to ensure consistency in addressing the outstanding access rate issues.⁴⁰

In rejecting Verizon's positions, the Commission must differentiate between protecting customers and protecting carriers. There is no doctrine of law that indicates the Commission is duty bound to ensure that Verizon's rates are sufficient to ensure its financial integrity. To the contrary, long standing precedent indicates that the question of proper rate levels does not at all hinge on whether a rate is sufficient to *ensure* that a utility earns a given return or even remains in business. To the contrary, like all businesses, utilities must be exposed to business risks like any other financial venture.

In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a "just and reasonable" level which is insufficient to ensure the continued financial integrity of the utility, it may

³⁸ Opinion and Order, *Investigation Regarding Intrastate Access Charges And IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund; 2006 Annual Price Stability Index/Service Price Index Filing of Buffalo Valley Telephone Company, et al.*, Docket Nos. I-00040105, P-00981428F1000, et al., at page 23 (July 11, 2007).

³⁹ *Id.*

⁴⁰ Reopening Order at 19.

simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the *Hope* decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in *Hope*, 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345, that investment returns to utility owners "should be commensurate with returns on investments in other enterprises having corresponding risks." (emphasis added). In addition, the *Hope* decision observed, "regulation does not insure that the business shall produce net revenues." [quoting *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590, 62 S.Ct. 736, 86 L.Ed. 1037, 1052 (1942)]." 320 U.S. at 603, 64 S.Ct. at 288, 88 L.Ed. at 345. The risks which utilities are to bear were further noted in *Natural Gas Pipeline*, 315 U.S. at 590, 62 S.Ct. at 745, 86 L.Ed. at 1052, where it was stated that "the hazard that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business." Since the risk of nonprofitability remains upon regulated utility companies, it follows that the consequence of that lack of profitability, to wit diminished financial integrity, also rests upon utility companies.⁴¹

As the record unequivocally indicates that consumers will benefit from access reductions⁴² – a fact Verizon does not dispute – the Commission's task is to balance the consumer benefit of access reductions *against* the Verizon's interests in returns for its investors. Sprint suggests that the Commission cannot reasonably conclude other than that access reductions will benefit consumers and that swiftly moving access rates to interstate levels is the most reasonable, appropriate means of ensuring the long-overdue consumer benefits that will accrue through access reductions. Any contrary conclusion would ignore long-standing precedent and elevate Verizon's interests over the contrary and compelling interests of consumers and competition.

⁴¹ *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 102 A.2d 130, 134 (Pa. 1985).

⁴² Transcript at p. 414, lines 10-22; see also Sprint Statement No. 1 at p. 11, lines 8-14.

B. The FCC, Pennsylvania and Other States Have Actively Engaged in Reducing Access Rates

1. Federal Policy Dictates That Implicit Subsidies Be Removed From Access Rates To Encourage Competition

Since the passage of the Act in 1996 the FCC has focused on implementing Congress' expressly stated intent of removing implicit subsidies as they are "neither consistent with, nor sustainable in, a competitive market."⁴³ The FCC's Intercarrier Compensation FNPR provides a summary of the FCC's actions reducing interstate access rates and removing implicit access charge subsidies culminating in the 2000 CALLS Order for interstate price cap LECs and the 2001 MAG Order⁴⁴ for interstate rate-of-return LECs. The Intercarrier Compensation FNPR summarizes that the CALLS Order and the MAG Order reforms "were designed to rationalize the interstate access rate structure by aligning it more closely with the manner in which costs are incurred."⁴⁵ The combination of these FCC Orders implementing the pro-competitive policy objectives Congress expressed in passing the Act has reduced the implicit subsidies in interstate access charges significantly over the years.

⁴³ *High-Cost Universal Service Support; Federal-State Joint Commission on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, at Appendix A ¶ 169 (rel. Nov. 5, 2008) ("Intercarrier Compensation FNPR"). The Telecommunications Act of 1996, at Section 254(e), requires universal service support, if any, to be "explicit."

⁴⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Commission on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) ("MAG Order").

⁴⁵ *Intercarrier Compensation FNPR*, at Appendix A ¶ 177.

Despite reductions in interstate rates, the FCC continues to recognize that differences in interstate and intrastate access rates and other termination rates caused by regulatory distinctions cannot continue. For example, the FCC stated in 2005,

First, our existing compensation regimes are based on jurisdictional and regulatory distinctions that are not tied to economic or technical differences between services. As the Commission observed in the *Intercarrier Compensation NPRM*, regulatory arbitrage arises from different rates that different types of providers must pay for essentially the same functions. Our current classifications require carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis. These artificial distinctions distort the telecommunications markets at the expense of healthy competition. Moreover, the availability of bundled service offerings and novel services blur the traditional industry and regulatory distinctions that serve as the foundation of the current rules.⁴⁶

The FCC provided further analysis as to why disparate compensation regimes for identical services harm competition as well as detailing the harm to competition caused by carriers who recover their costs from other carriers rather than from their own retail customers.

These bundled offerings and novel services blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing compensation regimes. Moreover, in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications. For instance, if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, *it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers.*⁴⁷

Therefore, sound public policy frowns on Verizon's disparate intra- and inter-state access rates and recognizes the competitive harm caused by Verizon seeking to recover costs (and excess profits) from other carriers' customers rather than its own retail customers.

⁴⁶ 2005 FCC FNPR at 4693-94.

⁴⁷ *Id.* at 4696 (emphasis added).

The FCC has overtly recognized that left to their own devices, carriers will always prefer to be insulated from competition and gain a competitive advantage by recovering costs from their competitors rather than their customers. By doing so, such carriers are able to compete based not on quality of products and services and efficiency, but on the basis of a benefit conferred by regulation alone: the ability to shift their costs on their competitors instead of their customers.

... implicit subsidies cannot be sustained, however, in the competitive markets for telecommunications services envisioned by the 1996 Act ... we suggest that, *given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage.* Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.⁴⁸

The foregoing clearly illustrates that allowing Verizon to continue to charge higher rates for intrastate switched access than for interstate switched access when both calls involve the same functionality is inappropriate both from an economic and policy perspective.

2. Potential Future FCC Access Reform Should Not Delay Implementation of Reform in Pennsylvania Today

The Commission was fully cognizant of the developments at the FCC when it issued its Order re-opening this docket.⁴⁹ The Commission acknowledged the possibility of FCC action on intercarrier compensation, but found the mere possibility of such action insufficient to further delay access reform in Pennsylvania, and ordered the instant

⁴⁸ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket No. 96-98 and 99-68, 16 FCC Rcd 9451, 9454 (rel. April 27, 2001) (“ISP Remand Order”) (emphasis added) (remanded on other grounds, *WorldCom, Inc. v FCC*, 288 F.3d 429 (D.C. Cir. 2002), subsequent mandamus, *In re: Core Communications, Inc.*, 531 F.3d 849 (2008); Order on Remand, *In re High Cost Universal Support*, WC Docket No. 05-337 (rel Nov. 5, 2008).

⁴⁹ See Reopening Order at 24.

investigation reopened.⁵⁰ The Commission's decision to proceed to address intrastate access rates was correct, and it would be folly to wait for developments in the federal arena to obviate the need for immediate reform in Pennsylvania by the Commission.

3. Pennsylvania and Other States Have Implemented Access Reform

In considering whether to require Verizon to mirror its intrastate access rates, the Commission can both look at its own recent actions as well as access reform in other states. The record establishes that there are numerous examples of access reform – whether instituted via statute or regulation – in other states.⁵¹ Today, many states require LECs' intrastate switched access rates to mirror their interstate access rates.⁵²

The Commission recently released its own order requiring Pennsylvania's rural ILECs to mirror their own interstate rates.⁵³ In the RLEC Access Order the Commission reached many accurate conclusions regarding the need for access reductions in Pennsylvania, but ultimately the Commission failed to order full mirroring as it wrongly concluded that it is appropriate to continue to allow carriers to collect subsidy through the Carrier Charge imposed on competitors.⁵⁴ Since the Commission specifically stated that its consideration of Verizon's access charges has and will continue to be considered separately,⁵⁵ it is not productive to delve into the specifics of the RLEC Access Order. Rather, it is sufficient to note that the Commission took action to require mirroring of traffic sensitive rate elements while substantially (but incompletely) reducing the amount

⁵⁰ *Id.*

⁵¹ See AT&T Panel Direct Testimony at Exhibit G.

⁵² *Id.*

⁵³ See generally *Investigation Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order entered July 18, 2011 ("RLEC Access Order")

⁵⁴ *Id.*

⁵⁵ RLEC Access Order at 17, fn. 24.

of carrier common line unjustly extracted from competitors rather than paid by the customers that cause the common line expense.

Other states have approached access reform and correctly concluded that *full* mirroring of interstate rates is the appropriate approach. In a recent instance of a state Commission electing to reform intrastate switched access rates by ordering LECs to mirror their own interstate switched access rates, the New Jersey Board of Public Utilities (“NJ BPU”) issued a ruling on February 1, 2010 that requires Verizon, and all other LECs in New Jersey, to mirror its interstate switched access rates within 36 months of the Order.⁵⁶ The NJ BPU required Verizon to entirely eliminate its Common Carrier Line Charge and Market Share Line Charge within twenty (20) days of the Order.⁵⁷ The remainder of the difference between Verizon’s intrastate and interstate switched access rates was ordered to be reduced in three equal increments at the 12, 24 and 36 month anniversary of the New Jersey Access Reform Order.⁵⁸

After hearing arguments from Verizon nearly identical to those arguments it made in the instant docket, the NJ BPU found as follows:

- It is this Board’s view, based upon the record in this proceeding that it is time to reduce these long standing subsidies that are neither necessary nor appropriate in the increasingly competitive marketplace. As noted in the record, many states and the FCC have reduced access charge rates over the years, some as many as 15 years ago. The policy decisions by the Board in the past to include significant subsidies in these rates were appropriate at a time when there was little or no competition. The Board is convinced that *the current level of subsidies is no longer necessary today.*⁵⁹

⁵⁶ Order, *In the Matter the Board’s Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, Docket TX08090830 (released February 1, 2010)(“New Jersey Access Reform Order”). Available at <http://www.state.nj.us/bpu/pdf/telecopdfs/TX08090830.pdf>.

⁵⁷ New Jersey Access Reform Order at 29.

⁵⁸ *Id.* at 29-30.

⁵⁹ *Id.* at 26-27 (emphasis added).

- *[S]witched access service is a monopoly* because there is no ability for an IXC or its customers to avoid excessive access charges. Furthermore, switched access is a monopoly because an originating carrier does not have a choice of terminating carriers.⁶⁰
- AT&T argues that the functionality used to provide interstate and intrastate switched access do not materially differ ... The Board agrees. Accordingly, the Board HEREBY FINDS that *there is no material difference in the functionalities used to provide interstate and intrastate switched access and, as a result, any disparities in the Intrastate and Interstate Access Rates should be eliminated.*⁶¹
- [T]he Board HEREBY FINDS that *a reduction of Intrastate Access Rates will benefit customers because there is a relationship between reduced access charges and toll reductions.*⁶²
- [it was been] argued that if the Board reduces Intrastate Access Rates, the Board should also eliminate their COLR obligations. However, *the record shows that COLR obligations of ILECs have not been reduced or eliminated in any state that has also reduced Intrastate Access Rates. ... Furthermore, the ILECs have failed to quantify the cost of their COLR obligations in New Jersey. ... the ILECs current COLR obligations as codified in N.J.S.A. 48:2-23 and in the Board's rules and Board Orders, should not be eliminated.*⁶³
- The Board also HEREBY FINDS that the Board *need not to wait for federal action from the FCC or from Congress on Intrastate Access Rate issues ...* the Board regulates Intrastate Access Rates and it is within the Board's authority to review the complete record in this proceeding and render its decision.⁶⁴
- The actions by the Board in this Order reflect a policy recognition that, *in a mostly competitive field, legacy subsidies are no longer necessary or appropriate.* As described above and as reflected in the record, the Board HEREBY FINDS that *the ILEC interstate access rate that the Board is setting herein as the appropriate rate for Intrastate Access charges at the conclusion of the phase-in period, is in excess of cost for providing Intrastate Switched Access service. Therefore, the revenues from the*

⁶⁰ *Id.* at 27 (emphasis added); see also Sprint Main Testimony (Sprint Statement 1.0) at 12; see also Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, at 9616-17 (rel. April 27, 2001)(the FCC acknowledges that terminating access is a monopoly).

⁶¹ *Id.* (emphasis added); see also Transcript at p. 176, lines 5-9; AT&T Panel Direct Testimony at page 36, lines 8-10; Sprint Main Testimony (Sprint Statement 1.0) at page 16, line 13 – page 17, line 11.

⁶² *Id.* (emphasis added); see also Transcript at 414:10-22.

⁶³ *Id.* at 28 (emphasis added).

⁶⁴ *Id.* (emphasis added).

*reduced Intrastate Access Rates will continue to provide a contribution to LECs.*⁶⁵

Another state that recently elected to reform intrastate switched access rates is Kansas.⁶⁶ In a March 10, 2010 Order, the Kansas Commission ordered CenturyLink's Kansas intrastate switched access rates to mirror its interstate switched access rates. In reaching this finding, the Kansas Corporation Commission made the following findings.

- The Commission believes the testimony and evidence provided by Sprint and AT&T has shown that [interstate] **parity will provide benefits in accordance with legislative policy goals, including enhancing the opportunity for greater competition and the opportunity for further telecommunications infrastructure development such as potentially greater broadband deployment.**⁶⁷
- The Commission finds substantial competent evidence indicates reducing access rates to parity ... should benefit Kansas consumers.⁶⁸
- The Commission finds **lowering ... access rates to parity will facilitate the advancement of telecom infrastructure at low, affordable prices.**⁶⁹
- Obviously, the Commission cannot predict what the FCC will do. However, Kansas has already taken a leadership role on access reform. ... Other states have also implemented reforms aimed at achieving parity of interstate and intrastate rates ... The Commission agrees that is not highly likely that FCC action will occur quickly. The FCC [intercarrier compensation] docket ... has not seen significant recent activity and the new FCC Chairman has not indicated access rate reform is a priority ... The Commission appreciates the efforts of AT&T, which has filed comments urging the FCC to protect the interest of Kansas consumers ... Other "early adopter" states have also filed comments. It is also reasonable to believe that the FCC would give the interests of early adopter states consideration. For these reasons, **the Commission does not believe the potential of FCC action that would**

⁶⁵ *Id.* (emphasis added).

⁶⁶ Order, *In the Matter of the Petition of Sprint Communications Company L.P., Sprint Spectrum L.P., and Nextel West Corp., d/b/a Sprint, to Conduct General Investigation into the Intrastate Access Charges of United Telephone Company of Eastern Kansas, United Telephone Company of South Central Kansas, and United Telephone Company of Southeastern Kansas, d/b/a Embarq.*, Docket No. 08-GIMT-1023-GIT (March 10, 2010) ("Kansas Access Order").

Available at <http://www.kcc.state.ks.us/scan/201003/20100310103628.pdf>

⁶⁷ Kansas Access Order at p. 38, ¶ 94.

⁶⁸ Kansas Access Order at p. 49, ¶ 128

⁶⁹ Kansas Access Order at p. 52, ¶ 138.

negatively affect Kansas customers, although troubling, is a factor that outweighs the benefits discussed in this Order.⁷⁰

- It is not necessary for the Commission to decide the appropriate cost method or inputs ... **the evidence presented here indicates [interstate] parity is a reasonable proxy** for costs.⁷¹
- The Commission does not here disagree with the argument that the statutory scheme may provide it with substantial flexibility with regard to rebalancing and that it may **have the ability to recognize revenue sources from deregulated lines** in its determination ...⁷²

As is evident from the foregoing, Kansas concluded that access reduction to parity with interstate rates is procompetitive, will lead to greater broadband deployment, can be conducted without access cost studies as interstate is a reasonable proxy rate, and that reducing ILEC access charges will have benefits for all Kansans. Sprint urges that the Commission should reach all the same conclusions.

Another example of a state commission eliminating the competitive harms caused by large disparities between intrastate and interstate access rates is Massachusetts, which found in a 2002 Order:

*Currently, intrastate switched access charges are higher than interstate switched access charges. This creates a situation where it could cost more for Massachusetts customers to make a call across the state than it does to make a call across the country. The Department concludes that this is inefficient because the cost to Verizon of originating or terminating a toll call does not vary with the distance of the call. Therefore, intrastate switched access charges will be lowered to the more cost-based interstate levels.*⁷³

⁷⁰ Kansas Access Order, p. 65-66, ¶ 178 – 179.

⁷¹ Kansas Access Order, p. 73-74, ¶ 204

⁷² Kansas Access Order, p. 84, ¶ 235.

⁷³ Order, *Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*, Mass. D.T.E. Docket No. 01-31 Phase I (May 8, 2002) (italics added), **2002 Mass PUC LEXIS 10**, *108-109. The Massachusetts Commission went on to find that that residential dial-tone rates would have to be increased to make up for lost subsidies, but that should not impact universal service.

The principles underlying the need to reduce intrastate access rates in Massachusetts recently have been affirmed by the Hearing Examiner in Sprint's complaint at the Virginia Corporation Commission against CenturyLink (then "Embarq") seeking reductions in CenturyLink's intrastate access rates in Virginia.⁷⁴ In that case, the Hearing Examiner concluded, among other things, that "the subsidies collected by CenturyLink through its intrastate access charges have a detrimental impact on competition" in Virginia.⁷⁵ In support of his conclusion, the Hearing Examiner stated as follows:

As the record in this case demonstrates, the distinction between providers of local exchange telephone service and the providers of other communication services, including wireless and interexchange, is becoming less and less defined. For example, a growing number of Virginia customers purchase their telecommunication services through "bundles" that include local exchange telephone service and other communication services. [citation omitted.] Consistent with Mr. Schollman's testimony, *providers of local exchange telephone service in Virginia also provide other communication services and are impacted by the level of subsidies collected through intrastate access charges*. AT&T witness Nurse testified that "[m]oving price away from cost reduces an efficiency and reduces entrants' ability to compete" [citation omitted.] More importantly from the perspective of the Local Competition Policy Statute, Embarq witness Dippon agreed that Embarq's intrastate switched access revenues contained subsidies that are used to keep Embarq's local service rates low. [citation omitted.] Mr. Dippon outlined the competition for local exchange telephone service faced by Embarq and the risks faced by Embarq if it increased rates to compensate for the loss of intrastate switched access subsidies. [citation omitted.] For example, in rural areas where Embarq currently faces little or no competition for local exchange telephone service, Mr. Dippon conceded that an increase in Embarq's rates could increase competition.

⁷⁴ *In the Matter of the Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Report of Alexander F. Skirpan, Jr., Senior Hearing Examiner, Case No. PUC-2007-00108, January 28, 2009, (hereinafter, "Hearing Examiner's Report"). Available at http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=86246&lib=CASEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native

⁷⁵ *Id.* at 40.

If Embarq were to raise rates in those areas – it all depends. I could see that there’s an increase in competition, but the increase in competition comes from the fact that carriers might see there’s some money to be made. [citation omitted.]

Likewise, in areas where Embarq currently faces competition for local exchange telephone service, Mr. Dippon took the position that if a loss in subsidy caused Embarq to increase rates in such areas, Embarq’s competitors would likely increase their market share. [citation omitted.]

*Thus, the subsidies collected through intrastate access charges continue to limit or dampen competition in opposition to the pro-competitive policies embodied in the Virginia Code §56-235.5:1.*⁷⁶

On May 29, 2009, the Virginia State Corporation Commission (“SCC”) issued its Order on Intrastate Access Charges. In that order the SCC agreed that “the subsidies contained in intrastate access charges distort the true cost of providing service, the true value of such service, and the development of the market for telephone service.”⁷⁷

C. Verizon’s Pennsylvania Access Rates Are Excessive When Compared to Other Applicable Rates for Exchanging Traffic Over the Same Facilities

The Commission has set out in the instant investigation to determine the appropriate level at which to set intrastate switched access charges for Verizon. The record establishes that Verizon’s intrastate switched access rates are inflated when compared to other applicable rates for the exchange of traffic over the same facilities that are used to terminate switched access traffic. Regardless of the means of comparison used, it is beyond dispute that Verizon receives an enormous, anti-competitive subsidy from its competitors through its unchecked, inflated access charges. The Commission

⁷⁶ Id. at 24-25 (emphasis added).

⁷⁷ Order, *In the Matter of the Petition of Sprint Nextel for Reductions in the Intrastate Carrier Access Rates of Central Telephone Company of Virginia and United Telephone-Southeast, Inc.*, Case No. PUC-2007-00108, May 29, 2009, (hereinafter “Virginia Order”) at 6.

should no longer tolerate Verizon's highly inflated access charges when there is no justification for existing rate levels.

For the exchange of local traffic, carriers' rates often reflect the forward-looking economic cost of traffic exchange. These rates are commonly referred to as reciprocal compensation rates. These forward-looking, cost-based rates, either approved by the Commission or agreed to in negotiations, function to compensate LECs for another carrier's use of their local switches, tandem switches and transport facilities to complete local calls while ensuring that the rates charged for monopoly-controlled bottleneck facilities are efficient and stimulate competition.⁷⁸ The FCC noted the following regarding the TELRIC (Total Element Long Run Incremental Cost – "TELRIC") methodology that it developed and intended for state commissions to implement in rate-making.

Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior. Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to making meaningful competition possible ... Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents ...⁷⁹

⁷⁸ First Report & Order, *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15846-47 (Released August 8, 1996) ("Local Competition Order"); *vacated in part on other grounds Iowa Utils Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *rev'd in part sub nom AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S. Ct. 721 (1999).

⁷⁹ *Id.* at 15846-47.

There is no functional difference between calls subject to reciprocal compensation and calls subject to switched access charges in terms of the network elements used.⁸⁰ In fact, they use identical network elements. Truly the only difference between reciprocal compensation calls and switched access (or toll) calls is that long ago before there was competition for the provision of telecommunications services, policy considerations allowed carriers to overcharge for the completion of toll (access) calls in order to maintain inexpensive basic local service. Since competition today regulates prices and ensures that local service is widely available at affordable prices, there is no longer any justification for inflated call termination rates to subsidize local service. In any event, because reciprocal compensation and access calls are functionally equivalent, reciprocal compensation rates can be used as a proxy for the forward-looking economic cost of providing switched access. While Sprint does not agree that Verizon's rates for reciprocal compensation are necessarily an accurate representation of the true cost of call termination,⁸¹ those rates provide a useful means to illustrate the extent to which access charges are inflated to provide unwarranted subsidies.

The record establishes that Verizon's reciprocal compensation rates are well below its intrastate switched access rates. Verizon's FCC mandated reciprocal compensation rate is \$0.0007.⁸² Regarding the reciprocal compensation rate, the FCC found that a rate of \$0.0007 would be "sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery."⁸³ Despite the fact

⁸⁰ See AT&T Panel Direct Testimony at 27-28.

⁸¹ See Sprint Statement No. 1 at p. 20, lines 5-6. Sprint believes the cost of call termination approaches zero.

⁸² See generally *ISP Remand Order*. Verizon has adopted the rate established by the FCC in the *ISP Remand Order*. The FCC specifically found that the \$0.0007 covered costs and provided a return on investment.

⁸³ *ISP Remand Order* at 6. See also Sprint Direct Testimony at 17.

that cost recovery is ensured by its reciprocal compensation rate, Verizon charges **30 times** more for intrastate switched access calls than for calls subject to reciprocal compensation.⁸⁴ This is so even though such calls use the same network facilities.⁸⁵ Even when compared to its own interstate rates Verizon charges three times⁸⁶ more for intrastate switched access than for interstate switched access, even though there is no difference in network functionality between the two types of calls.⁸⁷

There is absolutely no reason for these immense rate differentials and Verizon's exorbitant access profits to exist today. The above comparisons illustrate how far above other rates for the same network elements Verizon's intrastate switched access charges truly are, and the need for immediate access reductions. Nevertheless, Sprint only advocates to the Commission that Verizon be required to mirror its interstate rates, as the appropriate next step in access charge reform at this time.

D. Reducing Verizon's Access Rates Will Not Result in Unaffordable Rates For Basic Local Exchange or Other Services, and Will Not Result in Hardship for Verizon

The record firmly establishes that the access reductions Sprint advocates would result in reasonable increases to Verizon's basic local service rates and that such increases will not result in unaffordable rates. Two different numbers exist in the record regarding the extent of the increase to basic local rates.⁸⁸ The difference between the two numbers arises from the differences between the parties regarding the appropriate method of calculation. Under Verizon's approach, it counts all of its access lines – including its competitive lines, to determine its total access revenue reduction *impact*. However, when

⁸⁴ AT&T Panel Direct Testimony at 13.

⁸⁵ See AT&T Panel Direct Testimony at 27-28.

⁸⁶ Sprint Direct Testimony at 16.

⁸⁷ Transcript pg. 176, lines 5-9.

⁸⁸ See AT&T Surrebuttal Testimony at 5-9.

Verizon calculates the basic local service *rate increase* required to achieve revenue neutral rebalancing it allocates the entire increase in basic local service rates to its non-competitive lines only. Verizon's approach is both illogical and inappropriate.

Verizon's premise is that the Commission is prohibited from setting rates for competitive services under Pennsylvania law,⁸⁹ but that is an issue the Commission need never reach. To accomplish revenue neutral rebalancing, the Commission need only permit rate increases, not require them. Thus, to the extent that Verizon wishes to unnecessarily saddle its customers of non-competitive basic local service with the entire impact of rebalancing access reductions, the Commission should allow it to do so since the resulting rates would remain below the rate threshold the Commission has announced as reasonable.⁹⁰ The Commission should also recognize that the reasonable rate threshold for local service in the Verizon territories should be no lower than the level the Commission deemed to be reasonable in RLEC territories: \$23/month. As the highest suggested rate increase still results in a reasonable basic local service rate, the Commission need inquire no further in this regard.

The Commission should note that while Verizon's position is that the Commission cannot order Verizon to spread its rate increases to its competitive lines, Verizon itself is under no such impediment. If Verizon elects to, it is well able to spread the impact of its access increases across its wide-array of services regardless of whether the Commission is able to order it to take such action.

⁸⁹ Verizon Rebuttal Testimony at 48-51.

⁹⁰ See RLEC Access Order at 157 ("We determine based on the record ... that a \$23.00/month benchmark ... for local services rates is affordable, and is thus, reasonable and appropriate."); see also AT&T Surrebuttal Testimony at 8-9.

Additionally, Verizon's position is fatally flawed insofar as it overtly forces its customers of non-competitive basic local services to subsidize its customers of competitive services. In accord with Verizon's position, no competitive customer with a line that Verizon included to calculate the impact of rebalancing will see a rate increase attendant to the decrease in the access rates and revenue associated with that line. These competitive customers will avoid such an impact because Verizon proposes that it will recover the revenue lost from the line provided to the customer of competitive service by increasing charges to its customers of non-competitive services.

Verizon proposes to shield its competitive customers' rates from the impact of access revenue reductions by increasing rates to basic local service customers instead. This is a blatant violation of the prohibition against cross-subsidization,⁹¹ but is nevertheless the very crux of Verizon's revenue impact/rate rebalancing calculation methodology. Because under all the proposed methods of calculation the resulting basic local service rate remains reasonable, the Commission need not reach this issue. The Commission should, nevertheless, recognize the incongruity inherent in Verizon's approach.

E. Carrier of Last Resort ("COLR") and Other Regulatory Obligations Need Not Be Reduced and are not an Impediment to Immediate Reform

Verizon made blatantly unsupported arguments that in order to implement access reform, the Commission would need to relieve Verizon of its COLR obligations and other service quality obligations, presumably as cost saving measures. Despite this allegation, Verizon failed to present any evidence whatsoever regarding the cost of these obligations.

⁹¹ 66 Pa.C.S. § 3011(4) ("The General Assembly finds and declares that it is the policy of this Commonwealth to: (4) Ensure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers.").

On the other hand, no state Commission that has reduced an ILEC's access charges has concomitantly relieved it of its COLR obligations.⁹² Additionally, Verizon failed to present credible evidence that it has regulatory obligations substantially different from competitive local exchange carriers. With no credible factual basis to support its claim, the Commission should dispose of this argument with little ado.

V. REVENUE NEUTRAL REDUCTIONS

A. Revenue Neutrality Requires Only a Reasonable Opportunity to Offset Access Reductions

While the Parties may differ on the appropriate timing and structure of access reductions, there does not appear to be any serious disagreement that the revenue neutrality provision of 66 Pa. C.S.A. § 3017 requires only that a reasonable opportunity for revenue recovery be available. Verizon admitted that the statute requires only that a carrier be afforded a reasonable opportunity to offset access revenue reductions, not a dollar-for-dollar guarantee of revenue replacement.⁹³ Accordingly, the parties are in agreement that revenue neutrality does not require a dollar for dollar guarantee of revenue replacement.

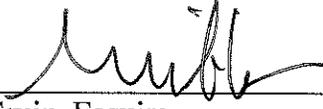
VI. CONCLUSION

The primary issue in this case is not whether Verizon's switched access rates should be reduced to mirror interstate rates and the switched access subsidy eliminated, but in what timeframe. Access rate reform is necessary to foster a fully competitive market in Pennsylvania, and the time for access reform is at hand. The Commission should quickly institute reform by ordering Verizon to immediately mirror the rate levels and structure of its interstate switched access charges.

⁹² See New Jersey Access Order at 28.

⁹³ Transcript at pg. 176, line 14 – pg. 177, line 1; see also AT&T Cross Exhibit 2 at pg. 15, lines 14-18.

Respectfully submitted this 16th day of August, 2011.



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AT&T Communications of Pennsylvania, Inc. :

v. :

Docket No. C-20027195

Verizon North Inc. and Verizon Pennsylvania Inc. :

CERTIFICATION OF SERVICE

I hereby certify that I have this day served by First Class U.S. Mail and Electronic Mail a true and correct copy of the foregoing Brief upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

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August 16, 2011



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