

1. REPORT DATE: 00/00/00 :
 2. BUREAU: ALJ :
 3. SECTION(S): : 4. PUBLIC MEETING DATE:
 5. APPROVED BY: : 00/00/00
 DIRECTOR: :
 SUPERVISOR: :
 6. PERSON IN CHARGE: : 7. DATE FILED: 03/20/02
 8. DOCKET NO: C-20027195 : 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: AT&T COMMUNICATIONS OF PA, INC.

RESPONDENT/APPLICANT: VERIZON NORTH INCORPORATED

COMP/APP COUNTY: PHILADELPHIA

UTILITY CODE: 311350

ALLEGATION OR SUBJECT

COMPLAINANT STATES THAT VERIZON NORTH'S INTRASTATE CARRIER ACCESS RATES ARE UNJUST AND UNREASONABLE, AND SEEK AN IMMEDIATE REDUCTION TO NO MORE THAN THE RATES CHARGED BY VERIZON PA.

DOCUMENT
FOLDER

DOCKETED
MAR 22 2002

ORIGINAL

311350



Robert C. Barber
Senior Attorney

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rcbarber@att.com

March 20, 2002

BY HAND

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Complaint of AT&T Communications of Pennsylvania, Inc.
Against Verizon North, Inc.
Docket Nos. C-20027195

Dear Mr. McNulty:

Please find enclosed for filing in the above-referenced docket the original and three (3) copies of the above-referenced complaint.

Please do not hesitate to contact me with any questions regarding this filing.

Very truly yours,

Robert C. Barber

Enclosures

cc: (w/ encl)
Julia Conover, Esq.

RECEIVED

MAR 20 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

66

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.,

Complainant,

v.

VERIZON NORTH, INC.,

Respondent

MAR 20 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C- 20027195

**FORMAL COMPLAINT OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.**

Pursuant to the 52 Pa. Code §5.22 and 66 Pa. C.S. §701, AT&T Communications of Pennsylvania, Inc. ("AT&T") submits this Complaint against Verizon North, Inc. ("VZ North"), seeking an immediate reduction in the intrastate carrier access rates charged by VZ North to a level no more than that currently charged by Verizon Pennsylvania Inc. ("VZ-PA").

Any question as to need for the immediate access rate reductions sought through this complaint is put to rest by the rates themselves. To complete just one part of an intrastate toll call in VZ North's service territory costs AT&T a weighted rate of at least 5.8 cents per minute – a rate that jumps to over 6 cents a minute for originating access because of the inclusion of the non-conversation additive. On a conversation minute of use basis – that is, if VZ North provides switched access service on both the originating and terminating end of an AT&T

CERTIFICATE OF SERVICE
AT&T Communications of Pennsylvania, Inc.
v. Verizon North, Inc.
Docket No. C-

The undersigned hereby certifies that a true and correct copy of the foregoing Formal Complaint of AT&T Communications of Pennsylvania, Inc. was caused to be served on this date by overnight mail on the counsel identified below in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Julia A. Conover, Esq.
Verizon North, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103



Robert C. Barber

Dated : March 20, 2002

RECEIVED
MAR 20 2002
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

intrastate toll call – VZ-North charges AT&T approximately 12.5 cents per minute.

In contrast, VZ-PA's comparable rates for the same services are approximately 1.7 cents and 3.7 cents per minute. In other words, VZ North's current access charge for completing just one end of an intrastate interLATA toll call is over 230 percent higher than the charge VZ-PA assesses for the same service. And, as the Commission is aware from the record developed in the Global Proceeding, VZ-PA's access rates, even after the significant reductions that were implemented as a result of the Global Order, still remain priced far in excess of the cost of providing carrier access services.

Commission action to reduce VZ North's access rates is already long overdue. While the Commission took steps in its September 1999 Global Order to reduce VZ-PA's access charges, VZ North's extraordinarily high access rates essentially were undisturbed. And although the Commission, in its subsequent November 1999 order approving the Bell Atlantic-GTE merger, committed to resolving the wide disparity between the intrastate carrier access rates between VZ North and VZ-PA, the proceeding that was to be the vehicle for that reform was scheduled to commence in January 2001. Now, well over a year later than had been promised, that proceeding has not yet even been initiated.

In the meantime, the need for VZ North access rate relief has, if anything, become even more urgent. Indeed, since the Commission's 1999 orders GTE and Bell Atlantic not only completed their merger – resulting in the renaming of their respective Pennsylvania incumbent local exchange carriers as Verizon North, Inc. and Verizon Pennsylvania, Inc. – but VZ-PA won approval to offer interLATA long distance in Pennsylvania. That authority was not limited to VZ-

PA's original territory, but rather encompasses VZ North as well. Thus, other toll carriers are being forced to compete against Verizon's long distance plans – some of which price intrastate toll calls at 5 cents per minute¹ -- in VZ North's territory while being forced to absorb VZ North's outlandish charges for originating and/or completing their calls – a “cost” that Verizon does not incur.²

Accordingly, the Commission should take immediate action to eliminate the bloat in VZ North's access rates. The first step in effecting such relief should be to immediately reduce VZ North's intrastate rates to levels that are no more than those currently charged by VZ-PA. Once it has taken that critical step, the Commission should then proceed to implement generic relief aimed at reducing both Verizon companies' access rates to truly cost-based levels.

In further support of this Complaint, AT&T states as follows:

1. Verizon North, Inc. is Pennsylvania's second largest incumbent local exchange carrier, providing local exchange, intraLATA toll and carrier access services in various parts of the Commonwealth. VZ North's affiliate, Verizon

¹ See, e.g., Verizon's “e-Values Plan”, which offers a weekend rate of 5 cents per minute for intrastate calls. The plan is described on Verizon's website at http://www22.verizon.com/longdistance/residential/plan_evalues.jsp.

² The only expense Verizon incurs in actually providing access to itself is the cost of local switching and transport – a cost one administrative law judge described several years ago as “almost nil.” Recommended Decision, Docket No. P-00971293, March 30, 1998, at 7. The anti-competitive potential inherent in the wide differential between this cost of providing access services and the rates Verizon charges its toll competitors for that same service cannot be cured through imputation, and especially not the gross imputation test that was established in the Global Order. As the same ALJ found, Verizon's ability under that “safeguard” to reduce toll rates for particular services below what it charges for access “should not be underestimated.” Id. at 7. Nor does the fact that Verizon's long distance affiliate “pays” VZ North's access charges provide any meaningful competitive protection. All that is happening in that circumstance is an accounting transfer, simply moving these charges from one corporate pocket to another.

Pennsylvania, Inc., is the Commonwealth's largest ILEC. Other VZ North corporate affiliates are now authorized to provide interLATA and intraLATA services in Pennsylvania, including in VZ North's service territory.

2. VZ North assesses a fee, commonly known as a carrier access charge, to long distance competitors such as AT&T to originate and/or complete intraLATA and interLATA calls to customers on the VZ North network. On an access minute of use basis – that is, for just one "end" of the call – AT&T estimates that VZ North's weighted intrastate access rate is \$0.058130. On a conversation minute of use basis -- i.e., for an intrastate toll call that is both originated and terminated on VZ North's network – the weighted rate is approximately \$0.124980.³

3. These rates are substantially in excess of VZ North's economic cost of providing carrier access services, and are unjust and unreasonable.

4. It is also abundantly clear that, at a minimum, VZ North's rates are grossly out of step with the carrier access rates currently charged by Verizon Pennsylvania Inc. AT&T estimates that VZ-PA's rate per access minute of use is \$0.017366. On a conversation minute of use basis, VZ-PA's rate is approximately \$0.037337. Thus, VZ North's rate for completing just one end of

³ Slightly different access rates apply in the former "GTE" and "Contel" territories that now comprise Verizon North, Inc. The "weighted" rate for VZ North reflects those differences, and has been calculated based on the respective traffic volumes for the "GTE" and "Contel" territories. Attachment A is a spreadsheet showing combined rate for different access rate elements, and the total rates per access minute of use and per conversation minute of use..

an intrastate toll call is well over three times the rate its Pennsylvania affiliate assesses for providing the very same service.⁴

5. The Commission recognized this substantial disparity when it considered the Bell Atlantic-GTE merger in 1999. In its November 4, 1999 Opinion and Order approving that merger – over the objections of AT&T and other parties and the recommendation of the administrative law judge who heard the case – the Commission did not adopt GTE and Bell Atlantic’s proposal to commence a proceeding 30 months after merger closing “for the purpose of developing access charge parity.”⁵ Instead, the Commission ordered that the “issue of access charge parity for Bell Atlantic-Pennsylvania, Inc. and GTE North, Inc.” be resolved in the access proceeding that had been provided for in the September 1999 Global Order.⁶

6. Under the terms of the Global Order, that proceeding was scheduled to commence on January 2, 2001.⁷ However, no proceeding was initiated on that date. In fact, as of the date this Complaint is being filed with the Commission, the proceeding contemplated in the Global Order and Merger Order has not even been scheduled, much less initiated.

7. While the access issue has festered, Verizon has been acting to expand its in-state monopoly. Since the Commission’s November 1999 Order,

⁴ Attachment A provides a breakdown of VZ-PA’s carrier access rate elements in comparison to the combined rate for Verizon North.

⁵ Opinion and Order, Docket Nos. A-310200F0002 et al., Nov. 4, 1999, at 37 (“Merger Order”).

⁶ Id. at 46.

⁷ Opinion and Order, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999, at 60.

the Bell-GTE merger was consummated, resulting in the creation of Verizon Corp., and the renaming of its Pennsylvania ILECs. Of even greater competitive concern is the fact that, just last year, VZ-PA was granted authority under Section 271 of the Telecommunications Act to provide in-region interLATA services. Despite the fact that this Commission had not evaluated whether Verizon North's markets were fully and irreversibly open to competition, the grant of Section 271 authority to VZ-PA was expressly extended to VZ North as well – that is, Verizon was granted authority to provide long distance service throughout the Commonwealth of Pennsylvania, including the Verizon North service territory.⁸

8. Verizon has taken full advantage of that authority, offering, for example, toll calling plans in VZ North's territory that provide for in-state long distance calls at 5 cents per minute.⁹ That means that AT&T and other long distance providers trying to compete with this offer in VZ North's territory automatically are starting in the red, paying, for example, a VZ North access rate to originate an in-state toll call – i.e., over 6 cents a minute with the non conversation additive -- that already exceeds the 5 cent per minute rate Verizon is charging its retail customers. If that call terminates in VZ-PA's territory – a likely result, given that ILEC's predominance in Pennsylvania – then competitors must tack on its access charge of approximately 1.7 cents, bringing just the access expense of competing with Verizon's 5-cent rate to nearly 8 cents. As bad as this result is, the true nightmare scenario for competitors is the call that

⁸ Memorandum Opinion and Order, CC Docket No. 01-138, Sept. 19, 2001, ¶134.

⁹ As noted previously, Verizon's "e-Values Plan" offers a weekend rate of 5 cents per minute for intrastate calls.

both originates and terminates in VZ North's territory, resulting in total access charges of over 12 cents per minute.

9. The Commission must act immediately to eliminate the anti-competitive potential inherent in VZ North's rates by reducing those charges to no higher than the rates currently charged by VZ-PA. That action will not bring VZ North's access charges down to the cost of providing carrier access services. Nevertheless, it will at least ameliorate the price squeeze problem that now exists, and permit the Commission to then move forward to implement comprehensive and final access reform for both Verizon companies.

10. AT&T is authorized to provide intraLATA and interLATA toll services in VZ North's service territory, and pays access charges assessed by VZ North for the origination and completion of intrastate toll calls in its service territory. AT&T is also a competitor of VZ North and VZ-PA for intraLATA and interLATA toll traffic originating and/or terminating in VZ North's service territory. Accordingly, AT&T has a direct, substantial, material and relevant interest in the level of VZ North's access rates that cannot adequately be represented by any other party.

11. AT&T respectfully asserts and reserves its right to fully participate in any proceeding undertaken to investigate VZ North's access charges, and to raise such additional issues as may be warranted as the record develops.

WHEREFORE, AT&T Communications of Pennsylvania, Inc. respectfully requests that the Pennsylvania PUC:

(A) Commence an investigation of Verizon North, Inc.'s intrastate carrier access charges.

(B) Find that Verizon North, Inc.'s intrastate carrier access charges are unjust and unreasonable.

(C) Reduce Verizon North, Inc.'s carrier access charges to a level that is no higher than the rate currently charged by Verizon Pennsylvania, Inc.; and

(D) Grant such other relief as the Commission deems just and appropriate.

Respectfully submitted,

AT&T COMMUNICATIONS
OF PENNSYLVANIA, INC.

By its Attorneys,



Robert C. Barber
3033 Chain Bridge Road
Oakton, VA 22185
(703) 691-6061

Of Counsel:
Mark A. Keffer

Dated: March 20, 2002

Pennsylvania

Verizon - North and Verizon - PA Switched Access Rates

Intrastate Rate Element	Combined Verizon - North (Former GTE and Contel Territory)	Verizon - PA
Carrier Charge (CC) per line	\$8.6354	\$0.61
Carrier Charge (CC) per MOU (Note 1)	\$0.049633	\$0.006982
Average Transport (Note 2)	\$0.002497	\$0.001384
Local Switching	\$0.006000	\$0.009000
Access Minute of Use (AMOU)	\$0.058130	\$0.017366
Conversation Minute of Use (CMOU) (Note 3)	\$0.124980	\$0.037337

Note 1: A per minute of use CC is calculated using Verizon - North and Verizon - PA actual expenses and minutes.

Note 2: The Average Transport is an estimated calculation.

Note 3: The CMOU is calculated as follows: AMOU x 2.15

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265, HARRISBURG PA 17105-3265

DATE SERVED: MARCH 22, 2002

C-20027195

VERIZON NORTH INC
C/O VERIZON PA INC
ATTN JULIA A CONOVER ESQ
VICE PRESIDENT AND GENERAL COUNSEL
1717 ARCH ST FLOOR 32-N
PHILADELPHIA PA 19103

DOCUMENT
FOLDER

Dear Sir/Madam:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by AT&T COMMUNICATIONS OF PA, INC.. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

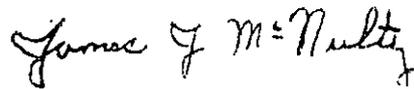
MARCH 22, 2002

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script that reads "James J. McNulty".

James J. McNulty
Secretary

dbs

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: MARCH 22, 2002

AT&T COMMUNICATIONS OF
PA, INC.

Complainant

VS.

VERIZON NORTH, INC.
Respondent

Complaint Docket
No: C-20027195

DOCUMENT
FOLDER

DOCKETED
MAR 22 2002

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: VERIZON NORTH, INC.

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17120**, an answer (original and two copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

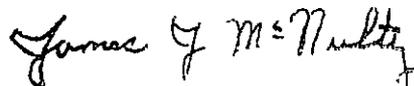
2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which

imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



James J. McNulty
Secretary

(SEAL)

Certified Mail



ORIGINAL

OFFICE OF CONSUMER ADVOCATE

555 Walnut Street 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

IRWIN A. POPOWSKY
Consumer Advocate

REP

FAX (717) 783-7152
E-Mail: paoca@ptd.net

DOCUMENT
FOLDER

April 10, 2002

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

SECRETARY'S BUREAU
02 APR 10 PM 3:59

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

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Notice of Intervention and Public Statement in the above-captioned proceeding.

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

Sincerely,

Shaun A. Sparks
Assistant Consumer Advocate

Enclosures

cc: All parties of record
Office of Special Assistants

*68614

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

AT&T COMMUNICATIONS OF :
PENNSYLVANIA, INC., :
Complainant :
v. :
VERIZON NORTH, INC., :
Respondent :

Docket No. C-20027195

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PENNSYLVANIA
SECRETARY'S BUREAU

NOTICE OF INTERVENTION

Pursuant to 52 Pa. Code Sections 5.71(a) and 71 P.S. § 309-4, the Office of Consumer Advocate hereby gives Notice of Intervention in the above-captioned proceeding. Please address a copy of all correspondence and notices, documents, orders, or other communications regarding the above-captioned proceeding to the following:

Philip F. McClelland, Senior Assistant Consumer Advocate
Shaun A. Sparks, Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

DOCKETED

APR 15 2002

Respectfully submitted,



Philip F. McClelland
Senior Assistant Consumer Advocate
Counsel for:
Irwin A. Popowsky
Consumer Advocate

DOCUMENT
FOLDER

Dated: April 10, 2002

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 19, 1976, authorizes the Consumer Advocate to represent the interests of Pennsylvania consumers before the Pennsylvania Public Utility Commission ("PUC" or "Commission"). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Notice of Intervention and to participate in the proceeding involving the Formal Complaint filed by AT&T Communications of Pennsylvania, Inc. ("AT&T") against Verizon North ("Verizon").

AT&T seeks immediate reductions in the intrastate carrier access rates charged by Verizon. AT&T requests that the PUC reduce the intrastate access rates of Verizon North to the same level as those charged by Verizon Pennsylvania. In addition, AT&T requests that the PUC reduce the intrastate carrier access rates charged by Verizon Pennsylvania to cost-based levels.

AT&T raises questions regarding the intrastate carrier access rates charged by Verizon. By intervening in this Complaint, the OCA will represent the interests of Pennsylvania utility consumers and investigate whether access reductions are appropriate and what the effect of any such reductions might be on other rates.

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Notice of Intervention and Public Statement, 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 10th day of April, 2002.

SERVICE BY INTER-OFFICE MAIL

Office of Trial Staff
Pa. Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

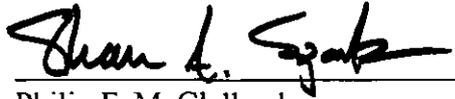
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02 APR 10 PM 3:59
SECRETARY'S BUREAU

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Robert C. Barber
3033 Chain Bridge Road
Oakton, VA 22185

John O. Dudley
212 Locust Street
P.O. Box 12060
Harrisburg, Pa 17108

Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101


Philip F. McClelland
Senior Assistant Consumer Advocate
Shaun A. Sparks
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
*68610

Suzan DeBusk Paiva
Regulatory Counsel
Law Department

ORIGINAL



Verizon
1717 Arch Street, 32NW
Philadelphia, PA 19103
Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

DOCUMENT
FOLDER

April 11, 2002

REP

Via UPS Overnight Delivery
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Complaint of AT&T Communications of PA, Inc.
Against Verizon North Inc. Docket No. C-20027195

Dear Secretary McNulty:

Enclosed for filing with the Commission, please find the original and two copies of Verizon North Inc.'s Answer and Motion to Dismiss in the above referenced case.

Very truly yours,

Suzan DeBusk Paiva

SDP/dkf
Enc.

cc: Certificate of Service

RECEIVED

APR 11 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

53

CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served a true copy of Verizon North Inc.'s Answer and Motion to Dismiss, upon the party listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 11th day of April 2002.

VIA UPS OVERNIGHT DELIVERY

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185



Suzan DeBusk Paiva, Esq.
Verizon
1717 Arch Street, 32NW
Philadelphia, PA 19103
(215) 963-6001

RECEIVED

APR 11 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.,

Complainant,

v.

VERIZON NORTH INC.

Respondent.

Docket No. C-20027195

DOCKETED
APR 17 2002

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VERIZON NORTH INC.'S
ANSWER AND MOTION TO DISMISS

Respondent Verizon North Inc. ("Verizon North") hereby answers and moves to dismiss the complaint of AT&T Communications of Pennsylvania, Inc. ("AT&T") seeking immediately to reduce Verizon North's intrastate carrier access rates, and in support avers as follows:

INTRODUCTION

After failing to raise this issue that, under its own argument, it should have raised over a year ago, AT&T now contends that it is "urgent" that the Commission summarily reduce Verizon North's access rates. AT&T's belated claims of urgency do not withstand scrutiny and do not excuse its procedurally improper and premature complaint attempting to circumvent the Commission's intended process to resolve the access charge issue. AT&T simply ignores the important and complex policy issues that the Commission has recognized go hand-in-glove with true statewide access charge reform, and disregards the Commission's established schedule. AT&T's complaint should be dismissed.

First, the complaint violates the Commission's decision in the *Global Order*, which expressly stated that the Commission would "further refine" solutions to access rate structure in a statewide investigation involving all ILECs.¹ The *Global Order* precludes complaints like this one, singling out a particular ILEC's access rates. Contrary to AT&T's claims, moreover, the Commission *has* taken some action to advance the statewide investigation.² If AT&T has an issue with the speed and scope of the Commission's statewide access charge investigation, it should have made a motion in that docket. Its complaint against Verizon North is procedurally improper and should be dismissed.

Second, AT&T's complaint jumps the gun. The Commission's *Merger Order* set December 31, 2002 as the date for Verizon North to make a proposal to develop access charge parity based on consolidated cost studies with Verizon Pennsylvania Inc. ("Verizon PA"). The Commission stated its intent to "roll-in" that proceeding with the ongoing statewide access investigation, rather than considering the Verizon issues in isolation, and it clearly maintained the December

¹ *Joint Petition of Nextlink, et. al.*, Docket No. P-00991648-1649 (Opinion and Order entered September 30, 1999), *aff'd*, *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Comm'n*, 763 A.2d 440 (Pa. Commw. Ct., Oct. 25, 2000) (en banc) ("*Global Order*") at 278, ordering paragraph 4.

² By Secretarial Letter dated October 24, 2001, the Commission acknowledged that the formal statewide investigation had been "postponed" due to "the more pressing matter of Verizon's Section 271 application." It indicated an intention to renew its efforts at statewide reform at that time, first by having Sprint and the Rural Telephone Company Coalition analyze a recent FCC order and make a proposal regarding reducing their access charges and the carrier charge pool. That proposal is due to be filed on April 15, 2002. See Secretarial Letters dated October 24, 2001 and February 1, 2002 (attached hereto as Exhibit A).

31, 2002 filing deadline.³ AT&T's complaint is therefore premature and should be dismissed.

MOTION TO DISMISS

AT&T's procedural ploy is transparent and improper. By filing this complaint it seeks to isolate Verizon North and to deprive the Commission of a full consideration of the complex issues relating to access charge reform. AT&T's complaint is intended to circumvent this Commission's clearly stated intent to consider Verizon North's access charges not in isolation, but as part of a statewide generic investigation of access charges for all Pennsylvania ILECs. Indeed, in the *Merger Order* the Commission rejected the proposal for a separate proceeding to address access charges for the Verizon companies and specifically stated that it wanted those issues "rolled-in" to the statewide investigation.⁴

The Commission has recognized that the issue of access charges cannot be considered without also addressing issues of affordable basic local service, local service rate levels and local competition. It acknowledges as a policy matter that it is not simply a question of slashing access charges, as AT&T would have it, but rather "implicit subsidies" must be replaced with "explicit and sufficient" support mechanisms to attain the goal of universal service in a competitive environment."⁵

³ *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, etc. (Opinion and Order entered November 4, 1999) ("*Merger Order*") at 36.

⁴ *Merger Order* at 36.

⁵ *Global Order* at 26-27.

The Commission is certainly aware of the relationship of access rates to cost. The Commission explained in the *Global Order* how regulators adopted a “public policy” to keep “basic local service rates lower than might otherwise be the case in high cost areas.”⁶ Contributions from services that are priced above their costs support this “public policy.” These are not issues that can be sorted out for Verizon North alone outside of the statewide proceeding. It is not necessarily the case, moreover – as AT&T presumes – that the Commission will decide that the best course is to immediately reduce access charges to cost. In fact, the Commission has previously rejected that very proposal.

AT&T’s sudden claim that Verizon North’s access charges must be addressed “urgently” does not withstand scrutiny either, especially since AT&T waited over a year from the January 1, 2001 deadline by which it believes the “vehicle for that reform” should have commenced before asking the Commission to do anything. Even if AT&T had a legitimate problem with the pace and scope of the statewide investigation, that is not an issue it should raise against Verizon North. The Commission has begun the process with Sprint and the Rural Telephone Company Coalition (see Exhibit A) and will “roll-in” Verizon North and Verizon PA at the appropriate time.

It is also no surprise to the Commission and no cause for urgency that Verizon North’s access charges are generally higher than Verizon PA’s. Market

⁶ *Global Order* at 11.

pressures and Commission orders have driven Verizon PA's rates, on average, below those of all the smaller ILECs, while Verizon North's rates have remained in line with those other ILECs.⁷ The Commission in its *Merger Order* set out the way it wanted to respond to the issue of parity between the Verizon companies, which is to have Verizon North and Verizon PA file a proposal based on consolidated cost studies 30 months after merger closing, or by December 31, 2002.

AT&T misreads the *Merger Order* to suggest the proceeding should have commenced on January 1, 2001. That is clearly not what the Commission intended, as evidenced by the fact that the Commission did not initiate an action at that time and that the Commission's current efforts in the statewide investigation involve companies other than Verizon North and Verizon PA. Rather, the *Merger Order* approved the provision of the Memorandum of Understanding between the companies and Pennsylvania's Attorney General that required a proceeding to be initiated within 30 months of merger closing to develop access charge parity for the Verizon companies based on consolidated cost studies.⁸ The Commission simply said it would not consider Verizon North's access charges in isolation from its statewide consideration of the access charge issue, and that, once commenced,

⁷ Verizon North cannot, however, verify the accuracy of AT&T's "weighting" to determine a "conversation" minutes of use rate for Verizon North and Verizon PA. As discussed in the Answer, AT&T's factor for non-conversation times overstates the effective rate.

⁸ *Merger Order* at 36.

this proceeding would “roll-in” to the ongoing investigation. Since December 31, 2002 has not come yet, AT&T’s complaint is premature, at best.

Interestingly, although AT&T protests loudly that Verizon PA’s access charges are so much lower than Verizon North’s, AT&T’s website indicates that AT&T charges a *higher* local toll rate (without a special package) of 13 cents a minute in the LATAs that include Philadelphia and Pittsburgh (Verizon PA territory) but 12 cents a minute in the LATA that contains Erie, Oil City and Franklin (Verizon North territory). This raises a question of whether AT&T is in fact flowing access charge savings back to its customers, as required by the *Global Order*.⁹

Contrary to AT&T’s arguments, moreover, the state of “competition” for IntraLATA toll services in Verizon North’s territory provides no reason for added urgency in this matter. Competitors have been gaining a share in that market at a dramatic rate – demonstrating that Verizon North’s access charges have not halted toll competition. In fact, since the advent of IntraLATA pre-subscription, competitors’ share of the toll market in Verizon North’s territory has grown from about 20% to over 75%. Verizon North’s toll revenues have fallen to slightly more than a tenth of what they were before pre-subscription. Given these facts, there is no reason to alter the schedule and procedure the Commission established in its *Global Order* and *Merger Order*.

⁹ <http://www.shop.att.com>.

AT&T's argument that the entry of Verizon Long Distance Inc. ("Verizon LD") into the already highly competitive long distance market has somehow changed things is a red herring. The Commission was well aware when it issued the *Global Order* and the *Merger Order* that Verizon intended to file for authority to offer long distance service in Pennsylvania, and it set its procedure for considering access reform with that fact in mind.

As far as IntraLATA toll service goes, Verizon LD pays the same access rates to Verizon North that AT&T pays. AT&T misrepresents Verizon Long Distance's "E-Values Plan," which offers a 5 cent week-end rate for IntraLATA calls. That plan also charges 11 cents for IntraLATA toll calls on weekdays, averaging out to a higher cost for the customer.¹⁰ Verizon LD's entrance into the undoubtedly competitive InterLATA long distance market likewise does not alter the access charge analysis. Verizon LD pays the same access charges as AT&T. Further, before the Verizon merger Verizon North offered InterLATA service in its territory and its access charges were not an impediment to competition.

The Commission, therefore, less than three months ago soundly rejected AT&T's arguments about competition in the IntraLATA market:

¹⁰ AT&T's argument about this plan resurrects its old argument for a product-level imputation test – something this Commission has rejected with respect to Verizon PA in favor of a service-level imputation test where total toll revenues must exceed total imputed access charges. *Global Order* at 241. The Commission has declined to require imputation at all for ILECs other than Verizon PA. *See Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers*, No. M-00960799 (Opinion and Order entered January 29, 2002) at 14.

We agree with the PTA that there is no evidence that [IXCs] are unable to compete today with the ILECs in the IntraLATA toll market. Further, we take administrative notice of the fact that the toll market is subject to increasingly intense price competition as many IXCs are setting their rates on a national level using flat rates that have no relationship with the access rates of any specific ILEC. Finally, we know of no evidence to refute AT&T's own witness that predatory pricing is extremely unlikely to occur; and, even if predatory pricing does occur, the federal antitrust laws are already available to address this type of conduct. Frankly, we are wary of taking any regulatory action that may discourage the aggressive pricing of toll services by any and all competitors, including ILECs, in that market...¹¹

In sum, AT&T's complaint violates the *Global Order* and the *Merger Order* and should be dismissed.

ANSWER

1. Denied as stated. It is admitted that Verizon North is authorized to operate as an ILEC in Pennsylvania and that its Pennsylvania territory contains the second-highest number of access lines among Pennsylvania ILECs. It is further admitted that Verizon North provides local exchange, IntraLATA toll and carrier access services in its territory. Prior to the merger between Bell Atlantic Corporation and GTE Corporation, which created Verizon North's parent company, Verizon North also offered InterLATA services in Pennsylvania. It is admitted that Verizon North's affiliate, Verizon LD is authorized to provide InterLATA and IntraLATA long distance service in Pennsylvania.

¹¹ *Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers*, No. M-00960799 (Opinion and Order entered January 29, 2002) at 14.

2. It is admitted that Verizon North, like all ILECs, assesses a carrier access charge to inter-exchange carriers (“IXCs”) like AT&T and Verizon LD that originate and/or terminate calls on Verizon North’s network. Those charges have been approved by this Commission. Verizon North cannot verify the accuracy of AT&T’s calculations attempting to “weight” various rates. For example, it appears that the “factor” AT&T uses to account for non-conversation time inflates its estimate of effective access rates. Verizon North’s access tariff, however, is a matter of public record with this Commission.

3. Denied. It is specifically denied that Verizon North’s access rates are “unjust and unreasonable.” To the contrary, these rates have been approved by the Commission and therefore are just and reasonable. Moreover, this Commission has recognized that historically access rates have deliberately been set for complex policy reasons and in the interest of supporting universal and affordable basic service. It does not necessarily follow – and indeed begs the question—that the Commission will conclude at the end of its statewide access charge investigation that “just and reasonable” access charges must be set at “cost.”

4. Denied as stated. It is admitted that exploring access charge parity between Verizon North and its affiliate Verizon PA was an issue recognized both by the parties and by this Commission in the proceeding that approved the merger that created the companies’ common Verizon parent. AT&T’s Complaint, however, jumps the gun. The Commission’s *Merger Order* required the companies to “commence a proceeding for the purpose of developing access

charge parity for both companies based on consolidated cost studies” within 30 months of merger closing. That date has not come yet. Verizon North and Verizon PA are preparing the studies necessary to make that filing by December 31, 2002 – the date required by the Commission’s order. Regarding AT&T’s characterization of Verizon PA’s access rates, again Verizon North cannot precisely verify AT&T’s conclusions; however, Verizon PA’s access tariff is a matter of public record with the Commission.

5. The Commission’s *Merger Order* is in writing and speaks for itself. However, AT&T is clearly misreading the order. The Commission *did* approve the provision of the Memorandum of Understanding between the companies and Pennsylvania’s Attorney General that required a proceeding to be initiated within 30 months of merger closing to develop access charge parity based on consolidated cost studies.¹² What the Commission said, however, was:

The question of achieving access charge parity between BA-PA and GTE North was not an issue in the Global Order. However, in the Global Order, we have provided for an investigation to achieve permanent solutions to access charge reform on or about January 20, 2001. Given the substantial impact a proceeding based on consolidated cost studies may have on the ratepayers for BA-PA and GTE North, we shall direct that the 30-month period provided for in the MOU be “rolled-in” and made a part of the Commission’s statewide investigation pertaining to access charges.¹³

¹² *Merger Order* at 36.

¹³ *Id.*

It is clear from that statement that the Commission did not want to consider Verizon North's access charges in isolation from its statewide consideration of the access charge issue – contrary to AT&T's improper attempt to “tee it up” in that manner by filing this complaint. The Commission clearly could have said, but *it did not say*, that the merger access proceeding would commence sooner than 30 months from merger closing. It simply said that, once commenced, this proceeding would “roll-in” to the investigation. The December 31, 2002 deadline remained the same, as confirmed by the way the Commission has handled the statewide access investigation and the fact that it has not included the Verizon companies in the proceeding thus far. Since the Commission's deadline has not occurred yet, AT&T's complaint is premature, at best.

6. The *Global Order* is in writing and speaks for itself. However, it must be read in conjunction with the *Merger Order* issued a few months later, which clarified that the Verizon North access issue would be rolled in to the statewide access investigation 30 months after merger closing, as discussed above. While it is admitted that the access proceeding involving Verizon North contemplated in the *Merger Order* has not commenced, that is not surprising since the deadline is December 31, 2002.

7. Denied as stated. AT&T's insinuation that this Commission or Verizon PA acted improperly in not addressing the state of competition in Verizon North's territory as part of Verizon's § 271 proceeding is nothing but tired rhetoric. The FCC squarely rejected AT&T's claim that such an analysis was required.

According to the FCC, "Verizon is not required to show checklist compliance for GTE North, the former GTE LEC, to receive section 271 authorization for the state of Pennsylvania."¹⁴ Moreover, Verizon North offered InterLATA service in Pennsylvania before the merger. Therefore, the fact that another Verizon affiliate may now offer InterLATA service in that same area is immaterial to AT&T's claims about Verizon North's access rates.

8. Denied as stated. AT&T grossly misrepresents Verizon LD's "e-Values Plan." The 5 cents a minute rate is available only on weekends, with a higher 11 cents a minute rate applying on weekdays, so obviously the average price to the customer is higher than AT&T portrays it. AT&T, too, is free to price its plans differently on weekends. As discussed above, AT&T's calculation of a cost to itself of 8 and 12 cents a minute is overstated. Indeed, AT&T offers an "AT&T One Rate® 7¢ Plus Plan" where all long distance calls including IntraLATA calls are 7 cents a minute any time.

9. Denied as stated. AT&T's "price squeeze" argument has been made and refuted many times.¹⁵ Indeed, the Commission was unconvinced by that

¹⁴ Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd 17419 (Rel. Sept. 19, 2001) ("*Pennsylvania § 271 Order*") ¶ 8.

¹⁵ AT&T's price squeeze argument contends that an ILEC has the incentive to price its toll calls below the price its competitors must pay for access. Verizon North pointed out in the merger proceeding that this supposed incentive makes no sense, because the ILEC would actually be losing money by taking a customer from AT&T and serving it at rates below access charges. The ILEC is better off having AT&T pay it \$.05 a minute than having the end user pay it \$.04 a minute. The price squeeze

argument in the merger case, and found that the terms of the Merger and Global orders regarding access charges were sufficient to allow the merger to proceed as in the public interest. Moreover, AT&T's claim of "anti-competitive potential" in the access rates is refuted by the facts. Since the advent of IntraLATA pre-subscription Verizon North's share of the IntraLATA toll market in its territory has declined dramatically – from 78.5% in 1996 to only 23% in 2000. Its IntraLATA toll revenues have been slashed by almost 90%. AT&T's claims of urgency are also belied by AT&T's own actions with respect to this issue. AT&T waited over a year past the January 1, 2001 deadline it now seeks to enforce to make this filing. AT&T can therefore wait the additional few months to the Commission's December 31, 2002 deadline.

10. Denied as stated. Verizon North believes that AT&T is authorized to provide InterLATA and IntraLATA services in Pennsylvania, including in Verizon North's territory. However, AT&T competes for InterLATA services with Verizon LD, not Verizon North.

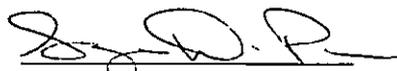
11. This paragraph does not require a response.

would only be ultimately profitable if the ILEC could drive all of its competitors from the market – and keep them out -- and then raise its rates sufficiently to recover the lost revenue. That scenario is highly unlikely in the toll market given the great number of large, global companies with deep pockets who have sunk investments in switches and fiber transport to provide this service. Moreover, if the switched access charges became intolerable, those companies have alternatives, such as dedicated access and leasing UNEs to avoid paying access charges. The price squeeze argument is also belied by the market evidence of competitors' gains in the IntraLATA market.

WHEREFORE, Verizon North respectfully requests that the Commission dismiss AT&T's Complaint. Verizon North further requests that the Commission consider its access rates not in isolation, but in conjunction with the statewide access charge investigation, as the Commission stated its intent to do in the *Merger Order*, and that the Commission do so under the schedule established in that order.

DATED: April 11, 2002

Respectfully submitted,



Julia A. Conover
Suzan DeBusk Paiva

Counsel for
Verizon North Inc.
1717 Arch Street, 32nd Floor
Philadelphia, PA 19103
(215) 963-6068

EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 24, 2001

2001.029.00

Ms. Patricia Armstrong, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500

Richard A. Hrip, Vice President External
Affairs
Sprint/ United
240 North 3rd Street
Harrisburg, PA 17101

Re: Access Charge Investigation Per
Global Order of September 30, 1999,
Docket Nos. P-00991648 and P-00991649

Dear Ms. Armstrong and Mr. Hrip:

The Global Order of September 30, 1999, ordered an investigation into access charges beginning on January 2, 2001, and that following said investigation a reduction of the carrier charge pool take place by the end of the year 2001.

Due to the more pressing matter of Verizon's Section 271 application filing at the beginning of this year, this investigation was postponed. Also, in light of the recent ruling of the FCC, *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers (CC Docket No. 00-256)*; *Federal-State Joint Board on Universal Service (CC Docket No. 96-45)*; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation (CC Docket No. 98-77)*; and *Prescribing the Authorized rate of return for interstate services of local exchange carriers (CC Docket No. 98-166)*, the Commission wishes to give the RTCC and Sprint/United time to review the FCC's Order, which may have an impact on the RTCC's and Sprint/United's intrastate access charges in Pennsylvania, before offering the Commission a proposal regarding the issue of reducing access charges.

Therefore, the Commission hereby directs, that the RTCC and Sprint/United have until January 15, 2002 to submit a proposal with the Commission outlining proposed changes in access charges and a reduction in the carrier charge pool, and outlining a time frame for changes to take effect. If the RTCC and Sprint/United fail to file a proposal, a formal investigation into the reduction of access charges shall commence in January, 2002.

Sincerely,

James J. McNulty

Post-It* Fax Note	7671	Date	4/10	# of pages	2
To	Suzan Paris	From	Wathy Bonette		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

2001.0293.00

February 1, 2002

To All Parties

Re: Access Charge Reform Investigation
Docket Nos. P-00991648 and P-00991649;
M-00021596

Dear Ms. Armstrong and Mr. Hrip:

We are in receipt of your letters dated January 15, 2002, respectively. In your letters you are requesting a 120-day extension of the deadline of January 15, 2002, within which time period to deliver to the Commission a proposal regarding modifications to the carrier charge pool as well as your telephone companies' intraLATA toll rates, access charges and residential local service rates. Upon receipt of your letters, Commission Staff spoke with you on the telephone and it was agreed that a ninety-day extension would suffice.

Taking into consideration the magnitude of work that has to be done before such a proposal can be forthcoming, a ninety-day extension shall be granted with the provision that you submit monthly reports to the Commission regarding your progress. **Said reports shall be due on February 15 and March 15, 2002.**

Therefore, the Commission hereby directs, that the RTCC and Sprint/United have until **April 15, 2002** to submit a proposal to the Commission outlining proposed changes in access charges and a reduction in the carrier charge pool, and outlining a time frame for changes to take effect.

Sincerely,

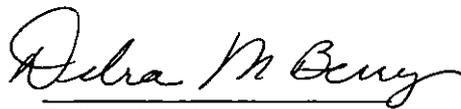
James J. McNulty
Secretary

cc: Elizabeth H. Barnes, Assistant Counsel
Gary Wagner, Manager Telecommunications, Bureau of Fixed Utility Services

VERIFICATION

I, Debra M. Berry, state that I am Director-Regulatory for Respondent Verizon North Inc. in Pennsylvania, and that as such I am authorized to make this verification on its behalf. I have reviewed the Answer and Motion to Dismiss of Verizon North Inc. to the Complaint of AT&T Communications of Pennsylvania, Inc., and verify that the facts contained therein are true to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 4/10/2002


Debra M. Berry

ORIGINAL  AT&T

Robert C. Barber
Senior Attorney

Room 3D
3033 Chain Bridge Road
Oakton, VA 22185
703 691-6061
FAX 703 691-6093
EMAIL rbarber@att.com

April 22, 2002

RECEIVED

BY OVERNIGHT MAIL

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

APR 22 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

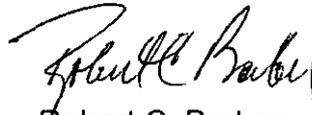
Dear Mr. McNulty:

Please find enclosed for filing in the above-referenced docket the original and three (3) copies of AT&T Communications of Pennsylvania, Inc.'s Answer in Opposition to Verizon North, Inc.'s Motion to Dismiss.

Please do not hesitate to contact me with any questions regarding this filing.

DOCUMENT
FOLDER

Very truly yours,



Robert C. Barber

Enclosures

cc: (w/ encl)
Service List

ORIGINAL

CERTIFICATE OF SERVICE

Docket No. C-20027195

The undersigned hereby certifies that a true and correct copy of the foregoing AT&T Communications of Pennsylvania, Inc.'s Answer in Opposition to Verizon North, Inc.'s Motion to Dismiss was caused to be served on this date by overnight mail on the counsel identified below in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Suzan D. Paiva, Esq.
Verizon North, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103


Robert C. Barber

Dated : April 22, 2002

RECEIVED
APR 22 2002
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.,

Complainant,

v.

Docket No. C-20027195

VERIZON NORTH, INC.,

Respondent

AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.'s
ANSWER IN OPPOSITION TO
VERIZON NORTH, INC.'S MOTION TO DISMISS

RECEIVED

APR 22 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Introduction

AT&T's complaint against Verizon North's intrastate access rates is based on a simple and incontrovertible fact – those rates exceed by a wide margin the already above-cost rates that its sister company, Verizon Pennsylvania Inc., charges to provide the very same service. Not even Verizon North contests this point. That does not mean, however, that Verizon is willing to resolve that problem any time soon. Instead, and in an obvious effort to avoid Commission action concerning this gross and unjustified disparity and its unfair competitive impact, VZ North instead has moved to dismiss AT&T's complaint on the grounds that (1) that the very act of filing the complaint somehow violates the Commission's Global Order, and (2) that the complaint "jumps the gun" on a deadline allegedly set in the Bell Atlantic/GTE merger order for considering Verizon North access rates.

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APR 24 2002

Neither of Verizon's arguments has any merit. As an initial matter, neither of the orders upon which Verizon relies expressly or implicitly preclude AT&T (or any other party) from bringing a complaint against Verizon challenging its access rates as unjust and reasonable. Indeed, such a prohibition plainly would be contrary to AT&T's statutory right to bring a complaint against Verizon under the Public Utility Code.

Even more ludicrous is Verizon's claim that the Commission specifically foreclosed any action regarding Verizon North's access rates until December 21, 2002. This contention is based on a blatant misreading of the Bell Atlantic/GTE merger order.¹ Indeed, only in Verizon's world could a Commission decision to incorporate consideration of Verizon North's access rates to a proceeding that was supposed to commence in January 2001 be construed instead as actually delaying any action concerning those rates until nearly January 2003.

In short, there is no valid reason for dismissing AT&T's complaint. To the contrary, there is every reason for acting expeditiously to grant the relief requested in that complaint, and immediately reduce Verizon North's access rates to the level currently charged by Verizon Pennsylvania. Standing alone, the substantial difference between Verizon North's access rates and those charged by Verizon Pennsylvania – rates that already are set at many multiples

¹ Verizon's recent history of misreading and then disobeying Commission directives that do not comport with its corporate business plans indicates that this current misinterpretation is not accidental. See, e.g., Recommended Decision, Docket No. R-00005261, March 26, 2001, at 2 (Verizon "failed to comply with explicit directions from this Commission in three Orders" issued prior to submission of testimony in the case); Recommended Decision, Docket No. M-0001353, Jan. 26, 2001, at 22 ("Verizon did not comply with the Commission's order's" concerning conduct of structural separation proceeding).

of the cost of providing switched access service – warrants swift remedial action by the Commission. The case for immediate action has been made even more compelling, however, by Verizon's entry into the state's long distance market, which has only exacerbated the artificial and unfair competitive advantage that its bloated access charges give it over its toll competitors.

Verizon's motion is an unfounded procedural ploy designed to maintain this advantage and to delay Commission action to eliminate it. Accordingly, the Commission should deny Verizon's motion and act expeditiously to resolve AT&T's formal complaint.

Argument

The central point of AT&T's complaint is that Verizon North's access rates are set at levels that greatly exceed the rates for the very same services charged in Pennsylvania by its corporate sister, Verizon Pennsylvania, Inc. As AT&T described in that complaint, Verizon North's charges for simply originating a toll call are approximately 6 cents a minute, over three times the rate for originating access charged by Verizon PA. Even this disparity pales against the situation in which Verizon North completes both ends of the intrastate toll call. In that nightmare scenario, Verizon North assess interexchange carriers a charge of approximately 12.5 cents a minute -- nearly 9 cents per minute higher than the already substantially above-cost rate assessed by Verizon PA.

In its motion to dismiss, Verizon North, while quibbling at the precise level of the rate disparity (while offering no calculation of its own) does not -- and indeed cannot -- contest the basic premise of AT&T's complaint. Indeed, Verizon

North admits that its rates are “generally higher” than VZ-PA’s.² In Verizon’s view, however, that disparity – and the competitive advantages it bestows on Verizon’s toll services – is something to preserve, not correct.³

Neither of Verizon’s arguments for dismissing AT&T’s complaint has any merit. First, Verizon’s contention that AT&T’s complaint against violates the Global Order fails on several grounds. As an initial matter, this argument finds no basis in the language of that decision itself. All that the Commission indicated in that Order was its intention to commence an investigation “to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced” – a solution that, according to that same order, is already over three months overdue.⁴ There is nothing in that decision, however, that either expressly or implicitly prohibits customers such as AT&T from bringing a formal complaint against individual ILECs to obtain relief from the high overall level of their access charges they are being forced to pay.

Indeed, such a prohibition would violate AT&T’s rights under the Public Utility Code. Section 701 of the Code explicitly provides that “any person [or]

² Verizon North, Inc.’s Answer and Motion to Dismiss (“VZ-North Motion”) at 4.

³ Engaging in its usual scare tactics, Verizon misreads AT&T’s complaint as demanding immediate reductions in Verizon North’s access rates to cost-based levels. See Verizon Motion at 4. As is very clearly expressed in that Complaint, the immediate relief that AT&T seeks is the reduction in Verizon North’s overall access rate to the level currently charged by Verizon Pennsylvania – a rate that is above Verizon’s cost of providing carrier access service. AT&T Complaint at 8. Once that step has been accomplished, the Commission will then be in a position to move forward and address the remaining bloat in Verizon’s rates.

⁴ *Opinion and Order*, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999, at 60 (“Global Order”). As indicated in the Order, reductions in the CC pool were to have been implemented no later than December 31, 2001.

corporation may complain in writing, setting forth any act or thing done or omitted to be done by any public utility" in violation of law or Commission order or regulation.⁵ That is precisely what AT&T had done here, filing a formal written complaint alleging that the rates it pays for Verizon North's access services are unjust and unreasonable, in violation of Section 1301 of the Code.⁶ Thus, even had the Commission attempted to preclude this complaint in the Global Order – and it did not – that attempt would run afoul of Section 701.

Verizon nevertheless argues that it was the Commission's intent to avoid piecemeal litigation of access issues, and particularly to avoid "singling out a particular ILEC's access rates."⁷ Even assuming the Commission had such an intent, however, the mechanism by which it was to have acted on it is already more than 15 months overdue – in fact, according to the Global Order, it actually was supposed to have been completed more than three months ago.⁸

Even more important, the idea that relief from Verizon's high access rates must await Commission action against the smallest ILECs is patently silly. There is no demonstrable link between the access rates charged by Verizon, whose two sister companies serve approximately 7 million access lines in Pennsylvania, and those charged by companies such as Yukon Waltz or Sugar Valley, which together barely break the 2000 line mark. If it is in fact "statewide" access relief

⁵ 66 Pa. C.S. §701.

⁶ See 66 Pa. C.S. §1301 et seq.. See also AT&T's Complaint, ¶13.

⁷ VZ-North Motion at 2. See also *id.* at 4.

⁸ Global Order at 60 ("At its conclusion, but no later than December 31, 2001, the pool will be reduced.").

that Verizon believes is imperative, the Commission can hardly do worse than begin with the entity with 90 percent of the Pennsylvania telephone market – that is, with Verizon.

This same Verizon illogic afflicts its second objection to AT&T's Motion to Dismiss. Specifically, Verizon interprets the Commission's decision to "roll in" issues concerning Verizon North's access rates into the investigation that was supposed to have commenced on January 2, 2001 as meaning that the Commission did not contemplate taking any action regarding Verizon's access rates until December 31, 2002. Thus, in Verizon's view, AT&T's complaint should be dismissed because it "jumps the gun."⁹

Verizon's reading of the Merger order makes absolutely no sense. Under Verizon's timeline, what the Commission meant when it directed that "the issue of access charge parity for Bell Atlantic-Pennsylvania, Inc. and GTE North, Inc. be incorporated into the Commission's statewide investigation pertaining to access charges"¹⁰ is that the latter investigation would commence as scheduled on January 2, 2001, **but without Verizon**. Rather, that investigation would apparently proceed for approximately two years in an effort to fashion what Verizon itself has described as a "statewide" solution to access issues,¹¹ with just the Commonwealth's smallest ILECs participating. Only after the Commission

⁹ VZ-North Motion at 2.

¹⁰ Opinion and Order, Docket Nos. A-310200F0002 et al., Nov. 4, 1999, at 46 ("Merger Order").

¹¹ See VZ-North Motion at 2.

had spent two years on this endeavor would Verizon then “roll” into the case with its proposals.

This is absurd on its face. More to the point, it has no basis in either the Merger Order or the Global Order. In the former, the Commission explicitly cited the contemplated start date of the generic access investigation –that is, January 2001 – when it directed that the Verizon access parity issue be “‘rolled-in’ and made a part” of that case.¹² Nothing in the Merger Order altered that date. Moreover, the Global Order, which had been issued a little over a month before the Merger Order, established December 31, 2001 – not December 2002 – as the definitive end date for that same investigation.¹³ In other words, the timetable originally established by the Commission envisioned completing the generic investigation a full year before Verizon now argues it even would have been required to join it.

The Commission clearly did not intend such a result. To the contrary, it made it clear in the Global Order that the “sooner” access issues were addressed and resolved “the better it would be for the competitive environment in Pennsylvania.”¹⁴ Of course, “sooner” is not “better” for Verizon. As this motion itself makes clear, no matter what timetable the Commission established to

¹² Merger Order at 37.

¹³ Global Order at 60 (“At its conclusion, but no later than December 31, 2001, the pool will be reduced.”). Interestingly, the December 2002 date that Verizon contends is operative here is basically the same as the January 2, 2003 date that Verizon Pennsylvania – then Bell Atlantic – had proposed in the Global proceeding to commence the global investigation. The Commission rejected that proposal. *Id.*

¹⁴ *Id.*

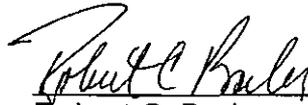
reduce access charges will be too fast for Verizon. The Commission should not succumb to this strategy of delay and obfuscation,¹⁵ however, but instead move forward to address these critical issues quickly through AT&T's complaint.

Accordingly, for the reasons set forth above, Verizon's Motion to Dismiss should be denied.

Respectfully submitted,

**AT&T COMMUNICATIONS
OF PENNSYLVANIA, INC.**

By its Attorneys,



Robert C. Barber
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Oakton, VA 22185
(703) 691-6061

Of Counsel:
Mark A. Keffer

Dated: April 22, 2002

¹⁵ Consistent with these tactics, Verizon – apropros of nothing – alleges that an AT&T website shows that AT&T is charging higher intraLATA toll rates in Verizon Pennsylvania territory (for example, in Philadelphia) than it is in Verizon North territory (for example, Erie), suggesting – at least to Verizon –that AT&T has not satisfied its flow-through commitments from the Global Order. VZ-North Motion at 6. Verizon is mistaken on all counts. First, the website from which Verizon claims to have obtained its information clearly shows that AT&T's rates for intraLATA toll track with the access charges AT&T must pay to Verizon. Thus, and not surprisingly, AT&T's rate for an intraLATA toll call from Erie is substantially higher – in fact, 5 cents per minute higher – than for a call from Philadelphia. This is a disparity that can be corrected for the benefit of Pennsylvania's consumers by reducing Verizon North's access charges. Second, and not that it is any of Verizon's business, AT&T has more than flowed-through the access reductions that resulted from the Global Order.



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BTL

June 6, 2002

BY OVERNIGHT MAIL

ORIGINAL

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Mr. McNulty:

Enclosed for filing in the above-referenced proceeding are the original and nine (9) copies of the Exceptions of AT&T Communications of Pennsylvania, Inc.

Copies of these Exceptions are being served on the Chief Administrative Law Judge, the Office of Special Assistants, and on all parties of record as indicated on the attached certificate of service. Please contact me if you have any questions regarding the enclosures.

Very truly yours,


Robert C. Barber

Enclosures

cc: (w/ encl)
The Honorable Robert A. Christianson
OSA (w/ diskette)
Service List

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JUN 6 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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FOLDER

CERTIFICATE OF SERVICE

Docket No. C-20027195

The undersigned hereby certifies that a true and correct copy of the foregoing Exceptions of AT&T Communications of Pennsylvania, Inc. was caused to be served on this date by overnight mail on the counsel identified below in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

Suzan D. Paiva, Esq.
Verizon North, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103

Shaun A. Sparks, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
Commonwealth of Pennsylvania
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-5048


Robert C. Barber

Dated : June 6, 2002

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.,

Complainant,

v.

VERIZON NORTH, INC.,

Respondent

JUN 8 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-20027195

**EXCEPTIONS OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.**

Introduction

AT&T brought this complaint to obtain long-overdue relief from Verizon North Inc.'s unreasonable and unlawful carrier access charges. As AT&T demonstrated in the complaint, the rates that AT&T must pay Verizon North for carrier access service exceed by a wide margin the already above-cost rates that its sister company, Verizon Pennsylvania Inc., charges to provide the very same service. Verizon North's charges for simply originating a toll call are approximately 6 cents a minute, over three times the rate for originating access charged by Verizon PA. Even this disparity pales against the situation in which Verizon North completes both ends of the intrastate toll call. In that nightmare scenario, Verizon North assess interexchange carriers a charge of approximately 12.5 cents a minute -- nearly 9 cents per minute higher than the already substantially above-cost rate assessed by Verizon PA.

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Verizon did not seriously dispute these facts. To the contrary, while quibbling at the precise level of the rate disparity (yet offering no calculation of its own), Verizon North admitted that its rates are “generally higher” than VZ-PA’s.¹ In Verizon’s view, however, that difference – and the competitive advantage its bestows on Verizon’s toll services – is something to preserve, not correct.² To that end, Verizon sought to forestall Commission action by moving to dismiss AT&T’s complaint on the grounds that (1) that the very act of filing the complaint somehow violates the Commission’s Global Order, and (2) that the complaint “jumps the gun” on a deadline allegedly set in the Bell Atlantic/GTE merger order for considering Verizon North access rates.

In resolving this motion, Administrative Law Judge Christianson, correctly, did not adopt either of Verizon’s specious arguments. To the contrary, he explicitly determined that “AT&T is correct in asserting its right” to pursue this complaint.³ Nevertheless, the ALJ ordered the complaint dismissed, without prejudice, in favor of a “broader investigation” of carrier access charge reform that he understood to have been commenced by the Commission.⁴

¹ Verizon North, Inc.’s Answer and Motion to Dismiss (“VZ-North Motion”) at 4.

² Engaging in its usual scare tactics, Verizon misreads AT&T’s complaint as demanding immediate reductions in Verizon North’s access rates to cost-based levels. See VZ-North Motion at 4. As is very clearly expressed in that Complaint, the immediate relief that AT&T seeks is the reduction in Verizon North’s overall access rate to the level currently charged by Verizon Pennsylvania – a rate that is above Verizon’s cost of providing carrier access service. AT&T Complaint at 8. Once that step has been accomplished, the Commission will then be in a position to move forward and address the remaining bloat in Verizon’s rates.

³ Recommended Decision, Docket No. C-20027195, May 17, 2002, at 2.

⁴ *Id.*

This decision is plainly erroneous and almost certainly would not survive appellate review. As the ALJ himself recognized, AT&T has a fundamental right under the Public Utility Code (as well as the Administrative Agency Law) to have its complaint against Verizon North's unreasonable carrier access charges heard by the Commission. Moreover, and insofar as the ALJ believed that AT&T would have an opportunity to pursue these claims in the context of some other, "broader investigation," his decision is premised on a mistake – there is no other "investigation." At best, there is nothing more than a docket number associated with an inchoate proceeding that is without a schedule, presiding officer, or even a settled list of parties.

In short, there is nothing in the law or the facts that justifies the dismissal of AT&T's Complaint and the resulting failure to address the serious issues it raises. To the contrary, and to paraphrase the ALJ, "the cleanest and clearest way to deal" with the discrete access charge issue addressed in that complaint is for the Commission to reinstate it, and to then act expeditiously to grant the requested relief by immediately reducing Verizon North's access rates to the level currently charged by Verizon Pennsylvania.⁵ Alternatively, and only to the extent that the Commission prefers to address Verizon North's access rate issues in the context of a "broader investigation," it should immediately commence such an investigation pursuant to 66 Pa. C.S. §1309, establish a

⁵ As AT&T noted in its Complaint, the case for immediate Commission action has been made even more compelling, however, by Verizon's entry into the state's long distance market, which has only exacerbated the artificial and unfair competitive advantage that its bloated access charges give it over its toll competitors.

definitive timetable for resolution of such a proceeding, consolidate AT&T's complaint with that investigation, and direct both Verizon Pennsylvania Inc. and Verizon North Inc. to participate as parties to that investigation.

Exception 1 The Administrative Law Judge Erred As A Matter Of Law In Dismissing AT&T's Complaint.

The Administrative Law Judge properly determined that AT&T had a right under the Public Utility Code to pursue relief from Verizon North's unreasonable and unlawful rates for carrier access services by way of a formal complaint proceeding.⁶ However, apparently operating under the belief that the Commission has initiated a formal investigation that will address access issues generically, the ALJ found that it would be "efficient and prudent" to dismiss AT&T's complaint, without prejudice, in favor of that "broader investigation."⁷ This decision is in error and should be reversed.

As a predicate matter, the ALJ's decision to dismiss the complaint, ostensibly as a result of Verizon's motion to dismiss, does not satisfy the high standard required for such a draconian action. As the Commission, applying standards delineated by the Pennsylvania Supreme Court,⁸ consistently has

⁶ Recommended Decision, Docket No. C-20027195, May 17, 2002, at 2.

⁷ *Id.*

⁸ Preliminary motions to dismiss addressed to the legal sufficiency of a complaint are analogous to the preliminary objections (in the nature of a demurrer) authorized by Rule 1028(a) of the Pennsylvania Rules of Procedure. *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). The Pennsylvania Supreme Court has held that such preliminary objections will be granted only where dismissal is "clearly warranted and free from doubt." *Interstate Travelers Services, Inc. v. Pa. Dept. of Environmental Resources*, 486 Pa. 536, 540, 406 A.2d 1020, 1022 (1979).

held, the grant of a preliminary motion pursuant to 52 Pa. Code §5.101 is only appropriate "in unusual circumstances, where dismissal is clearly warranted and free from doubt."⁹

The ALJ's decision is far from being "clearly warranted and free from doubt." To the contrary, his dismissal of the complaint directly violates AT&T's rights under the Public Utility Code. Section 701 of the Code explicitly provides that "any person [or] corporation may complain in writing, setting forth any act or thing done or omitted to be done by any public utility" in violation of law or Commission order or regulation.¹⁰ That is precisely what AT&T had done here, filing a formal written complaint alleging that the rates it pays for Verizon North's access services are unjust and unreasonable, in violation of Section 1301 of the Code.¹¹

The ALJ's decision fares no better when scrutinized under the requirements of the Administrative Agency Law. His analysis completely overlooks the fact that, in addition to 66 Pa. C.S. §703, the Commission must comply with the Administrative Agency Law ("AAL"). Section 504 of the AAL specifically provides that no adjudication by an agency of the Commonwealth is

⁹ *Reid v. GTE North and Bell Tel. Co. of Pa.*, 1993 WL 855847 at *2 (Interim Order of ALJ Corbett denying motion to dismiss). See also *Marinoff*, 75 Pa. PUC at 491 ("Since the sustaining of a demurrer results in the dismissal of the complaint, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted.") (citing *County of Allegheny v. Com. of Pa.*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)).

¹⁰ 66 Pa. C.S. §701.

¹¹ See 66 Pa. C.S. §1301 et seq.. See also AT&T's Complaint, ¶3.

valid unless the party has been afforded "an opportunity to be heard."¹² Thus, under the AAL an administrative agency, including the Commission, must hold an oral hearing to resolve any contested, material facts. The only circumstances under which Pennsylvania courts have found that the "right to be heard" does not require a hearing is "where no legally relevant factual issue is in dispute."¹³

If anything, applying this legal standard to AT&T's complaint arguably would support a grant of summary judgment in AT&T's favor, since there are no legally relevant factual issues in dispute as to the level of Verizon North's access rates or the gross disparity between those rates and Verizon Pennsylvania's carrier access charges. However, the ALJ's adoption of the extreme sanction of dismissal as against AT&T plainly does not satisfy the requirements of the AAL.

Thus, even if the ALJ arguably was correct in his assumption regarding the commencement of a separate, "broader investigation," his decision to dismiss AT&T's complaint flies in the face of both the Public Utility Code and the Administrative Agency Law. His decision should be reversed on that ground alone.

This defect is exacerbated by the mistaken factual premise on which the ALJ based his decision. Citing to the fact that a docket number has apparently been assigned to what the ALJ described as a generic access investigation, the

¹² 2 Pa. C.S. §504.

¹³ *Snyder v. Dep't of Env. Resources*, 138 Pa. Commw. 534, 538, 588 A.2d 1001, 1003 (Pa. Cmwlth. 1991) (citation omitted). See also *King v. Commonwealth State Employee's Retirement Board*, 129 Pa. Cmwlth. 444, 456, 566 A.2d 323, 329 n. 5 (Pa. Cmwlth 1989) (no requirement for a hearing "where not a single legally relevant factual issue is in dispute.")

ALJ literally jumps to the conclusion that the Commission has in fact commenced such a proceeding. If only that were the case. As near as AT&T – a party that has an avid interest in such an investigation – can determine, this proceeding is little more than a docket number. No formal proceeding has been commenced, no schedule has been established, no presiding officer has been designated – indeed, it is not clear that either Verizon North or Verizon Pennsylvania would even be parties.¹⁴ So far, this “investigation” is only an empty shell.

It is AT&T’s understanding that, in lieu of a formal investigation, the Commission may desire that interested companies discuss access issues in the context of a collaborative. Even that desire, however, has yet to manifest itself in the form of a schedule, much less an agenda that explicitly includes resolution of the Verizon North access problem. Just as important, such an amorphous “collaborative” is no substitute for the formal adjudicatory proceeding AT&T invoked – and has a right to pursue – through the filing of its formal complaint.

It is important to note that, although the ALJ recommended the dismissal of AT&T’s complaint, he did not adopt either of Verizon’s two arguments for such a dismissal as the basis for his decision. As AT&T described in its answer to Verizon’s motion, however, Verizon – like the ALJ -- utterly failed to establish that dismissal of AT&T’s complaint is “clearly warranted and free from doubt.”

First, Verizon’s contention that AT&T’s complaint violates the Global Order fails on several grounds. Certainly this argument finds no basis in the language of that Order itself. All that the Commission indicated in the Global Order was its

¹⁴ As discussed below, it is Verizon’s position that it is not even required to participate in any Commission access proceeding before the end of 2002.

intention to commence an investigation “to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced” – a solution that, according to that same order, is already more than five months overdue.¹⁵

There is nothing in that decision, however, that either expressly or implicitly prohibits customers such as AT&T from bringing a formal complaint against individual ILECs to obtain relief from the high overall level of their access charges they are being forced to pay. Indeed, as described above, such a prohibition would violate AT&T’s right to pursue a complaint under the Public Utility Code. Thus, even had the Commission attempted to preclude this complaint in the Global Order – and it did not – that attempt would run afoul of Section 701.

Verizon nevertheless argues that it was the Commission’s intent to avoid piecemeal litigation of access issues, and particularly to avoid “singling out a particular ILEC’s access rates.”¹⁶ Even assuming the Commission had such an intent, however, the mechanism by which it was to have acted on it is now already nearly eighteen months late in getting started – and, as noted above, more than five months late in getting finished.¹⁷

¹⁵ Opinion and Order, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999, at 60 (“Global Order”). As indicated in the Order, reductions in the CC pool were to have been implemented no later than December 31, 2001.

¹⁶ VZ-North Motion at 2. *See also id.* at 4.

¹⁷ Global Order at 60 (“At its conclusion, but no later than December 31, 2001, the pool will be reduced.”).

Even more important, the idea that relief from Verizon's high access rates must await Commission action against the smallest ILECs is patently silly. There is no demonstrable link between the access rates charged by Verizon, whose two sister companies serve approximately 7 million access lines in Pennsylvania, and those charged by companies such as Yukon Waltz or Sugar Valley, which together barely break the 2000 line mark. If it is in fact "statewide" access relief that Verizon believes is imperative, the Commission hardly has any choice but to begin with the entity that controls at least 90 percent of the Pennsylvania telephone market – that is, with Verizon.

This same Verizon illogic afflicts Verizon's second argument in support of its Motion to Dismiss. Specifically, Verizon interprets the Commission's decision to "roll in" issues concerning Verizon North's access rates into the investigation that was supposed to have commenced on January 2, 2001 as meaning that the Commission did not contemplate taking any action regarding Verizon's access rates until December 31, 2002. Thus, in Verizon's view, AT&T's complaint should be dismissed because it "jumps the gun."¹⁸

Verizon's reading of the Merger Order is nonsensical. Under Verizon's timeline, what the Commission meant when it directed that "the issue of access charge parity for Bell Atlantic-Pennsylvania, Inc. and GTE North, Inc. be incorporated into the Commission's statewide investigation pertaining to access charges"¹⁹ is that the latter investigation would commence as scheduled on

¹⁸ VZ-North Motion at 2.

¹⁹ Opinion and Order, Docket Nos. A-310200F0002 et al., Nov. 4, 1999, at 46 ("Merger Order").

January 2, 2001, **but without Verizon**. Rather, that investigation would apparently proceed for approximately two years in an effort to fashion what Verizon itself has described as a “statewide” solution to access issues,²⁰ with just the Commonwealth's smallest ILECs participating. Only after the Commission had spent two years on this endeavor would Verizon then “roll” into the case with its proposals.

This is absurd on its face. More to the point, it has no basis in either the Merger Order or the Global Order. In the former, the Commission explicitly cited the contemplated start date of the generic access investigation –that is, January 2001 – when it directed that the Verizon access parity issue be “rolled-in’ and made a part” of that case.²¹ Nothing in the Merger Order altered that date. Moreover, the Global Order, which had been issued a little over a month before the Merger Order, established December 31, 2001 – not December 2002 – as the definitive end date for that same investigation.²² In other words, the timetable originally established by the Commission envisioned completing the generic investigation a full year before Verizon now argues it even would have been required to join it.

²⁰ See VZ-North Motion at 2.

²¹ Merger Order at 37.

²² Global Order at 60 (“At its conclusion, but no later than December 31, 2001, the pool will be reduced.”). Interestingly, the December 2002 date that Verizon contends is operative here is basically the same as the January 2, 2003 date that Verizon Pennsylvania – then Bell Atlantic – had proposed in the Global proceeding to commence the global investigation. The Commission rejected that proposal. *Id.*

The Commission clearly did not intend such a result. To the contrary, it made it clear in the Global Order that the “sooner” access issues were addressed and resolved “the better it would be for the competitive environment in Pennsylvania.”²³ Of course, “sooner” is not “better” for Verizon. As its motion itself makes clear, no matter what timetable the Commission established to reduce access charges will be too fast for Verizon. The Commission should not succumb to this strategy of delay and obfuscation,²⁴ however, but instead move forward to address these critical issues quickly through AT&T’s complaint.

Accordingly, for the reasons set forth above, the ALJ’s Initial decision should be reversed, and AT&T’s Complaint should immediately be reinstated. To the extent that the Commission does have a preference for resolving the issue of Verizon North’s access rates in the context of a generic proceeding, however, it should not simply permit that matter to wallow. Rather, the Commission should immediately commence the investigation pursuant to 66 Pa. C.S. §1309, establish a reasonable timetable for the conduct of that proceeding and the issuance of a recommended decision, consolidate AT&T’s complaint into that

²³ *Id.*

²⁴ Consistent with these tactics, Verizon – apropos of nothing – alleged that an AT&T website shows that AT&T is charging higher intraLATA toll rates in Verizon Pennsylvania territory (for example, in Philadelphia) than it is in Verizon North territory (for example, Erie), suggesting – at least to Verizon – that AT&T has not satisfied its flow-through commitments from the Global Order. VZ-North Motion at 6. Verizon is mistaken on all counts. First, the website from which Verizon claims to have obtained its information clearly shows that AT&T’s rates for intraLATA toll track with the access charges AT&T must pay to Verizon. Thus, and not surprisingly, AT&T’s rate for an intraLATA toll call from Erie is substantially higher – in fact, 5 cents per minute higher – than for a call from Philadelphia. This is a disparity that can be corrected for the benefit of Pennsylvania’s consumers by reducing Verizon North’s access charges.

investigation, and explicitly direct Verizon North Inc. and Verizon Pennsylvania Inc. to participate in that proceeding.

Respectfully submitted,

**AT&T COMMUNICATIONS
OF PENNSYLVANIA, INC.**

By its Attorneys,



Robert C. Barber
3033 Chain Bridge Road
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(703) 691-6061

Of Counsel:
Mark A. Keffer

Dated: June 6, 2002

Second, and not that it is relevant to this complaint, AT&T has more than flowed-through the access reductions that resulted from the Global Order.

Suzan DeBusk Paiva
Regulatory Counsel
Law Department

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June 17, 2002

Via UPS Overnight Delivery
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RECEIVED
JUN 17 2002
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Complaint of AT&T Communications of PA, Inc. vs.
Verizon North Inc. Docket No. C-20027195

Dear Secretary McNulty:

Enclosed for filing with the Commission, please find the original and nine copies of Verizon North Inc.'s Reply To Exceptions.

Very truly yours,

Suzan DeBusk Paiva

SDP/dkf
Enc.

cc: Certificate of Service

93

CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served a true copy of Verizon North Inc's Reply To Exceptions, upon the parties listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

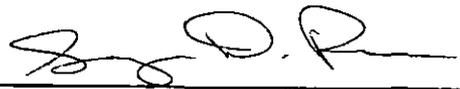
Dated at Philadelphia, Pennsylvania, this 17th day of June 2002.

Via UPS Overnight Delivery

Robert C. Barber, Esquire
AT&T Communications of PA, Inc.
3033 Chain Bridge Road
Oakton, VA 22185

Philip F. McClelland
Shaun A. Sparks
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.,

Complainant,

v.

VERIZON NORTH INC.

Respondent.

Docket No. C-20027195

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VERIZON NORTH INC.'S REPLY TO EXCEPTIONS

Introduction

On March 20, 2002, AT&T Communications of Pennsylvania, Inc.

("AT&T") filed a Formal Complaint demanding that the access charges of Verizon North Inc. ("Verizon North") immediately be reduced to the level of Verizon Pennsylvania Inc. ("Verizon PA"). Verizon North moved to dismiss, and on May 17, 2002 Chief ALJ Christianson issued an Initial Decision ("ID") dismissing the complaint in favor of the Commission's broader *Access Charge Reform Investigation*, docketed at M-00021596. The dismissal is "of course, without prejudice to going forward with the complaint at a more appropriate time" if AT&T's issues are not resolved through the statewide access investigation. (ID at 2).

AT&T's Exceptions to the ID make a token argument in favor of going forward with AT&T's separate complaint against Verizon North, but it is clear that AT&T's real disagreement is *not* with the concept of addressing Verizon

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North's access rates in connection with the statewide investigation of all ILEC access rates. Rather, AT&T wants to turn the Commission's effort to resolve the very complex policy issues surrounding access rates into an adversarial proceeding in which AT&T can repeat its mantra that access charges should be reduced to cost – a concept that the Commission has rejected many times before.

AT&T criticizes the Commission, calling its investigation an “inchoate proceeding” that has been permitted to “wallow” and should have been completed by now. (AT&T Exceptions, p. 3, 8, 11). It was AT&T, however, that sat by and did nothing for more than a year. AT&T should not now be heard to claim that it is “urgent” that the Commission summarily reduce Verizon North's access rates without waiting for the statewide proceeding to be resolved. AT&T filed this complaint more than a year after it contends the Commission should have commenced a statewide investigation to address the issue, and nearly two years after the closing of the Verizon merger. There is simply no reason why AT&T cannot wait for the Commission to resolve its statewide access investigation under the procedure and schedule that the Commission sees fit to pursue. If at the end AT&T is not satisfied, this dismissal is “without prejudice” to AT&T's ability to resurrect its complaint against Verizon North at that time.

AT&T simply ignores the important and complex policy issues that the Commission has recognized go hand-in-glove with true statewide access charge reform, and disregards the Commission's stated intent to resolve this issue in a

statewide investigation. ALJ Christianson therefore properly recommended dismissing AT&T's complaint without prejudice.

Reply to Exception 1

Both the Commission's *Global Order*¹ and its *Merger Order*² made very clear that the Commission intended to address access charges in a statewide investigation, rather than considering individual complaints like this one singling out a particular ILEC's access rates. Indeed, in the *Merger Order* the Commission rejected the proposal for a separate proceeding to address access charges for the Verizon companies and specifically stated that it wanted those issues "rolled-in" to the statewide investigation.³ AT&T's complaint attempts to circumvent the Commission's clearly stated intent, and ALJ Christianson therefore correctly recommended dismissal without prejudice in favor of the ongoing statewide proceeding.

The Commission has recognized that the issue of access charges cannot be considered without also addressing issues of affordable basic local service, local

¹ *Joint Petition of Nextlink, et. al.*, Docket No. P-00991648-1649 (Opinion and Order entered September 30, 1999), *aff'd*, *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Comm'n*, 763 A.2d 440 (Pa. Commw. Ct., Oct. 25, 2000) (en banc) ("*Global Order*") at 278, ordering paragraph 4 (Commission will "further refine" solutions to access rate structure in a statewide investigation involving all ILECs).

² *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket No. A-310200F0002, etc. (Opinion and Order entered November 4, 1999) ("*Merger Order*") at 36 (setting December 31, 2002 as the date for Verizon North to make a proposal to develop access charge parity based on consolidated cost studies with Verizon PA, and stating its intent to "roll-in" that proceeding with the ongoing statewide access investigation, rather than considering the Verizon issues in isolation).

³ *Id.*

service rate levels and local competition. It acknowledges as a policy matter that it is not simply a question of slashing access charges, as AT&T would have it, but rather “implicit subsidies” must be replaced with “‘explicit and sufficient’ support mechanisms to attain the goal of universal service in a competitive environment.”⁴ The Commission is certainly aware that there is much more at stake than AT&T’s own financial interest in reducing the rates it pays to ILECs.⁵ The Commission explained in the *Global Order* how regulators adopted a “public policy” to keep “basic local service rates lower than might otherwise be the case in high cost areas.”⁶ Contributions from services that are priced above their costs support this “public policy.” These are not issues that can be sorted out for Verizon North alone outside of the statewide proceeding. It is not necessarily the case, moreover – as AT&T presumes – that the Commission will decide that the best course is to immediately reduce access charges to cost. In fact, the Commission has previously rejected that very proposal.

⁴ *Global Order* at 26-27.

⁵ Long distance carriers like AT&T should not profit unfairly from access reductions. The Commission must ensure that consumers benefit. For example, AT&T claims that it charges 5 cents a minute more to IntraLATA toll customers in Erie (Verizon North territory) than to such customers in Philadelphia (Verizon PA territory) – reflective of the higher access rates it pays in Verizon North territory. (AT&T Exceptions at 11, note 24). It is very interesting, however, that in April, 2002, AT&T’s website indicated quite the opposite, quoting 12 cents a minute for Erie (without a special package), but 13 cents a minute for Philadelphia. <http://www.shop.att.com>. This pricing certainly raises a question of whether the Philadelphia customers have benefited from Verizon PA’s lower access rates. Verizon North pointed this fact out in its Motion to Dismiss, and the website has now been changed, showing 7 cents a minute for Philadelphia.

⁶ *Global Order* at 11.

AT&T's sudden claim that Verizon North's access charges must be reduced "urgently" does not withstand scrutiny either, especially since AT&T waited over a year from the January 1, 2001 deadline by which it contends the statewide investigation should have commenced before asking the Commission to do anything. AT&T's belated rhetoric attacking the pace and procedure of the statewide investigation does not justify its attempt to circumvent the Commission's intent and single out Verizon North in a complaint. AT&T should have raised these issues in the generic docket the Commission has established for this purpose.

Despite AT&T's feigned outrage, it is no surprise to the Commission and no cause for urgency that Verizon North's access charges are generally higher than Verizon PA's. Market pressures and Commission orders have driven Verizon PA's rates, on average, below those of all the smaller ILECs, while Verizon North's rates have remained in line with those other ILECs.⁷ The Commission was well aware of this fact when it approved the merger over two years ago – and indeed AT&T made extensive arguments about access charges in the merger proceeding. The Commission in its *Merger Order* set out the way it wanted to respond to the issue of parity between the Verizon companies, which is to have Verizon North and Verizon PA file a proposal based on consolidated cost studies

⁷ Verizon North cannot, however, verify the accuracy of AT&T's numbers for its effective access rates from Verizon North and Verizon PA. Verizon North explained in its Answer that AT&T's factor for non-conversation times overstates the effective rate.

30 months after merger closing, or by December 31, 2002, and to have the issue “rolled-in” to the statewide proceeding.

The Commission has already heard and rejected AT&T’s complaints about the impact of access charges on toll competition. Verizon North’s access charges have not halted toll competition. In fact, since the advent of IntraLATA pre-subscription, competitors’ share of the toll market in Verizon North’s territory has grown from about 20% to over 75%. Verizon North’s toll revenues have fallen to slightly more than a tenth of what they were before pre-subscription. The Commission, therefore, less than five months ago soundly rejected AT&T’s arguments about competition in the IntraLATA market:

We agree with the PTA that there is no evidence that [IXCs] are unable to compete today with the ILECs in the IntraLATA toll market. Further, we take administrative notice of the fact that the toll market is subject to increasingly intense price competition as many IXCs are setting their rates on a national level using flat rates that have no relationship with the access rates of any specific ILEC. Finally, we know of no evidence to refute AT&T’s own witness that predatory pricing is extremely unlikely to occur; and, even if predatory pricing does occur, the federal antitrust laws are already available to address this type of conduct. Frankly, we are wary of taking any regulatory action that may discourage the aggressive pricing of toll services by any and all competitors, including ILECs, in that market...⁸

Although AT&T contends that Verizon’s entry into the long distance market -- which occurred nearly 6 months before AT&T filed its complaint -- somehow adds urgency to this issue, that claim does not survive scrutiny either.

⁸ *Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers*, No. M-00960799 (Opinion and Order entered January 29, 2002) at 14.

The Commission was well aware when it issued the *Global Order* and the *Merger Order* that Verizon intended to file for authority to offer long distance service in Pennsylvania, and it set its procedure for considering access reform with that fact in mind. The entry of a separate Verizon affiliate into the undoubtedly competitive InterLATA long distance market does not alter the access charge analysis. Verizon Long Distance pays the same access charges as AT&T. Further, before the Verizon merger an affiliate of then-GTE similarly offered InterLATA service in GTE's territory and GTE's access charges were not an impediment to competition.

Given these facts, there is no reason to alter the schedule and procedure the Commission established in its *Global Order* and *Merger Order* to address Verizon North's access charges.

Conclusion

For the foregoing reasons, the Commission should accept ALJ Christianson's Initial Decision and should dismiss AT&T's complaint without prejudice.

DATED: June 17, 2002

Respectfully submitted,



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June 17, 2002

DOCUMENT

ORIGINAL

James J. McNulty, 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.
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find for filing an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

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

Sincerely,

Shaun A. Sparks
Assistant Consumer Advocate

Enclosures
cc: All parties of record

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKETED
JUN 19 2002

REPLY EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

DOCUMENT

I. INTRODUCTION

On March 20, 2002, AT&T Communications of PA, Inc. ("AT&T") filed the above captioned complaint, which concerns intrastate carrier access rates, against Verizon North Incorporated ("Verizon North"). On April 10, 2002, the Office of Consumer Advocate ("OCA") intervened in that proceeding. On April 11, 2002, Verizon North moved to dismiss the complaint of AT&T, in part, on the basis that the Complaint ignored the schedule established by the Commission to examine access charges on a statewide basis. On May 17, 2002, the Office of the Secretary issued the Initial Decision of Chief Administrative Law Judge Robert A. Christianson ("ALJ"). That Initial Decision dismissed AT&T's complaint, without prejudice, on the basis that the Commission had already commenced a related collaborative proceeding entitled Access Charge Reform Investigation, Docket No. M-00021596 ("Access Investigation"). The ALJ reasoned that the prudent and

efficient course for the parties is to pursue this matter in the broader context of the Access Investigation related collaborative.

On June 6, 2002, AT&T filed exceptions to that Initial Decision. AT&T's exceptions focus on the assertion that, as a matter of law, the dismissal of its complaint based on the existence of the Access Investigation was in error. The OCA now submits these reply exceptions in support of the procedural basis of AT&T's Exceptions.

II. REPLY EXCEPTIONS

Reply Exception No. 1 – The Administrative Law Judge Erred as a Matter of Law in Dismissing AT&T's Complaint On the Basis Of The Existence Of The Contemporaneous Access Charge Reform Investigation Proceeding at Docket No. M-00021596. I.D. at 2; AT&T Exc. at 4-12.

The OCA does not express any view at this time as to the substantive issues raised by AT&T, but simply supports AT&T's opportunity to litigate those issues on the merits. The OCA submits that the full process of law is a right of all parties properly before the Commission, and the Commission must avail that process to all such parties. The dismissal of this complaint presents serious due process questions regarding the conditions under which parties have the right to an adjudication of complaints before this Commission.

First, Title 66 Pa. C.S. §701 permits persons to file complaints with this Commission alleging a violation of the laws under its jurisdiction. Section 703 of that Title provides that where reasonable grounds exist for investigating a complaint, the Commission shall fix a time and place for a hearing. That section vests the Commission with discretion regarding whether or not to hold a hearing on

any particular complaint. Duquesne Light Company v. Pennsylvania Public Utility Commission, 715 A.2d 540, 545 (Pa. Commw. Ct. 1998).

There are some instances, however, where the Commission has little discretion in that regard because a hearing is mandatory. For example, when the Commission addresses substantial property rights in an adjudicatory context, it must afford parties the opportunity for an on-the-record hearing. AT&T Communications of Pennsylvania, Inc., v. Pennsylvania Public Utility Commission, 570 A.2d 612, 618 (Pa. Commw. Ct. 1990). There, interexchange carriers compensated local exchange carriers for customer billing services, the ultimate cost of which the interexchange carriers passed on to end users. Id. Those interexchange carriers petitioned the Commission for a hearing regarding the placement of certain customer service information on the bills generated by the local exchange carriers. Id. The Commonwealth Court determined that substantial property rights were involved because increased customer costs could result from Commission action. Id. Next, Commonwealth Court determined that the Commission's action in that case was adjudicatory because the Commission's decision in the case would affect the "rights, duties, and obligations of both AT&T and Bell under their service agreement..." Id.

The instant case also requires an on-the-record hearing because the parties are addressing substantial property rights in an adjudicatory context. That is true because the central issue presented by the AT&T Complaint is the substantive right of Verizon North to collect, and the obligation of AT&T to pay, access fees that AT&T characterizes as unreasonable and unlawful. AT&T Exc. at 1. Like the case above, the instant proceeding is adjudicatory in nature because any Commission action will affect the rights, duties, and obligations of both AT&T and Verizon North.

Second, the OCA agrees with AT&T's reading of Title 2 Pa.C.S. § 504, Pennsylvania's Administrative Agency Law, which states that agency adjudications are not valid as to any party unless there is notice and a hearing. AT&T Exc. at 5-6. Pennsylvania's Commonwealth Court has taken a similar view, adding that in all such hearings, testimony shall be stenographically recorded and a full and complete record kept of the proceedings. AT&T Communications, 570 A.2d at 618. Therefore, because this is an agency adjudication, the Commission must provide AT&T with the process appropriate to the nature of its Complaint -- a formal on-the-record hearing with the opportunity for discovery, examination and cross-examination.

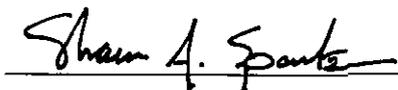
Finally, the Access Investigation in which the ALJ suggests that AT&T pursue the subject of its complaint is not a substitute that would comport with the due process requirements discussed above. It is the understanding of the OCA that the Access Investigation proceeding will be in the nature of a collaborative. It is the experience of the OCA that the collaborative format is informal, off the record, and does not provide for the mandatory attendance of any party. By virtue of the fact that collaboratives produce no record, there is no means for appellate review of the consensus-based outcome of those proceedings. In addition, collaboratives often have no fixed time schedule, and do not have a presiding officer capable of issuing the types of orders common to an adjudicatory setting. Collaboratives also generally lack the opportunity to examine witnesses under oath or conduct discovery.

Therefore, because of those limitations, this particular collaborative has the increased risk of litigation after the fact. There is no guarantee that forcing AT&T to address access charge issues in the Access Investigation collaborative will produce the administrative efficiency the Commission often seeks to create when conducting collaboratives.

III. CONCLUSION

For all the foregoing reasons, the OCA submits that the formal hearing process is the appropriate mechanism with which to address AT&T's complaint. That process will guarantee the parties full due process. Therefore, this Commission should grant AT&T's exceptions to the Initial Decision of the ALJ, should reinstate the Complaint of AT&T, and should hold formal hearings to resolve the issues presented therein.

Respectfully submitted,



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Counsel for:
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Dated: June 17, 2002

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Exceptions, 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 17th day of June, 2002.

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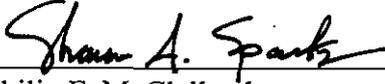
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DATE: June 25, 2002

SUBJECT: C-20027195

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

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JUN 27 2002

DOCUMENT
FOLDER

AT&T COMMUNICATIONS OF PA, INC.
VS
VERIZON NORTH, INC.

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

AT&T COMMUNICATIONS OF PA INC

Reply Exceptions have been received from:

**VERIZON NORTH INC
OFFICE OF CONSUMER ADVOCATE**

cc: Susan Hoffner, ALJ