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September 12, 2011

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Reply Brief in the above-captioned proceeding.

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

Sincerely,

Aron J. Beatty
Assistant Consumer Advocate
Pa. Attorney I.D. # 86625

Enclosures
cc: All parties of record
Hon. Cynthia Fordham, ALJ
135231

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On August 16, 2011, the Office of Consumer Advocate ("OCA"), along with the other active parties, filed its Main Brief setting forth its position on the issues raised in this proceeding. The other active parties in this proceeding include Verizon Pennsyvania, Inc. and Verizon North LLC (collectively "Verizon"), AT&T Communications of Pennsylvania, Inc. ("AT&T"), Sprint Communications LLC ("Sprint") and the Office of Small Business Advocate ("OSBA"). The OCA submits that its Main Brief provides the Commission and Your Honor with a comprehensive discussion of the issues in this proceeding. The OCA's Main Brief fully addresses and responds to many of the arguments raised by the parties in their Main Brief.

As discussed in the OCA's Main Brief, the OCA respectfully submits that Verizon's intrastate access rates should not be reduced as part of this proceeding. The Commission should reject the arguments of AT&T and Sprint, the only parties in this proceeding who advocate for a reduction of Verizon's intrastate access rates. Neither AT&T nor Sprint have presented substantial evidence demonstrating that Verizon's current intrastate access rates are unjust or unreasonable. Verizon's intrastate access rates have been reduced twice by the Commission. As the record here demonstrates, these rates provide a reasonable contribution to the joint and common costs of the network and do not subsidize any other Verizon rate or service. The reasonable and appropriate level of intrastate access charges in Pennsylvania should be set at a level that not only recovers the incremental cost of access, but also requires access customers, as well as all users of the public switched telephone network, to contribute towards the recovery of the joint and common costs of the network. Verizon's current rates achieve this goal.

The OCA further submits that this proceeding is not the appropriate forum to discuss Verizon's regulatory obligations. Regardless of whether the Commission determines to modify

Verizon's intrastate access rates as part of this proceeding, which the OCA suggests it should not, the Commission should not modify Verizon's regulatory obligations.

The OCA now files this Reply Brief in response to some of the arguments made by the various parties in their Main Briefs. Some parties have taken certain positions that, among other things, fail to understand the affordability benchmark recently created by the Commission in the investigation of the rural local exchange carriers' ("RLECs") intrastate access rates and related issues.[1] Some parties have also misstated the OCA's position in the proceeding involving the RLECs' intrastate access rates as compared to the current case. The OCA will address these failings and other arguments. The OCA also submits that other parties have raised arguments that are irrelevant to this proceeding, including Verizon's arguments regarding its regulatory obligations and any compensatory concerns, as well as Sprint's arguments regarding actions taken by other states.

The OCA continues to advocate its positions articulated in its Main Brief. Verizon's intrastate access rates should not be further reduced at this time. All other arguments to the contrary should be rejected.

II. REPLY ARGUMENT

A. Increases To Basic Local Service Rates Advocated By AT&T And Sprint Will Jeopardize Total Bill Affordability.

AT&T argues in its Main Brief that Verizon's intrastate access rates could be reduced to their interstate levels "with only a minimal increase in local rates that does not pose any issue with their continued affordability." AT&T M.B. at 2; *see also*, Id. at 19-21, 29. Similarly,

[1] Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund, Docket No. I-00040105, and AT&T Communications of Pennsylvania, *et al.* v. Armstrong Telephone Company-Pennsylvania *et al.*, Docket Nos. C-2009-2098380 *et al.*, Order (entered July 18, 2011) ("July 18th Order").

Sprint argues that "reducing Verizon's access rates will not result in unaffordable rates for basic local exchange or other services." Sprint M.B. at 28-30. Sprint notes, for example, the $23.00 benchmark rate that the Commission recently set for the RLECs basic local service rates. Id. at 29.[2] Yet, AT&T and Sprint's arguments fail to recognize that the Federal Communications Commission ("FCC") is currently considering a proposal submitted by a group of incumbent local exchange carriers ("ILECs") that will directly impact the Commission's $23.00 affordability benchmark, called the "ABC Plan." This plan could impact the total bill affordability level discussed in the Commission's July 18, 2011 Order in the RLEC access proceeding rendering AT&T and Sprint's arguments in this proceeding moot.

Any examination of an ILEC's intrastate access rates requires consideration of affordability of basic local telephone service. This is because Section 3017 of the Public Utility Code requires that any reductions in access rates must be revenue neutral.[3] Since basic local exchange rates are the most likely source of revenue to offset access rate reductions, and the Commission also is obligated to maintain universal telecommunications service at affordable rates,[4] this Commission must ensure that any reductions to Verizon's intrastate access rates do not result in an increase to basic local service rates that cause the entire basic local telephone bill to become unaffordable. As a result, the OCA has consistently advocated that the Commission should be mindful of its state and federal universal service obligations when addressing ILECs' access rates.

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[2] *See*, July 18, 2011 Order at 157.

[3] *See*, 66 Pa. C.S. § 3017(a). Section 3017(a) provides: "**(a) General Rule.--** The commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis."

[4] *See*, 66 Pa. C.S. § 3011(2). Section 3011(2) provides, in pertinent part: "The General Assembly finds and declares that it is the policy of this Commonwealth to: … (2) Maintain universal telecommunications service at affordable rates…".

The ABC Plan is a proposal presented to the FCC by six large ILECs on July 29, 2011 in an attempt to resolve many of the same issues that the Commission recently addressed in the July 18, 2011 Order in Pennsylvania, including intercarrier compensation, universal service and establishing a benchmark rate for residential local exchange service.[5] The overlap of issues raises concerns with the applicability or implementation of certain aspects of the July 18, 2011 Order given the possible outcomes of the FCC proceeding. Such concerns are relevant to this proceeding as well to ensure that Verizon's rates also do not become unaffordable.

In the July 18, 2011 Order, the Commission established a residential benchmark rate of $23.00 for basic local exchange service for the RLECs.[6] In doing so, the Commission recognized that the $23.00 rate is exclusive of federal and state taxes and fees, including the Subscriber Line Charge ("SLC"), such that the total affordable bill for a residential customer is $32.00 per month.[7] Other line items on the residential basic local service bill that must be paid in order to obtain basic local service include the SLC, the Telecommunications Relay Surcharge (TRS), 911 fees, the federal universal service charge and taxes. AT&T and Sprint rely on the $23.00 benchmark rate established in the July 18, 2011 Order as support for their argument that Verizon's intrastate access rates should be reduced and offset by increases to basic local exchange rates because such rebalancing would not jeopardize the affordability of basic local exchange rates.

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[5] The "America's Broadband Connectivity Plan," or "ABC Plan," was submitted to the FCC by AT&T, Verizon, CenturyLink, FairPoint, Frontier and Windstream. The ABC Plan was subsequently supported, in part, by a conglomeration of rural carrier associations.

[6] July 18, 2011 Order at 157.

[7] Id.

AT&T and Sprint fail to consider the entire telephone bill and all the taxes, fees and surcharges that are required to be paid in order to receive basic local exchange service. In the ABC Plan, for example, it is proposed that the SLC be increased to nearly $11.00 from its current level of $6.50. That additional increase is not factored into the affordability benchmark set in the July 18, 2011 Order. If the FCC adopts that portion of the ABC Plan, which AT&T advocates before the FCC that it should, and Verizon's basic local exchange service rates are increased to offset reductions in their intrastate access rates at the same time, Verizon's customers may see their customers' bills exceed the $32.00 affordable level.

AT&T and Sprint's arguments fail to recognize that there are other elements on the local telephone bill that impact affordability, not just the basic local service rate. Some of those elements, such as the SLC, are not set by the Commission, but this Commission must keep the entire bill in mind when meeting its Chapter 30 obligation to ensure that basic telephone exchange rates are affordable.

As such, the Commission should reject AT&T and Sprint's argument that the increase to basic local exchange rates needed to offset any reduction in Verizon's intrastate access rates would not impact affordability.

B. AT&T And Sprint's Arguments That End-User Consumers Will Benefit From Their Proposals Are Unsupported.

Both AT&T and Sprint argue in their Main Briefs that Verizon's intrastate access rates should be reduced because, in part, such reductions will flow through to end-user consumers. *See*, AT&T M.B. at 7, 9, 12-14, 29; Sprint M.B. at 3, 11, 12, 15. Sprint, for example, argued that "consumers will surely benefit from reduced prices for competitive retail service offerings." Sprint M.B. at 11. This argument is without merit and should be rejected. As the Commission

correctly recognized in its July 18, 2011 Order in the RLEC access proceeding, there is no certainty that the benefits of reduced intrastate access rates will be realized by end-user consumers.

In its July 18, 2011 Order, the Commission determined to reduce the RLEC intrastate access rates. The Commission also recognized the potential that such reductions would flow through to Pennsylvania consumers was uncertain. The Commission found:

> At the same time we are not absolutely convinced that potential reductions in the intrastate carrier access charges of the RLECs will fully inure to the benefit of Pennsylvania end-user consumers of long-distance services. As the PTA correctly observed, in sharp contrast to the Commission's enforcement of its 1999 *Global Order* where intrastate carrier access charge reductions flowed to the end-user consumers of IXCs and intrastate long-distance services, the Commission no longer regulates IXC rates under Act 183. For example, interested parties in this proceeding with large and integrated wireline and wireless telecommunications and retail broadband access operations are essentially free to utilize the bulk of the potential RLEC intrastate carrier access rate reductions to the benefit of their respective national customer bases notwithstanding self-professed commitments to do otherwise in a limited fashion for Pennsylvania consumers.[8]

As such, the Commission was not swayed by the argument that reductions in intrastate access rates would benefit end-user consumers in Pennsylvania. AT&T and Sprint's same arguments here are equally unconvincing.

Sprint further argues in its Main Brief that access rate reductions will provide carriers more resources to "develop new, innovative service offerings." Sprint M.B. at 3. As the OCA demonstrated in its testimony and Main Brief, however, Sprint was unable to identify any

[8] July 18, 2011 Order at 104-105; *citing*, 66 Pa. C.S. § 3018(b)(1) ("the commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services or otherwise regulate interexchange competitive services except as set forth in this chapter.").

services that the company was unable to provide to consumers as a result of Verizon's current intrastate access rate levels. OCA M.B. at 20; *citing*, OCA St. 1-R at 12. AT&T has made similar claims in this proceeding yet has also failed to identify any service or innovation that the company was unable to provide to consumers as a result of Verizon's intrastate access rate levels. OCA M.B. at 20; *citing*, OCA St. 1-R at 12.

As such, the Commission should reject AT&T and Sprint's arguments that Verizon's intrastate access rates should be reduced because such a reduction will benefit Pennsylvania end-user consumers. As the Commission found, these arguments are mere speculation. The Commission should also reject AT&T and Sprint's argument regarding consumers benefitting through the introduction of new services as a result of Verizon's lowered intrastate access rates. AT&T and Sprint have not identified any service or innovation that the companies would produce if Verizon's intrastate access rates were reduced as a benefit to Pennsylvania consumers.

C. AT&T Has Misstated The OCA's Position In The RLEC Access Case.

In its Main Brief, AT&T argues that "the OCA itself has endorsed parity as an alternative to its do-nothing approach." AT&T M.B. at 6; *see also*, Id. at 11, 25-27. In doing so, AT&T references the positions advocated by the OCA in the Commission's recent investigation of the RLECs' intrastate access rates which led to the July 18, 2011 Order. The OCA submits, however, that AT&T's argument fails to recognize that the OCA's proposal in the RLEC access proceeding to reduce the RLECs' intrastate access rates to their interstate levels is only part of a larger comprehensive proposal that also ensures that the Commission satisfies its state and federal universal service obligations by maintaining just and reasonable basic local service rates and by appropriately funding the Pennsylvania Universal Service Fund.

AT&T relies in large part on the OCA's willingness in the RLEC access investigation to accept the elimination of the carrier charge. As OCA witness Dr. Loube testified, the OCA previously maintained in the RLEC access proceeding that the carrier charge was a fair way to ensure that the public switched telephone network was properly supported. OCA St. 1-R at 14. But the OCA agreed as part of that proceeding to eliminate the carrier charge ***if*** the Commission adopted a comprehensive proposal that was designed to address the multiple issues of intercarrier compensation reform, universal service and a residential basic local exchange rate. Id. at 14-15. In its Brief, however, AT&T relies only upon the OCA's position regarding the elimination of the carrier charge without adequately considering the fact that such position was contingent upon the adoption of ***all*** parts of the OCA's comprehensive proposal.

OCA witness Dr. Loube noted in his testimony in both the RLEC access investigation and this case that the first best solution to access reform is to equate all intercarrier compensation rates, both interstate and intrastate, access charge and reciprocal compensation, and so on, to the average of all of those existing rates. OCA St. 1 at 21. Dr. Loube added, however, that it is not possible for the Pennsylvania Commission to unilaterally establish the first best solution because of the dual jurisdiction between the FCC and the Commission. Id. As such, through the testimony of Dr. Loube, the OCA presented a comprehensive four-part proposal in the RLEC access investigation that included:

> 1. RLEC intrastate access rates should be set equal to their respective interstate rates, including the elimination of the carrier common line charge;
>
> 2. RLEC residential basic local exchange rates that are below 120 percent of the Verizon Pennsylvania weighted average residential basic local exchange service rate should be increased to

that level, subject to an affordability constraint, while RLEC rates that are above 120 percent of the Verizon weighted average rate remain at their current levels;

3. any remaining revenue required to offset the revenue decrease associated with access rate reductions should be recovered from the Pennsylvania Universal Service Fund; and

4. the revenue base of the Pennsylvania Universal Service Fund should be enlarged to include any service provider that uses the public switched telecommunications network at any point in providing their service.[9]

As can be seen, elimination of the carrier charge was only one component of a detailed plan designed to provide reasonable, comparable and affordable rates for rural customers. It cannot be viewed in isolation as AT&T seeks to do now in its Main Brief in this case.

AT&T's use of the prior OCA testimony is misguided and should be rejected. AT&T fails to recognize the balance that was struck by the OCA proposal and the balance that the Commission created in its July 18, 2011 Order by including the maintenance of a $2.50 carrier charge. The Commission identified the $2.50 carrier charge as a method to ensure that all users of the public switched telephone network support the costs of that network. As the Commission stated: "this Commission has a long-established policy that permits the recovery of such [joint and common] costs from ***all*** users of such joint and common telecommunications plant and facilities, and not by end-users of regulated telecommunications services alone."[10] Pursuant to

[9] *See*, July 18th Order at 85-86.

[10] Id. at 12.

the comprehensive OCA proposal in the RLEC Access case, if the carrier charge were to be eliminated in its entirety, the size of the PA USF should be modified so that any revenue neutral cost recovery would not jeopardize universal service. Yet, in its Main Brief in the current proceeding, AT&T wants the elimination of the carrier charge in its entirety without any further sharing of the burden to support the public switched telephone network beyond further increases to basic local service rates. This issue has been thoroughly considered by the Commission in the RLEC proceeding and AT&T's position has been rejected.

AT&T also argues that "Dr. Loube openly acknowledged the problems of the current access regime and advocated that the RLECs' intrastate switched access rates be reduced to parity with corresponding interstate rates." AT&T M.B. at 26 (citations omitted). AT&T quotes from a white paper that Dr. Loube authored with Mr. Labros Pilalis of Commissioner James Cawley's staff. Id. Yet again, however, AT&T is selectively using portions of Dr. Loube's position regarding comprehensive intercarrier compensation reform. The white paper provided a discussion of intercarrier compensation and related issues on a nationwide basis. Such selective usage is improper and should be rejected.

As such, AT&T's reliance on the OCA's willingness to reduce intrastate access rates as part of a comprehensive solution in the RLEC access proceeding as support for AT&T's position in this case is misguided and should be rejected. AT&T relies on only one aspect of the OCA's comprehensive proposal to resolve intercarrier compensation issues and fails to consider the Commission's state and federal universal service obligations as well.

D. There Is No Record Evidence Demonstrating That Verizon's Basic Local Service Rates Are Subsidized By Their Intrastate Access Rates.

Both AT&T and Sprint argue in their Main Briefs that Verizon's intrastate access rates subsidize basic local service rates. AT&T M.B. at 17, 36-38; Sprint M.B. at 4, 7, 9, 12-14, 27. Yet, as the OCA demonstrated in its Main Brief, there is no record evidence to support such a claim. As such, AT&T and Sprint's arguments must be rejected.

The OCA discusses this issue in its Main Brief in some detail. *See*, OCA M.B. at 13-17. As the OCA demonstrated in that portion of its Main Brief, neither AT&T nor Sprint have provided any record evidence to demonstrate that Verizon's intrastate access rates subsidize their basic local exchange rates, or any other rate. This is true despite the fact that AT&T's Direct Testimony uses the words "subsidy" or "subsidized" at least nine times. Id. at 13; *quoting*, OCA St. 1-R at 2. OCA's witness Dr. Robert Loube testified that "in this instance, for a subsidy to exist, the revenue from a service must be greater than the total stand-alone cost of providing the service." Id. at 13-14; *citing*, OCA St. 1-R at 3. Dr. Loube demonstrated that there is no record evidence in support of this proposition in this case.

The lack of a subsidy is also evident from the fact that no party in this proceeding produced a stand-alone cost study for Verizon's intrastate access rates. Since no stand-alone cost study was produced, Dr. Loube produced an alternative analysis wherein he addressed the incremental cost of access and the joint and common loop costs in order to determine if a subsidy exists. Id. From this analysis, Dr. Loube demonstrated that "state access service cannot be providing a subsidy to basic local service or any other service." Id. at 14; *quoting*, OCA St. 1-R at 3-4. This is because the state access revenue is less than the stand-alone cost of service since the state access revenue is less than the joint and common loop cost. Id.

Sprint further supports its argument that intrastate access rates should be reduced by continuing to argue that intrastate access rates provide a subsidy because they are higher than interstate access rates. Sprint M.B. at 27. As in its testimony, Sprint relies on the FCC's $0.0007 per minute rate for interstate access rates as support for of its argument that Verizon's intrastate access rates are too high. Sprint M.B. at 27. This argument is also misguided and should be rejected.

Sprint fails to recognize that the FCC's rate for interstate access was set by a settlement and was not set based on any cost studies. OCA M.B. at 14-15 (citation omitted). Therefore, the FCC's interstate access rates cannot be relied on to demonstrate that Verizon's intrastate access rates provide a subsidy to any other rate. Dr. Loube further testified that "the fact that intrastate access rates are higher than the interstate rates merely supports a claim that intrastate access rates provide a greater contribution to the support of the joint and common costs of the network than interstate access rates do." Id. at 15; *see also*, OCA St. 1-R at 5.

As such, the Commission should reject AT&T and Sprint's argument that Verizon's intrastate access rates provide a subsidy to Verizon's basic local service rates. There is no evidence of record in this proceeding that supports such an argument.

E. Verizon's "Takings" Argument Is Incorrect And Should Be Rejected.

In its Main Brief, Verizon argues that its "extensive rate structure is no longer compensatory because the combination of intense competitive pressures and burdensome legacy regulation is causing substantial and growing losses on rate-regulated services." Verizon M.B. at 3. Verizon further argues that "constitutional, statutory and public policy requirements require the Commission to ensure that Verizon has an opportunity to recover its costs of providing

regulated services." Id. at 9-11; *see also*, Id. at 12, 19. The OCA submits that Verizon's current rate levels under Chapter 30 are fully compensatory and that any argument to the contrary should be rejected.

For more than half a century, the United States Supreme Court has consistently adhered to the principle that a utility cannot claim an unconstitutional confiscation of property in the ratemaking context unless it can first show that the complained of regulatory action has resulted in substantial financial harm to the company. The Supreme Court has held, for example, that "it is the result reached not the method employed which is controlling," and that "[i]f the total effect of the rate order cannot be said to be unjust and unreasonable, the judicial inquiry is at an end."[11] The Supreme Court reiterated this lesson in Duquesne Light Co. v. Barasch, wherein it stated that "today we reaffirm these teachings of Hope Natural Gas: '[I]t is not theory but the impact of the rate order which counts.'"[12]

The D.C. Circuit Court of Appeals discussed Hope in Jersey Central Power & Light Co. v. FERC, noting that there can be no finding of a taking without a showing of substantial financial harm to the utility.[13] Verizon simply has not, and cannot, make such a showing in this proceeding. As the OCA discussed in its Main Brief, a proper review of Verizon's annual financial report reveals the Company is not experiencing the financial deterioration Verizon claims with respect to its regulated services. OCA M.B. at 44-46.

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[11] FPC v. Hope Natural Gas Co., 320 U.S. 591, 602 (1994)("Hope").

[12] Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

[13] Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168 (D.C. Cir. 1987); *see also*, In re Permian Basin Area Rate Case, 390 U.S. 747 (1969) (there was no "constitutional infirmity" in the adoption of an area rate system for certain gas producers).

The OCA noted, for example, that Verizon has over-allocated certain costs to the state jurisdiction while allocating certain revenue to either the interstate jurisdiction or the non-regulated sector. Id. at 44. Dr. Loube testified: "after a reasonable re-assignment of cost, the results of the adjusted financial report show that if Verizon is losing money, it is only in the non-regulated sector." Id.; *quoting*, OCA St. 1 at 30. Verizon is not experiencing financial harm, let alone substantial financial harm, in the provision of services that are the subject of this proceeding. Dr. Loube also demonstrated that Verizon's own evidence – the Income Statements of Verizon for 2007-2010 attached to its pre-filed testimony – contradicts the Company's claim that any financial deterioration results from the regulated portion of its business. Id. at 45; *see also*, Tr. at 229-230.

Verizon's argument regarding Brooks Scanlon should be rejected as well. In Brooks-Scanlon, the Louisiana Commission considered whether a sawmill that operated a railroad would be permitted to abandon railroad service entirely given that the railroad was operating at a loss.[14] The Supreme Court found that the Louisiana Commission improperly attempted to consider the profits of the sawmill in determining whether the railroad should be permitted to abandon its railroad service. Brooks-Scanlon is distinguishable from this proceeding, in part, because no utility is attempting to abandon service and, in part, because no utility is being forced to support its regulated service with profits from unregulated businesses. Instead, this proceeding pertains to the level of rates that may be set for a regulated service, *i.e.* Verizon's intrastate access rates. Moreover, while the OCA does not support any reduction in Verizon's intrastate access rates in

[14] Brooks-Scanlon Co. v. Railroad Comm'n, 251 U.S. 396 (1920).

this proceeding, the OCA acknowledges that if there is such a reduction, it must be done on a "revenue neutral" basis pursuant to Section 3017(a) of the Public Utility Code.[15]

The Fifth Circuit Court of Appeals also addressed this issue when it rejected a claim by GTE, now a part of Verizon, that the FCC's Total Element Long Run Incremental Cost ("TELRIC") ratemaking methodology was confiscatory.[16] The Fifth Circuit held that GTE's takings claim "has no merit because it has not shown that a taking has occurred or that any taking will be permanent or would be so serious as to be considered 'confiscatory.'"[17] The Fifth Circuit added: "even if GTE can show that some taking will result, it must demonstrate that its losses are so significant that the 'net effect' is confiscatory."[18]

As such, Verizon's arguments regarding lack of compensation are without merit and must be rejected.

F. Verizon's Arguments Seeking To Be Relieved Of Its Regulatory Obligations Are Irrelevant And Should Be Rejected.

In its Main Brief, Verizon argues that the company should be relieved of its regulatory obligations as part of this proceeding. Verizon M.B. at 26-34. The OCA has fully addressed Verizon's argument in its Main Brief. *See*, OCA M.B. at 40-43. The OCA, however, responds to certain specific arguments raised in Verizon's brief. Verizon's arguments are irrelevant and without merit.

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[15] *See*, fn. 3, *supra*.

[16] Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999).

[17] Id. at 413.

[18] Id. at 437.

Verizon complains, for example, that numerous Commission regulations constrain Verizon's interaction with its customers with respect to service and billing. Verizon M.B. at 28. Verizon argues that "the vigorously competitive telecommunications market provides the best incentives for carriers to interact with their customers in optimal ways." Id. at 29. Verizon notes Section 64.14 of the Commission's regulations, pertaining to information to be provided on customers' bills, as one burdensome regulation it should no longer have to comply with. Yet, when asked during cross-examination about the burdens of complying with Section 64.14, Verizon's witnesses could not provide the cost of complying with Section 64.14 or any customers that they may have lost to a competitor as a result of their compliance with Section 64.14. Tr. 241-246.

Verizon also argues that it "faces regulatory constraints on its pricing flexibility that do not apply to its competitors." Verizon M.B. at 30. Yet, as the OCA noted in its Main Brief, only a small group of services offered by Verizon are considered "protected" by Chapter 30 and therefore subject to price constraint. OCA M.B. at 42; *citing*, OCA St. 1 at 27. As such, for the great majority of services, Verizon has significant or total pricing flexibility. Id., *citing*, Tr. at 189-190. Even so, the OCA has also demonstrated that, even for its basic local exchange service, a "protected service," Verizon has been able to increase its rate by more than 20 percent since 2004. Id. Verizon's claim that it has constraints on its retail pricing flexibility are without merit.

Furthermore, Verizon argues that "much of Verizon's broadband deployment to meet its obligation has been uneconomic," and that much of it has been undertaken because of regulatory requirements. Verizon M.B. at 33. The OCA submits that the entire *quid pro quo* of Chapter 30 requires Verizon, as well as other ILECs in Pennsylvania, to provide high speed internet service

even in places where it may be uneconomic to do so. This is because Verizon had been freed from rate base/rate of return regulation and given substantial pricing freedoms. Verizon voluntarily accepted its broadband obligation in exchange for the elimination of rate base/rate of return regulation and other benefits to the Company provided by Chapter 30.

Additionally, Verizon has already deployed high speed internet service in areas where it was most "economic" to do so. Now that Verizon is nearing completion of its obligation to provide high speed service throughout its entire service territory, the remaining areas are the most uneconomic areas to serve. This is precisely the time where consumers, who may otherwise not receive high speed internet service, are most in need of the continued regulatory protections of their Chapter 30 bargain.

As such, Verizon's arguments seeking to be relieved of its regulatory obligations are irrelevant and should be rejected.

G. Actions Taken By Commissions In Other States Are Irrelevant To Whether Verizon's Intrastate Access Rates Should Be Reduced In Pennsylvania.

Sprint provides extensive argument in its Main Brief that the Commission should reduce Verizon's intrastate access rates in this proceeding because other Commissions have lowered intrastate access rates in their states. Sprint M.B. at 19-25. Sprint specifically discusses actions taken in New Jersey, Kansas, Massachusetts and Virginia. This argument should be rejected. Actions taken by other states, under their own statutory and regulatory constructs, are not relevant to establishing the appropriate level for Verizon's intrastate access rates in Pennsylvania.

ILECs in Pennsylvania, including Verizon, are governed by Chapter 30 of the Public Utility Code.[19] Chapter 30 is landmark legislation that was first passed in 1993, and then re-enacted in 2004, that completely changed the way ILECs in Pennsylvania are governed. At the time of enactment, many of Chapter 30's provisions were unique in the country, and some remain unduplicated anywhere.

Sprint has failed to identify, in its discussion of other states' actions regarding intrastate access rates, whether those other states:

> - have the obligation to maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services;[20]
>
> - have the obligation to ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis;[21]
>
> - have the obligation to provide 1.544 mbps high speed internet service to 100% of its service territory by December 31, 2015;[22]
>
> - have the obligation to provide a bona fide retail request program under certain circumstances;[23]
>
> - have ILEC rates for noncompetitive services tied to the rate of inflation minus a 0.5% offset;[24] and

[19] 66 Pa. C.S. § 3011, *et seq.*

[20] 66 Pa. C.S. § 3011(2).

[21] 66 Pa. C.S. § 3011(3).

[22] 66 Pa. C.S. § 3014(b)(3).

[23] 66 Pa. C.S. § 3014(c).

[24] 66 Pa. C.S. § 3015(a)(1)(ii).

- must give ILECs the opportunity to offset any reduction to their intrastate access rates on a revenue neutral basis.[25]

Yet, all of these, and other, obligations exist in Pennsylvania. Sprint has not indicated in its Main Brief that any of the other states where commission's have reduced intrastate access rates have the same or similar statutory obligations.

This Commission must also be aware of the unique demographics in Pennsylvania that impact the provision of basic local exchange service. For example, Pennsylvania has a far higher rural population than New Jersey which raises the cost of providing telecommunications services. Comparing intrastate access rate levels in Pennsylvania to the intrastate access rate levels in New Jersey is not an "apples-to-apples" comparison.

As such, Sprint's arguments that the Commission should lower Verizon's intrastate access rates in Pennsylvania because other state commissions have lowered their intrastate access levels is without merit and should be rejected. Actions taken by Commissions in other states are not determinative as to whether Verizon's intrastate access rates should be reduced in Pennsylvania.

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[25] 66 Pa. C.S. § 3017(a).

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Commission should not reduce Verizon's intrastate access rates as part of this proceeding. In addition, regardless of whether the Commission determines to reduce Verizon's intrastate access charges, the Commission should not reduce any of Verizon's regulatory obligations as Verizon has advocated.

Respectfully submitted,

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Dated: September 9, 2011
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CERTIFICATE OF SERVICE

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

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

Dated this 12th day of September 2011.

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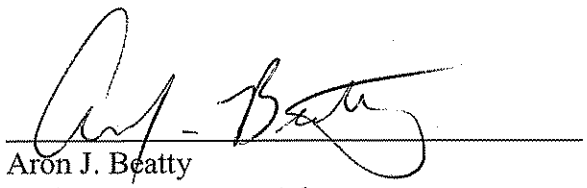

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