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August 24, 2011

Via Electronic Filing

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


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

Dear Secretary Chiavetta:

Enclosed please find Verizon's Main Brief, being filed by Verizon Pennsylvania Inc. and Verizon North LLC, in the above captioned matter.

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

Very truly yours,


Suzan D. Paiva

SDP/slb
Enc.

Via E-Mail and Federal Express Delivery
cc: The Honorable Dennis J. Buckley

Via E-Mail and First Class U.S. Mail
cc: Herbert Nurick, Mediation Coordinator
Attached Certificate of Service

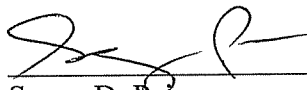
CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Verizon Companies' Main Brief, 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 24th day of August, 2011.

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

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**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 MAIN BRIEF

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INTRODUCTION

Verizon's tariffs provide reasonable rates, terms and conditions for Tandem Transit Traffic Service, a service that allows other telephone carriers to send local calls through Verizon's network to be terminated to other local service providers, such as competitive local exchange carriers ("CLECs") or wireless carriers, without a direct connection to those providers.¹ As a prerequisite to interconnecting with Verizon, CLECs and wireless carriers must enter into Commission-approved interconnection agreements ("ICAs"); these agreements generally require the carriers to compensate Verizon for Tandem Transit Traffic Service. Verizon has been providing the same Tandem Transit Traffic Service to the so-called rural incumbent local exchange carriers ("RLECs"). However, the "RLECs" have been sending Tandem Transit Traffic destined to other local service providers over their existing interconnection facilities without compensating Verizon. Verizon attempted to negotiate commercial arrangements with the RLECs to cover these services, but the RLECs preferred the status quo that resulted from their interconnection with Verizon prior to the advent of local competition; receiving a service for free. As a result, Verizon was forced to file the tariffs at issue so that it may begin charging the RLECs the same rates that are paid by CLECs and wireless carriers for this service.

The present complaints against the proposed tariffs were filed by some – but not all – of the RLECs that would be required to pay for transit once the tariffs take effect.²

¹ The tariffs at issue are Verizon Pennsylvania Inc. ("Verizon PA") Tariff PA PUC No. 219 and Verizon North LLC ("Verizon North") Tariff PA PUC No. 10. These companies are referred to herein as "Verizon."

² Two of the largest RLECs, CenturyLink and Windstream, did not make a filing with the Commission taking issue with the tariffs.

The “PTA Complainants” (those RLECs identified in the testimony of Mr. Zingaretti) provide no basis to reject or alter Verizon’s Tandem Transit Traffic Service Tariffs. In fact, the PTA Complainants witness stated at the hearing that they did not have “an issue” with the proposed Verizon PA rate for the service. Indeed, it is clear from the record that the rates proposed are just and reasonable, and are in fact the same rates paid by other local service providers for the same service. Likewise, the tariff terms are reasonable and consistent with the terms and conditions for Tandem Transit Traffic Service that have been agreed to by numerous CLECs and wireless carriers – including the PTA Complainants’ own affiliates – and approved without question by the Commission. The PTA Complainants’ claims of financial injury and burden from the tariff conditions are not supported by the record. Their random demand for conditions regarding their receipt of call detail for traffic sent to them by other carriers, a matter that is unrelated to the service being provided in these tariffs, is an improper attempt to extract concessions from Verizon as a condition for their paying for Tandem Transit Traffic Service. Those industry issues are being addressed by the Federal Communications Commission (“FCC”) (with this Commission’s input) and are not properly addressed in a carrier-specific tariff.

Because the PTA Complainants have been using Verizon’s Tandem Transit Traffic Service for years without compensating Verizon, they have been unjustly enriched. They have received “benefits conferred” on them by Verizon “under such circumstances that it would be inequitable for [the PTA Complainants] to retain the benefit without payment of value.” *See, e.g., Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121 (Pa. Super. Ct. 2011). Accordingly, in addition to allowing the tariffs to take

effect on or before the statutory deadline, the Commission should require the PTA Complainants to compensate Verizon for the Tandem Transit Traffic Service they have used in the past, from the applicable statute of limitations date.

STATEMENT OF THE CASE

A. Procedural History

Verizon filed the tariffs at issue (Verizon PA's Tariff PA PUC No. 219 and Verizon North's Tariff PA PUC No. 10) on April 5, 2011, to establish rates, terms and conditions for carriers that use Verizon's network to send their own local traffic to a local service provider other than Verizon — referred to in the tariffs as Tandem Transit Traffic Service.³ Tandem Transit Traffic Service provides the customer (in this case another telephone company providing local exchange service to end users) with the transport of local calls that are originated by the customer's end-users through Verizon's switching and transport facilities to the end office (or its equivalent) of another local service provider (other than Verizon).⁴ Through this service the customer is able to send its local traffic to other local service providers without connecting directly to those other local service providers.

Verizon's tariffs were originally scheduled to take effect on May 5, 2011. On April 22, 2011, the Pennsylvania Telephone Association ("PTA"), a trade association comprised of most of the RLECs operating in Pennsylvania, filed complaints against the

³ The tariffs are attached as Exhibits A and B, respectively, to VZ St. 1.0 (D'Amico Direct).

⁴ The tariffs do not apply to Tandem Transit Traffic Service that Verizon provides pursuant to an agreement with a local service provider. They are specifically intended to apply only to carriers that are using Verizon's Tandem Transit Traffic Service without any agreement, a category that currently includes only RLECs. Wireless carriers and CLECs generally have provisions in their Commission-approved interconnection agreements with Verizon that govern Tandem Transit Traffic Service. VZ St. 1.0 (D'Amico Direct) at 3.

tariffs on behalf of some, but not all, of its members.⁵ 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.

On June 27, 2011, Verizon filed an Amended Answer and New Matter to each of the complaints, asserting a claim for unjust enrichment. Verizon has been providing a “service” to the RLECs as defined in 66 Pa. C.S. § 102 by transiting the PTA Complainants’ local traffic through its network and the Commission should require them to compensate Verizon for this transit service to avoid their unjust enrichment. On July 18, 2011, the PTA Complainants’ filed their Answer to Verizon’s New Matter, as well as Preliminary objections to which Verizon responded.

The parties provided pre-filed direct, rebuttal and surrebuttal testimony. An oral hearing for cross-examination of the witnesses was held on August 12, 2011.

B. Tandem Transit Traffic Service

Verizon, as an incumbent local exchange carrier (“ILEC”), operates a network within its own service territory that includes both end office switches and tandem switches. End office switches are connected to end-user premises within a particular wire center and switch all calls coming from or destined to the end-users in that area. Tandem switches are “super” switches that connect other switches to each other. Verizon facilities connect its end office and tandem switches to carry traffic to and from Verizon end-users.

⁵ 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 complaints.

Other local service providers (wireless carriers, CLECs and RLECs) are able to connect to Verizon's network to exchange traffic with Verizon's customers and with the customers of other carriers that are also connected to Verizon's network. Specifically, a local service provider that is connected to Verizon's network is able to originate a local call on its own network and send the call through a Verizon tandem and/or end office switch to be delivered to the end-user to whom the call was placed. These local calls can be terminated to a Verizon end-user customer, but they also can be terminated to the end-user customers of other local service providers (CLEC, ILEC or wireless). This indirect exchange of local traffic through Verizon's network allows a local service provider to exchange local calls with another local service provider without being directly interconnected with that local service provider. And even where two local service providers are directly interconnected, they may route local traffic to each other through Verizon's network if the traffic volume exceeds the capacity of their direct connection.

The RLECs have long interconnected with Verizon's network to exchange toll and local traffic with Verizon and other RLECs. Their historic use of Verizon's network to transit their local traffic destined to other local service providers has increased as competitive options for local service have expanded, and the RLECs have increasingly been sending traffic destined to other local service providers over Verizon's network without compensating Verizon for this transit service. By contrast, new entrants into the market (*e.g.*, CLECs and wireless carriers) generally have Commission-approved interconnection agreements with Verizon that provide rates, terms and conditions for those new entrants to pay Verizon for transit service.

Verizon's tariffs (Verizon PA's Tariff PA PUC No. 219 and Verizon North's Tariff PA PUC No. 10) require RLECs using Verizon's network to transit local traffic originated by their end-user customers and destined to other local service providers to pay for their use of Verizon's network. An RLEC would operate as an originating "Local Service Provider" of "Tandem Transit Traffic," as defined by the tariffs, if and when the RLEC sends local traffic to Verizon's network for delivery to a local service provider other than Verizon, and would therefore be charged the rates described in the tariffs.

ARGUMENT

A. Verizon's Rates for Tandem Transit Traffic Service are Just and Reasonable.

Verizon proposes to charge just and reasonable rates for Tandem Transit Traffic Service. For Verizon PA, the proposed rate is \$0.001362 per minute-of-use (Verizon PA Pa. PUC No. 219, Section 5). For Verizon North, the proposed rate is \$0.0047856 per minute-of-use (Verizon North Pa. PUC No. 10, Section 9 5). In each case, these rates are the same per-minute rates that Verizon PA and Verizon North, respectively, charge to other local service providers for local transit service through Commission-approved agreements. VZ St. 1.0 (D'Amico Direct) at 10.

1. Verizon PA

The proposed rate for Verizon PA is the rate that it bills to CLECs that currently use its local transit service.⁶ Indeed, the proposed rate is uncontested. In the words of Mr. Zingaretti: "I just wanted to be clear that [the PTA Complainants are] not having an

⁶ The only issue raised by the PTA Complainants regarding Verizon PA's proposed rate was a question of whether it would include a "per-mile" charge. Prepared Rebuttal Testimony of Gary M. Zingaretti ("Zingaretti Rebuttal") at 19. Verizon's witness explained that "[t]here will not be such a charge." VZ St. 1.1 (D'Amico Surrebuttal) at 3. This clarification answered the PTA Complainants' question and there is no longer any issue regarding Verizon PA's proposed rate.

issue with specifically the Verizon Pennsylvania rate.”⁷ Tr. at 128. Because there is no issue regarding Verizon PA’s proposed rate, the Commission should approve it.

2. Verizon North

Like the Verizon PA proposed rate, the proposed rate for Verizon North is the same rate that it bills to CLECs that currently use its local transit service. This rate has been incorporated without question or complaint into dozens of interconnection agreements between Verizon North and CLECs. VZ St. 1.1 (D’Amico Surrebuttal) at 13. Each of these agreements has been approved by this Commission.

In his written testimony, Mr. Zingaretti did not specifically challenge Verizon North’s proposed rate. At the hearings, however, he suggested that there was no proof that Verizon North’s rate was a “cost-based” rate. Tr. at 128-129. But the FCC has made clear that there is no legal requirement that transit rates be based on the FCC’s TELRIC cost methodology. In an arbitration proceeding, the FCC’s Enforcement Bureau “decline[d], on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates.”⁸ The Bureau

⁷ Although not required by law, Verizon PA’s proposed rate is based on its TELRIC costs (the FCC’s methodology for determining rates for unbundled network elements). Verizon PA developed the proposed rate by adding together the individual rate elements established by this Commission for the unbundled network elements that correspond to the separate functionalities that combine to provide Tandem Transit Traffic service. VZ St. 1.0 (D’Amico Direct) at 11. These rate elements appeared in Appendix A to the Commission’s Compliance Order entered July 16, 2004 at Docket R-00016683, listing the final approved rates resulting from Verizon PA’s most recent TELRIC rate case for UNE pricing under federal law. *Generic Investigation Re: Verizon Pennsylvania Inc.’s Unbundled Network Element Rates*, Docket No. R-00016683 (Opinion and Order on Compliance entered July 16, 2004). They were subsequently memorialized in Verizon PA’s Tariff Pa P.U.C. –No. 216, Section 3.C.2.c & d Sheet 8B, Section 3.C.3.b Sheet 9A, and can be found in that tariff today.

⁸ *In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039, 27101 (2002).

reaffirmed this conclusion on reconsideration.⁹

Under Pennsylvania law, the record establishes that Verizon North's proposed Tandem Transit Traffic Service rate is a just and reasonable rate. Not only is it the same rate that the Commission has approved and that CLECs pay Verizon North for the same service, but also Verizon North's proposed rate is comparable to Neutral Tandem's tariffed rate for transit service. Neutral Tandem is charging a transit rate of \$.004498 per minute of use in Verizon North service territories, which is only six percent less than Verizon North's proposed rate of \$.0047856. VZ St. 1.0 (D'Amico Direct), Exh. C.

The fact that Verizon North's proposed rate is the same rate included in Verizon North's Commission-approved interconnection agreements and is comparable to at least one competitor's rate for transit service demonstrates the reasonableness of Verizon North's proposed rate. The Commonwealth Court has upheld the Commission's rate findings where the challenged rates are "in line with rates charged by other companies offering similar services."¹⁰ The Commission should therefore approve Verizon North's proposed rate.

B. Verizon's Terms and Conditions for Tandem Transit Traffic Service are Just and Reasonable.

The terms and conditions proposed in Verizon's Tandem Transit Traffic tariffs are the same terms and conditions imposed on CLECs and wireless carriers under Commission-approved interconnection agreements and on interexchange carriers under Verizon's switched access tariffs (for transiting non-local traffic). Verizon is not proposing to impose any unique requirement on the PTA Complainants through its

⁹ 19 FCC Rcd 8467 (2004).

¹⁰ *Mobilfone of Northeastern Pennsylvania, Inc. v. Pa. Pub. Util. Comm'n*, 78 Pa. Commw. 336, 340 (1983).

proposed tariffs. In fact, each of the tariff requirements challenged by the PTA Complainants is a requirement that CLECs and wireless carriers have complied with for many years under Commission-approved interconnection agreements.

1. Verizon's Trunking Provisions are Reasonable and Non-Discriminatory.

Verizon's proposed tariffs include provisions that are designed to ensure that the RLECs have trunking arrangements in place for Tandem Transit Traffic Service that are consistent with industry standards. These trunking arrangements specified under the tariffs are the same trunking arrangements that CLECs and wireless carriers have had in place for many years and are currently using to deliver Tandem Transit Traffic to Verizon. These trunking arrangements not only ensure that Tandem Transit Traffic is routed in accordance with industry standards, they also ensure that such traffic is properly recorded and billed.

One such trunking requirement is that the RLEC have separate local interconnection trunk groups and access toll connecting trunks, as CLECs and wireless carriers do today. As Mr. D'Amico explained, "[i]ndustry standards generally dictate that carriers interconnected with another carrier's tandem have separate groups: one to deliver local, toll and transit traffic and another to deliver interexchange carrier traffic." VZ St. 1.1 (D'Amico Surrebuttal) at 5. These industry standards are designed to ensure that traffic is recorded and billed properly.

In order for the billing systems to work properly, traffic destined for an interexchange carrier cannot be combined on the same trunk group with traffic destined for a local service provider. When interexchange traffic is delivered over the same trunk group as local traffic, there is an inherent risk that the interexchange carrier traffic will be recorded twice – once in the originating switch and once in the tandem switch – and then billed twice. By using separate trunk groups, current billing systems can more accurately record and bill local and interexchange carrier traffic.

VZ St. 1.1 (D'Amico Surrebuttal) at 7.

The PTA Complainants assert that Verizon has not imposed a similar requirement on other carriers. Zingaretti Rebuttal at 10. This assertion is incorrect. As Mr. D'Amico explained, "Verizon's interconnection agreements require CLECs and wireless carriers to establish separate access and local trunk groups, and in fact require such trunking." VZ St. 1.1 (D'Amico Surrebuttal) at 6.

The PTA Complainants also argue that the tariff language requiring separate trunk groups is too vague. The tariff language was drafted to allow some flexibility for the RLECs to reuse existing trunking facilities where reasonable.¹¹ If an individual RLEC would prefer to negotiate more specific trunking provisions with Verizon, it may do so and those contract provisions would apply in lieu of the tariffs. Moreover, as Mr. D'Amico explained in his testimony, Verizon would be willing to add language to the tariffs to describe these trunking requirements in more detail. VZ St. 1.1 (D'Amico Surrebuttal) at 9.

Another trunking requirement for Tandem Transit Traffic Service is the establishment of separate trunking to each tandem switch in the LATA, as CLECs and wireless carriers do today. Mr. D'Amico explained that this requirement "is intended to ensure that traffic is routed in accordance with industry standards that provide for only one tandem in the call path." VZ St. 1.0 (D'Amico Direct) at 20. If Tandem Transit Traffic is switched through more than one tandem switch, "billing records may not be generated properly and as a result the traffic sometimes appears as 'phantom traffic' to the terminating carrier." *Id.*

¹¹ The existing trunking arrangements with individual RLECs have been in place for as many as 100 years. Tr. at 55.

The PTA Complainants assert that this trunking requirement will force the RLEC to build significant new trunking facilities. Zingaretti Rebuttal at 10. This assertion completely distorts the potential changes that would be needed to bring the RLECs trunking facilities into compliance with industry standards. As Mr. D'Amico testified, "Interconnection Trunks are only required to those Verizon Tandems in the same LATA that the RLEC serves." VZ St. 1.1 (D'Amico Surrebuttal) at 10. This tariff requirement "can by no means be read as a requirement to have a trunk group to every tandem in the state, as Mr. Zingaretti implies." *Id.*

Moreover, this trunking requirement would not require the RLECs to build new interconnection facilities into Verizon's service territory to reach Verizon's tandems. The RLECs currently deploy and maintain their own interconnection facilities up to a meet point at the existing boundary between the RLEC's service territory and Verizon's service territory. "Whatever rearrangements and/or additional trunk groups the RLEC might need would only be on the RLEC side of the meet point." VZ St. 1.1 (D'Amico Surrebuttal) at 11.

Finally, this same trunking requirement "appears in CLEC and wireless interconnection agreements approved by the Commission." *Id.* It is therefore both reasonable and non-discriminatory to impose this trunking requirement on the RLECs under the tariffs.

One additional trunking issue raised by the PTA Complainants is that the tariffs do not specify whether the interconnection facilities would be configured as one-way or two-way facilities. Zingaretti Rebuttal at 11. There is no need for the tariffs to specify such a requirement because the tariffs allow the RLECs to continue using their existing

arrangements. As Mr. D'Amico explained, "[t]he tariff assumes that the interconnection is already in place [and] the RLECs can continue to use one-way and two-way interconnection arrangements already in place for delivering transit traffic to Verizon." VZ St. 1.1 (D'Amico Surrebuttal) at 12. Moreover, "[i]f a particular RLEC wishes to convert existing one-way trunk groups to two-way trunk groups or vice versa, the tariff does not preclude Verizon and the RLEC from agreeing to do so." *Id.*

2. The Definitions Included in Verizon's Tandem Transit Traffic Tariffs Are Reasonable and Accurate.

The PTA Complainants make meritless challenges to several definitions included in Verizon's tariffs.

First, the PTA Complainants argue that the definition of "local service provider" should "exclude customers of third party providers that utilize Verizon's switching." Zingaretti Rebuttal at 12. Verizon's tariff definition of "Tandem Transit Traffic" already addresses this issue because it only includes traffic that "is transported through the Telephone Company's Tandem or End Office, to the End Office or its equivalent of another Local Service Provider ('Other LSP')." *See* Section 2.5. In other words, traffic meets the definition of Tandem Transit Traffic only when it terminates to another LSP's switch. "Resale and Wholesale Advantage traffic by definition terminate to a Verizon switch and are not included within the definition of Tandem Transit Traffic." VZ St. 1.1 (D'Amico Surrebuttal) at 13.

Second, the PTA Complainants challenge the definition of "Exchange Access" included in Verizon's tariffs as "vague" and "not a working definition of the type employed in the industry." Zingaretti Rebuttal at 12. Although Mr. Zingaretti mentions the term "exchange access," he appears to be challenging the definition of "telephone

exchange service.” In either case, Verizon has included these definitions in Commission-approved interconnection agreements for many years. Mr. D’Amico testified that he is “not aware of disputes about what traffic is covered” under these definitions. VZ St. 1.1 (D’Amico Surrebuttal) at 13-14.

Third, the PTA Complainants argue that it is unclear how intra-MTA wireless calls will be treated under Verizon’s tariffs. Zingaretti Rebuttal at 14. While an intra-MTA call may be rated by the RLEC as either an intraLATA toll call or a local call, the tariffs would only apply to those intra-MTA calls that are rated as local by the RLEC. As Mr. D’Amico explained,

[R]elevant traffic that is transited through Verizon’s network falls into two categories – local or IntraLATA Toll, either of which requires compensation. Local transit would be the subject of the tariffs in this case. The RLECs already compensate Verizon for the transiting of IntraLATA toll traffic by virtue of Verizon’s access tariffs and the IntraLATA Toll Originating Responsibility Plan (‘ITORP’) arrangement among the RLECs. To the extent an RLEC is already reporting intra-MTA toll calls to ITORP and is already paying access charges to Verizon to transit that traffic, Verizon agrees that calls reported to ITORP should not be charged as Tandem Transit Traffic under the tariffs. To the extent an RLEC is not reporting intra-MTA calls as IntraLATA toll calls under the ITORP system, then those calls would be subject to compensation under this tariff.

VZ St. 1.1 (D’Amico Surrebuttal) at 14-15. It is therefore clear that only local intra-MTA calls would be subject to Verizon’s tariffs.

3. The PTA Complainants’ Request for Additional Call Detail Records Is an Inappropriate Attempt to Bootstrap an Unrelated Issue to Verizon’s Tandem Transit Traffic Service.

The Tandem Transit Traffic Service offered through Verizon’s tariffs is a service Verizon provides to the RLECs as originating local service providers, allowing them to send local traffic originated by their end-user customers through Verizon’s network to other local service providers. The PTA Complainants want to insert a completely

different service offering into Verizon's tariffs. Such an attempt to bootstrap an unrelated issue must be rejected.

Specifically, the PTA Complainants want Verizon to guarantee the contents of call detail records for traffic sent to them by other local service providers. The traffic RLECs may receive from other local service providers is not the subject of the service provided to the RLECs under these tariffs; the tariffs only provide a service that allows the RLECs to send *their own* local traffic through Verizon's network to *other* local service providers.

In any event, Verizon is already providing the RLECs with call detail records for traffic from other local service providers pursuant to standard industry practice, rather than a tariff or a contract. These billing records Verizon provides to terminating local service providers "meet all established industry standard guidelines." VZ St. 1.0 (D'Amico Direct) at 28.

The PTA Complainants do not dispute the fact that Verizon is providing call detail records for traffic that other local service providers transit through Verizon's network to the RLECs. They are simply dissatisfied with the information included on those records and are trying to demand concessions that are unrelated to the service at issue in the tariffs. In essence, the PTA Complainants are attempting to hijack this proceeding, which is focused on compensation to Verizon for transiting traffic originated by the RLECs, to dictate terms relating to traffic flowing in the other direction from other carriers. The Commission should not countenance such a maneuver, particularly when it is being used by the PTA Complainants to continue to delay having to pay for a service that they have received for free for years.

More importantly, the call detail information that Verizon is able to provide to the RLECs is only as good as the information provided to Verizon by the originating carrier. As Mr. D'Amico testified, "Verizon generally passes along the call detail for transiting traffic as it is received from the originating local service. If the call detail is incomplete, inaccurate or altered, it is probably due to the actions of the originating local service providers." VZ St. 1.0 (D'Amico Direct) at 28. In fact, Mr. Zingaretti himself concedes that "[s]ome of the problem related [sic] to the carriers themselves involved in delivering the call to Verizon." Zingaretti Rebuttal at 14.

The issues the RLECs raise here "are industry-wide issues that the RLECs must take up directly with the companies that are delivering traffic and that are being considered by the FCC." VZ St. 1.1 (D'Amico Surrebuttal) at 16. Verizon "is not in a position to force these carriers to provide the call detail that the RLECs demand." VZ St. 1.1 (D'Amico Surrebuttal) at 16. The FCC recently took comments on industry-proposed rules intended to address this issue. This Commission submitted comments generally supporting the FCC's efforts to address the issue, and recognized that any rules in this area "should be of equal and more general applicability."¹² To the extent any regulatory intervention is needed, it must be and is being addressed on a uniform, industry-wide basis. It is certainly not properly raised in the context of an individual carrier's tariff for an unrelated service, nor does it provide a basis for the RLECs to resist paying for the transit service they admittedly use to send their own traffic to other local service providers.

¹² VZ St. 1.0 (D'Amico Direct) at 29-30 (quoting *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, WC Docket No, 10-90, etc, Comments of the Pennsylvania Public Utility Commission filed April 1, 2011 at 15).

The RLECs also assert that Verizon “strip[s] out call details.” Zingaretti Rebuttal at 15. This assertion is incorrect. As Mr. D’Amico testified, “Verizon does not strip out call detail.” VZ St. 1.1 (D’Amico Surrebuttal) at 18. In certain switch technologies, the call recording software does not enable Verizon to preserve both the CPN (Calling Party Number) and BTN (Billing Telephone Number). In those limited situations, zeros are in the originating number field where the CPN was not recorded. *Id.* Nonetheless, even in these limited situations, Verizon is providing sufficient call detail for the RLEC to bill the originating carrier. In fact, “CLECs are using this same information today to bill wireless carriers.” *Id.*

4. The RLECs Should Be Required to Pay for Tandem Transit Traffic Service For Calls That Originate From Their End Users and Terminate to CLECs, Wireless Carriers and other RLECs.

Verizon’s Tandem Transit Traffic Service applies on a non-discriminatory basis to all Tandem Transit Traffic, regardless of whether the terminating carrier is a CLEC, a wireless carrier or another RLEC. The PTA Complainants, however, do not want to pay Verizon for Tandem Transit Traffic Service when the call terminates to a CLEC or wireless carrier. According to Mr. Zingaretti, “[t]he CLEC [or wireless carrier] decided how it would route both incoming and outgoing traffic to the ILEC’s [point of interconnection] and the CLEC [or wireless carrier] should be responsible for payment of all Tandem Transit charges.” Zingaretti Rebuttal at 20. However, this issue is between those carriers and the PTA Complainants, and Verizon should not be caught in the middle and forced to provide service without compensation.

Moreover, the RLECs proposal is not reasonable. CLECs and wireless carriers pay to transit their own local traffic, originated by their own end-users, through Verizon’s

network to other local service providers, including the RLECs. The RLECs should likewise pay to transit their own local traffic, originated by the RLECs' own end-users, to other local service providers. If the RLECs are not willing to pay Verizon for this service, they should be directed to cease sending Tandem Transit Traffic through Verizon's network and make some other arrangements to deliver their local traffic to CLECs and wireless carriers.

5. Tandem Transit Traffic Service is Appropriate for a Tariff.

Verizon sought to enter into commercial agreements with the RLECs to address this service, and it continues to be willing to do so, as evidenced by its active participation in the concurrent mediation in this matter. After several weeks of discussions in late 2010, Verizon sent the RLECs a proposed commercial agreement in January 2011. When the RLECs did not promptly provide a substantive response to this draft, Verizon was left in the position of continuing to provide Tandem Transit Traffic Service to them without any compensation and without the prospect of an immediate commercial agreement. Verizon was forced to file a tariff and exercised its legal right to do so in April of 2011. VZ St. 1.0 (D'Amico Direct) at 31-32. In the face of such facts, the PTA Complainants' assertion that "Tandem Transit Service is not the appropriate subject for a tariff filing" (Complaint ¶ 9) is not well taken.

The PTA Complainants do not cite a single statute, rule or order that prohibits any carrier from offering transit service under tariff. In fact, other carriers in the Commonwealth are offering transit services pursuant to tariff. Mr. D'Amico identified two such carriers – Neutral Tandem – Pennsylvania, L.L.C. and Peerless Network of Pennsylvania, L.L.C. – that have local transit terms in their tariffs. VZ St. 1.0 (D'Amico Direct) at 9.

When the tariffs take effect, an individual RLEC (including those that did not complain against the tariffs) will have the choice to purchase the service out of the tariff or to negotiate its own commercial agreement. Verizon drafted its tariff to accommodate the continued negotiation of commercial agreements. Specifically, Verizon's Tandem Transit Tariffs do not foreclose any RLEC from obtaining Tandem Transit Traffic Service pursuant to the terms of a negotiated agreement. Section 1.3 of the tariffs makes clear that "[t]his tariff does not supersede any agreement between the Telephone Company and a Local Service Provider that governs the transport of Tandem Transit Traffic."

C. The PTA Complainants Must Compensate Verizon for Their Unjust Enrichment by their Use of Verizon's Network to Transit Local Traffic.

The Commission should require the PTA Complainants to compensate Verizon for their prior use of Verizon's network to transit local traffic from their end-user customers to CLECs, wireless carriers and other RLECs. Under the doctrine of unjust enrichment, "[w]here one party has been unjustly enriched at the expense of another, he is required to make restitution to the other. In order to recover, there must be both (1) an enrichment, and (2) an injustice resulting if recovery for the enrichment is denied."¹³ The record shows that each of the elements of unjust enrichment has been met here and Verizon is entitled to compensation for the transit services already provided to the PTA Complainants.

¹³ *Meehan v. Cheltenham Twp.*, 410 Pa. 446, 449, 189 A.2d 593, 595 (1963), *citing Bailis v. Reconstruction Fin. Corp.*, 128 F.2d 857 (3d Cir. 1942). *See also Braun v. Wal-Mart Stores, Inc.*, 2011 PA Super 121 (Pa. Super. Ct. 2011) ("[t]he 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").

Verizon provided a “service” within this Commission’s jurisdiction that conferred a benefit on the PTA Complainants without compensation. Where a “service” as defined by the Public Utility Code has been provided without compensation, the Commission has ample authority to require compensation to avoid “unjust enrichment.” For example, the Commission found that it has authority to permit “the ‘back-billing’ of a commercial customer who knowingly received and used the public utility service for which, due to mutual inadvertence and due to the negligence of the public utility, the said ratepayer paid nothing.”¹⁴ In the words of the Commission: “[a] contrary result would unjustly enrich Complainant at the expense of the other ratepayers.”¹⁵ Similarly, the Commission has observed that a consumer of public utility service “has a ‘duty to pay for services rendered’” and “[a]ny other result would unjustly enrich the Complainant.”¹⁶

It is undisputed that the PTA Complainants received the benefit of Verizon’s transit “service” and did not pay for it. The PTA Complainants admitted that they “do send ‘local’ traffic and other traffic to Verizon’s network, some of which transits the Verizon network to other service providers.”¹⁷ As Mr. D’Amico explained, their use of Verizon’s network provided a benefit to the RLECs because “[w]ithout the use of Verizon’s network to transit their local traffic to other local service providers, the PTA Complainants would have had to interconnect directly with those other providers or utilize some other carrier’s network for transit. Otherwise, the end-user customers of the

¹⁴ *Cefalo v. Pennsylvania Gas and Water Company*, Docket No. C-881680, 1989 Pa. PUC LEXIS 123, 69 Pa. PUC 265 (Opinion and Order entered July 7, 1989).

¹⁵ *Id.*

¹⁶ *Rogers v. PECO Energy Company*, Docket No. C-00003599, 2001 Pa. PUC LEXIS 2 (Opinion and Order entered Jan. 12, 2001) (available on the Commission’s website at <http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=C-00003599>).

¹⁷ Verizon Cross Examination Exhibit No. 1.

PTA Complainants would not have been able to place calls to customers served by those other local service providers.” VZ St. 1.0 (D’Amico Direct) at 32. The PTA Complainants also admitted that they have not paid Verizon for their use of this transit service, stating that “there is currently no effective ICA or tariff imposing charges where Verizon transits such local calls and therefore the PTA Complainants have not to date paid Verizon such monies.”¹⁸

Under the doctrine of unjust enrichment, the PTA Complainants should be required to pay “the value of the benefit conferred.”¹⁹ Verizon requested that this value be calculated based on the rates proposed in its tariffs because these are the same rates other local service providers paid for Verizon’s transit services during the period at issue. Exhibit H to Mr. D’Amico’s direct testimony provides a spreadsheet calculating the amount by which each PTA Complainant has been unjustly enriched by its use of Verizon’s Tandem Transit Traffic Service without compensation from June 27, 2007 through June 27, 2011.²⁰ This evidence was not rebutted. The monthly run rate on this chart may be used to update the calculation through the date of the Commission’s final order in this case. VZ St. 1.0 (D’Amico Direct) at 33.

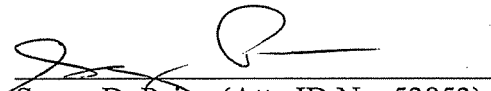
¹⁸ *Id.*

¹⁹ *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super 2006).

²⁰ Verizon is seeking recovery for unjust enrichment back to the applicable statute of limitations date. *See* 42 Pa. C.S. § 5525(a)(4) (“[a]n action upon a contract implied in law” to be filed within four years).

CONCLUSION

For the foregoing reasons, the Commission should approve Verizon's tariffs and allow them to go into effect immediately. The Commission should also award Verizon compensation for the PTA Complainants' past use of Verizon's Tandem Transit Traffic Service.



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