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September 7, 2011

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> 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 Reply 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,

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

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

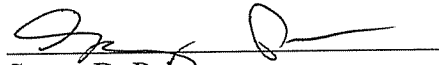
**CERTIFICATE OF SERVICE**

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Verizon Companies' Reply 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 7<sup>th</sup> day of September, 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.	:	
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	:	
Pennsylvania Telephone Association	:	
v.	:	C-2011-2237456
Verizon Pennsylvania Inc.	:	
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Pennsylvania Public Utility Commission	:	
v.	:	R-2011-2234462
Verizon North LLC	:	
	:	
	:	
Pennsylvania Telephone Association	:	
v.	:	C-2011-2237496
Verizon North LLC	:	

**VERIZON'S REPLY BRIEF**

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Dated: September 7, 2011

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## INTRODUCTION

In today's highly competitive communications marketplace, the Pennsylvania Telephone Association ("PTA") Complainants are no longer the sole providers of local service in their respective service territories. Competitive local exchange carriers ("CLECs"), cable companies and wireless carriers also offer local service in competition with them. The PTA Complainants need to provide their own end-user customers with the ability to place local calls to the end-user customers of these competitors. Although the PTA Complainants could interconnect directly with these competitors, they instead use Verizon's network to transit calls from their end-user customers to their competitors' end-user customers, but without providing any compensation to Verizon for this service.

The PTA Complainants refuse to accept responsibility for their end-user customers' traffic, claiming that Verizon, or the competitors, or anyone other than the PTA Complainants should bear the cost of getting the PTA Complainants' traffic to its final destination. They deliver traffic destined to CLECs and wireless carriers over interconnection arrangements that were developed as many as 100 years ago and that do not reflect the current industry standards their competitors currently meet. These antiquated interconnection arrangements not only prevent Verizon from billing the PTA Complainants for Tandem Transit Traffic Service, they also exacerbate the "phantom traffic" problem by preventing terminating carriers from obtaining call identifying information to bill the PTA Complaints terminating charges. Rather than undertaking the minimal reconfigurations needed to bring these interconnection arrangements up to the same industry standards as their competitors have done, the PTA Complainants expect Verizon to redesign its own network and to develop unnecessary traffic recording

capabilities just to allow the PTA Complainants' continued use of outdated interconnection arrangements.

Verizon offered to provide Tandem Transit Traffic Service to the PTA Complainants pursuant to an agreement containing the same rates, terms and conditions as the interconnection agreements under which Verizon provides this service to CLECs and wireless carriers, but the PTA Complainants have not agreed to such a contract and claim in their main brief that there is no reason they should ever do so. When it became apparent that the PTA Complainants would not enter into an agreement, Verizon filed the tariffs now at issue. Verizon's tariffs would not impose any more onerous terms or conditions on the PTA Complaints than those imposed on CLECs, wireless carriers or interexchange carriers. The PTA Complainants plainly do not want to obtain Verizon's Tandem Transit Traffic Service on the same rates, terms and conditions as their competitors; they want preferential arrangements – key of which is that they inexplicably continue to insist that they should receive Verizon's Tandem Transit Traffic Service at no charge.

Seeking to maintain the status quo of free transit service, the PTA Complainants have concocted a laundry list of “red herring” excuses as to why they should not be required to pay for the Tandem Transit Traffic Services they receive from Verizon. As discussed below, none of these excuses survives scrutiny. The Commission should permit the tariffs to take effect on or before their scheduled date so as to require the PTA Complainants and other rural local exchange carriers (“RLECs”) that have not challenged the tariffs to pay Verizon for providing transit services. The Commission should also award Verizon compensation for the PTA Complainants' unjust enrichment for using

Verizon's network to transit their local traffic for the past four years without any compensation to Verizon.

## **ARGUMENT**

### **A. Verizon Was Forced to Tariff Tandem Transit Traffic Service.**

The PTA Complainants argue that Tandem Transit Traffic Service “should be provided based on negotiated terms.” PTA Main Br. at 6. Verizon tried to negotiate a commercial agreement with the PTA Complainants, but the PTA Complainants did not take such negotiations seriously (the apparent reasons for that reluctance are explained below). Without any agreement with the PTA Complainants and faced with the prospect of having to continue to provide a service for free (after having already done so for many years), Verizon was forced to file these tariffs, as it did with the Commission. There is no law that prohibits local exchange carriers from tariffing this service. Indeed, this Commission and at least several other state commissions are allowing local exchange carriers to provide transit services pursuant to tariff. The Federal Communications Commission (“FCC”) has never interpreted the federal Communications Act to require that transit services be provided pursuant to an interconnection agreement. In any event, if the PTA Complainants are serious about negotiating an agreement to cover this service, nothing in Verizon's tariffs would preclude the PTA Complainants from purchasing Tandem Transit Traffic Service pursuant to a negotiated agreement.

#### **1. This Commission and Other State Commissions Allow Local Exchange Carriers to Provide Transit Services Pursuant to Tariffs.**

The PTA Complainants argue that it is not appropriate for Verizon to file a tariff for transit services (PTA Main Br. at 6), but this argument flies in the face of this

Commission's and other state commissions' handling of transit service tariffs. Verizon is not the first local exchange carrier to file a tariff for transit service. At least two other local exchange carriers have filed transit service tariffs in Pennsylvania, and this Commission allowed those tariffs to become effective.

For example, Neutral Tandem – Pennsylvania, L.L.C. has local transit terms in its tariffs. VZ St. 1.0 (D'Amico Direct) at 9. Neutral Tandem's transit tariff has been in effect since at least August 28, 2009. VZ St. 1.0 (D'Amico Direct), Exhibit C. This Commission allowed revisions to Neutral Tandem's tariffs as recently as March 12, 2010.<sup>1</sup> Peerless Network of Pennsylvania, L.L.C. also has local transit terms in its tariffs and those terms have been effective since at least June 9, 2008. VZ St. 1.0 (D'Amico Direct), Exhibit D. This Commission allowed revisions to Peerless's tariffs as recently as March 4, 2009.<sup>2</sup>

This Commission is not alone in allowing local exchange carriers to provide transit services pursuant to tariff. In 2000, the New York Public Service Commission required Verizon New York Inc. to file a tariff for transit service.<sup>3</sup> The Massachusetts state commission has allowed Verizon New England Inc. to provide transit service pursuant to tariff since 2002.<sup>4</sup> In 2005, AT&T (then BellSouth) filed a transit service

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<sup>1</sup> Docket No. R-2010-2161623, *Neutral Tandem-Pennsylvania, LLC, Revisions to Switched Access Services Tariff*, Letter from James J. McNulty, Secretary, to Carey Roesel, Consultant to Neutral Tandem Pennsylvania LLC (March 12, 2010).

<sup>2</sup> Docket No. R-2008-2080180, *Peerless Network of Pennsylvania, LLC, Tariff Revision to Access Services Tariff*, Letter from James J. McNulty, Secretary, to Daniel Meldazis, Director of Regulatory Affairs for Peerless Network of Pennsylvania, LLC (March 4, 2009).

<sup>3</sup> Case 00-C-0789, *Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies*, Order Establishing Requirements for the Exchange of Traffic (NY PSC Dec. 22, 2000).

<sup>4</sup> Exh. GMZ-6.

tariff in South Carolina and several parties challenged the tariff. The Public Service Commission of South Carolina dismissed the complaints and allowed the tariff to become effective.<sup>5</sup>

As noted above, this Commission and several other state commissions have either allowed or required other local exchange carriers to provide transit service pursuant to tariff. Accordingly, not only is there is no state law impediment to but, rather, there are multiple, explicit precedents for, Verizon providing transit services pursuant to its own tariffs.

## **2. Federal Law Does Not Preclude Verizon from Tariffing Tandem Transit Traffic Service.**

The PTA Complainants also argue that federal law requires Verizon to provide transit service pursuant to an interconnection agreement and, therefore, it precludes Verizon from providing transit service pursuant to a tariff. PTA Main Br. at 6-9. But plainly federal law has not preempted this Commission from allowing transit service to be tariffed under this Commission's jurisdiction. The FCC, the agency charged with interpreting and implementing the federal Communications Act, has never found a requirement under federal law for a carrier to provide transit service. Rather, Verizon has been providing transit service to the PTA Complainants (unfortunately, without compensation) so that it does not block their traffic. This is because the FCC "previously has found that call blocking is an unjust and unreasonable practice under section 201(b) of the Act" and "[FCC] precedent provides that no carriers, including interexchange

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<sup>5</sup> Docket No. 2005-63-C, *BellSouth Telecommunications, Inc. – Transit Traffic Tariff 2005-50*, Order No. 2006-199 (PSC SC March 28, 2006).

carriers, may block, choke, reduce or restrict traffic in any way.”<sup>6</sup> Verizon has conservatively operated as if the foregoing FCC statement applies not only to directly exchanged traffic between carriers but, also, to transit traffic. But the FCC has repeatedly recognized that its “rules have not required incumbent LECs to provide transiting.”<sup>7</sup> In its consideration of long distance applications filed by Verizon and other Bell Operating Companies, the FCC held that “[w]ith regard to transit traffic, . . . we find no clear Commission precedent or rules declaring such a duty.”<sup>8</sup>

The FCC’s Wireline Competition Bureau reached the same conclusion in the context of an interconnection agreement arbitration, rejecting AT&T’s claim that federal law requires incumbent local exchange carriers, such as Verizon, to provide transiting services to competitors. The 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.”<sup>9</sup> The Bureau reaffirmed this conclusion on reconsideration.<sup>10</sup>

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<sup>6</sup> See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 11629 ¶¶ 5, 6 (2007).

<sup>7</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶ 534 n.1640 (2003), *vacated in part and remanded*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

<sup>8</sup> *Application by BellSouth Corporation, et al., for Authorization to Provide In-Region InterLATA Services in Florida and Tennessee*, Memorandum Opinion and Order, 17 FCC Rcd 25828 ¶155 (2002). See also *Joint Application by BellSouth Corporation, et al., for Provision of In-Region InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, Memorandum Opinion and Order, 17 FCC Rcd 17595 ¶ 222 n.849 (2002); *Application by Verizon Maryland Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC Rcd 5212 ¶ 101 (2003).

<sup>9</sup> *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).

<sup>10</sup> 19 FCC Rcd 8467 (2004).

The PTA Complainants' reliance on the Sixth Circuit's opinion in the *Verizon North v. Strand* case is misplaced. In that case, a CLEC "had filed a tariff with the [Michigan Public Service Commission] pursuant to which [the CLEC] established a rate of 1.5 cents per minute in reciprocal compensation charges."<sup>11</sup> The Communications Act explicitly lists "reciprocal compensation" as a matter for negotiation in an interconnection agreement, and accordingly the Sixth Circuit found that this statute preempted tariffing of reciprocal compensation charges.<sup>12</sup> By contrast, the Act does not explicitly list "transit service" as a matter for negotiation in an interconnection agreement and the FCC has never interpreted the Communications Act to impose such a requirement. Therefore, the PTA Complainants' suggestion that the federal Act preempts tariffing of transit service is baseless.

The PTA Complainants' reliance on the FCC's decision in the *T-Mobile* case is similarly unwarranted. In that case, T-Mobile challenged rural local exchange carriers' tariffs imposing termination charges on local wireless calls in lieu of reciprocal compensation under interconnection agreements. As the FCC explained, T-Mobile filed a petition for declaratory ruling asking the Commission to reaffirm "that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic."<sup>13</sup> By contrast, the tariffs at issue here do not impose any reciprocal compensation obligations on any carrier for the termination of traffic. These tariffs simply impose rates, terms and conditions for transit

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<sup>11</sup> *Verizon North v. Strand*, 367 F.3d 577, 579 (6<sup>th</sup> Cir. 2004).

<sup>12</sup> See 47 U.S.C. §§ 252(b)(5), (c).

<sup>13</sup> *Developing a Unified Intercarrier Compensation Regime; T-Mobile, et al., Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd. 4855 ¶ 1 (2005).

service, which the FCC has never found to be required under the Act's interconnection provisions and, therefore, the *T-Mobile* decision is inapposite.

Furthermore, the PTA Complainants' argument is undermined by their own actions during their negotiations with Verizon for a transit service agreement. Those negotiations were initiated by a letter from Verizon dated November 15, 2010. VZ St. 1.0 (D'Amico Direct) at 31. If the PTA Complainants truly believed that Verizon could only offer transit services pursuant to an interconnection agreement, they should have treated Verizon's November 15<sup>th</sup> letter as a request for good faith negotiations under Section 251(c) of the Communications Act.<sup>14</sup> The Act prescribes a negotiation period of 135 days and a window to seek arbitration of any unresolved issues between day 135 (March 30, 2011) and day 160 (April 24, 2011).<sup>15</sup> By April 24, 2011, Verizon and the PTA Complainants had not resolved all issues in their negotiations for transit agreement, but the PTA Complainants did not file a petition for arbitration to resolve any outstanding issues. The PTA Complainants' failure to follow the Act's prescribed procedures for negotiating an interconnection agreement and filing an arbitration petition is completely inconsistent with their position that transit services can only be offered pursuant to an interconnection agreement. Of course, the PTA Complainants arguably would have filed for arbitration only if they actually wished to enter into an agreement for transit service. However, as Verizon knows only too well from trying to negotiate transit service terms with the PTA Complainants for many years, the PTA Complainants would much rather

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<sup>14</sup> 47 U.S.C. § 251(c)(1).

<sup>15</sup> 47 U.S.C. § 252(b)(1) (“[d]uring the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues”).

not enter into such an agreement, or be subject to a transit service tariff, so that they can continue to receive free transit service from Verizon.

**3. The PTA Complainants Have No Incentive to Negotiate When They Are Able to Transit Their Traffic over Existing Common Trunk Groups for Free and Delay Verizon's Longstanding, Reasonable Efforts to Obtain Compensation.**

The PTA Complainants accuse Verizon of “placing its thumb on the scales” of negotiation by tariffing its transit services (PTA Main Br. at 12), but it is the PTA Complainants that currently have – and for many years have had – the scales of negotiation tipped completely in their favor. The PTA Complainants have no incentive to negotiate an agreement with Verizon or to start paying compensation for Verizon’s transit service because they already have interconnection facilities with Verizon and are using those facilities to deliver their transit traffic to Verizon’s network, forcing Verizon to transit it without compensation. As Mr. D’Amico explained, “as a practical matter, once an RLEC is connected to Verizon’s network for purposes of sending traffic to Verizon, it is not possible for Verizon to stop the RLEC from also sending local traffic destined to another local service provider through the same interconnection facilities, and Verizon is not able to block that traffic even though the RLECs currently refuse to pay Verizon to transit this local traffic through Verizon’s network.” VZ St. 1.0 (D’Amico Direct) at 8. Unless Verizon prevails on its unjust enrichment claim, every day of delay is money in the PTA Complainants’ pockets as they continue to obtain free Tandem Transit Traffic Service. The PTA Complainants’ conduct in this regard has for many years been, and to this day continues to be, outrageous.

In its complaint challenging BellSouth’s transit tariff, ALLTEL made essentially the same argument that the PTA Complainants make here and it was rejected.

ALLTEL's witness "asserted that [BellSouth's transit service] should be the subject of commercial negotiations between BellSouth and ALLTEL and that ALLTEL would continue to negotiate with BellSouth on this matter, although ALLTEL is concerned that approval of this tariff will end any chance of fair negotiations."<sup>16</sup> The Public Service Commission of South Carolina dismissed ALLTEL's complaint, noting that "[a]ll Intervenor-Complainants were able to reach a commercial agreement on this issue at the time of the hearing on this matter, except ALLTEL."<sup>17</sup> This Commission should similarly approve Verizon's transit tariffs and disregard the PTA Complainants' hollow promises to negotiate a transit agreement with Verizon.

**4. If the RLECs Choose to Use Verizon's Network to Transit Their Traffic, They Must Pay for That Service.**

The PTA Complainants assert that Verizon's tariffs would require them to pay the costs of interconnection services outside of their respective networks, and they believe they have no obligation to do so. PTA Main Br. at 11. This candid disclosure explains one of the main reasons why Verizon and the PTA Complainants have not been able to negotiate an agreement for transit service. According to the PTA Complainants, "because the RLECs are not required to bear the costs of exchanging local traffic outside of their networks, it seriously calls into questions whether a transit agreement between the RLECs and Verizon is even necessary." PTA Main Br. at 12. If the PTA Complainants believe that an agreement with Verizon is unnecessary, it is unlikely they will engage in serious negotiations.

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<sup>16</sup> Docket No. 2005-63-C, *BellSouth Telecommunications, Inc. – Transit Traffic Tariff 2005-50*, Order No. 2006-199 at 4 (PSC SC March 28, 2006).

<sup>17</sup> *Id.* at 6.

The PTA Complainants apparently want an arrangement where Verizon provides its Tandem Transit Traffic Service to them for free, while the terminating CLECs and wireless carriers who receive calls from the PTA Complainants' end-user customers pay for that service. But the arrangement proposed by the PTA Complainants would effectively require the amendment or modification of virtually every interconnection agreement approved by this Commission. Such action is well beyond the scope of this tariff proceeding. In evaluating Verizon's tariffs, the Commission cannot override thousands of approved interconnection agreements and force CLECs and wireless carriers to pay for the transit services that Verizon provides to the PTA Complainants.

CLECs and wireless carriers already pay to transit their own local traffic, originated by their own end-user customers, through Verizon's network to other local service providers, including the PTA Complainants. The PTA Complainants should likewise pay to transit their own local traffic, originated by the PTA Complainants' own end-user customers, 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.

The issues raised by the PTA Complainants regarding their wish to interconnect directly with other local service providers or otherwise have direct agreements regarding the exchange of traffic is between those carriers and the PTA Complainants. Verizon should no longer be caught in the middle and forced to provide transit service to the PTA Complainants without compensation. If the PTA Complainants prefer to deliver their end-user customers' traffic over direct interconnection with third party carriers, rather

than through Verizon's Tandem Transit Traffic Service, they should exercise their legal rights to do so. But they should not be permitted to use Verizon's network for transit service while refusing to compensate Verizon. The PTA Complainants have the right to establish interconnection agreements with wireless carriers, and if they have failed to exercise those rights, it is through no fault but their own. In the *T-Mobile* case, the FCC acknowledged that "LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate interconnection agreements or submit to arbitration under section 252 of the Act."<sup>18</sup> The FCC "[fou]nd it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today" and therefore "amend[ed] section 20.11 of [its] rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act."<sup>19</sup>

The PTA Complainants can likewise attempt to negotiate direct interconnection arrangements with CLECs. While the PTA Complainants claim that "the RLECs have no right to demand an interconnection agreement with a CLEC" (PTA Main Br. at 3, n.8), they do not show that they have broached the subject with any CLEC or that any CLEC has refused to negotiate voluntarily. If the PTA Complainants have difficulty negotiating interconnection arrangements with CLECs, the PTA Complainants can petition the FCC to amend its rules as it did for negotiations with wireless carriers. The PTA Complainants failure to pursue such arrangements does not justify requiring Verizon to provide Tandem Transit Traffic Service to them for free.

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<sup>18</sup> *T-Mobile*, 20 FCC Rcd 4855 ¶ 15.

<sup>19</sup> *Id.* ¶ 16.

## **B. Verizon's Chapter 30 Plans Are Not Relevant to This Case.**

The PTA Complainants' next excuse to avoid paying for Verizon's transit service is to claim that Verizon's tariffs were not properly filed under Verizon's Chapter 30 plans. According to the PTA Complainants, "[a] Chapter 30 company is permitted to file an *annual* rate adjustment for noncompetitive services [and] [t]he tariffs, which are the subject of this proceeding, are for noncompetitive services and were not filed as part of the annual tariff filing." PTA Main Br. at 14. The PTA Complainants' argument is without merit.

Revenues from wholesale charges to other carriers arising from the advent of local competition are not included in the category of "noncompetitive" revenue governed by Chapter 30's annual tariff filing and Price Change Opportunity (PCO) requirements. There are only five categories of services that are included in determining Verizon's "noncompetitive" revenue subject to PCO adjustments: Exchange Services – Residence; Exchange Services – Business; Switched Access; Billing (Late Payment/Return Check Charge); and Premises Transport.<sup>20</sup> Tandem Transit Traffic Service, like other wholesale services arising from the advent of local competition, is not included in any of these categories.

Verizon has long provided Tandem Transit Traffic Service to CLECs and wireless carriers pursuant to interconnection agreements. Those revenues have never been

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<sup>20</sup> See Verizon Pennsylvania Inc.'s 2011 Price Change Opportunity Filing (Nov. 1, 2010), Attachment A, page 2 of 2, available at <http://www.puc.state.pa.us/pcdocs/1100742.pdf> (approved *Verizon Pennsylvania Inc. 2011 Price Change Opportunity Filing*, Docket No. P-2010-2208063 (Opinion and Order entered December 22, 2010) at 4 ("Our review of the calculations submitted by Verizon PA indicates that they appear to be consistent with the terms of the Company's Price Stability Mechanism/Price Change Opportunity formula approved in its Chapter 30 Plan" and "we shall approve Verizon PA's 2010 PCO calculations."))

included as “noncompetitive” revenues in Verizon’s calculation of the PCO, and this Commission has consistently reviewed and approved Verizon’s calculations in this manner. Moreover, Verizon’s Tandem Transit Traffic Service rates have never been subject to Chapter 30’s annual PCO requirements.

The fact that Verizon would collect some of its revenues from Tandem Transit Traffic Service pursuant to these tariffs does not suddenly bring this service within the scope of Verizon’s Chapter 30 plans. Tandem Transit Traffic Service is not subject to Verizon’s Chapter 30 plans, regardless of whether it is provided under contract or tariff.<sup>21</sup>

**C. The Additional Terms and Conditions Demanded by the PTA Complainants Relating to Traffic Coming to Them from Other Local Service Providers Are Unreasonable.**

As Verizon explained in its main brief, the Tandem Transit Traffic Service offered through Verizon’s tariffs is an originating-only service. It is provided 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 “disagree[] that tariffed tandem transit service should be narrowly viewed as a one-directional offering.” PTA Main Br. at 17. The reason for this disagreement is that they want to insert a completely different service offering into Verizon’s tariffs. As the PTA Complainants candidly acknowledge, “[t]he PTA Companies have been seeking for some time to ensure that the traffic that Verizon sends

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<sup>21</sup> Even if Verizon’s introduction of Tandem Transit Traffic Service via tariffs were subject to Chapter 30, which it is not, 66 Pa. C.S. §3016(b) permits Verizon to declare it to be a “competitive” service and it would not be part of the annual revenue increase process for noncompetitive services. No evidentiary showing is required to declare a non-protected service competitive under this provision.

through to the RLECs contains the calling information necessary to bill the originating carrier.” PTA Main Br. at 18. Such an attempt to bootstrap an unrelated issue must be rejected. The traffic the PTA Complainants may receive from other local service providers is not the subject of the service provided to the PTA Complainants under these tariffs; the tariffs only provide a service that allows the PTA Complainants to send *their own* local traffic through Verizon’s network to *other* local service providers.<sup>22</sup>

Moreover, 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. These billing records Verizon provides to terminating local service providers, including the PTA Complainants, “meet all established industry standard guidelines.” VZ St. 1.0 (D’Amico Direct) at 28.

The PTA Complainants are simply dissatisfied that some of those records are missing the originating telephone number (Calling Party Number or CPN). PTA Main Br. at 20. But this issue is not unique to the records provided to the RLECs. Some of the billing records Verizon provides to CLECs and wireless carriers, as well as Verizon’s own records, are missing such information. But the RLECs and other carriers can still use these billing records to bill the originating carrier, just as Verizon, the CLECs and wireless carriers do today. Verizon’s witness explained that additional information in these billing records, such as the Jurisdictional Identification Parameter or JIP, “can easily be used by RLECs to identify the originating carrier to bill for each call and to

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<sup>22</sup> The PTA Complainants attempt to support their argument that transit service is a two-way service by pointing to a page on Verizon’s website that describes Access Tandem Connection (ATC) arrangements. Contrary to the assertions by the PTA Complainants, ATC “is not a service description, but rather a description of a type of interconnection.” VZ St. 1.1 (D’Amico Surrebuttal) at 19. Moreover, “[n]owhere in the description of ATC interconnection facilities is any mention of ATC providing any billing records.” *Id.* at 21.

determine the jurisdiction of a wireless call for call rating purposes.” VZ St. 1.1 (D’Amico Surrebuttal) at 18. In fact, “CLECs are using this same information to bill wireless carriers.” *Id.* Mr. D’Amico explained that “[f]actoring also offers an acceptable alternative to having CPN to jurisdictionalize a call (*i.e.*, determining whether it is subject to reciprocal compensation or access charges for termination).” *Id.* Verizon itself “relies on factoring to bill the originating carriers in those situations where the CPN cannot be recorded.” *Id.* at 19.

One of the reasons some billing records may not include CPN information is that the originating carrier may not have passed it along to Verizon. As Mr. D’Amico testified, “Verizon generally passes along the call detail for transiting traffic as it is received from the originating local service provider. If the call detail is incomplete, inaccurate or altered, it is probably due to the actions of the originating local service provider.” VZ St. 1.0 (D’Amico Direct) at 28. In fact, the PTA Complainants’ witness, 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 PTA Complainants argue that Verizon should “enforce CPN adherence by other originating providers.” PTA Main Br. at 21. But 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. These issues “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. In fact, the FCC is actively engaged in addressing these issues, and this Commission is participating in those

processes and generally supporting the FCC's efforts.<sup>23</sup> 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.

The PTA Complainants also assert that Verizon "alters call records by replacing the originating number with zeros." PTA Main Br. at 23. This assertion is patently false. 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)." *Id.* In those limited situations, "zeros are in the originating number field where the CPN was not recorded." *Id.* Because these switches do not record the CPN in the first place, that information cannot be "stripped."

More importantly, the PTA Complainants do not need the CPN information on these records to bill the originating carrier. As explained above, the call records Verizon provides to the RLEC contain sufficient call detail for the RLEC to bill the originating carrier. Verizon, CLECs and wireless carriers are using these same records to bill originating carriers and the RLECs should be able to do the same. The PTA Complainants' demand that Verizon change its network to suit them before they pay for transit service, when all other local service providers are able to transit traffic to each

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<sup>23</sup> 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 at 15 (filed April 1, 2011).

other and bill each other without such changes, is completely unreasonable and clearly a makeweight to continue their unconscionable receipt of free transit service.

**D. The Tariff Definitions of Local Service Provider, Telephone Exchange Service and Related Terms Are Sufficiently Specific.**

The PTA Complainants express concerns regarding two definitions included in Verizon's tariffs, but these concerns have no merit.

First, the PTA Complainants contend that the definition of "local service provider" should be revised to exclude "customers of third party providers that utilize Verizon's switching." PTA Main Br. at 25. As Verizon explained in its main brief, 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 of Verizon's Tariffs. 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 express concerns with the definition of exchange access in the tariffs as "vague" and "not a working definition of the type employed in the industry." PTA Main Br. at 25-26. The term "exchange access" is not a defined term in Verizon's tariffs. The PTA Complainants' concerns appear to be addressed to the tariff definition of the term "Telephone Exchange Service." Verizon has included this definition 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. Moreover, the PTA Complainants' own witness, Mr. Zingaretti, admitted at the hearing he had no problem with using the definition in the Communications Act and had used that same definition in interconnection agreements he negotiated.<sup>24</sup>

**E. Verizon's Trunking Provisions Are Reasonable and Consistent with What the Commission Has Approved for CLECs and Wireless Carriers.**

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 and ensure that such traffic is properly recorded and billed. 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 that these carriers are currently using to deliver Tandem Transit Traffic to Verizon. The PTA Complainants argue that they should be excused from meeting these requirements, but their arguments ring hollow.

**1. Establishing Separate Trunk Groups for Local and Interexchange Traffic Is an Industry Standard Practice Followed by Verizon, CLECs and Wireless Carriers to Facilitate Recording and Billing Traffic.**

Verizon's tariffs include a trunking requirement that the RLECs have separate local interconnection trunk groups and access toll connecting trunk groups, as CLECs and wireless carriers do today. These trunking requirements are designed to ensure that traffic is recorded and billed properly. Because CLECs and wireless carriers have already implemented these trunking requirements, Verizon is able to record their traffic and provide billing records to the RLECs that enable them to bill their terminating

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<sup>24</sup> Tr. at 164-65.

charges to the originating CLECs and wireless carriers. The reverse is not true. So long as the RLECs continue delivering their traffic to Verizon over common trunk groups, Verizon is not able to record their traffic or provide billing records to the CLECs or wireless carriers that would enable them to bill their terminating charges to the originating RLECs.

In a transparent attempt to preserve the status quo, the PTA Complainants argue that these trunking requirements are not industry standards, but “only Verizon standards.” PTA Main Br. at 28. This is not true. 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.

Moreover, the PTA Complainants themselves impose these same industry standard trunking requirements in their interconnection agreements. For example, Section 2.3 of the interconnection agreement between Commonwealth Telephone Company and Service Electric Telephone Company provides that “the Parties shall establish Access Toll Connecting Trunks between CLEC’s End Office Switch and CTCO’s Tandem, for the exclusive transmission of Meet-Point Billing Traffic,”<sup>25</sup> which is traffic routed to or from an interexchange carrier. Section 2.2 of that same interconnection agreements says that “[t]he Parties shall route traffic to one another via the Traffic Exchange Trunk groups pursuant to the Local Exchange Routing Guide (LERG)” and that Traffic Exchange Trunk Groups are for “rout[ing] Local Traffic,

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<sup>25</sup> VZ Cross Exh. 3 at 6.

Transit Traffic and Switched Access Traffic to one another,”<sup>26</sup> which does not include traffic routed to or from an interexchange carrier. The requirement to establish these separate trunk groups is an industry standard that even the RLECs impose on other carriers and is not unique to Verizon’s network.

The PTA Complainants imply that it might be costly for them to reconfigure their existing arrangements into separate trunk groups, but provided no cost evidence to support their position. In fact, their own witness conceded that “[t]he RLECs cannot predict this additional cost” for reconfiguring the trunk groups. Zingaretti Rebuttal at 10. Verizon submitted evidence showing that the trunk reconfigurations required by Verizon’s tariffs are minimal. As Mr. D’Amico explained, “[d]epending on the current configuration of an individual RLEC’s trunk groups, some reconfiguration may be necessary to meet industry trunking standards” and that “any such changes . . . are reasonable and are not likely to be extensive.” VZ St. 1.1 (D’Amico Surrebuttal) at 4. For example, “an RLEC that has one common trunk group delivering its traffic to Verizon may simply be able to split that existing group into an Interconnection trunk group and an Access Toll Connecting trunk group, without any new construction or use of any new facilities.” *Id.* at 5. There is simply no basis to conclude that these trunking requirements would impose significant financial burdens on the PTA Complainants.

Finally, the PTA Complainants suggest that there might be alternatives to these trunking requirements, but provided no evidence to support any of them. For example, during the hearings, the PTA Complainants asked whether it would be possible to use traffic studies and manual billing methods with the existing trunk configurations.

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<sup>26</sup> *Id.* at 5.

Verizon's witness explained that these alternatives would be extremely burdensome, unreliable and difficult to implement. According to Mr. D'Amico, "it would be pretty manual and would soon become probably unmanageable."<sup>27</sup> Moreover, "doing it this way . . . you've got factoring of factors" and "you're really watering down the accuracy of the information."<sup>28</sup>

There is no reason to allow the PTA Complainants to continue using their non-industry standard interconnection arrangements. The trunking requirements in Verizon's tariffs are the same industry standard trunking requirements that CLECs and wireless carriers meet today. Implementing these trunking requirements will facilitate the recording and billing of the PTA Complainants' traffic, which not only is the best way to enable Verizon to record the traffic that is being sent to it for transit, but also will permit the terminating local service providers to receive sufficient information to bill the PTA Complainants for terminating these calls.

**2. Reconfiguring Trunk Groups for Each Tandem in a LATA Is Reasonable and Not Burdensome.**

Verizon's tariffs also include a trunking requirement that the RLECs have separate trunking to each tandem switch in the LATA, as CLECs and wireless carriers do today. 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.*

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<sup>27</sup> Tr. at 71.

<sup>28</sup> Tr. at 72.

The PTA Complainants assert that this trunking requirement obligates them to expend “new capital and operating costs” to reach Verizon’s tandems. PTA Main Br. at 31. This assertion completely distorts the potential changes that would be needed to bring the PTA Complainants’ trunking facilities into compliance with industry standards. This trunking requirement would not obligate the PTA Complainants 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.

The PTA Complainants also assert that this trunking requirement is “discriminatory.” PTA Main Br. at 31. To the contrary, Verizon applies this same trunking requirement on a uniform basis to CLECs and wireless carriers. In fact, this same trunking requirement “appears in CLEC and wireless interconnection agreements approved by the Commission.” VZ St. 1.1 (D’Amico Surrebuttal) at 11. It is therefore both reasonable and non-discriminatory to impose this trunking requirement on the PTA Complainants under these tariffs.

### **3. The Additional Trunking Provisions Requested by the PTA Complainants Are Unnecessary.**

The PTA Complainants ask the Commission to add two additional trunking requirements to Verizon’s tariffs. Neither of these requirements is necessary.

First, the PTA Complainants propose that Verizon’s tariffs give RLECs the right to request two-way trunking. PTA Main Br. at 19. There is no need for the tariffs to

specify such a requirement because the Tandem Transit Traffic Service will work with either two-way or one-way interconnection facilities. As Mr. D'Amico explained during the hearing, transit service "is an RLEC sending traffic to Verizon's tandem and then going to a third party, so the underlying trunking behind it, whether it's one way or two way, doesn't really impact the transit service itself."<sup>29</sup> It is for this reason that "[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.* In any event, for purposes of Tandem Transit Traffic Service, "[o]ne way or two way is not relevant."<sup>30</sup>

Second, the PTA Complainants assert that "absent from Verizon's tariffs are any provision defining an appropriate threshold at which point dedicated facilities for the traffic would be more appropriate." PTA Main Br. at 24. The PTA Complainants are mistaken because Verizon's tariffs do contain such a provision. Section 3.5.6 says that "[i]f the customer uses Tandem Transit Traffic Service for traffic volumes that exceed the Centum Call Seconds busy hour equivalent of 200,000 combined minutes of use per month to the subtending End Office of an Other LSP for any month (the 'Threshold Level'), the customer shall use good faith efforts to establish direct interconnection with

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<sup>29</sup> Tr. at 85.

<sup>30</sup> Tr. at 85.

such Other LSP and reduce such traffic volumes below the Threshold Level.” There is no need for any additional provisions on direct trunking.

**F. Verizon North’s Tandem Transit Traffic Rate Is the Same Rate Paid by Other Carriers, Is Comparable to Competitors’ Rates and Is Reasonable.**

The PTA Complainants acknowledge that Verizon PA’s proposed rate for Tandem Transit Traffic Service is appropriate. *See* PTA Main Br. at 33. They only take issue with Verizon North’s proposed rate, suggesting that it should be reduced to the level of Verizon PA’s rate. The PTA Complainants are effectively requesting a preferential rate that is less than the rate paid by their competitors for the same service.

As Verizon explained in its main brief, the proposed rate for Verizon North is the same rate that Verizon 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 that have been approved by this Commission. VZ St. 1.0 (D’Amico Direct) at 13.

The PTA Complainants argue that Verizon should have presented a cost study to support the Verizon North rate. 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 Wireline Competition 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.”<sup>31</sup>

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<sup>31</sup> *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). The Bureau reaffirmed this conclusion on reconsideration. 19 FCC Rcd 8467 (2004).

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 of \$.004498 per minute of use in Verizon North service territories. 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."<sup>32</sup> The Commission should therefore approve Verizon North's proposed rate.

**G. The PTA Complainants Have Failed to Rebut Verizon's Unjust Enrichment Claim.**

The PTA Complainants do not even address Verizon's unjust enrichment claim in their main brief. Apparently, they intend to rely on their legal arguments set forth in their preliminary objections. But as Verizon pointed out in its response to these preliminary objections, 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. Verizon has been providing to the PTA Complainants a "service" as defined in 66 Pa. C.S. § 102, and the PTA Complainants are knowingly using Verizon's network for this purpose and accepting the

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<sup>32</sup> *Mobilfone of Northeastern Pennsylvania, Inc. v. Pa. Pub. Util. Comm'n*, 78 Pa. Commw. 336, 340 (1983).

benefit of this transit service without compensating Verizon for it. Under the doctrine of unjust enrichment, Verizon is entitled to compensation for the transit services already provided to the PTA Complainants during the statute of limitations period.

Verizon's claim for unjust enrichment satisfies the requirements of Section 5.62(a)(2) of the Code because it alleges that its forced provision of transit service to the PTA members listed in the Complaint constitutes a "service" as defined in the Public Utility Code at 66 Pa. C.S. § 102. Verizon New Matter ¶ 7. The Commission has both the jurisdiction and the authority to determine whether Verizon should be compensated for this service.

Verizon's claim for unjust enrichment is also timely. The Commission's rules impose no deadline for filing an answer or for amending an answer in this proceeding. Nor has there been any unreasonable delay in Verizon bringing this claim.

Verizon's unjust enrichment claim is not a request for retroactive ratemaking. The rule against retroactive ratemaking prohibits this Commission from setting future rates above or below cost to account for recovery or refund relating to past periods.<sup>33</sup> Here, Verizon is separately requesting payment for unpaid services already rendered.

Verizon requested that this compensation 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. The PTA Complainants have not presented any evidence to contradict Verizon's calculation of the amount of the unjust enrichment.

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<sup>33</sup> *Popowsky v. Pa. PUC*, 164 Pa. Commw. 338, 344 (Pa. Commw. Ct. 1994).

## 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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