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March 16, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Various Intrastate Switched Carrier Access Tariffs for VoIP Traffic

Docket No. R-2012-2285812	Armstrong Telecommunications, Inc.
Docket No. R-2012-2282908	Core Communications Inc.
Docket No. R-2011-2278283	Frontier Communications of PA, LLC
Docket No. R-2011-2278290	Frontier Communications Commonwealth Telephone Company
Docket No. R-2011-2279479	Metropolitan Telecom. Corp. of PA d/b/a MetTel
Docket No. R-2012-2282660	Pennsylvania Telephone Association
Docket No. R-2011-2279738	Windstream PA, LLC
Docket No. R-2011-2279743	Windstream D&E Systems, Inc.
Docket No. R-2011-2279763	Windstream Conestoga, Inc.
Docket No. R-2011-2279769	Windstream Buffalo Valley, Inc.
Docket No. R-2011-2280166	Talk America Inc. d/b/a Cavalier Business Communications
Docket No. R-2011-2280802	Cavalier Telephone Mid-Atlantic LLC
Docket No. R-2012-2285252	XO Communications Services, Inc.
Docket No. R-2012-2285795	XO Communications Services, Inc.

Dear Secretary Chiavetta:

The Pennsylvania Telephone Association ("PTA") is in receipt of your letter dated March 6, 2012 regarding the above captioned matter.

On February 17, 2012, Verizon submitted a letter raising certain positions related to intrastate VoIP-PSTN switched access carrier tariff submissions in the above-referenced Dockets, including that of the PTA. The PTA fully agrees with the Commission's observation that "this Verizon letter communication is not a Formal Complaint and is not deemed to cause one or more formal, on-the-record contested proceedings."

A. Background on PTA Tariff

PTA Supplement No. 13 to Telephone – PA PUC Tariff No. 11 (“PTA VoIP-PSTN Tariff”) was filed on January 10, 2012 to be effective February 1, 2012. The tariff was extended by Secretarial Letter for an additional 30 days and became effective by operation of law on March 1, 2012. It is the PTA’s position that the revised rates for VoIP-PSTN are applicable beginning with the March 2012 service month.

The application of the tariff to any carrier’s traffic is dependent upon submission of a percent VoIP usage (“PVU”) factor by the carrier seeking to qualify. As the effective tariff provides:

The PVU information and supporting documentation supplied by the Customer shall be based on information that is independently verifiable by the Telephone Company, including but not limited to the number of the Customer’s or an underlying service provider’s retail VoIP subscriptions in the state (e.g. as reported on FCC Form 477), traffic studies, actual call detail or other relevant and verifiable information. The Telephone Company may reject unverified or unverifiable assertions that the traffic is VoIP-PSTN Traffic.¹

Several carriers have already submitted PVUs and the PTA companies are processing those requests. The PTA tariff appropriately provides the telephone company with the opportunity to review the PVU information before the PVU becomes effective:

The Telephone Company will apply PVU factors on the next bill date provided that the PVU factors and the relevant and verifiable supporting documentation described above are provided to the Telephone Company at least 15 days prior to the next bill date. Factors that are received less than 15 days before the next bill date will be applied on the bill date following the next bill date.²

If a PVU and supporting information is not provided, then the carrier’s PVU is zero:

If the Customer does not furnish the Telephone Company with PVU factors, along with the relevant and verifiable supporting documentation described above, the Telephone Company will utilize PVU factors equal to zero.³

As noted previously, the PTA VoIP-PSTN Tariff became effective by operation of law for intrastate access services rendered on and after March 1, 2012.

¹ PTA VoIP-PSTN Tariff at Rule 2.3.13 (C)(3).

² PTA VoIP-PSTN Tariff at Rule 2.3.13 (D).

³ PTA VoIP-PSTN Tariff at Rule 2.3.13 (C)(5).

B. Verizon Letter

Five weeks after the tariff was filed and without approaching the PTA member companies prior, Verizon submitted a letter complaining about several aspects of the PTA VoIP-PSTN Tariff, none of which, in the PTA's opinion, have any merit. The general topics raised by Verizon are the inclusion of originating charges, accounting for IP on the RLEC's network and the effective date of the interstate rate to intrastate traffic. The PTA will reply to these.

1. Originating Access Is Properly Not Included

The PTA Companies recognize that the FCC has stated that "toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates"⁴ as Verizon recites. However, at that same paragraph 961, the FCC also specified that "on a transitional basis we allow the imposition of originating access charges in this context, subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM."⁵ This contradiction has confounded more than few in the industry, particularly since, on non-VoIP traffic, the FCC limited parity access reform to terminating access charges and applied rate reductions *only to terminating* access rates. The FCC's immediate approach to originating access rates, including intrastate charges, was to retain and cap, while opening a further rulemaking.⁶

A Petition For Reconsideration and/or Clarification is pending before the FCC wherein it is argued that the discussion on prospective intercarrier compensation obligations for VoIP-PSTN traffic "should not be read to undermine this originating access regime by flash-cutting intrastate originating rates for PSTN-originated calls to interstate levels when those calls are terminated by another carrier as VoIP." The position is taken that, "[i]f the Commission intended such a reading, it should reconsider this decision, which would be contrary to the Commission's goal of creating 'measured transitions' and would invite new arbitrage schemes where the Commission has vowed to eliminate them."⁷

Numerous *ex partes* have been filed by all parties including Verizon. As the National Rural Associations recently pointed out:

... the Order could not have been more clear that there was no intent to reduce originating intrastate access charges in any manner for rural rate-of-return regulated incumbent local exchange carriers ("RLECs"). Specifically, the Order identified concerns about "overburdening the Universal Service Fund" as well as

⁴ FCC's November 18th Order at ¶ 961.

⁵ *Id.* (note 1976).

⁶ *Id.* at ¶ 818.

⁷ Petition for Reconsideration and/or Clarification filed by Windstream Communications, Inc. and Frontier Communications Corp. on December 29, 2011 (See <https://prodnet.www.neca.org/publicationsdocs/wwpdf/122911/windstream.pdf>).

a belief that the wholesale toll market would constrain originating rates as justification to avoid capping or otherwise reforming originating intrastate access rates for RLECs. Order at ¶ 805.⁸

Thus, there is no basis for Verizon to claim that the PTA VoIP-PSTN Tariff should include originating access at this time.

2. Accounting for IP on the RLECs' Networks

The RLECs that concur in the PTA tariff all operate traditional TDM-based networks. None of their customers are required to use IP-compatible customer premise equipment to originate or terminate calls. The companies have no plans to change their networks over the next 16 months, at which time the entire industry will be at parity under the FCC Order and the VoIP-PSTN compensation rule will be moot. Therefore, the PTA Companies have an implicit PVU of zero and no "Company PVU" is needed in the tariff.

3. The New Tariff Rates Become Effective on the Date that the Tariff Was Approved and *After a Proper PVU is Submitted*

The PTA VoIP-PSTN Tariff became effective on March 1, 2012. Verizon, on the other hand, seeks retroactive effect of the tariffs back to January 1, 2012 and further asks that it be permitted to submit its PVU with application back to that date. Verizon identifies no legal requirement to do so and ignores basic proscriptions against retroactive ratemaking.

No other IP-based carrier has objected to the effective date of the filed and approved tariffs. Moreover, many carriers have *already* submitted letters specifying their PVU, including Comcast and Level 3.

Rates change in tariffs on a prospective, and not retroactive, basis. Both the regulated company and its customers are entitled to be advised of rate changes *before* they occur. This is a two-way street, protecting both the company and its customers. Retroactive rate making is not advised and, indeed, is proscribed under Pennsylvania law. Tariffs are contracts that bind the utility and its customers.⁹ Tariffs approved by the PUC include schedules of rates,¹⁰ and all

⁸ March 12, 2012 Ex Parte Letter of National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, National Exchange Carrier Association, TDS Telecom, et al. <https://prodnet.www.neca.org/publicationsdocs/wwpdf/31212ntca2.pdf>.

⁹ *Brockway Glass Co. v. Pennsylvania Public Utility Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067 (1981) ("*Brockway Glass*").

¹⁰ "The term "rate," as used in the Pennsylvania Public Utility Code, includes "any rules, regulations, practices classifications or contract affecting such compensation...." 66 Pa. C.S. § 102 (Definition of "Rate").

rules, regulations, practices or contracts involving rates and have the force of law.¹¹ Section 1303 of the Public Utility Code prohibits charges outside of the tariff.¹²

The FCC directed that carriers accomplish changes in their intrastate rates by filing revised intrastate tariffs with the State commissions. There is nothing in the FCC Order indicating that it did not fully expect that state review, even suspension, would occur and that state law applicable to tariff changes would apply.

This said, the real issue presented by Verizon is not the effective date of the rate change, but whether Verizon has demonstrated an entitlement to it. The FCC's new regime establishes and requires states to oversee a two-year phase down to interstate access rate levels for intrastate access rates. The only *exception to this rule* is where the traffic, as a factual matter, is shown to meet the definition of "VoIP-PSTN" traffic. There is no automatic entitlement to this lower rate.

Verizon only now has made a PVU claim¹³ and, in doing so, offered no justification for a state wide PVU of 26%. The methodology used to arrive at a claim to an interstate discount for intrastate traffic is nowhere explained or provided. This is in violation of the PTA tariff provision which requires that the claim to the discount be presented with the PVU claim and be verifiable. The Verizon letter claiming the 26% PVU does not even identify the Verizon companies to whom the PVU applies. Certainly, the Verizon ILECs, CLECs and IXC's operating in Pennsylvania do not originate the exact same amount of VoIP traffic.

As this Commission well knows, there are numerous "bad actors" in the industry, carriers like Global Naps, CommPartners and Infotelcom, who misrepresent the nature of their traffic in order to engage in access arbitrage. There is no doubt that the FCC's VoIP-PSTN rule offers these carriers a further chance to unfairly game the system. Therefore, the FCC agreed with the terminating carrier that verification was appropriate and, indeed, necessary. The PTA VoIP-PSTN Tariff is effective and defines the rules that apply. Verizon's letter nowhere complains of these tariff provisions.

Simply stated, until a carrier explains its methodology it is not entitled to the VoIP discount. Verizon has no special dispensation in this regard.

¹¹ *AT&T Communications, Inc. v. Pennsylvania Public Utility Comm'n*, 130 Pa. Commw. 595, 568 A.2d 1362 (1990).

¹² 66 Pa. C.S. § 1303. "No public utility shall directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part." *Re Maislin Industries et al.*, Docket No. P-980204 at 295 (Opinion and Order entered March 20, 1990) ("... it is well settled in the law that a public utility and its customer may not fix rates by contract different from rates contained in a filed tariff, and that the filed tariff rate has the force of law and is binding on both the utility and the customer."); *See Brockway Glass, supra*; *see also, Pa. Elec. Co. v. Pa. Public Utility Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995) (tariff provisions cannot be "waived").

¹³ Verizon PVU Letter Laurel Highland mailed February 29, 2012.

C. The Informal Consultative Process

The PTA is willing to engage the Staff of the Bureau of Technical Utility Services in the informal consultative process described in the Secretarial Letter of March 6, 2012.

Thank you for your attention to this matter. Should you or any member of the Commission Staff have any questions or comments, please do not hesitate to contact me at your convenience.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By:


Norman J. Kennard



February 29, 2012

LAUREL HIGHLAND TELEPHONE CO
PO BOX 168
STAHLSTOWN, PA 15687

Re: Verizon's VoIP usage factors

Dear Sirs:

Your intrastate tariffs, revised to reflect implementation of the FCC's VoIP-PSTN intercarrier compensation regime established in its November 2011 Order¹ ask each switched access customer to submit a percent-VoIP-usage ("PVU") factor representing the percentage of intrastate access minutes of use exchanged with your company that the customer originates or terminates in Internet protocol ("IP") format.

Verizon's PVU factors for the states in which Verizon exchanges traffic with other carriers are set forth in Exhibit A to this letter. These factors apply across originating and terminating usage.

Verizon's factors are to be used, along with your own PVU factor, to develop for each jurisdiction an overall PVU factor to be applied to all intrastate access minutes of use Verizon exchanges with you, in order to determine the quantity of traffic that is VoIP-PSTN traffic and therefore subject to the FCC's interim compensation rules for such traffic, effective as of January 1, 2012.

Please contact Donna Donahue at 312-470-5665 if you have any questions, and pass this notice onto others in your company who need to process Verizon's PVU factor for correct call rating.

Sincerely,

A handwritten signature in cursive script that reads "Donna M Donahue".

Donna M Donahue
Manager - Verizon

¹ See *In re: Connect America Fund, etc.*, Report & Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011) ("FCC Order"). Although some carriers may not yet have revised their intrastate tariffs (or price lists), all carriers must implement the FCC's VoIP-PSTN intercarrier compensation regime. Therefore, a carrier must consider Verizon's PVU factor, along with the carrier's own VoIP usage, in order to identify and correctly rate VoIP-PSTN traffic exchanged with Verizon.

Exhibit A

CARRIER NAME	State	VOIP %
LAUREL HIGHLAND TELEPHONE CO	PA	26%