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September 12, 2011

HAND DELIVERED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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 for filing are the original and nine (9) copies of the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. Please note that both Proprietary and Non-Proprietary versions of this Brief are being filed. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven C. Gray
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

NON-PROPRIETARY

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Dated: September 12, 2011

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I. Introduction

A. Prior Proceedings

On September 30, 1999, the Pennsylvania Public Utility Commission ("Commission") entered the *Global Order*.[1] The *Global Order* required all incumbent local exchange carriers ("ILECs") to reduce their access charges. In addition, the *Global Order* provided for an access charge proceeding to begin in January 2001 to determine whether additional access charge reductions were warranted. In January 2002, the Commission initiated a formal generic access charge investigation at Docket No. M-00021596, as required by the *Global Order*.

On March 22, 2002, AT&T Communications of Pennsylvania Inc. filed a Complaint at Docket No. C-20027195 seeking to have the access charges of Verizon North Inc. ("Verizon North") reduced to the level of the access charges of Verizon Pennsylvania Inc. ("Verizon PA") pursuant to the requirements in the Bell Atlantic-GTE Merger Order.

On December 24, 2002, the Commission entered an Order bifurcating the Verizon access charge issues (including the AT&T Complaint) and the rural local exchange carriers' access charge investigation into two separate dockets.

On December 30, 2002, Verizon PA and Verizon North filed a Joint Petition in regards to the further reduction of their access charges.

On February 18, 2003, the Office of Small Business Advocate ("OSBA"), among other parties, filed Comments opposing the Verizon PA and Verizon North Joint Petition.

On May 5, 2003, the Commission entered an Order consolidating the Verizon PA and Verizon North Joint Petition, the AT&T Complaint, and the ongoing investigation and assigned

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[1] *Joint Petition of Nextlink Pennsylvania, Inc., et al.*, 196 PUR 4th 172, 93 Pa. PUC 172 (Order entered September 30, 1999) *affirmed, Bell Atlantic-Pennsylvania v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part, MCI v. Pennsylvania Public Utility Commission*, 577 Pa. 294, 844 A.2d 1239 (Pa. 2004) (colloquially known as the "*Global Order*").

the matter to the Office of Administrative Law Judge ("OALJ") for the preparation of a Recommended Decision ("RD"). Subsequently, the OALJ assigned the proceeding to Administrative Law Judge ("ALJ") Cynthia Williams Fordham.

On July 18, 2003, the OSBA filed the testimony of Allen G. Buckalew.

On November 18, 2003, ALJ Fordham issued her RD (*"2003 RD"*). ALJ Fordham recommended the adoption of a Joint Proposal submitted by Verizon PA, Verizon North, and the Office of Consumer Advocate ("OCA") to consolidate the access charges of the two ILECs. However, before the Commission entered an Order addressing the *2003 RD*, Verizon PA, Verizon North, the OCA, and the OSBA filed a Joint Petition for Resolution of Litigation, which addressed the recovery of lost access charge revenue.

On July 28, 2004, the Commission approved the *2003 RD* subject to the Petition for Resolution of Litigation. In addition, the Commission remanded the case to the OALJ for the further development of the record, and issuance of an RD, on issues that were not decided in the July 28, 2004, Opinion and Order. The issues on remand were to include (but not be limited to) the consideration of specific access charge reduction proposals, the removal of implicit subsidies from access charges, and the reduction or elimination of the carrier charge.

Subsequent to prehearing conferences held before ALJ Fordham, the OSBA submitted the direct and rebuttal testimony of Mr. Buckalew on June 8, 2005, and June 29, 2005, respectively. The OSBA also submitted a main brief and a reply brief on August 17, 2005, and August 31, 2005, respectively.

On December 7, 2005, ALJ Fordham issued her RD (*"2005 RD"*). In summary, the ALJ recommended that the carrier charge be eliminated and that traffic sensitive access charges be reduced to match interstate levels.

On January 9, 2006, the OSBA submitted exceptions in response to the *2005 RD*. On January 25, 2006, the OSBA submitted reply exceptions.

The Commission never ruled on the *2005 RD* or on the exceptions submitted by the OSBA and other parties. Instead, on January 8, 2007, the Commission stayed the proceeding pending the outcome of the *Unified Intercarrier Compensation* proceeding before the Federal Communications Commission ("FCC").

B. Current Proceeding

On August 12, 2009, Verizon PA, Verizon North, and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (collectively "Verizon") filed a Status Report and Motion to Extend the Stay for an additional twelve months.

On May 11, 2010, the Commission denied Verizon's Motion to Extend the Stay, and remanded this case to the OALJ for further proceedings. The Commission provided direction on the scope of this remanded proceeding, as follows:

> [I]t is apparent that the record in this investigation needs to be updated. As such, in addition to our specific directives, *infra*, we will direct the ALJ and the Parties to consider those issues that still need to be resolved in the reopened investigation and whether any parts of the developed record in the investigation can be used or whether they need to be refreshed.
>
> With regard to our specific directives for matters to be addressed in this investigation, we shall afford the participating parties due process opportunities to supplement the evidentiary record including any issues that were not adjudicated at the time of the Remand before the ALJ. In addition to the supplemental issues that will be raised by the parties, the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between (a) any FCC ruling that may have an impact on intrastate switched access charges; (b) the intrastate access charge reform for ILECs in view of the new Chapter 30 law and its relevant provision at 66 Pa. C.S. §§

> 3015(g), pertaining to 'Rate change limitations,' and 3017, pertaining to 'Access charges;' and (c) the potential effects on rates for Verizon's basic local exchange services. In addition, should the resulting rate changes from this investigation occur within the context of the Verizon Companies' subsequent Price Change Opportunity filing, the ALJ shall address the potential implications of the resulting rate changes in the calculations associated with the relevant PCO filing and why those resulting rate changes would be considered lawful, just and reasonable pursuant to the Chapter 30 law.

Opinion and Order, Docket No. C-20027195 (Order entered May 11, 2010), at 21-22 ("*Remand Order*").

On December 8, 2010, a prehearing conference was held before ALJ Fordham.

On February 1, 2011, Verizon served its direct testimony.

On March 29, 2011, the OSBA served the direct testimony of Dr. John W. Wilson.

On May 10, 2011, the OSBA served the rebuttal testimony of Dr. Wilson.

On June 3, 2011, the OSBA served the surrebuttal testimony of Dr. Wilson.

On June 14 and 15, 2011, evidentiary hearings were held before ALJ Fordham.

On July 11, 2011, Verizon filed a Petition to Reopen the Record, arguing that the forthcoming rural local exchange carrier ("RLEC") access charge order would materially affect the outcome of this proceeding.

On July 14, 2011, upon request of Verizon, ALJ Fordham extended the schedule for the filing of main and reply briefs.

On July 18, 2011, the Commission entered an Order in *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund* at Docket Nos. I-00040105 and C-2009-2098380, *et al.* ("*July 18th Order*").

On August 12, 2011, ALJ Fordham informed the parties of her intent to deny Verizon's Petition to Reopen the Record.

On August 16, 2001, the OSBA submitted its main brief. Verizon; AT&T Communications of Pennsylvania, LLC, TCG Pittsburgh, LLC, and TCG New Jersey, Inc. (collectively "AT&T"); Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint"); and the OCA also submitted main briefs.

The OSBA submits this reply brief according to the revised procedural schedule ordered by ALJ Fordham.

II. Argument

A. A further reduction in Verizon's access charges is not necessary.

In its main brief, AT&T stated, as follows:

> [N]o one disputes that the harms that high access charges wreak on Pennsylvania consumers have grown more severe, and the need for access reform has grown even more urgent.

AT&T Main Brief, at 2.

AT&T has materially misstated the record in this proceeding. The OSBA does not agree with the AT&T theory that Verizon's access charges are "high," or that those access charges wreak unspecified "harms ... on Pennsylvania consumers," or that access reform is "urgent." For example, OSBA witness Dr. John W. Wilson testified, as follows:

> No additional decrease in Verizon's intrastate access charges is warranted. Access charges permit toll carriers to use local facilities, i.e., loops, that have been constructed at substantial cost to provide both toll and local services, and that are designed and required to provide toll service. Moving access charges to zero for toll carriers (as advocated by Sprint Nextel and AT&T) means that local exchange service would subsidize toll service. Toll carriers should be required to support a reasonable share of the local access facilities' costs that are essential for their businesses. As I explained in my direct testimony, toll carriers are already paying far less than their fair share of loop costs. Further access charge reductions would force local exchange ratepayers to subsidize even more of the cost of the loops that were designed and installed to provide both toll and other services. Therefore, no additional reduction in Verizon's access charges should be implemented.

OSBA Statement No. 2, at 2.

This misstatement in AT&T's main brief is difficult to understand, in that AT&T made a similar misstatement in testimony earlier in this proceeding and was corrected by the OSBA. Specifically, Dr. Wilson responded to the error in AT&T's testimony, as follows:

> Q. IN STATEMENT 2.0 AT PAGE 3, THE AT&T WITNESSES STATE WHAT THEY REFER TO AS THEIR THREE 'CENTRAL POINTS.' TWO OF THESE ARE:
>
> > 1. SWITCHED ACCESS RATES CONTAIN LARGE SUBSIDIES TOWARDS BASIC LOCAL EXCHANGE SERVICE.
> >
> > 2. ACCESS 'REFORM' (I.E., ACCESS RATE REDUCTIONS FOR TOLL CARRIERS) WOULD BENEFIT PENNSYLVANIA CONSUMERS, BY REDUCING RATES FOR LONG-DISTANCE SERVICE.
>
> THEY THEN GO ON TO CLAIM THAT 'NEITHER OCA NOR THE OSBA DISPUTE OUR CENTRAL POINTS.' IS THAT CLAIM ACCURATE?
>
> A. No. I very clearly refuted these AT&T arguments in my prior testimony. Toll carriers should be required to pay for local exchange access costs because they are responsible for the incurrence of those costs. In fact, the rates that intrastate toll carriers are now charged for access are well below their share of access costs. Thus, it is these toll carriers, and not basic local exchange service ratepayers, who are being subsidized. I also explained that there is no evidence that further reductions in toll carrier access rates would provide any benefit to Pennsylvania consumers through reduced rates for long distance service. There surely has been no evidence presented by these toll carriers that they have reduced their long distance rates in concert with any of the Commission's previously authorized reductions in their access rates.

OSBA Statement No. 3, at 2-3. *See also*, AT&T Statement No. 2.0, at 2-3.

It is improper for AT&T to make repeated misrepresentations of the positions of the other parties before the ALJ and the Commission. The OSBA is well aware that AT&T is an advocate of access charge reductions; and AT&T should, by now, recognize that the OSBA is not a proponent of further reductions. Therefore, AT&T should not be heard to speak for any party other than itself, and should not materially misstate the record, as it has done in its main brief.

B. Access charges should contribute to the cost of the loop.

In this proceeding, the primary issue is how much interexchange carriers ("IXCs") should pay for access to Verizon's network. The IXCs, such as AT&T and Sprint, argued that the access charge they pay Verizon for the traffic sensitive costs of intrastate calls should be reduced to the access charge they pay Verizon for the traffic sensitive costs of interstate calls. *See* AT&T Main Brief, at 3; Sprint Main Brief, at 1. The IXCs also argued that Verizon's non-traffic sensitive carrier charge ("CC") should be eliminated. *Id.*

However, in the recent RLEC access proceeding, the Commission held that the RLECs' CCs should not be eliminated but, rather, that they should be transitioned to a uniform $2.50. In reaching that decision, the Commission affirmed its continued adherence to the position that IXCs should contribute to the cost of the loop. Specifically, the Commission stated, as follows:

> [W]e are guided by the long-established principle and regulatory policy of this Commission, which has been upheld upon appellate review, that the RLECs' intrastate carrier switched access service ***NTS [non-traffic sensitive] joint and common costs primarily associated with the RLECs' local loop plant must be recovered from all users of the RLECs' network***. In this respect, our conclusion differs materially from those that have been adopted by the FCC in the past. The FCC has shifted the burden of NTS joint and common network costs in the interstate intercarrier compensation mechanism for switched access services totally and exclusively upon the end-user through the initial imposition and subsequent increases to the federal SLC [subscriber line charge].

July 18th Order, at 118 (emphasis added).

Ironically, AT&T criticized the OSBA for advocating that this proceeding should follow Commission precedent, *i.e.*, that the IXCs should contribute to loop costs. *See*, AT&T Main Brief, at 36. However, consistent with the OSBA's position, the *July 18th Order* in the RLEC

access proceeding unequivocally reaffirms that the Commission requires an IXC contribution toward the cost of the loop through a CC.

The IXCs provided no persuasive argument as to why they should be required to contribute to the RLECs' loop costs through a CC but should be relieved from having to make a similar contribution to Verizon's loop costs through a CC. AT&T and Sprint did argue that the Commission's decision in the *July 18th Order* holds no precedential value for the instant proceeding. Both based this conclusion on footnote 24 in the *July 18th Order*. AT&T, citing to footnote 24, stated:

> [T]he Commission's order [the *July 18th Order*] in that case made it clear that it is not only determined to continue its overall efforts at access reform, but that it is also committed to continue its efforts to reform Verizon's access rates on a separate track from the RLECs.

AT&T Main Brief, at 31-32 (footnote omitted). Sprint also cited to footnote 24, and concluded that "it is not productive to delve into the specifics of the RLEC Access Order [the *July 18th Order*]." Sprint Main Brief, at 19.

AT&T and Sprint are reading too much into footnote 24. Contrary to the spin applied by AT&T and Sprint, footnote 24 actually stated, as follows:

> Reductions to Verizon's access charges have been and will continue to be considered separately by the Commission at Docket No. C-20027195.

July 18th Order, at 17, footnote 24.

In contrast to the reading advocated by AT&T and Sprint, footnote 24 is nothing more than a procedural statement that the Verizon access charges will be addressed in a Verizon-specific proceeding. What is much more on point is the above-quoted statement by the Commission that it is "guided by the long-established principle and regulatory policy" to recover

non-traffic sensitive loop costs "from all users of the RLECs' network." *July 18th Order*, at 118. The Commission's decision in the *July 18th Order* appears to be dispositive of whether Verizon's CC should be eliminated, *i.e.*, according to the *July 18th Order*, it should *not* be eliminated.

Thus, the only remaining questions are whether Verizon's CC should be increased or decreased and whether Verizon's traffic sensitive intrastate access charges should be reduced to match Verizon's traffic sensitive interstate access charges. The OSBA recognizes that, in the *July 18th Order*, the Commission concluded that each RLEC should set its intrastate traffic sensitive access charges to match that RLEC's traffic sensitive interstate access charges. Consequently, the OSBA expects that the Commission will order Verizon to do the same. However, as set forth in its main brief, the OSBA provided the Commission with the option of increasing Verizon's CC to recover the lost traffic sensitive intrastate access revenue. *See* OSBA Main Brief, at 11-12.

In that regard, Dr. Wilson observed that the "carrier charge recovers a small portion of the loop's total cost." OSBA Statement No. 1, at 9. Specifically, Dr. Wilson explained the magnitude of the IXCs' contribution toward Verizon's loop costs, as follows:

> In the 2005 proceeding, Mr. Buckalew observed that Verizon claimed the cost of a loop to be about **[BEGIN PROPRIETARY]** ■ **[END PROPRIETARY]**. Even if the Commission eventually finds that the real cost of the loop is lower than **[BEGIN PROPRIETARY]** ■ **[END PROPRIETARY]** the fact is that the current intrastate carrier access charge of **[BEGIN PROPRIETARY]** ■ **[END PROPRIETARY]** is only **[BEGIN PROPRIETARY]** ■ **[END PROPRIETARY]** of the cost of a **[BEGIN PROPRIETARY]** ■ **[END PROPRIETARY]** loop.

Id., at 9-10.

Dr. Wilson recommended that there be no further reductions in Verizon's intrastate access charges. OSBA Statement No. 1, at 17. Consistent with that recommendation, the

OSBA recommends that the Commission increase Verizon's CC to recover the lost traffic sensitive intrastate access revenue.

Verizon testified that it would have to rebalance **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** in order to recover the revenue lost if its intrastate traffic sensitive rates were reduced to interstate levels. *See* Verizon Statement No.1.0, at 58. Furthermore, Verizon's intrastate CC is currently set at $0.58, which allows Verizon to recover **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** of intrastate non-traffic sensitive revenue. *Id.* Therefore, adding the **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** to the existing CC would require Verizon to recover **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** through its CC. Recovering **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** through the CC would require a CC of roughly **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**.[2]

However, during the evidentiary hearings in this proceeding, new evidence came to light regarding the total amount of intrastate access revenue that will have to be rebalanced by Verizon. AT&T Main Brief, at 19-20. AT&T observed that Verizon did not reveal "the dollar impact of bringing non-traffic-sensitive rates to parity until the hearing." *Id.*, at 20. **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** Transcript, June 14th Hearing, at 113-114.

If the Commission determines that this new evidence of additional non-traffic sensitive access revenue is valid and represents access revenue that shall also be recovered, the OSBA

[2] **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**

alternative proposal remains the same: recover all lost intrastate access revenue using Verizon's CC. Using Verizon's updated access revenue total, this would result in a CC of **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**

A CC of **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** than the $2.50 CC set for RLECs in the *July 18th Order* and **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**.

A CC of **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]** than the $2.50 CC set for RLECs in the *July 18th Order,* and **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**.

Therefore, the OSBA respectfully submits that increasing Verizon's CC would be a reasonable alternative. The IXCs would make a more appropriate contribution toward the cost of Verizon's loop, and Verizon's customers would not have to endure an increase in their local exchange rates.

C. Verizon's litany of financial woes is irrelevant to this proceeding.

In its main brief, Verizon spent considerable effort focusing on its supposedly dire financial condition, rather than addressing the topic of intrastate access charge reform. For example, Verizon claimed:

> [T]he Commission cannot lawfully reduce Verizon's rates further when it already is losing millions annually on intrastate services,

> particularly while it continues to subject Verizon to archaic legacy regulatory burdens which contribute to those large ongoing losses.

Verizon Main Brief, at 4.

In addition to the Verizon argument that it is losing money in Pennsylvania (*See, e.g.*, Verizon Main Brief, at 12-14), Verizon extensively argued that the Commission cannot further reduce Verizon's access charges "in the face of the burdensome asymmetrical regulation that is precluding Verizon from recovering its costs." Verizon Main Brief, at 22-35.

OSBA witness Dr. Wilson addressed Verizon's financial arguments, as follows:

> ... Verizon complains that its annual Price Change Opportunity ('PCO') filings are not producing enough revenue to cover Verizon's costs. Verizon also complains that its broadband deployment has been uneconomic because not enough customers have taken advantage of the enhanced service. However, OSBA counsel advises that Original Chapter 30 (enacted in 1993) and New Chapter 30 (enacted in 2004) allowed Verizon to switch from rate base/rate of return regulation to rate regulation through PCOs in exchange for the deregulation of certain services and a commitment to deploy broadband. Counsel also advises that Verizon's predecessor, Bell of Pennsylvania, advocated the enactment of Original Chapter 30 and that Verizon itself advocated the enactment of New Chapter 30. In my opinion, Verizon should not be permitted to change the bargain just because that bargain has not turned out to be as favorable as Verizon may have anticipated.

OSBA Statement No. 1, at 20-21.

Simply put, this proceeding is not the proper venue for Verizon's financial or regulatory arguments. Nevertheless, Verizon made one legal assertion that is simply incorrect, and must be addressed in this brief. Verizon stated:

> A state regulator such as this Commission must ensure an adequate return on rate-regulated services – in this case Verizon's basket of

> intrastate services that have not been classified by the Commission as competitive. *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 149 (1930).

Verizon Main Brief, at 9.

Verizon is wrong.

New Chapter 30, Act 183 of 2004 (66 Pa. C.S. §§ 3011-3019), allows an ILEC to submit an annual price stability mechanism ("PSM") filing to the Commission in order to request a revenue increase that will be used to fund the ILEC's accelerated broadband deployment.[3] The details of each ILEC's PSM are set forth in that ILEC's network modernization plan ("NMP"). Each ILEC (including Verizon PA and Verizon North) submitted its NMP, with amendments ("Amended NMP"), to the Commission pursuant to Section 3014(b) in order to take advantage of the benefits provided to all ILECs under New Chapter 30.

A PSM is defined by statute, as follows:

> A formula which may be included in a commission-approved ***alternative form of regulation*** plan that permits rates for noncompetitive services to be adjusted upward or downward.

66 Pa. C.S. § 3012 (emphasis added). Section 3012 also defines "alternative form of regulation," as follows:

> A form of regulation of telecommunications services ***other than the traditional rate base or rate of return regulation***, including a streamlined form of regulation, as approved by the commission.

66 Pa. C.S. § 3012 (emphasis added).

The Commission has held that the PSM employed by an ILEC "is a complete substitution of the rate base/rate of return regulation." *Commonwealth Telephone Company PSI/SPI Filing*

[3] The original Chapter 30 provided ILECs a similar opportunity but required the annual revenue increase to be based on a more significant offset to the inflation rate than required under New Chapter 30. *Compare* Section 3004(d)(2) of the Public Utility Code, 66 Pa. C.S. § 3004(d)(2) (repealed), to Section 3015(a)(1) of the Public Utility Code, 66 Pa. C.S. § 3015(a)(1).

for Year 2005, Docket No. R-00050551 (Order entered August 31, 2005), at 2 ("*Commonwealth Telephone*").

Thus, Verizon is simply wrong that the Commission must ensure that it recovers an "adequate rate of return" on any of its noncompetitive service offerings.

Furthermore, the Commission held (in the RLEC access proceeding) that "revenue neutral rebalancing may be accomplished only through allowed increases in noncompetitive services to offset reductions to access charges, rather than through consideration of non-jurisdictional or competitive revenues." *July 18th Order*, at 127. Significantly, the Commission addressed the issue of "guaranteed revenue," as follows:

> Regarding the arguments that the RLECs believe they are entitled to a guarantee of recovering lost revenues from access charge reform, we agree with AT&T that the ALJ properly ruled that Section 3017(a) of the Code gives the RLECs the *opportunity* to recover lost access revenues on a revenue neutral basis, but that each RLEC's response to access reform is left to the RLEC's discretion. Section 3017(a) states: '[t]he commission may not require a local exchange telecommunications company to reduce access rates except on a revenue neutral basis.' Nothing in this provision guarantees that all access revenue reductions will be revenue neutral. Such a definition that guarantees revenue recovery would be illogical under Act 183, especially in the existing telecommunications markets, which are becoming more competitive each year.

July 18th Order, at 140-141 (footnotes omitted) (emphasis in original).

Thus, the Commission has made it clear in the *July 18th Order* that an ILEC such as Verizon must be afforded the *opportunity* to recover its lost intrastate access revenues, but that Verizon is not entitled to a *guarantee* of such recovery. Verizon will simply have to employ its business acumen in order to construct its rates to recover as much of the lost intrastate access revenue as it can.

D. Verizon did not address the OSBA regarding contract customers.

In the testimony of Dr. Wilson, and in its main brief, the OSBA raised the issue that non-contract customers should not be required to contribute to Verizon's recovery of lost access revenues attributable to contract customers. OSBA Statement No. 1, at 19; OSBA Main Brief, at 12-17. Verizon was certainly aware of this issue, and addressed it in their rebuttal testimony. *See* Verizon Statement No. 1.1, at 48-51.

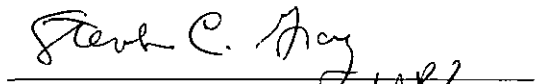
However, Verizon failed to address this issue in its main brief. As a result, the OSBA has no opportunity to refute any legal arguments Verizon may raise in its reply brief in regards to this issue. If Verizon were to present such legal arguments in its reply brief, doing so would violate the requirements of 52 Pa. Code § 5.501(3) and would deprive the OSBA of its due process rights. Such shenanigans should not be permitted by either the ALJ or the Commission.

III. Conclusion

For the reasons set forth in its main brief and in this reply brief, the OSBA respectfully requests that the Commission decline to further reduce Verizon's total intrastate access charges. In that regard, if the Commission orders a reduction in Verizon's intrastate access charges, the OSBA respectfully requests that the Commission order Verizon to recover the lost intrastate access revenue by increasing Verizon's carrier charge.

In addition, if the Commission orders a reduction in Verizon's total intrastate access charges, the OSBA respectfully requests that the Commission prohibit Verizon from raising rates for noncompetitive services to recover the lost intrastate access revenue attributable to toll service for contract customers.

Respectfully submitted,



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Dated: September 12, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Brief, in both Proprietary and Non-Proprietary versions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons and in the manner addressed below:

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Date: September 12, 2011