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September 12, 2011

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

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

Dear Secretary Chiavetta:

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

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

Best regards,

STEVENS & LEE

Michael A. Gruin

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

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

SPRINT'S REPLY BRIEF

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September 12, 2011

Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel"), hereby submit this Reply Brief. At the hearings, conducted on June 14-15, 2011, and presided over by the Pennsylvania Public Utility Commission's ("Commission") Administrative Law Judge Fordham ("ALJ Fordham"), a comprehensive record was developed on the issues identified for inclusion in this docket. The parties filed their Main Briefs on August 16, 2011, but no brief provided any compelling justification to reach any conclusion other than that the Commission should immediately order Verizon North LLC and Verizon Pennsylvania, Inc. (collectively "Verizon") to eliminate their Carrier Charge and reduce their intrastate switched access rates to mirror the level and structure of their interstate switched access rates.

The telecommunications market today is no longer characterized by the availability of two-way communications from but a single provider as was the case when access rates in Pennsylvania were originally set. Policymakers at the federal and state level have articulated policy goals which reflect the fact that consumers are best served (and provided with affordable service) through promoting competition and technological development. Pennsylvania consumers now enjoy a wealth of choices for their communications needs. Pennsylvania consumer can choose amongst multiple providers for wireless telephony, wireline telephony, broadband services, email, text messaging, Voice over Internet Protocol ("VOIP") telephony, video services, etc. However, Pennsylvania consumers are not realizing the full panoply of competitive pricing and service benefits that should be available to them.

Consumer benefits are currently constrained due to a continuing problem that this proceeding is meant to address. While Verizon is able to rely on a subsidy stream extracted from its competitors, some other carriers and (and their customers) must shoulder the unwarranted burden of subsidizing Verizon via inflated intrastate switched access rates. High intrastate switched access rates stifle competition and increase prices for all Pennsylvania consumers of telecommunications services. All other carriers offering voice communications in Pennsylvania are forced to pay Verizon's inflated intrastate access rates. These inflated intrastate switched access rates are a burden not only to interexchange carriers ("IXCs"), but also to wireless carriers which must pay intrastate switched access charges to terminate calls to Verizon's customer. For instance, despite the wide-spread availability of wireless phone service in Pennsylvania, wireless carriers receive no access subsidy for terminating calls to their customers from Verizon's long-distance customers. Yet the wireless carriers are required to pay access subsidies to Verizon to terminate wireless calls to Verizon's customers. The effect is that the cost of Verizon's network is passed from Verizon and its customers to other carriers and ultimately to Pennsylvania consumers in the form of higher retail prices. Paying subsidies to Verizon also reduces the resources available to competitors to improve and expand services and places them at a cost disadvantage relative to Verizon. Ultimately, this reduces the level of competition in the market and inflates retail prices.

There can be no real dispute that, in the current competitive telecommunications marketplace, Verizon's inflated access rates should be reduced in the direction of cost. The primary issue is simply how quickly such reductions can be implemented. The record clearly establishes that Verizon's intrastate switched access rates will still be

compensatory if lowered to mirror interstate switched access rates. Additionally, since access reductions in Pennsylvania must be revenue neutral, there is simply no net revenue impact on Verizon.

Verizon has attempted to obfuscate the task at hand by inserting extraneous arguments regarding what it describes as "asymmetrical regulations" and by characterizing the Commission as being precluded from lowering Verizon's access rates. The Office of the Consumer Advocate ("OCA") and the Office of the Small Business Advocate ("OSBA") similarly offered no compelling arguments. OCA and OSBA primarily focus on their desire to saddle a limited class of carriers and their customers with excessive access charges while ignoring the fact that many, or most, services using Verizon's access network do so without paying any access charges whatsoever.

Ultimately, Verizon, OCA and OSBA have all failed entirely to provide any concrete support for the unavoidable conclusion that Verizon's intrastate switched access rates must be lowered to mirror its interstate access rates in rate level and structure – including the complete elimination of the Carrier Charge. Rather than be swayed by self-serving arguments focused on maintaining subsidies to Pennsylvania's largest wireline carrier, the Commission must recognize that the time to reduce Verizon's intrastate switched access rates is at hand. The record supports this conclusion and no evidence or argument supports any further delay in implementing access reform.

I. VERIZON'S ARGUMENTS PROVIDE NO SUPPORT FOR ANY DELAY TO IMMEDIATELY IMPLEMENTING ACCESS REFORM.

A. Verizon's Argument that this Proceeding is not Ripe for Commission Action is Farcical at Best.

Despite all logic, the breadth of the record developed in this docket, and the fact that this docket has been open for over half a decade, Verizon argues that the time is not "ripe" for Commission action.[1] Stripped to its fundamental elements, Verizon essentially argues that it desires this docket to remain unresolved until the plethora of pre-conditions that are documented in its testimony have all been met.

Verizon argues that any order in the instant docket would need to be revisited to consider the Commission's determinations in the Commission's RLEC Access Order.[2] Verizon makes this statement despite the fact that the Commission specifically indicated in the RLEC Access Order that Verizon's access rates would be considered separately,[3] and the Commission's conclusion that there is no requirement for Verizon's rates and rural carriers rates to bear any proportional relation to each other.[4] Clearly Verizon would like to delay any decision in the instant docket, but it cannot look to the Commission for support as the Commission has consistently rejected such an approach.

Verizon also urges the Commission to wait for the Federal Communications Commission ("FCC") to issue an order containing an all-encompassing, industry-wide framework for intercarrier compensation.[5] This suggestion, too, is misguided and self-serving. In the context of RLEC access reform, Verizon strenuously objected to any

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[1] Main Brief of Verizon at 4.
[2] *Investigation Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105, Order entered July 18, 2011 ("RLEC Access Order")
[3] RLEC Access Order at 17, fn. 24.
[4] RLEC Access Order at 157.
[5] Main Brief of Verizon at 6-7

delay predicated upon some action by the FCC. Similarly, the Commission itself rejected such a suggestion from Verizon when it was suggested that the Commission should stay the instant docket.[6] As Sprint indicated in its Main Brief, should the FCC issue an order regarding intercarrier compensation the Commission can address that at the appropriate time, but the mere possibility of such an action by the FCC should not form the basis for the Commission delaying much needed access reform now. Verizon's gambit at delay offers no justification to defer reform. As the Commission has already rejected Verizon's argument in the instant docket, renewal of this argument by Verizon must be rejected.

Finally, and comically, Verizon makes the argument that its access rates should be allowed to stand because Verizon provides subsidy to other carriers in the form of access charges and Universal Service Fund payments. If Verizon's argument is thematically familiar, it is likely because on any given day school teachers and parents across the country can be heard delivering the admonishment that two wrongs do not make a right. Verizon, however, apparently believes that this time-tested logic does not apply to Verizon itself. Verizon is wrong. The Commission's inadequate reform of other carrier's subsidy streams does not provide justification for maintaining inflated access rates for Verizon. To the contrary, Verizon's rates should be brought to parity with its interstate rates, as should the rates of all other ILECs in Pennsylvania – a matter currently before the Commission for reconsideration.

B. Verizon's Legal Arguments Regarding Just and Reasonable Rates are Misplaced.

Verizon argues that the Commission must set rates which are just and reasonable, a conclusion with which Sprint fully agrees. Unfortunately, the remainder of Verizon's

[6] *See Generally* Opinion and Order, AT&T Communication of Pennsylvania, Inc. v. Verizon North Inc. *et al.*, at 18-19 (entered May 11, 2010)(" Reopening Order").

arguments regarding just and reasonable rates are wildly off target. Verizon glosses over the fact that it elected to eschew rate-of-return regulatory treatment in order to be regulated under an alternative form of regulation. Upon cross examination, Verizon admitted that it is not entitled to any particular rate-of-return.[7] Among the consequences of the regulatory regime under which Verizon voluntarily elected to be regulated is that the Commission need not conduct the dollar-for-dollar earnings-requirement analysis that was characteristic of rate-of-return regulation. Indeed, Verizon ensured that no such analysis would be conducted when it entirely failed to submit a study establishing its cost of providing switched access, and it did so despite squarely shouldering the burden of proof in the instant docket.

Verizon also ignores the clear pronouncement of the Commonwealth Court that under an alternative form of regulation, the Commission's examination of whether rates are just and reasonable may include consideration of factors such as comparing a LEC's rates with national averages.[8] Accordingly, when Verizon elected to be regulated under an alternative form of regulation, it fundamentally altered the type of review to which its rates would be subjected. The Commission has considerable latitude to set Verizon's rates using a variety of means and methods – including the one urged by Sprint: mirroring Verizon's Pennsylvania intrastate switched access rates to Verizon's own interstate switched access rate and rate structure.

The foregoing notwithstanding, the impact of any access reduction order issued by the Commission in the instant docket is easily differentiated from the rate orders cited

[7] Transcript at Page 207, lines 9-19.
[8] *Popowsky v. Pennsylvania Public Utility Commission,* 669 A.2d 1029, 1037 (Pa. Cmwlth. 1995); *reversed* and *remanded* on unrelated grounds regarding competitive determination and productivity offset calculation in *Popowsky v. Pennsylvania Public Utility Commission* 550 Pa. 449, 706 A.2d 1197 (1997).

by Verizon. Unlike the rate orders cited by Verizon, in the context of intrastate switched access charges the Commission is required to ensure that access charge reductions are revenue neutral.[9] The cases cited by Verizon address the obligation of regulators to ensure that the rates they set allow a regulated company the opportunity – but not a guarantee – to achieve a level of return that satisfies the just and reasonable standard. Unlike the cases cited by Verizon, the case at bar involves a shifting of revenues in a manner dictated with particularity by statute for a carrier governed by an alternative regulation plan.

In the context of access reductions, the Commission will not be changing Verizon's revenues received. Rather, the Commission will merely be taking the pro-competitive step of lowering Verizon's subsidy stream while concurrently increasing the rates Verizon is permitted to charge its own customers. As required by statute, Verizon's revenue will remain unaffected by this change. The lack of any net revenue impact whatsoever renders moot whatever shred of relevance Verizon's ill-conceived rate-of-return arguments may have otherwise had.[10]

While Verizon obviously prefers to continue to collect unearned revenues from its competitors, the Commission's decision to direct Verizon to collect the same revenues from its customers does not render Verizon's rates unjust and unreasonable. Verizon itself has not even argued that its access rates will be anything short of compensatory if

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[9] 66 Pa. C.S. § 3017(a).

[10] Sprint disputes that Verizon's rate-of-return arguments would have any relevance even without the revenue neutrality statute because Verizon is regulated under an alternative plan of regulation which Verizon voluntarily entered into. As Verizon elected not to be subject to rate-of-return regulation, it cannot seek protection from precedent discussing revenue requirements when Verizon has opted not to be regulated in such a manner. The only remaining commonality is whether Verizon's rates remain just and reasonable – a matter which Sprint has addressed in its Main Brief and elsewhere herein.

lowered to levels mirroring interstate. Rather, Verizon argues that its new rates will not cover the cost of providing basic local exchange service ("BLES").

Should this argument give the Commission pause, the Commission should recognize that the BLES rate increase required to offset the access reductions Sprint advocates is substantially below the levels the Commission has recently deemed to be just and reasonable.[11] Additionally, Verizon admitted upon cross-examination that the rates resulting from a shift of access revenues into BLES rates would not result in unaffordable or unreasonably high BLES rates.[12] Accordingly, even should the Commission be concerned whether its *revenue neutral* access reductions are sufficient to ensure Verizon receives what Verizon considers adequate revenues, the solution is to allow BLES rate increases in excess of what would be required merely to offset access reductions, not to forgo access reductions in the first instance. Accordingly, Verizon's arguments regarding rate-of-return era regulation and just and reasonable rate analysis are without merit.

C. Verizon's Losses in Pennsylvania Are Irrelevant.

Verizon next argues that it is losing money on its operations in Pennsylvania and that such losses preclude the Commission from unilaterally reducing its access rates without relief from the "regulatory constraints and burdens that are causing its losses."[13] Missing from Verizon's argument is any actual evidence of record whatsoever establishing that regulatory constraints and burdens are causing losses. As Verizon carries the burden of proof in this docket, this argument must fail. Even were there any credence to this argument, it must be noted that Verizon's allegations of asymmetrical

[11] *See* RLEC Access Order setting $23 BLES reasonability benchmark.
[12] Transcript at page 209, line 21 – page 210, line 9.
[13] Main Brief of Verizon at 14.

regulatory treatment are primarily predicated upon statutes that apply equally to competitive carriers and Verizon. To the extent that Verizon could not establish either a cost associated with *any* regulation, or even that there is any large body of asymmetrical regulation, this line of argument amounts to little more than an irrelevant, soporific diversion.

D. Verizon's Attempt to Use the RLEC Access Order as Justification to Maintain its own Rates Ignores Essential Elements of that Order and Plain Logic.

Verizon advances several arguments predicated on comparing its circumstances and rates with those of Pennsylvania RLECs and the reductions to their rates resulting from the RLEC Access Order. As a prefatory matter, it must be noted that the Commission has long treated Verizon's access rates separately and apart from those of the RLECs. The Commission acknowledged in the RLEC Access Order that it would not stray from that approach.[14] Accordingly, Verizon's lengthy discussion of the relevance of the RLEC Access Order to its own rates is misplaced.

Verizon unsuccessfully attempts to establish that its rates are not exorbitant and are necessary to maintain its financial integrity.[15] Even taken at face value, however, there is no substance to Verizon's analysis. The simple fact is that Verizon's access rates and Carrier Charge *are* exorbitant. The record shows that Verizon charges **30 times** more for intrastate switched access traffic than for reciprocal compensation traffic even though such calls use the same network facilities.[16] Even when compared to its own interstate rates Verizon charges three times more for intrastate switched access than for

[14] RLEC Access Order at 17, fn. 24.
[15] Main Brief of Verizon at 14-15.
[16] *See* AT&T Panel Direct Testimony at 27-28.

interstate switched access,[17] even though there is no difference in network functionality between the two types of calls.[18] Verizon ignores the facts relevant to its own rates in favor of a comparison of its rates to other carriers' rates with good reason: its rates are exorbitant in comparison to what it is permitted to charge for use of the same network facilities for non-intrastate switched access traffic.

Verizon's exorbitant rate argument is paired with an argument that its regulated rates must as a whole afford Verizon a reasonable opportunity to maintain its financial integrity.[19] As it did earlier in its brief, Verizon ignores entirely the fact that access reductions must be revenue neutral. Revenue neutrality ensures that Verizon's rate reductions provide at least a reasonable opportunity to remain in the same position relative to revenues that it was in without access reductions – a point which Verizon conceded is all that is required by the statutory revenue neutrality requirement.[20] Despite the fact that Verizon's overall revenues will not be affected by access reductions, Verizon nevertheless advances the argument that insofar as the Commission proposes to reduce Verizon's access rates, the Commission cannot do so without evaluating the entirety of Verizon's regulated rates and ensuring that Verizon has a reasonable opportunity to maintain its financial integrity.

In response to Verizon's position, it must be recognized that Verizon has not been reluctant to raise its BLES rates separate and apart from its access rates in the past. BLES rates are no less regulated rates than are access rates. Indeed they are both among the very few remaining regulated services Verizon still offers. Verizon has in the past

[17] Sprint Direct Testimony at 16.
[18] Transcript pg. 176, lines 5-9.
[19] Main Brief of Verizon at 15.
[20] Transcript at page 176, line 14 – page 177, line 10.

raised its BLES rates numerous times since adoption of its Alternative Plan of Regulation, but in none of those instances did Verizon clamor to have its intrastate switched access rates reviewed concurrently. When the Commission permitted Verizon to increase its retail rates without any interruption or reduction of Verizon's unearned revenue stream from its competitors, Verizon failed to object. Only now that Verizon's unearned revenue stream is threatened does it cry foul.

It follows that since Verizon has in the past benefited from the Commission's acquiescence to Verizon unilaterally raising its regulated BLES rates without raising access rates, Verizon must be estopped from now changing its position and arguing that such practice is unlawful. To be clear, Sprint does not consider the Commission's approach unlawful (and indeed, Sprint believes that the revenue neutral nature of the proposed access rate changes renders such arguments immaterial), but ever were it so, Verizon cannot be allowed to benefit from such practice for years on end, and then raise the argument to its advantage when a rate it does not wish to be changed is under examination. Such a hypocritical practice should be sanctioned, not condoned or rewarded.

E. Verizon's Financial Condition is Irrelevant In Light of Revenue Neutral Requirement Under Chapter 30

During the proceedings before ALJ Fordham Verizon went to considerable lengths to paint a picture of its financial condition as dire. As are all of Verizon's arguments in the matter at bar, this, too, is merely a diversionary argument with no bearing on the ruling in this matter. This is so because any decision rendered by the Commission in the instant docket will be revenue neutral and therefore have no net

revenue impact on Verizon whatsoever. The Commission's decision in the instant docket will not impact Verizon's revenues, but only alter the source of those revenues.

If Verizon's financial condition is such that it requires more revenue, then Verizon has several options. Chief amongst them is that Verizon can seek the Commission's permission to increase its BLES rates to a level higher than the minimum revenue neutral adjustment required by law. Verizon's own witnesses admitted during cross-examination that such an action – seeking additional revenues from its own customers – is the preferred course.[21] Other options for Verizon to pursue are to streamline its expenses and take steps to increase its market share. Those are the difficult choices that all carriers face, but most carriers face those choices without the benefit of the excessive subsidy stream from access that Verizon has enjoyed for many years.

Verizon also admitted without reservation that when setting access rates, the Commission need not consider the cost of access because access is a cost of providing BLES.[22] Additionally, the record establishes that access rates will continue to provide contribution if set at interstate levels.[23] This makes it all the more incongruous for Verizon to argue that the Commission must consider Verizon's financial condition. Simply put, none of those facts lead to the conclusion that any such inquiry is necessary. With no revenue impact, rates acknowledged to be above cost, and no need for a cost analysis of the rate being set, it stretches credulity to posit that the Commission must nevertheless consider Verizon's financial condition.

As stated above, Verizon's argument is not appropriately made in this access proceeding in any event. Verizon's argument belongs, if anywhere, in another

[21] Transcript at page 134, lines 3-13.
[22] Transcript at page 133, line 14 – page 134, line 6.
[23] *See* Main Brief of AT&T at 38, fn. 142, and fn. 143.

proceeding wherein Verizon seeks a revenue positive BLES rate increase sufficient to cover what it alleges is its tenuous financial condition. Such a docket would involve a net revenue impact, unlike the instant docket which will be revenue neutral. The reason Verizon is undoubtedly reluctant to seek such a rate increase is that it voluntarily entered into an alternative regulation plan that dictates the circumstances and procedures governing Verizon's BLES rate increases, and the Commission has every right to hold Verizon to the regulatory bargain struck when Verizon entered into its alternative regulation plan. Verizon has received tangible benefits from its alternative regulation plan. The plan has allowed Verizon to enjoy automatic rate increases – without need to apply to the Commission – when certain target triggers are satisfied. Verizon appears loathe to disturb the terms of its alternative regulation plan, preferring instead to argue that the Commission must continue to permit Verizon to collect unearned subsidies. Regardless of Verizon's preference, the unavoidable conclusion is that if Verizon's financial condition is an issue, that issue is properly raised in some other proceeding regarding revenue positive BLES rate increases, not one in which its access rates will be decreased in a revenue neutral manner.

F. Neither the Presence of Competition, nor Allegations of "Asymmetrical" Regulations Support a Delay in Access Reform.

The record developed in this proceeding amply illustrates that Verizon is losing access lines. No party denies this. The record also illustrates that there are a number of regulatory burdens that are carried equally by local exchange carriers ("LEC") and Verizon. Verizon was unable to identify to any large extent regulatory requirements that apply to Verizon, but not to other LECs. Neither was Verizon able to quantify ANY financial impact associated with the regulations it describes as asymmetrical. As

Verizon carries the burden of proof, it is clear and obvious that these arguments must fail.

It must also be noted that while Verizon identifies its broadband build-out requirements as an asymmetrical regulatory obligation, Verizon fails to tell the entire story about these obligations. Verizon neglects to mention that its broadband commitments are fully tied to its annual, automatic price increases under its alternative regulation plan. But for that plan, Verizon would be forced to seek permission for any rate increase to a regulated service. Thus, when it committed to its broadband build-out obligations, Verizon also secured for itself a guaranteed source of funding in the form of annual rate increases. In any event, since cross-subsidization of Verizon's competitive ventures with revenues derived from its protected services – such as access and BLES and switched access – is prohibited,[24] the facts relative to Verizon's broadband build-out are not only irrelevant, but are inappropriate for discussion in the context of setting rates for protected services.

As it has throughout this proceeding, Verizon makes no effort to engage in a direct discussion of its access rates and their appropriate level. Instead, Verizon engages in a stratagem of weaving inappropriate arguments and irrelevant facts into the record in order to distort the unavoidable conclusion: Verizon's inflated intrastate switched access rates are unwarranted, and rebalancing Verizon's access subsidy into its BLES rates is essential in light of the competitive market

Over a decade ago, Administrative Law Judge Schnierle clearly articulated the role of competition in delivering consumer benefits.

[24] 66 Pa.C.S. § 3011(4)("... it is the policy of this Commonwealth to (4) [E]nsure that that rates for protected services do not subsidize the competitive ventures of telecommunications carriers.").

> In short, politically unpopular though it may be, rate rebalancing is required, along with access charge reductions, if there is to be competition for all customers in all locations … I am aware of no other way to solve this problem, and the parties here have presented no other proposal that is likely to solve the problem. Moreover, the very point of introducing competition to the local exchange market is to bring about lower prices through the operation of the market. An unwillingness to rebalance rates suggests an unwillingness to trust the market to bring about lower prices. If that is the case, I suggest that society rethink the notion of attempting to have competition in the local exchange market.[25]

There is no doubt that the market is competitive – indeed Verizon describes its line loss directly in its Brief.[26] There is also no question that Verizon supports the collection of revenues from customers rather than competitors.[27] Similarly, Verizon acknowledges that its customer losses will continue regardless of the outcome of this proceeding.[28] Accordingly, Verizon's arguments regarding line loss, competitive pressures, broadband commitments, and the like are all extraneous to the central point of this docket: access charges are injurious in a competitive market and they must be lowered expeditiously. This was ALJ Fordham's conclusion several years ago in this same docket, and ALJ Schnierle's conclusion some thirteen years ago, and Verizon has done nothing to refute that conclusion despite its many extraneous and irrelevant arguments.

II. OCA AND OSBA'S ARGUMENTS REGARDING COMMON LINE ALLOCATION ARE ILLOGICAL AND MUST BE REJECTED.

The glaring flaw in the OCA and OSBA position regarding access reform is that they inappropriately advocate for recovery of carrier common line charges from carriers rather than consumers. This approach flies in the face of all commonly accepted treatment of such costs. The FCC has long since acknowledged that elimination of the

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[25] *In Re: Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, at 28 (June 30, 1998)(emphasis added).
[26] Main Brief of Verizon at 23.
[27] Transcript page 134, lines 3-13.
[28] Transcript at page 148, line 21 – page 149, line 9.

collection of common-line charges from competitors rather than customers is appropriate in a competitive market. As long ago as 1983, the FCC indicated that its long-range goal was for common-line costs to be removed from the calculation of the cost of switched access.[29] In support of this conclusion, the FCC found that a customer which does not use his or her local-loop to place or receive even a single call generates the same local-loop expense as a customer who places calls over the local-loop; accordingly, every LEC customer causes the same local-loop cost, and does so regardless of whether the local-loop is ever used.[30] Thus, as the LEC customer causes 100% of the local-loop expense without any traffic-sensitivity, the FCC concluded that those costs should ultimately be bourn exclusively by the LEC customer and/or the LEC, and should not be shifted to competing carriers.

The FCC largely concluded its work in removing local-loop costs from switched access rates in its CALLS Order.[31] Therein, the FCC combined all local-loop expenses into a single subscriber charge. In describing its rationale for shifting *all* common-line cost onto subscribers the FCC stated that "... consistent with the 1996 Act, including Section 254(k), it simplifies the current rate structure and long-distance bills, reduces consumer confusion, and furthers the Commission's efforts over the past two decades to eliminate per-minute recovery of common line costs ... the proposal is a major step

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[29] *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, 264-65 (1983); recon., 97 FCC 2d 682 (1983), second recon., 97 FCC 2d 834 (1984)("1983 Access Charge Reform Order").

[30] *Id.* at 278.

[31] *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, and Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (rel. May 31, 2000)("CALLS Order").

forward from the Commission's current access charge regime, and preferable in moving access charges to cost-based levels than the current process."[32]

Thus, at the federal level the expense of common line costs were shifted from carriers to a customer charge called the subscriber line charge ("SLC"). The important point is that in the federal jurisdiction, loop cost is not recovered through access charges to LECs' competitors but rather from the cost-causer: their own customers. This is in stark contrast to the OCA and OSBA position in this docket and the manner in which such charges are recovered in Pennsylvania today.

Verizon fully understands the economic logic underlying the FCC's policy, and to Verizon's credit it has not unduly polluted this docket with counter-intuitive, anti-competitive arguments that common line cost should be collected from competitors.[33] Unfortunately, however, OCA and OSBA each continue to support collection of common line expenses from other carriers. They persist in advocating this position despite the most glaring issue with the position: their proposed method of collection of common line charges does not spread the cost of the line equally among all the types of services that use the common line. Under the OSBA and OCA proposal no common line expenses is collected from services including broadband, VoIP, video, and other types of services that are provided using the common line. OCA and OSBA essentially ignore the fact that wireless and long-distance are far from the only non-local services utilizing the common line. ALJ Fordham recognized this fundamental flaw when she concluded:

> With the changes in the industry and the emergence of wireless and other technologies that use the local loop without paying the carrier charge, it is

[32] *Id.* at 12990-91 (internal citations omitted).
[33] Transcript at page 175, line 9 – page 176, line 1. While Verizon continues to advocate for maintaining the status quo for its access rates, Verizon has not adopted the illogical common line arguments of OCA and OSBA in support of its position.

> difficult to continue to charge the IXCs for using the local loop. Although public advocates still contend that the IXCs pay for using the loop, the trend seems to be toward eliminating this charge. In the *Global Order*, which was issued in 1999, the charge was changed from a per minute to a per line charge. Although it made sense at the time, this change has proven to be costly. The record shows that the number of access minutes is decreasing. With the merger of SBC and AT&T and Verizon and MCI, the number of access lines will continue to diminish.
>
> Although the IXCs pay for using the loop, there is no proposal to charge the wireless and other technologies for using the same facilities. This negates the public advocates argument that the loop is a joint cost that must be shared by all who use it.
>
> The IXCs have proven that the carrier charge is no longer valid way to address this matter. Consequently, the cost must be paid by the end user.[34]

Nothing has been presented in the instant docket that changes the logic underlying ALJ Fordham's above quoted conclusion. To the contrary, services that today use the common line are more extensive than those that were available at the time the RD on Remand was issued. Accordingly, there is no reason for ALJ Fordham to veer from her earlier holding correctly recognizing that the most appropriate means of collecting the cost of the common line is to embed that cost in BLES or otherwise collect the cost directly from the end user.

III. CONCLUSION

The Commission began its investigation of intrastate switched access reform many years ago, but has allowed Verizon's inflated intrastate switched access rates to continue to distort the telecommunications marketplace. Access rate reform is necessary to foster a fully competitive market in Pennsylvania, and implementation of meaningful reform is needed presently. The Commission should quickly institute reform by ordering

[34] Recommended Decision on Remand at 63 (issued December 7, 2005).

Verizon to immediately mirror the rate levels and structure of its interstate switched access charges.

Respectfully submitted this 12th day of September, 2011.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATION OF SERVICE

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

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September 12, 2011

Michael A. Gruin