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August 31, 2005

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed for filing please find the original and nine (9) copies of AT&T Communications of Pennsylvania L.L.C.'s Reply Brief, both a proprietary and public version, in the above-captioned matter. A copy of the proprietary version is being served on all parties of record and a copy of the public version will be served upon request. Also, please find a disk which contains the filing, a copy of which is also being provided to ALJ Fordham.

If you have any questions, please contact the undersigned.

Respectfully submitted,



Alan C. Kohler

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/jlb
Enclosures

cc: Attached Certificate of Service (w/enc)
Administrative Law Judge Cynthia W. Fordham (w/ enc Via Email and Overnight Mail)

HAR:60841.1/ATT004-225805

14-8

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania,
Inc.

v.

Verizon North, Inc.
Verizon Pennsylvania, Inc.

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: Docket No. C-20027195
: Remand Phase
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AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC'S
REPLY BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Six years after this Commission held that the sooner access reform was completed and the Carrier Charge eliminated “the better it would be for the competitive environment in Pennsylvania,”¹ Verizon Pennsylvania, Inc. (“Verizon PA), Verizon North, Inc. (jointly “Verizon”) and the public advocates² are still arguing that there is no reason for the Commission to rush to judgment. Like the proverbial ostrich with its head in the sand, however, Verizon and the public advocates are ignoring the facts. The uncontroverted truth is that wireless carriers, e-mail, Verizon’s own long distance services and, now, VoIP services, are taking huge volumes of traffic away from IXCs, not because the IXCs provide poor service, but because high access costs are making it impossible for the IXCs to compete. Unless that changes, IXCs will steadily continue to lose traffic and, eventually, Verizon’s access revenues stream will dry up and disappear.

The public advocates may not like it, but reality is that Verizon’s access stream is going to be reduced. The decision for the Commission is whether to further reduce access charges and keep IXCs in the market as a meaningful choice for Pennsylvania consumers, or to let the IXCs wither and die.

Predictably, Verizon and the public advocates argue that the Commission should await the outcome of the Federal Communications Commission’s (“FCC”) pending intercarrier

¹ *Joint Petition of Nextlink Pennsylvania, Inc. et.al.*, P-00991648, P-00991649 (September 30, 1999) (“*Global Order*”)at 60.

² The public advocates are the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Office of Trial Staff (“OTS”).

compensation proceeding before taking any action on Verizon's access charges.³ As explained below, however, the Commission has already rejected this position, and there are a number of sound reasons to reject it again. The Commission's decision to defer rural ILEC access reform until the FCC acts was based on factors which have no relevance to Verizon, not the least of which is the fact that access reform for the rural carriers will involve USF issues that Verizon does not face.⁴

Verizon and the advocates also argue, with no supporting evidence, that IXC customers have not benefited from prior access reductions. Those arguments are flat-out wrong. The record proves that IXC customers are receiving all of the benefits of prior Verizon intrastate access charge reductions. Indeed, the evidence shows that, for the past several years, AT&T's prices have fallen *faster* than its access expense. Even so, AT&T and other IXCs are being driven from the market because they cannot compete with wireless carriers, e-mail providers and Verizon itself, which do not have to pay excessive access charges.

The Commission directed that the Remand phase be conducted in as expedited a manner as possible in order to further reduce or eliminate the Carrier Charge as well as other implicit subsidies embedded in Verizon's access rates. Nothing has changed since the Remand phase was initiated, except that market conditions for the IXCs have gotten even worse. The Commission should finally complete the job it started in 1999 through its landmark *Global*

³ See August 11, 2005 Motion of Vice Chairman Cawley, AJG-2005-OSA-0243, I-00040105 deferring to the pending FCC docket *In re: Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 05-33 (March 3, 2005).

⁴ The two primary factors supporting deferral cited by Vice Chairman Cawley are that many of the rural ILECs are "average schedule companies" which are not subject to jurisdictional separations and are dependent on federal universal service high cost support and that the rural ILECs and also recipients of support from the State Universal Service Fund ("USF"). Neither factor is applicable to Verizon.

Order and reduce Verizon's access rates to cost-based levels. No other result is supportable, nor does any other result serve the public interest.

II. COUNTERSTATEMENT OF THE CASE

While several of the opposing parties attempt to slant their take on the procedural background of the case, there is general agreement that this investigation originated in the Commission's 1999 *Global Order* and is a Remand of the first phase of the proceeding as directed by the Commission in its July 28, 2004 Order at this docket ("*Phase 1 Order*"). Rather than repeat procedural background already recited in its Main Brief,⁵ AT&T will adopt that Statement of the Case and incorporate it by reference.

III. ARGUMENT

A. THE COMMISSION SHOULD NOT DEFER THE OUTCOME OF THIS PROCEEDING UNTIL THE FCC RESOLVES ITS INTERCARRIER COMPENSATION DOCKET.

1. **Because the Circumstances Surrounding Verizon's Access Charges Are So Markedly Different Than Those Facing the Rural ICOs, Vice Chairman Cawley's Motion In the Rural Carrier Access Case Does Not Apply to This Proceeding.**

In their respective main briefs, Verizon and the OCA argue that Vice Chairman Cawley's Motion in the rural ILEC access investigation⁶ sets a precedent for this proceeding. Both parties argue that, based on the Vice Chairman's Motion, this case should be deferred pending the outcome of the FCC's pending Intercarrier Compensation docket.

This argument for deferral represents yet another attempt by Verizon and the OCA to maintain the status quo -- a status quo which is patently anti-competitive and cannot be tolerated

⁵ AT&T M.B. at 2-4.

⁶ *Investigation Regarding Intrastate Access Charges, Intra LATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, I-00040105.

any longer. Indeed, Vice Chairman Cawley's Motion is not applicable to this case for a variety of reasons.

First, the language of the Motion is clear that the decision and the underlying rationale for the decision are specific to rural carriers and have no application here. In explaining his decision to defer to the federal docket, the Vice Chairman first cited to the fact that "[a] number of the rural ILECs operating in Pennsylvania are 'average schedule companies,' i.e. their operating revenues, expenses, and assets are not subject to jurisdictional intrastate-interstate allocations."⁷ In other words, the Vice Chairman is concerned that intrastate access reform for smaller rural companies which have not been subject to jurisdictional separation of their access costs may cause interference or double recovery in relation to potential future FCC access reform, because the assignment of access costs for such average schedule companies between the intrastate and interstate jurisdictions has not been established.

However, Verizon is not a small company. Verizon is not a rural company; and Verizon is not an "average schedule company."

The Vice Chairman's concern is inapplicable to Verizon and this investigation. Unlike some of the small rural ILECs, Verizon's access costs have been subject to the separations process and the assignment of access costs between the intrastate and interstate jurisdictions is well-established and abundantly clear.

The second factor mentioned in the Vice Chairman's Motion is that "the overall annual revenue level of their [rural] ILECs depends on the receipt of federal Universal Service Fund ("USF") support distributions."⁸ This is not a concern for Verizon or for the Verizon access

⁷ Motion at 2.

⁸ Motion at 2.

reform issues in this proceeding. Unlike many of the rural ILECs, Verizon is not dependent on receipt of federal USF high cost funds for revenue recovery and there is no risk that aggressive intrastate access reform will interfere with USF recovery.

The third factor relied on by the Vice Chairman for rural ILEC deferral is that “these [rural] ILECs are also recipients of support contributions from the Pennsylvania USF (“Pa. USF”).” Again, this third factor has no application to Verizon or this Remand docket. The Pennsylvania USF is a fund established in the *Global Order* to provide explicit subsidy towards the access and toll rates of all of the ILECs in Pennsylvania except Verizon and Verizon North, who are not and have never been recipients of support from the Pennsylvania USF.⁹ Implementing aggressive intrastate access reform for Verizon in this docket will have no impact on the operation of the Pennsylvania USF.

OCA argues that deferral is also appropriate here because some of the outcomes advocated by commenting parties before the FCC would directly affect Verizon’s intrastate access charges and associated revenue neutral recovery.¹⁰ The OCA’s fear is that if the FCC permitted ILECs to increase Subscriber Line Charges (“SLC”) to offset intrastate access reductions, Verizon would be getting a “double recovery” if this Commission implemented local rate rebalancing at this docket to offset the same intrastate access reductions.¹¹

The OCA’s fears are unfounded. As the record of this proceeding reflects, and as endorsed by AT&T’s witnesses, any Verizon rate rebalancing resulting from the first phase of this proceeding must be subject to true-up to assure absolute revenue neutrality as required by

⁹ See *Global Order* at 151.

¹⁰ OCA M.B. at 9-13.

¹¹ OCA M.B. at 11.

both equity and Pennsylvania law.¹² Neither the OCA nor any other party knows if, when, or how the FCC will finalize its intercarrier compensation docket -- it could be months or years. *If* it occurs and *if* the FCC reduces Verizon's intrastate access charges and offsets those reductions through increases to Verizon SLC, the Commission could then adjust Verizon's rate rebalancing.¹³ Such adjustments are relatively routine and uncomplicated, the Commission knows how to make them, and the prospect that such adjustments *might* need to occur at some unspecified point in the future is certainly no reason to delay access reform here.

Likewise, the parties' advocacy positions before the FCC should have no bearing on the outcome of this Remand proceeding. A wide array of parties have advocated a wide array of positions before the FCC.¹⁴ There is no credible basis for reliance on any outcome -- particularly since any outcome may be years away. Pennsylvania access reform simply cannot wait that long.

2. The Commission Has Already Rejected Requests to Defer Verizon Access Reform.

The Commission has already rejected the notion that this docket should wait on the FCC. Earlier in this docket, at the end of 2004 and the beginning of 2005, and at the request of the parties, the Commission was considering how the remand phase of the proceeding should be

¹² AT&T M.B. at 9-11; AT&T St. 1.2-R at 11-12, *See* 66 Pa. C.S. § 3017(a).

¹³ AT&T St. 1.1-R at 14.

¹⁴ AT&T St. 1.1-R at 13-14. For example, while AT&T has advocated for FCC preemption of intrastate access rates, the OCA has opposed such preemption as patently illegal, and Verizon has argued for no state or federal government imposed access reform and would leave access charge rate levels for private contract negotiations. This Commission argued that the FCC should adopt a unified compensation model at the interstate level, but voluntary at the intrastate level -- leaving the Commission to adopt or maintain its own intrastate access reform solutions. July 20, 2005 Pennsylvania Public Utility Commission Reply Comments, CC Docket No. 01-92.

conducted. Nearly a year ago in November, 2004, the OCA referenced the pending FCC rulemaking, discussed specific proposals before the FCC, including the Intercarrier Compensation Forum ("ICF") of which both AT&T and MCI are members, raised concerns that intrastate access charge reform should not be considered by the Commission when it is pending before the FCC, and warned that double recovery could result if state and federal initiatives were not coordinated.¹⁵

On January 18, 2005, the Commission resolved this issue in a very balanced manner. First, the Commission denied the request by IXC Petitioners to order further Verizon access reductions based on the previous record in the original phase of this proceeding and, instead, ordered further hearings before the ALJ. One of the stated reasons for requiring additional hearings was to consider federal activity, which activity is to be included in the ALJ's Recommended Decision "to the extent that the FCC issues a decision **prior** to the issuance of the Recommended Decision on Remand in this proceeding."¹⁶ As to the pace of the proceedings, the Commission required that the proceedings be conducted in an expedited manner "subject only to any constraints on the ALJ."¹⁷

Now the OCA essentially is repeating the very same arguments the Commission has already rejected. The Commission has been clear that this proceeding should not be extended or otherwise deferred to await action by the FCC. Accordingly, OCA and Verizon are, through their remand briefs, doing nothing more than seeking reconsideration of the Commission's

¹⁵ See November 30, 2004 OCA Answer, C-20027195

¹⁶ *January 18, 2005 Order* at 15 (emphasis added).

¹⁷ *January 18, 2005 Order* at 15.

January 18, 2005 Order at this docket. No new or novel reasons have been raised in support of deferral, and their request should be rejected.

3. **Deferral at This Time Would Constitute a Wasteful Abuse of the Administrative Process.**

Finally, unlike the rural carrier access investigation, the remand phase of this case has been subject to full record development and briefing and is ripe for a recommended decision by the ALJ.¹⁸ Three sets of extensive testimony have been submitted by the parties and hearings were stipulated as unnecessary. Extensive resources have been allocated by the parties to this proceeding -- which again were initiated by the Commission on an expedited basis despite OCA claims that it should be deferred pending the outcome of the FCC's rulemaking. To reconsider the status of this proceeding at this late date would be inequitable and would represent a wasteful use of the administrative process.

Given the complete uncertainty of the federal access reform process, and the possibility, if not the likelihood, that the federal initiative will take a considerable time to complete,¹⁹ deferral is intolerable from a competitive perspective and will do nothing more than make a bad situation worse. Accordingly, the Commission should stay the course and complete the job it started six years ago in the *Global Order* by removing all implicit subsidies from Verizon's access rates in an expedited manner.

¹⁸ In contrast, the Vice Chairman's Motion deferred the rural ILEC access investigation prior to the start of any record development for that case.

¹⁹ The FCC rulemaking docket at issue was actually initiated in 2001 and has already been pending for years.

B. THE RECORD IS CONCLUSIVE THAT THE COMPETITIVE MARKET DELIVERS DIRECT BENEFITS TO CUSTOMERS AS A RESULT OF INTRASTATE ACCESS CHARGE REDUCTIONS

IXC toll pricing has been deregulated as “competitive” since 1993,²⁰ and with good reason. Even though AT&T has the freedom to raise prices, the intensely competitive nature of the Pennsylvania long distance market has forced AT&T, on average, to *reduce* its rates such that AT&T’s Pennsylvania customers are receiving the full and direct benefit of prior Commission access reductions, including the reduction ordered in the first phase of this proceeding. Indeed, AT&T’s prices have fallen faster than its access expenses. As customers shift to lower priced calling plans, including the plans that give the customer unlimited toll calling for a fixed monthly rate, AT&T’s average revenue per minute (which is directly related to its price per minute) has declined *faster* than the per minute access charge it pays to Verizon, taking into full account the Phase 1 reductions.²¹ From 2001 to 2004, AT&T’s average revenue actually declined by **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** while its average per minute access payments to Verizon increased:

²⁰ See 66 Pa. C.S. § 3018 and its predecessor 66 Pa.C.S. § 3008.

²¹ AT&T St. 1.1-R at 7-9; OAO Remand Exhibit 5; AT&T St. 1.2-R at 12-13.

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Put another way, from 2001 to 2004, AT&T's intrastate revenue per minute declined by more than [BEGIN PROPRIETARY] [END PROPRIETARY] while its intrastate average access rate per minute increased by about [BEGIN PROPRIETARY] [END PROPRIETARY] Even taking into account the Phase 1 reductions, from 2001 to the present, AT&T's intrastate average access rate per minute has only declined by a little more than

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[BEGIN PROPRIETARY] [END PROPRIETARY] far less than the decrease in intrastate average revenue per minute over the same period.

This data is conclusive that the highly competitive long distance market is working as the Commission intends, and that customers have and continue to receive the direct benefit of intrastate access reductions, including the Phase 1 reductions. Given the strength and depth of AT&T's evidence, it is difficult to understand how the parties continue to argue otherwise.

Nevertheless, in their Main Briefs, Verizon and the public advocates continue to argue, without evidence, that Pennsylvania customers have not received any direct benefit. However, none of the parties even attempt to refute the evidence of record to the contrary.²⁵ They ignore the fact that reducing intrastate access rates improves competitive conditions and forces IXCs to offer and promote more favorable, lower rate and often unlimited calling plans. The result is that, as a direct result of intrastate access reductions, Pennsylvania customers are paying less -- far less -- for intrastate toll service, regardless of whether AT&T or any other IXC files a tariff rate reducing its base rates.

²⁵ On page 20 of its Main Brief, OCA does reference in passing that including "additional fees" in AT&T's revenue per minute analysis increases its revenue per minute for intrastate toll service. However, without a shred of evidence, OCA then concludes that IXC rates and margins have increased rather than decreased. What the record does reflect is that AT&T witness, Dr. Oyefusi, openly acknowledged that his revenue per minute analysis did not include the In-State Connection Fee and that if it did, it would have an upward effect on AT&T's intrastate average revenue per minute. However, Dr. Oyefusi also provided evidence that bundled calling plans were also excluded from AT&T's revenue per minute analysis and that if it were possible to include the revenue and minutes from these plans, it would have a downward impact on AT&T's revenue per minute since many of the bundled calling plans include unlimited intrastate toll calling. AT&T St. 1.1-R at 7-9. Overall, the record indicates that that effects of these two factors offset each other and, as outlined above, AT&T's intrastate revenue per minute has declined, while during this same period its average access cost per minute has increased - - proving once and for all that AT&T's toll customers in Pennsylvania are paying less for intrastate toll service and have received the full benefit of intrastate access reductions (and more).

C. THERE IS NO LEGAL OR FACTUAL BASIS FOR MAINTAINING VERIZON'S ACCESS RATES ABOVE COST-BASED LEVELS.

In variations on the same unsupportable theme, OCA and Verizon argue that Verizon access rates should continue to contribute support to other Verizon services. The OCA's argument is that Verizon's local loop should be allocated as a shared cost between local and toll services.²⁶ Verizon's variation on the same theme is that implicit subsidies should be maintained in Verizon's access rates as an above cost contribution to local service.²⁷ In either case, the argument is not legally or factually supportable and denies the anti-competitive effects of an above-cost access regime.

1. OCA's Arguments Pertaining to Loop Allocations are Obsolete and Should Be Rejected.

For well over a decade and despite frequent rejection, OCA has consistently maintained its claim that local loop costs should be shared between both local and toll services. That argument is *no more valid now* than it has been in the past and should be rejected.

The OCA's argument is immersed in theories of "residual pricing" and "loop allocation." As AT&T witnesses Kirchberger and Nurse explained in the original phase of its proceeding, "residual pricing" was the means by which local exchange rates were historically established in the context of monopoly telecommunications markets, ostensibly for the purpose of promoting universal service.²⁸ This process basically would start with the determination of the telecommunications providers "revenue requirement" through the now defunct rate-of-return ratemaking analysis. Then, the rates for toll services (and, after the Bell System break-up in

²⁶ OCA M.B. at 23-24.

²⁷ Verizon M.B. at 24-35.

²⁸ AT&T St. 1.1 at 3.

1984, the prices for access services) were set at extremely high levels, with only the remaining (or “residual”) amount of the providers’ revenue requirement assigned to local exchange services.

To provide an air of legitimacy to this historically popular approach to the pricing of local exchange service, the costs of providing consumers with local access to the telecommunications network were arbitrarily allocated to other telecommunications services that “use” the loop. That is, a certain percentage of loop costs was assigned to be recovered from interexchange carriers, regardless of the amount of long distance traffic that a particular customer generated - or indeed, whether they made any long distance calls at all. In doing so, costs were shifted from residential and single-line business customers to high volume customers (especially large business customers), on the theory that the latter were better able to bear these costs.²⁹

One consequence of this approach was that it drove the price of long distance service to unreasonably high levels, thus artificially reducing the demand for that long distance calling. Just as important, these policies disconnected the pricing of local exchange service from the true costs of providing it, making it likely that basic local exchange services in many areas of the Commonwealth are priced below their incremental cost. Finally, by allocating away the cost of providing consumers with network access, these pricing policies fostered the illusion that an acceptable “universal service policy” was to establish artificially low local telephone rates for all subscribers.³⁰

²⁹ AT&T St. 1.0 at 3.

³⁰ AT & T St. 1.0 at 4.

Given these problems, it is not at all clear that the system of residual pricing” and “loop cost allocation” was valid even in the bygone era of the old Bell System monopoly.³¹ Now, however, with the enactment of the Telecommunications Act and the establishment of a national policy of full competition in all telecommunications markets, there can be no question that this system is illegitimate.

The Commission already has recognized as much in its post-Telecommunications Act decisions. Indeed, ALJ Schnierle, in his 1998 Recommended Decision in the *Generic Access Investigation*, described how the sea change in the law brought about by the Telecommunications Act had completely undermined the theories of residual pricing and loop cost allocation:

[T]he “loop as a joint cost” theory simply will not work in a competitive environment because it fails to recognize the physical and financial reality that most of the cost of providing a telephone network is incurred in simply providing basic service. If society wants to replace the monopoly regulation of local telephone service with open competition, (as it has indicated by the enactment of Chapter 30 and the Telecommunications Act of 1996), then it must be prepared to allow prices for local telephone service to be more reflective of reality.³²

³¹ Indeed, the fully distributed cost methodologies for the pricing of local exchange services that are reflected in the testimony submitted by OCA have been roundly criticized in the economic literature for many years. See, e.g., William J. Baumol, et al. “How Arbitrary is ‘Arbitrary?’ -- or *Toward the Fortnightly*, September 3, 1987, p. 16 ff; Alfred E. Kahn “The Road to More Intelligent Telephone Pricing,” *Yale Journal on Regulation*, Vol. 1 1984 pp. 139-157; and David L. Kaserman and John W. Mayo “Cross-Subsidies in Telecommunications” Roadblocks on the Road to More Intelligent Telephone Pricing.” *Yale Journal on Regulation*. Vol. 11, Winter 1994, pp. 119-148. See AT&T Stmt. 1.1 at 4.

³² *Generic Investigation of Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, June 30, 1998, at 53.

The Commission subsequently adopted ALJ Schnierle's conclusions in its 1999 *Global Order*.³³ In doing so, the Commission found that the Telecommunications Act of 1996 required it to "take the necessary steps to strive to replace the system of implicit subsidiaries with 'explicit and sufficient' support mechanisms to attain the goal of universal service in a competitive environment."³⁴ Indeed, this legal conclusion adopted by the Commission was affirmed by the Commonwealth Court.³⁵ While both the OCA and Verizon claim that the Court endorsed a shared loop allocation or continuing contribution approach to access pricing, review of the Court's decision reveals just the opposite -- that being that the Court affirmed the Commission's approach of reducing access to cost in phases rather than in one dramatic step.³⁶

Furthermore, even more recently, and consistent with its determinations in the *Global Order*, the Commission, in approving a proposal by Sprint/United and the Rural Telephone Company Coalition to reduce access charges and offset those reductions with increases in basic local exchange rates, the Commission reiterated its "objective to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market."³⁷ And the Commission also described the competitive benefits that accrue in both the local exchange and long distance markets from making the rates for both local and carrier access services reflect

³³ *Global Order* at 27.

³⁴ *Id.* at 26-27.

³⁵ *Bell Atlantic Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated in part sub. nom. MCI Worldcom v. Pennsylvania Public Utility Commission*, 844 A.2d 1239 (Pa. 2004).

³⁶ 763 A.2d at 480 ("Initiating a gradual transition in improving the placement of costs burden is a valid approach in establishing [access charges] rate structure.")

³⁷ *Sprint/RTCC Order* at 10.

their corresponding costs³⁸ -- a concept that is anathema to the ratemaking schemes being advocated by OCA and Verizon.

As set forth in AT&T's Main Brief, the Remand record demonstrates that OCA's insistence on maintaining above-cost access rates (under OCA's antiquated loop allocation theory or any other theory) distorts the competitive landscape in favor of Verizon, wireless carriers and others who do not have to pay above-cost access rates. While sustainable in a monopoly environment, OCA's antiquated views have been and, if adopted, would continue to destroy fair toll competition and must be rejected.

2. Verizon's "Continue to Contribute" Theory is Equally Meritless.

Faced with the dilemma of opposing OCA's "shared cost" theory, but desiring to maintain its anti-competitive access rates, Verizon has advanced a "Continue to Contribute" theory as its basis for maintaining the artificial pricing advantages it garners from its access rates. To that end, Verizon contends that the Commission should continue to permit implicit subsidies to be recovered in Verizon's above-cost access rates.³⁹

This contention is utterly without merit. In fact, it is directly contradicted by Verizon's advocacy in the original phase of the proceeding. As Verizon explained in its September 18, 2003 Main Brief, access rates were originally set at many multiples of the cost of providing carrier access service through the practice of "residual pricing."⁴⁰

³⁸ Id.

³⁹ Verizon M.B. at 24-31.

⁴⁰ See Verizon September 18, 2003 M.B. at 7-8.

As Verizon describes it, Chapter 30 and the Telecommunications Act reflected a “break with the old regulatory model...”⁴¹ According to Verizon, this change prompted the FCC and this Commission to begin “shifting revenue away from access charges and into explicit end user charges.”⁴² In fact, relying on this regulatory evolution, Verizon dismisses the public advocates’ reliance on the “loop as a joint cost” theory as being “based on outdated regulatory principles” that “make little sense today.”⁴³

On this point, Verizon is absolutely right. And that is also why Verizon is absolutely wrong in contending that, notwithstanding these regulatory changes -- and its own rate rebalancing proposals -- switched access charges should continue to be priced in excess of cost to provide “support” to the network.⁴⁴

Verizon cannot have it both ways. If, as Verizon correctly asserts is the case, the advent of competition in the local exchange market has made “residual pricing” and “loop allocation” obsolete, it cannot also be the case that Verizon’s competitors should continue to be required to support Verizon’s local exchange services through implicit subsidies buried in its carrier access charges. And the competitive imbalance has only been exacerbated by Verizon’s entrance into Pennsylvania interLATA market. As AT&T witnesses Kirchberger and Nurse testified in the original phase of this proceeding, “There is simply no justification in law, economics or public

⁴¹ Verizon September 18, 2003 M.B. at 8.

⁴² Verizon September 18, 2003 M.B. at 8.

⁴³ Verizon September 18, 2003 M.B. at 50, 53.

⁴⁴ See Verizon M.B. at 26.

policy to require Verizon's long distance competitors to incur access costs that Verizon itself does not bear, much less to subsidize Verizon's operations."⁴⁵

D. WITH PROPER RATE REBALANCING, VERIZON'S ACCESS RATES CAN BE REDUCED TO COST WITH MINIMAL IMPACT ON ITS BASIC LOCAL EXCHANGE RATES.

Much of the public advocate opposition in the respective Main Briefs to Commission efforts to complete Verizon access reform rests on concerns of the rate impact of any associated rate rebalancing on Verizon end user rates.⁴⁶ However, the record reflects that, given a number of factors, a proper, revenue neutral rate rebalancing will have a minimal impact on end user rates.

The factors reflected in the record which document the minimal rate impact on end users of completing Verizon access reform are as follows:

- (1) Verizon's rate rebalancing from the original phase of this proceeding, based on Verizon's current estimate of minutes -- utilizing February 2004 to January 2005 actually access minutes -- overrecovers the revenue impact of its access reduction by \$4.8 million per year.⁴⁷
- (2) It is virtually certain, given recent trends, that the amount of actual overrecovery, based on actual 2005 access

⁴⁵ AT&T St. 1.0 at 25.

⁴⁶ The public advocates predict that modest local rate increases could wreak havoc on basic service penetration rates, but forget to mention that they *stipulated* to the Phase I local rate increases as being in the public interest, and likewise forget to mention that no one complained when the Phase I increases were implemented. Weighed against this history, their Chicken Little warnings here carry no weight. As with the Phase I increases, it is highly unlikely that the Commission will receive customer complaints when access reductions are offset by modest local rate increases. Indeed, as a result of stipulated access charge agreements involving the public advocates, many rural carrier customers have already been subject to local rate increases much greater in magnitude than the modest increases that are contemplated here.

⁴⁷ AT&T M.B. at 9-10; AT&T St. 1.2-R at 9-10.

minutes, will exceed the estimated \$4.8 million overrecovery by a wide margin.⁴⁸

- (3) As access minutes of use continue to rapidly decline, the amount of actual overrecovery under Verizon's current rate rebalancing scheme will also continue to rapidly increase.⁴⁹
- (4) The proper way to eliminate this annual overrecovery is through an annual true-up mechanism.⁵⁰
- (5) The annual overrecovery from the true-up should be applied to future access reductions or to offset end user rate rebalancing.⁵¹
- (6) In Verizon's Phase 1 rate rebalancing plan, its \$.80 per line increase was only imposed on certain end user customer lines and bundled service customers were excluded because those lines are "subject to competitive pressures."⁵²
- (7) This aspect of Verizon's Phase 1 rate rebalancing should be imposed on all of Verizon's **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** lines and Verizon should not be permitted to protect lines that are subject to more competition.⁵³
- (8) This adjustment alone would reduce the end user impact of removing all implicit subsidies from Verizon's access rates to \$1.08 per month per line.⁵⁴

⁴⁸ AT&T M.B. at 9-10; AT&T St. 1.2-R at 9-10.

⁴⁹ OCA M.B. at 15-16; OCA St. 1-R at 4.

⁵⁰ AT&T M.B. at 11; AT&T St. 1.2-R at 11-12.

⁵¹ AT&T M.B. at 11; AT&T St. 1.2-R at 11-12.

⁵² Verizon M.B. at 3.9

⁵³ MCI M.B. at 12-13; MCI St. 1-0 Remand at 17. As in other rate rebalancing authorized by the Commission, Verizon should be permitted to increase local rates by a set amount to all of its customers' lines. If Verizon chooses not to implement the increase for certain customers or lines, it should be free to do so, but the revenue attributable to those lines should remain in the calculation of revenue neutrality.

⁵⁴ MCI M.B. at 12-15; MCI St. 1.0 Remand at 17.

- (9) Taking into account, the overrecovery of revenue under Verizon's Phase 1 rebalancing as described in (1) through (5) above, and applying that to offset future rate rebalancing would reduce the rate impact well below \$1 per line per month.

Indeed, this is a small price to pay to complete Verizon access reform once and for all.

Given all of these factors, the Commission should act expeditiously to remove all implicit subsidies from Verizon's access rates and reduce those rates to proper cost-based levels.

IV. CONCLUSION

For all of the foregoing reasons, the Commission should finish the job it started six years ago in the *Global Order* and reduce Verizon's access rates to proper cost-based levels. Doing so will help ensure that the Pennsylvania long distance market remains competitive, and that Pennsylvania consumers will continue to be able to use IXC's for their long distance needs.

Respectfully submitted,



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Dated: August 31, 2005



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

IN REPLY PLEASE
REFER TO OUR FILE

August 31, 2005

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

**DOCUMENT
FOLDER**

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the **Reply Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Robert V. Eckenrod
Prosecutor
Office of Trial Staff

Enclosure

c: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, :
Inc. :

v. :

Docket No. C-20027195

Verizon North, Inc. & :
Verizon Pennsylvania, Inc. :

ORIGINAL

REPLY BRIEF
OF THE
OFFICE OF TRIAL STAFF

**DOCUMENT
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DOCKETED
SEP 02 2005

Johnnie E. Simms
Chief Prosecutor

Robert V. Eckenrod
Prosecutor

Office of Trial Staff
Pennsylvania Public Utility
Commission

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P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Dated: August 31, 2005

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I. INTRODUCTION

The procedural history of this case is detailed in the Office of Trial Staff's ("OTS") Main Brief filed on August 17, 2005. In its Main Brief, OTS set forth the arguments in support of its position that no further access charge reform should be mandated until such time that the requesting parties are able to detail some quantifiable and specific public benefit from doing so. This Reply Brief is supplemental to the Main Brief filed on behalf of OTS and is limited to those matters raised by parties in their respective Main Briefs. Additionally, the Reply Brief will discuss matter previously addressed by OTS that require additional discussion and comment as a result of arguments presented by the parties in their respective Main Briefs.

II. ARGUMENT

A. The IXCs Have Failed to Establish Any Public Benefit in Seeking Further Access Charge Reductions

As set forth in greater detail in OTS' Main Brief, the basic thrust of the OTS position is that further access charge reductions in the context of this proceeding are not preordained, as the arguments of the Inter-exchange Carriers ("IXCs") in this proceeding would suggest. Indeed, Qwest, citing both to the Commission's July 28, 2004 Order and the *Global Order*, argue for the proposition that the only issue in the present proceeding is how much Verizon's access charges should be reduced.¹ Similarly, AT&T also argues

¹ Qwest Main Brief, pp. 1-5.

that it is not a question of whether or when access charges should be reduced, but how much.²

But, while the IXC's continue to argue for further reductions in the interest of fostering "competition" for the "benefit of consumers", neither one has been able to demonstrate any specific public benefit stemming from the first round of reductions occurring in February, 2005. As the proponent of a rule or order, it is incumbent upon the IXCs to illustrate some demonstrable benefit or public interest in advocating further reductions.³ Yet, inconceivably, in briefing, Qwest would now shift the burden of proof onto the opposing parties to show that access charge reductions will actually harm customers,⁴ despite explicit assurances to the Commission that IXC consumers would benefit from any such reductions.

But, "promises" of consumer benefits are nothing new and the IXCs have long induced the Commission to undertake access charge reductions with specific assurances that customers would see reductions in standard toll rates. To be sure, in crafting the *Global Order*, the Commission noted that "[a] number of IXCs have agreed to pass on access charge reductions through to consumers via direct reduction in standard toll rates."⁵ As a result, access charge reform was initiated by the Commission in reliance upon these IXC proposals. And, in the first phase of this proceeding, as detailed in the

² AT&T Main Brief, pp. 1-4.

³ See 66 Pa. C.S. § 332(a) (a proponent of a Commission rule or order has the burden of proof).

⁴ See Qwest Main Brief, p. 7 ("...the record remains void of any evidence that any *actual* harm might befall any Pennsylvania consumer from the proposed access charge reform....[i]nstead of proving the 'harm' some parties contend exists, these parties point to Qwest, and other IXCs to either prove that no 'harm' will occur, or disprove that the alleged, though unsubstantiated 'harm' does exist.")

⁵ *Global Order* at p. 23.

OTS Main Brief, the IXCs, once again, promised specific consumer benefits which ultimately persuaded the Commission to grant the requested relief.

Contrary to the IXC's contentions, OTS does not automatically foreclose upon the idea that further access charge reform may be warranted at some point in time; but in furtherance of the public interest, the Commission should evaluate whether any assured benefits have actually come to fruition before determining that further access charge reform is necessary. In this phase of the proceeding, the IXCs have failed to set forth any of those public benefits and, as a consequence, no further reductions in Verizon's access charges are warranted at this time.

B. The IXC's Have Failed to Show That Verizon's Access Charges Are Subsidizing Basic Local Exchange Rates.

Additionally, all of the IXCs in this proceeding have claimed that intrastate access charges are above "cost" and the Commission should remove such subsidies from access rates.⁶ However, as OCA has clearly shown through its testimony, while Verizon's current access charges may be above incremental costs, this in no way proves that they are subsidizing basic local exchange rates.⁷ As such, it would amount to improper shifting of costs to reduce intrastate access charges and increase basic local exchange rates.

C. The IXC's Proposal to Eliminate the Carrier Charge Should Not Adopted.

In this phase of the proceeding, there has been a proposal for the Commission to eliminate Verizon's Carrier Charge ("CC"). Moreover, both Qwest and AT&T also

⁶ AT&T Main Brief, pp. 1-2; MCI Main Brief, p. 2; Qwest Main Brief, pp. 7-10.

⁷ OCA Main Brief, pp. 28-32.

proposed that Verizon's intrastate access charges should mirror its interstate access charges.

Ceding to the desire of Qwest in this regard would be tantamount to duplicity since Qwest fails to follow its own proposal within its own corporation. As set forth by OTS Witness Kubas, in those states where Qwest operates as a local exchange carrier, its intrastate switched access rates are much higher than its interstate rates.⁸ Additionally, Qwest even continues to maintain a Carrier Charge ("CC") in eight states, despite claiming in the first phase of this proceeding that a Carrier Charge is unreasonable, not based on any cost component, and is an inequitable IXC charge in Pennsylvania.⁹

For its part, AT&T has claimed that its "per minute" access rate is actually increasing, presumably because less customers are utilizing AT&T's service and the CC remains a fixed cost.¹⁰ Yet, just because AT&T's "per minute" access rate is increasing because of a loss of subscribers does not justify a corresponding increase in local basic exchange rates that would occur as a result of the elimination of Verizon's CC.

As set forth by OTS in the first phase of this proceeding, and OSBA in this portion of the proceeding, the CC should not be eliminated because it is designed to recover the cost of maintaining the local loop, which is a joint and common cost for all users to bear.¹¹

⁸ See OTS Rebuttal Exhibit No 1, pp. 1-27.

⁹ See OTS Statement No. 1 Supp. R., p. 5.

¹⁰ AT&T Main Brief, pp. 16-17.

¹¹ OSBA Main Brief, p. 4.

D. It is Prudent to Evaluate the Effects of the First Round of Access Charge Reductions before Determining Whether Further Access Charge Reductions Are Warranted.

Finally, in response to OTS' arguments, Qwest has claimed that it will take time for the market to work before the affects of access charge reform become apparent.¹² In essence, this is true and OTS does not dispute this claim, but it is also a tacit admission that further access charge reform, at the present time, is premature. As such, at a minimum, the Commission should wait until it is able to evaluate the impact of the last rate rebalancing, which took effect in February, 2005. At present time, despite Qwest's assurance that customers would be the ultimate "winners" as a result of the first round of rate rebalancing, there has been no proffer of evidence in this proceeding that customers actually had benefited.

III. CONCLUSION

It is clear that the IXCs have failed to bear their burden of proof in this proceeding to demonstrate that further access charges reductions are warranted at this time. Failing in this burden, the ALJ and the Commission should decline to grant the relief as requested by Qwest, MCI and AT&T.

OTS offers this Reply Brief as a supplement to the positions presented earlier in its Main Brief. The issues addressed in the Reply Brief were deemed to need additional clarification based upon the presentation of Qwest, MCI and AT&T in their respective Main Briefs. Failure of the OTS to address an issue in this Reply Brief should be of no

¹² Qwest Main Brief, p. 22.

consequence as those issues were adequately explained in its Main Brief and did not require repeating. Most importantly, it does not signify withdrawal from an issue.

For the reasons stated herein as support for its position, the Office of Trial Staff respectfully requests that the Administrative Law Judge and the Commission adopts its recommendations in this proceeding.

Respectfully submitted,



Johnnie E. Simms,
Chief Prosecutor

Robert V. Eckenrod,
Prosecutor

Office of Trial Staff
Pennsylvania Public Utility Commission

Dated: August 31, 2005

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief**, dated August 31, 2005, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

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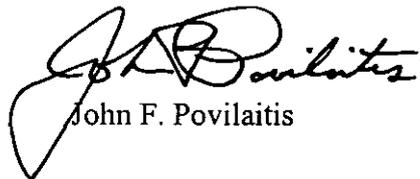
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Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc.
and Verizon Pennsylvania Inc., Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies each of the Reply Brief on Remand of Qwest Communications Corporation in the above-captioned proceeding. Copies of the brief have been served in accordance with the attached Certificate of Service.

Very truly yours,


John F. Povilaitis

Enclosures
JFP/ck

c: Certificate of Service
The Honorable Cynthia W. Fordham
(via UPS overnight mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In Re The Joint Application of :
Bell Atlantic Corporation and GTE :
Corporation for Approval of Agreement :
And Plan of Merger : Docket No. C-20027195
:
AT&T Communications of Pennsylvania, Inc. :
v. Verizon North, Inc. :

REPLY BRIEF ON REMAND
OF QWEST COMMUNICATIONS CORPORATION

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re The Joint Application of	:	
Bell Atlantic Corporation and GTE	:	
Corporation for Approval of Agreement	:	
And Plan of Merger	:	Docket No. C-20027195
	:	
AT&T Communications of Pennsylvania, Inc.	:	
v. Verizon North, Inc.	:	

**REPLY BRIEF ON REMAND
OF QWEST COMMUNICATIONS CORPORATION**

I. INTRODUCTION

Qwest Communications Corporation (“Qwest”) submits its Reply Brief to the Pennsylvania Public Utility Commission (“Commission”) seeking long overdue reductions in the intrastate access charges imposed by Verizon Pennsylvania Inc. (“Verizon-PA”) and Verizon North, Inc. (“Verizon-North”)(collectively “Verizon”). As Qwest has suspected for over a year, there were no new issues presented in the parties’ briefs on remand, which were not already adequately addressed in the initial phase of this proceeding.

II. BACKGROUND

In 1999, this Commission in its *Global Order* set forth to remove the implicit subsidies from Verizon’s intrastate access charges. Indeed, it is confusing as to why any party now questions whether intrastate access charges subsidize local rates, given the Commission’s clear conclusion in its *Global Order* that “[a]ccess charges provide a source of earnings while keeping

basic local service rates lower than might otherwise be the case in high cost areas.”¹ The Commission went on to explain that “[i]n reality, local exchange rates throughout the United States have been subsidized by access charges which are well in excess of their costs. The other elements that contribute to the subsidization of local exchange rates are toll and local vertical services. The combined subsidies from these services is what have kept basic local exchange service rates in Pennsylvania at an affordable level over the years. It could be said that the sum of the subsidies from access, local and optional local exchange services has performed the duty of an implicit ‘universal service fund’ in Pennsylvania.”² Of the subsidies infused in the intrastate access charges, the CC “is the largest contributor to local service rates not directly related to costs.”³ It is these subsidies in access charges which the Commission decided in 1999 to eliminate.

As in its *Global Order*, the Commission in its *July 28, 2004 Order* reiterated that the time had come for access charge reform in Pennsylvania. Over Qwest’s objections that the record created initially was sufficient to make the determination for revenue and competitively neutral reductions for intrastate switched access rates to be taken to parity with interstate switched access rates,⁴ Verizon, OCA and OSBA argued that an opportunity to supplement the record was necessary on remand for the Commission to make its final determination.⁵ Instead, this tactic of needing to “supplement the record” on remand has served only to achieve additional delay, and further waste of the limited resources of the Commission and the parties.

¹ *Global Order* at 11.

² *Global Order* at 13.

³ *Global Order* at 13.

⁴ Qwest Supplemental Prehearing Memorandum, March 31, 2005, p. 5.

⁵ Verizon Supplemental Prehearing Memorandum, p. 4; OCA Supplemental Prehearing Memorandum on Remand, p. 3; OSBA Prehearing Memorandum, p. 2.

III. ARGUMENT

A. THE RECORD SUPPORTS ELIMINATING THE CARRIER CHARGE, WHILE REDUCING THE ACCESS RATES TO PARITY WITH INTERSTATE ACCESS IN A REVENUE-NEUTRAL AND COMPETITIVELY-NEUTRAL MANNER.

In reviewing the Briefs of these parties, it has become abundantly clear that those arguments to “supplement the record” were merely another successful ploy to delay the necessary access charge reform in Pennsylvania. Without any additional issues being raised in the briefs on remand, Qwest has fully briefed these issues repeatedly in this docket as far back as September of 2003.

In its Main Brief filed on September 18, 2003, Qwest urged the Commission to embrace its obligation to Pennsylvania consumers and carriers to continue promoting competition in Pennsylvania by removing the implicit subsidies in Verizon’s access charges, which entails reducing intrastate access rates to interstate rates on a revenue-neutral and competitively-neutral basis, as well as eliminating the CC. Qwest went on to explain that “[r]educing intrastate switched access rates to interstate rates and removing the CC, while shifting support for other services to end-users, will create an economically sound and competitively-neutral rate structure, which will encourage vigorous competition in the market for telecommunications services to the benefit of all Pennsylvania consumers.”⁶ “In fact, revenue neutrality and competitive neutrality ensure that local exchange carriers, incumbent and competitive carriers alike, are not penalized for the progressive restructuring of rates that are in the long term best interests of competition and consumers in Pennsylvania.”⁷ The basic premise remains that Verizon’s current intrastate

⁶ Qwest Main Brief at 11-12.

⁷ Qwest Main Brief at 9 *citing* Qwest St. No. 1.0, ¶ 7.

rates subsidize local rates to the detriment of Pennsylvania consumers by skewing local and long distance competition in favor of certain providers.

In its Reply Brief filed on September 29, 2003, Qwest indicated that “[d]espite unsubstantiated claims by the public advocates on a few issues, there remains no question that the Commission should eliminate the non-cost-based Carrier Charge (‘CC’), while reducing the inflated, traffic-sensitive access rates to parity with interstate access rates. With intrastate access charges reduced to interstate levels, Pennsylvania consumers will enjoy reduced intrastate long distance rates without Commission intervention.”⁸ The Reply Brief explains “that no other party has raised any argument in their Main Briefs, which justifies ignoring the Commission’s responsibility to achieve reductions in Verizon’s intrastate switched access rates, namely to interstate levels on a revenue-neutral and competitively-neutral basis.”⁹ More specifically, Qwest focused on the other parties’ attempts “to derail the necessary reductions in Verizon’s intrastate switched access charges, with various illogical and misguided theories . . . (1) that the CC is a reasonable mechanism for recovering the cost of the loop; and (2) that removing the CC will allow IXCs a “free ride”.”¹⁰ As explained in further detail in the Qwest Reply Brief, the basis for these themes remains unsupported two years later.

In fully briefing the matters two years ago, the parties added nothing substantively new to the record, other than the mere fact that the FCC had officially requested comments on numerous, varying proposals in its ongoing, comprehensive intercarrier compensation docket. Though this issue is further outlined below, it is important to note that discussing the few related issues in the FCC intercarrier compensation docket, and advocating certain proposals from that

⁸ Qwest Reply Brief at 1.

⁹ Qwest Reply Brief at 4.

docket, would be irrelevant if not for the parties' success with previous delay tactics that thus far have prolonged access reform in Pennsylvania. Perhaps surprising to no one is that these same parties continue to seek even further delay of access charge reform by any means necessary.

Six years after the Commission decided to remove implicit subsidies from Verizon's access charges, no actual access charge reform has been accomplished in Pennsylvania. The record in this case is clear, and has been for years. The time came long ago for reform of Verizon's intrastate access charges in Pennsylvania. The Commission must conclude this remand by achieving the access charge reform it set out so long ago to undertake.

B. THE COMMISSION MUST ACHIEVE ACCESS CHARGE REFORM IN PENNSYLVANIA, REGARDLESS OF THE ACTIVITY AT THE FCC.

1. The Uncertainty of Whatever the FCC Will Decide Cannot Derail Achieving the Overdue Access Charge Reform in Pennsylvania

Qwest has repeatedly pointed out that while the activities occurring at the FCC are important, they do not imminently impact the states and current intercarrier compensation rules. Switched access is only one portion of the changes contemplated by the FCC. Qwest has also pointed out repeatedly that there are a large number of differing proposals, and it is too early to determine which proposals are under serious consideration.¹¹ No party, either in this state docket or in the FCC docket, can predict the direction that the FCC will take in this matter at this time.

Much comment has been made of the possibility that the FCC could preempt state authority, and the various positions taken by each carrier. The question is not whether various parties have commented and what their positions are, rather what is most important is the result and what can be done today by this Commission to address access charge reform in this state.

¹⁰ Qwest Reply Brief at 6 *citing* OCA Main Brief at 14-23, 34; OTS Main Brief at 11-12; OSBA Main Brief at 15-16; OTS Main Brief at 5; Verizon Main Brief at 42-44..

¹¹ Qwest Remand Rebuttal St. No. 2.0, p. 3-4.

All of this discussion ignores the fact that the end result of the preemption discourse is to require the states to mirror the FCC rates and structure. If Pennsylvania already has taken steps to mirror the current interstate switched access structure, the overall impact to the consumers of Pennsylvania will be lessened.¹² This Commission can and should move forward to take the necessary steps to alleviate the opportunities for fraud and arbitrage, regardless of any proposed federal activity.

As the OCA has pointed out, the FCC is concerned with regulatory arbitrage, including the difference between intrastate and interstate access rates. However, current law allows states to reduce or eliminate that arbitrage opportunity by accepting the interstate switched access element rates as the target rate for intrastate. There is no need to delay implementation of rate rebalancing because of the specter of complete reform. The minor step of rebalancing rates to current interstate parity is not inconsistent with any of the potential actions the FCC could take.

This Commission should not step beyond applying current law and accept a reform proposal, as filed at the FCC in the intercarrier compensation docket. The OCA proposal that the Commission should do nothing, or in the alternative go beyond current law and accept a reform proposal that anticipates change beyond switched access should be rejected. However, it is interesting to note that the NASUCA proposal, as filed by the OCA at the FCC, has the following point as one of the tenets: “States would be encouraged to match the target rate for intrastate rates.” For switched access, this is an option currently available to the Commission today—revenue neutral and competitively neutral intrastate switched access at parity with interstate switched access rate elements.

¹² Qwest Remand Surrebuttal St. No. 3.0, pp. 2-3.

2. The Commission's Temporary Suspension of the Rural Company Access Case Should Not Impact This Proceeding.

Verizon, OCA and OSBA argue that the Commission's recent action to suspend its investigation of rural telephone companies access charges for no more than twelve months, or less if the FCC issues its ruling earlier, due to the pending FCC docket on intercarrier compensation, compels a similar suspension of access charge reform for Verizon.¹³ The Commission entered an order on August 30, 2005, in the rural access investigation proceeding that implements the August 11, 2005, Motion of Vice Chairman James H. Cawley. A comparison of the order with this proceeding quickly establishes that an ALJ recommendation to defer resolution of the remand issues until the conclusion of the FCC docket would be erroneous.

A decision to defer resolution based on the decision in the rural access case would be erroneous because the Commission's concerns that drove the suspension in the rural case are not applicable to Verizon and this remand proceeding. Moreover, an ALJ recommendation to defer resolution would ultimately require an unprecedented second remand of this proceeding by this Commission on grounds that would be identical to the first remand and would conflict with the Commission's clear inference in the January 18, 2005 order at this docket that it has no intention of suspending the remand proceeding in order to await final FCC action.

The Order suspending the rural telephone company investigation emphasizes that the rural company ILECs that were the subject of the Commission rural access investigation are recipients of federal and state universal service fund dollars and the overall revenue level of rural

¹³ Verizon Main Brief on Remand, pp. 13-14; OCA Main Brief on Remand, p. 10; OSBA Main Brief, pp. 8-9. The Commission action to suspend the investigation occurred via an August 11, 2005 Motion of Vice Chairman James H. Cawley, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 ("Cawley Motion"); Order entered August 30, 2005.

ILECs depends on these distributions.¹⁴ The Order also notes that rural company access charge reductions may have to be absorbed by rural ratepayers on a revenue-neutral basis.¹⁵ The Order makes it clear that the potential rate effects of the intercarrier compensation docket, new Chapter 30 and the Pennsylvania universal service fund on rates for rural customer local exchange services are the Commission's primary concerns. The Commission also pointedly observed that four rural ILEC rate increases based on price stability mechanisms/price change opportunity formulas have occurred.

None of the Commission's concerns appear to have been the impetus behind the suspension in the rural investigation are relevant to Verizon and its remand access proceeding. First, and of paramount significance, is the fact that Verizon's low local exchange rates (which are low in relation to rural ILECs and in relation to ILEC rates of neighboring states), eliminates Commission concern about revenue neutral rate increases to Verizon customers arising from access rate reductions.¹⁶ Verizon ratepayers can weather the revenue-neutral local exchange rate increases arising from parity with FCC access rates with ease. In comparison, current rural ILEC local exchange rates are higher than Verizon's rates, making revenue-neutral increases a Commission concern. Second, the relative impact of adjusting universal service fund policy such as contemplated by the FCC is more significant for rural ILECs (high cost areas) than for Verizon (low cost areas). As stated by the Commission in the *Global Order*, access charges were established during a monopoly regime of telecommunications regulation at the local exchange level. Access charges provide a significant source of ILEC earnings and contain implicit and explicit subsidies for local rates. This combination of earnings and subsidy was

¹⁴ Order at 16.

¹⁵ Order at 15-16.

approved pursuant to a public policy of encouraging universally available and relatively affordable telecommunications services while providing earnings sufficient to attract stable investment in a national communications infrastructure. Consequently, public policy over time has resulted in a situation wherein higher cost areas, such as rural areas, with lower density cells and longer loop distances, obtain rate support from lower cost areas, such as urban areas with higher density cell rates and shorter loop distances. Access charges provide a source of earnings while keeping basic local service rates lower than might otherwise be the case in high cost areas.¹⁷

Other important distinguishing factors between the Verizon access docket and the rural ILEC access investigation relate to the vastly different procedural postures of the cases. The Verizon access case has a completed *remand* record and is poised for a Recommended Decision by the ALJ. Thus, a deferment of the decision would require an unprecedented second remand. In this case, the Commission has already approved, in July 2004, revenue neutral access charge reductions, and referred to further access charge reform to follow. In contrast, testimony had not even been filed in the rural investigation proceeding. Thus, the Commission's thinking regarding the appropriate level of the rural ILEC's access charges has not matured to the same level as in the Verizon proceeding. Qwest notes that in the August 30, 2005, order of the Commission suspending the rural telephone company access charge investigation, the Commission characterized the Verizon access charge proceeding as follows: "[i]n a proceeding closely related to the instant investigation,¹⁸ where the Commission currently is in the process of

¹⁶ No persuasive evidence showing a negative impact on universal service penetration rates from the local rate increases on the table on this case has been presented in the record of this proceeding.

¹⁷ *Global Order* at 11.

¹⁸ See *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc.*, Docket No. C-20027195.

completing a two-step elimination of subsidies from Verizon's access rates, the IXCs argue that the Commission already rejected the central argument made by the Joint Petitioners in this instant case (*i.e.*, that Pennsylvania access reform should be delayed until the FCC completes its Unified Intercarrier Compensation proceeding at CC Docket No. 01-92) when it addressed this matter in its January 18, 2005 Order at Docket No. C-20027195.¹⁹ To the extent this excerpt captures the Commission's view of the Verizon access proceeding, it reflects an intention to complete access reform for Verizon through a second-step elimination of subsidies from Verizon's access rates, and not defer access reform until the FCC has acted.

Finally, and perhaps most importantly, the Commission was fully aware of the FCC's planned review of intercarrier compensation issues when it clarified the issues on remand in its January 18, 2005 order on the IXCs' Petition for Clarification in this proceeding. The Commission has made it clear that the ALJ is to take FCC *actions* into account, should those *actions* precede her issuance of a Recommended Decision in this case. By emphasizing that the ALJ and parties should acknowledge any FCC final *action* in presenting their positions, the Commission by clear inference has no intention of suspending the remand proceeding in order to await final FCC action. Verizon and OCA requested that the ALJ significantly delay the scheduling of this remand case to allow further progress to occur in the federal intercarrier compensation docket. The ALJ wisely rejected that request and is proceeding toward a Recommended Decision on the merits of access charge reform issues. That course should continue, and the ALJ should issue a Recommended Decision on the merits of the specific issues that have been remanded.

¹⁹ Order at 14. (Emphasis added).

IV. CONCLUSION

Based on the record in this case, Qwest urges the Commission to take the steps to ensure that the telecommunications marketplace can continue to thrive in the manner in which the Commission has endeavored to create, by:

- a. Immediately adopting a clear policy position that the ILECs' intrastate access rates must be at parity with interstate access rates; and
- b. Reducing Verizon's intrastate switched access charges to the interstate level in a revenue-neutral and a competitively-neutral manner.

Respectfully submitted,



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Counsel for Qwest Communications Corporation

Dated: August 31, 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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Counsel for
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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Recommended Decision on Remand an official Commission document entered, issued, or otherwise promulgated under date of December 7, 2005 at Docket No. C-20027195 on behalf of:

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Cathy Rayer
Signature

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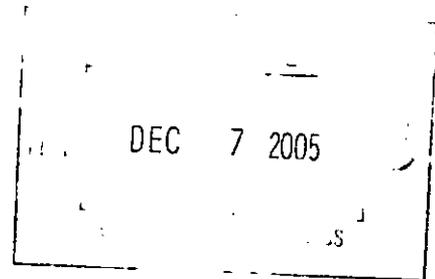
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AND NOW, to wit, this _____ day of _____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of a Recommended Decision on Remand an official Commission document entered, issued, or otherwise promulgated under date of December 7, 2005 at Docket No. C-20027195 on behalf of:

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December 15, 2005

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SECRETARY'S BUREAU

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

Dear Secretary McNulty:

We are writing to advise that the parties to the above-captioned proceeding have reached an agreement concerning a postponement of exceptions. I have spoken with Cheryl Walker Davis of the Office of Special Assistant (OSA) and based upon our agreement, OSA has advised that such extension should be granted for good cause.

The Recommended Decision in this case was issued on December 7, 2005. The Exceptions and Reply Exceptions in this proceeding were set for December 27, 2005 and January 6, 2006, respectively. The extension will allow the Exceptions and Reply Exceptions to be filed on January 9, 2006 and January 25, 2006.

We would appreciate if you would note this extension and so advise the parties.

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

Sincerely,

Philip E. McClelland
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record
Hon. Cynthia Fordham, ALJ
Cheryl Walker Davis/OSA
*86863

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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,
Letter re: Extension for Exceptions and 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 15th day of December, 2005.

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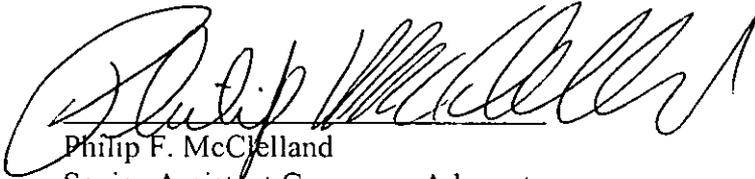
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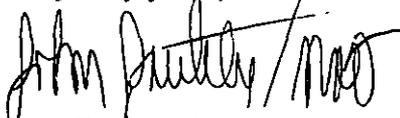
Re: AT&T Communications of Pennsylvania; Inc. v. Verizon North Inc.
and Verizon Pennsylvania Inc., Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Exceptions of Qwest Communications Corporation to the Recommended Decision on Remand in the above-captioned proceeding. Copies of the exceptions have been served in accordance with the attached Certificate of Service.

DOCUMENT
FOLDER

Very truly yours,



John F. Povilaitis

Enclosures
JFP:ck

c. The Honorable Cynthia W. Fordham
(Via overnight mail)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In Re The Joint Application of
Bell Atlantic Corporation and GTE
Corporation for Approval of Agreement
And Plan of Merger

Docket No. C-20027195

AT&T Communications of Pennsylvania, Inc.
v. Verizon Pennsylvania, Inc. and Verizon North,
Inc.

EXCEPTIONS OF QWEST COMMUNICATIONS CORPORATION
TO RECOMMENDED DECISION ON REMAND

DOCKETED
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Counsel for Qwest Communications Corporation

Dated: January 9, 2006

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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In Re the Joint Application of :
Bell Atlantic Corporation and GTE :
Corporation for Approval of Agreement :
And Plan of Merger : Docket No. C-20027195
:
AT&T Communications of Pennsylvania, Inc. :
v. Verizon Pennsylvania, Inc. and Verizon North, :
Inc. :

**EXCEPTIONS OF QWEST COMMUNICATIONS CORPORATION
TO RECOMMENDED DECISION ON REMAND**

Qwest Communications Corporation (“Qwest”) submits to the Pennsylvania Public Utility Commission (“Commission”) its Exceptions to the *Recommended Decision on Remand* of Administrative Law Judge (“ALJ”) Cynthia Williams Fordham, issued on November 30, 2005. The *Recommended Decision on Remand* properly recognizes that the time has come for Verizon Pennsylvania Inc. (“Verizon-PA”) and Verizon North, Inc. (“Verizon-North”) (collectively “Verizon”) to remove the carrier charge as an anti-competitive subsidy,¹ and to reduce its intrastate access charges to parity with its interstate rates in a revenue-neutral manner.² The *Recommended Decision on Remand* also concludes correctly that this access charge reform must occur despite the activity on intercarrier compensation presently before the Federal Communications Commission (“FCC”).³ However, Qwest files these Exceptions to urge the Commission (1) to clarify that Verizon, not the interexchange carriers (“IXCs”), has the burden

¹ *Recommended Decision on Remand* at 63-65.
² *Id.* at 64-66.
³ *Id.* at 18-33, 58-60.

of proof in this matter, and (2) to establish clear deadlines by which Verizon must achieve the access charge reductions set forth in the *Recommended Decision on Remand*.

I. ARGUMENT

EXCEPTION NO. 1: VERIZON HAS THE BURDEN OF PROOF IN THIS PROCEEDING.

The ALJ erroneously concluded in the *Recommended Decision on Remand* that “the IXCs are requesting that Verizon’s existing rates be changed”, and therefore “are the proponents of a rule or order” which have the burden of proof in challenging the rates.⁴ While the IXCs in this proceeding certainly advocated the necessary reductions in Verizon’s intrastate access charges, the Commission, not the IXCs, initiated this proceeding to consider access charge reductions,⁵ and remanded the matter for consideration of further reductions in access charges.⁶

Section 315(a) of the Public Utility Code states that “[i]n any proceeding upon the motion of the Commission involving any proposed or existing rate of any public utility...the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.”⁷ The Commission in its *Global Order* prompted this proceeding “to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market,”⁸ because “[a]s implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC’s service territory”.⁹ In its *July 28, 2004 Order*, the

⁴ *Id.* at 17.

⁵ *Id.* at 1 citing *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999) (“*Global Order*”); 196 P.U.R. 4th 172, *aff’d sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlt. 2000), *alloc. granted*.

⁶ *Id.* at 4.

⁷ 66 Pa. C.S. §315(a).

⁸ *Global Order* at 10.

⁹ *Id.*

Commission remanded this matter requesting examination of further access reductions.¹⁰ Therefore, as the public utility whose existing rates are subject to a Commission-initiated investigation under Section 315(a), Verizon has the burden of proof to show that the rate involved is just and reasonable. Qwest requests that the Commission properly attribute the burden of proof in this proceeding to Verizon, not the IXCs.

EXCEPTION NO. 2: VERIZON MUST ELIMINATE ITS INTRASTATE CARRIER CHARGE, AND REDUCE ITS INTRASTATE ACCESS CHARGES TO PARITY WITH ITS INTERSTATE RATES IN A REVENUE NEUTRAL MANNER NO LATER THAN SIX MONTHS FROM THE DATE OF THE FINAL COMMISSION ORDER ON REMAND.

Though the *Recommended Decision on Remand* correctly finds that “it is clear the time has come for additional access reform of Verizon’s rates in Pennsylvania”, the ALJ proposed implementation timeframes, which continue to postpone access charge reform in Pennsylvania while allowing Verizon the discretion to choose when to comply.¹¹ Specifically, the ALJ recommends the carrier charge “should be removed within six months to a year after the Commission’s order in this matter”,¹² and “that Verizon reduce its intrastate charges to interstate charge levels within one to two years after the final Order in this matter.”¹³ Simply put, the timing in the *Recommended Decision on Remand* is too long and too undefined. The record provides no justification to support prolonging the reductions as suggested in the *Recommended Decision on Remand*. Given the initial phase of intrastate access charge reductions adopted in

¹⁰ *July 28, 2004 Order* at 38.

¹¹ *Recommended Decision on Remand* at 64, 66.

¹² *Id.* at 64.

¹³ *Id.* at 66.

July 2004 and implemented in February 2005, it is also clear that Verizon requires specific implementation dates for the second phase of reductions.

Verizon must be given specific and immediate deadlines to both provide customer notification and file tariffs to reflect the access charge reductions outlined in the *Recommended Decision on Remand*. In the *July 2004 Order*, the Commission directed Verizon to file tariffs to bring former GTE switched access rates into parity with those of Verizon North, and notify customers of local rate increases at least 30 days prior to any rate change. As outlined in the IXCs' Joint Petition for Clarification, Verizon delayed implementation of the initial phase of reductions for six months.¹⁴ Because Verizon has demonstrated the need for clearly defined compliance deadline, and the Commission noted the need to conduct the remand "*in an expedited manner*",¹⁵ the Commission should not allow Verizon to have a self-imposed timetable for complying with the second phase of reductions.

A. THE UNSUBSTANTIATED "CONCERNS" ABOUT RATE SHOCK AND UNIVERSAL SERVICE CLEARLY FAIL TO JUSTIFY CONTINUED DELAY IN VERIZON'S ACCESS CHARGE REDUCTIONS.

The Commission has provided clear directives that reductions to Verizon's intrastate access charges are long overdue.¹⁶ As Qwest explained in its Brief on Remand, the Commission recognized over six years ago that the time had come to reduce Verizon's intrastate access charges.¹⁷ However, these reductions were initially delayed for the merger between Bell Atlantic and GTE (now Verizon), though the Commission acknowledged that "we have provided for an

¹⁴ *Joint Petition of AT&T Communications of Pennsylvania LLC, MCI Worldcom communications, Inc. and Qwest Communications Corporation for Clarification of the Commission's Order Entered on July 28, 2004 at the Above-Captioned Docket Regarding the Compliance Obligations of Verizon Pennsylvania Inc. and Verizon North Inc.*, C-20027195 (Nov. 17, 2004).

¹⁵ *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, C-20027195 (Order Entered January 18, 2005) at 15 (*emphasis added*) ("*January 18, 2005 Order*").

¹⁶ Qwest Main Brief on Remand at 1-3; Qwest Reply Brief on Remand at 1-2, 10.

¹⁷ *Id.* at 5-6 citing *Global Order* at 10.

investigation to achieve *permanent solutions* to access charge reform on or about January 2, 2001.”¹⁸ In 2003, the Commission recognized that “[t]he mandated access charge investigation was delayed because of Verizon’s Section 271 hearings in January and February of 2001.”¹⁹

In 2004, the Commission expressed chagrin that the *Recommended Decision* failed to address adequately the access charge reductions called for in the initial phase of this docket.²⁰ After months of Verizon not achieving the reductions required by the *July 28, 2004 Order*, the Commission established February 1, 2005 as the compliance filing date and directed the remand be conducted “*in an expedited manner*” to the extent the Office of ALJ was able to do so.²¹ Eighteen months have passed since the Commission remanded this proceeding to consider the need for further reductions in Verizon’s access charges. Despite repeatedly recognizing the need for access charge reform, the *Recommended Decision on Remand* would allow Verizon to continue avoiding such reform until 2008.

There is no evidence on the record in this matter to support that immediate implementation of access reform raises any “concern about rate shock and universal service”.²² In fact, the record points to rate shock as a consequence of delaying the proceeding.²³ Furthermore, the significant passage of time that has occurred since the Commission first initiated this proceeding effectively has suspended, and in turn mitigated, whatever “concerns” there arguably might be about achieving access charge reductions in this remand phase. Without

¹⁸ *Id.*

¹⁹ *In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger, AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, Docket No. C-20027195, Order (May 1, 2003)(“*Order Initiating Proceeding*”) at 3.

²⁰ See Qwest Main Brief on Remand at 1-2.

²¹ *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, C-20027195 (Order Entered January 18, 2005) at 15 (*emphasis added*) (“*January 18, 2005 Order*”).

²² Qwest Main Brief on Remand at 7, 22-25; Qwest Reply Brief on Remand at 6.

²³ Qwest Main Brief on Remand at 8.

more than unsubstantiated “concerns”, the Commission should refuse delaying for several more years the elimination of the carrier charge and the reduction in its intrastate access charges to parity with its interstate rates.

B. THE FCC HAS YET TO ESTABLISH ANY TIMETABLE EFFECTING INTRASTATE ACCESS CHARGE REFORM.

The *Recommended Decision on Remand* also stated that “requiring the reduction within two years is ahead of the FCC timetable.”²⁴ However, the prior sentence acknowledged that the Intercarrier Compensation Forum (“ICF”) timeline of six years is merely a proposal submitted to the FCC, not a mandated adopted by the FCC. Using a proposal submitted to the FCC that has yet to be adopted by the FCC is entirely inappropriate. Keeping Verizon’s intrastate access rates in transition for another year or two, because one of the numerous proposals referenced a six year timeframe, also seems to contradict directly the ALJ’s recommendations that “the Commission act without waiting for a decision from the FCC”,²⁵ and “the Commission should not endorse the ICF plan or adopt portions of this plan in resolving this case”.²⁶ Inaction on the *Recommended Decision on Remand* while the FCC proceeds would seem to nullify this proceeding, the ALJ findings, and the efforts of all participants. Accordingly, Qwest urges the Commission to reject the concept that any deadline shorter than the six-year timeframe set forth in the ICF proposal is proper, and adopt a much shorter, more reasoned deadline for complete implementation.

C. IF THE COMMISSION FINDS THAT A PHASED APPROACH IS NECESSARY, VERIZON MUST ACHIEVE COMPLETE IMPLEMENTATION NO LATER THAN SIX MONTHS FROM THE ISSUANCE OF THE FINAL ORDER ON REMAND.

²⁴ *Recommended Decision on Remand* at 66.

²⁵ *Id.* at 60.

²⁶ *Id.* at 62.

There is no question that a reasonable deadline for Verizon's implementation of its access charge reductions would be significantly sooner than 2008. Commission regulations on implementing rate changes envision days, not months or years to comply with Commission decisions. Section 5.92 of the Commission's regulations requires that, upon a final Commission decision modifying rates, a public utility must file a tariff revision consistent with the final decision within 20 days of the entry of the final order, unless otherwise directed by the Commission.²⁷ It is also important to note that an ALJ at the California Public Utilities Commission issued a similar Draft Decision on December 19, 2005, which provided Verizon thirty (30) days to eliminate its interconnection charge.²⁸ Reducing intrastate access charges in Pennsylvania should take no longer.

Despite its belief that implementation should occur in an expedited manner, Qwest proposes a compromise to allow Verizon six months both to eliminate its carrier charge and reduce its intrastate access rates to parity with its interstate rates. Indeed, Verizon has admitted in its October 27, 2004 letter to Qwest that the first phase of rate reductions from the *July 28, 2004 Order* could have been implemented in three months, which included time for system and billing changes to integrate the GTE and Verizon North rates. There is no basis for Verizon to argue that implementation in this second phase is unique enough to require a significantly longer timeframe. If the Commission insists that the reductions ordered in this remand require an additional phased-in approach, Qwest suggests as part of its compromised proposal that Verizon eliminate the carrier charge no later than three months from the date of the final decision, and

²⁷ 52 Pa. Code § 5.92.

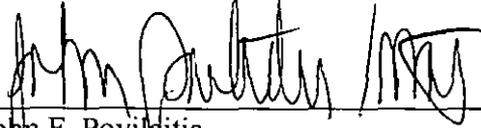
²⁸ *Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, R.03-08-018, Draft Decision (Dec. 19, 2005).

reach parity with its interstate access rates within six months of the date of the final decision, so as to achieve complete implementation with six months.

II. CONCLUSION

Accordingly, Qwest urges the Commission to grant the foregoing Exceptions and to ensure that the telecommunications marketplace in Pennsylvania can continue to thrive in the manner in which the Commission has endeavored to create by establishing a clear, yet reasonable timetable in which to phase in the appropriate level of reform for Verizon's intrastate access rates.

Respectfully submitted,



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Dated: January 9, 2006

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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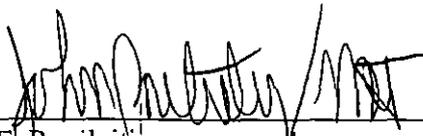
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ORIGINAL

January 9, 2006

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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 Exceptions on Remand in the above-captioned proceeding.

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

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures

cc: All parties of record
Hon. Cynthia Fordham, ALJ
*68614

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

AT&T Communications of Pennsylvania
Inc.

v.

Verizon North Inc.

Docket No. C-20027195

EXCEPTIONS ON REMAND OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On December 7, 2005, the Office of Administrative Law Judge issued the Recommended Decision on Remand of Administrative Law Judge Cynthia Williams Fordham. This Decision is in response to an Order entered by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) dated July 28, 2004.¹ In the July 28th Order, the Commission permitted Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively referred to as “Verizon”) to reduce and restructure its intrastate access charges by allowing Verizon to file a rate rebalancing filing reducing access and raising local rates. The July 28th Order also remanded the case back to ALJ Fordham for the further development of a record, and issuance of a recommended decision, on issues that were not decided in the July 28th Order.² In addition, the Commission denied the later request of the interexchange carriers (“IXCs”) to order further access reductions without hearing in its Order dated January 18, 2005.³ The January 18th Order also specifically expanded the scope of the proceeding to address the significant activity currently underway at the Federal Communications Commission (“FCC”) concerning access charges.⁴

In her Recommended Decision on Remand, the ALJ, *inter alia*, recommends that the Commission adopt an Order that allows Verizon to raise its residential basic local service rate by up to \$1 per month to compensate for lost revenue from the elimination of the Verizon carrier charge within six months to one year. R.D. at 68. The Recommended Decision further recommends that the Commission allow Verizon also to raise its residential basic local service rate by up to an additional \$0.50 per month to compensate for lost revenue that results from “the

¹ AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195, Opinion and Order (entered July 28, 2004)(“July 28th Order”).

² Id. at 34.

³ AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195, Opinion and Order (entered Jan. 18, 2005)(“January 18th Order”).

⁴ In the Matter of Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking (rel. May 23, 2005)(“ICC FNPRM”); January 18th Order at 15.

additional intrastate access charge reductions” within one to two years. R.D. at 69. The Recommended Decision further provides that any remaining lost revenue that may arise as a result of these intrastate access charge reductions can be recovered from business line rate increases. Id. The OCA files the following Exceptions in response to these recommendations made by the ALJ.⁵ As discussed further below, the OCA submits that these recommendations are contrary to the public interest and should be rejected.

II. SUMMARY

The ALJ’s Recommended Decision will not yield any benefits to Pennsylvania consumers. The ALJ’s Recommended Decision reduces the rates paid by IXC’s that no longer even exist on a stand-alone basis, while raising rates for residential basic service customers.

Rather than impose additional costs on basic service customers on a piecemeal basis, the OCA has demonstrated through the testimony of OCA witness Dr. Robert Loube⁶ that the Commission should wait for the FCC to determine what access reductions, if any, may be appropriate as a part of comprehensive Intercarrier Compensation (“ICC”) reform. Failure to wait for the FCC Order might result in additional costs being imposed on Pennsylvania customers and reduce the ability of Pennsylvania customers to benefit from any federal universal service funding to compensate for access reform.

In addition, the Recommended Decision should be rejected because it would eliminate the carrier charge that properly recovers a reasonable share of loop costs from IXC’s. The OCA has also shown that, if this Commission determines to increase basic local service rates to offset

⁵ The OCA notes that the Office of Special Assistants approved an extension of time for the filing of Exceptions and Reply Exceptions via e-mail to all of the parties sent on December 20, 2005.

⁶ Dr. Robert Loube is the Director of Economic Research at Rhoads and Sinon, LLC. His consulting practice centers on providing expert advice to state agencies involved in telecommunications regulation. Prior to joining Rhoads and Sinon, Dr. Loube worked at the FCC, the Public Service Commission for the District of Columbia and the Indiana Utility Regulatory Commission on issues associated with incremental cost, rate design, competition, universal service and separations. Dr. Loube received his Ph.D in Economics from Michigan State University in 1983. See, OCA St. 1R at App. 1.

any further intrastate access reductions, the rate design and procedure should be modified, *inter alia*, by not limiting the number of lines over which any such increase would be applied.

III. EXCEPTIONS

Exception No. 1 - The Commission Should Wait For The FCC Order Concerning Comprehensive Intercarrier Compensation Before Acting To Further Reduce Access Rates And Raise Local Rates In This Proceeding. ALJ R.D. at 58-66; OCA M.B. at 5-18.

A. Introduction.

PUC consideration of the current remand proceeding is the latest phase in Commission action designed to consider modifying Verizon access charges. Fortunately, PUC consideration of these Exceptions coincides with increasing activity at the FCC with the National Association of Regulatory Utility Commissioners⁷ (“NARUC”) in order to reduce the many forms of Intercarrier Compensation, including intrastate access charges, and resolving how to fund this effort. NARUC members and other stakeholders involved in ICC issues continue to meet and discuss these issues in order to resolve these matters and bring them before the FCC.

As explained below, the question of Pennsylvania intrastate access charges is now a small part of the greater problem of national ICC reform. While state rate rebalancing will certainly raise local rates, it will yield little benefit in an increasingly national market moving toward intra and interstate bundles. Most importantly, “go it alone” state access reform will also miss out on federal benefits that will necessarily function as the federal “carrot” to accomplish national ICC reform in all of the state jurisdictions. Further, Pennsylvania rate rebalancing to accomplish state access reductions on the eve of federal ICC reform will complicate the process of two regulatory

⁷ NARUC endorsed the work of its Intercarrier Compensation Task Force at the Winter 2005 meeting and the work of this Task Force with the industry, consumer and governmental stakeholders continues in order to resolve these issues and make a presentation to the FCC before the FCC issues an order on these issues. Resolution on the NARUC Intercarrier Compensation Task Force, http://www.naruc.org/associations/1773/files/intercarriercomptaskforce_w05.pdf.

commissions attempting simultaneously to revise the same access rates. This will lead to the real possibility of imposing double costs on Pennsylvania consumers and losing FCC financial support for any state rate rebalancing that is ordered prior to an FCC Order.

Accordingly, the OCA advocates that the PUC should wait to examine what action the FCC will take on this important issue. OCA submits that the FCC will likely develop a national plan for reducing all forms of ICC. PUC action in advance of FCC activity will cause the same ICC reform to be more expensive for Pennsylvania consumers and needlessly complicate arrival at a similar goal. OCA submits that the question is how to reform Pennsylvania access rates in coordination with FCC ICC reform at the least cost to Pennsylvania consumers.

For the reasons explained below, it will simply be more costly to Pennsylvania consumers for the PUC to order access reductions at this time, before the FCC ICC order and without advance coordination with any new FCC requirements. Now that the FCC is poised to implement a nationwide system to develop a unified ICC scheme, including targets and funding for intrastate access reductions, it makes little sense for the PUC immediately to proceed on that issue. What little benefit may flow from ICC rate reductions will better be implemented through the application of FCC proposed rate changes in conjunction with federal funding, rather than the PUC unilaterally moving forward with no associated federal funding. Consumers deserve the benefit of whatever federal support and funding is made available through the comprehensive ICC reform process.

B. The Recommended Decision Does Not Justify Moving Forward Without the Benefit of FCC ICC Reform.

OCA submits that the justifications used in the Recommended Decision in support of not considering FCC action before ordering rate rebalancing do not support this recommendation. First, the ALJ appears to conclude that, because the PUC did not stay this proceeding in response

to the ALJ's Phase I Recommended Decision in its July 28th Order, then access reform should proceed without waiting for FCC ICC reform. R.D. at 59. OCA submits that the PUC's decision in the July 28th Order to continue litigating this proceeding did not predetermine that the Commission would order unilateral access reductions without waiting for FCC ICC activity. Instead, the July 28th Order "remanded to the ALJ for the further development of the record and the issuance of a recommended decision." July 28th Order at 38. The PUC clearly did not predetermine the outcome in this phase of the proceeding and, concerning various access issues, directed the ALJ to "consider the merits of each of the Parties' positions on this matter and make a recommendation based on the record evidence in the next phase of the investigation." Id. 19, 25.

The PUC's interest in exploring the importance of ICC reform was also apparent in the January 18th Order. On November 17, 2004, the IXCs filed a Petition essentially seeking to terminate the remand proceeding and order further access reductions without additional hearings. The PUC rejected that attempt explaining that:

We are especially concerned about any impact that the proposed ICF proposal, if it is ultimately approved by the FCC, may have jurisdictionally on access charge regulation in Pennsylvania, our ability to further reduce or restructure intrastate access charges, and whether any FCC action may lead to a double recovery by the LECs in Pennsylvania in light of the remanded proceeding, and if the FCC permits intrastate access charges to be offset by increases to the federal SLC.

January 18th Order at 14. The Commission concluded that "we shall direct the ALJ to expand the scope of this proceeding for the purpose of addressing the impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding." Id. Thus, it is impossible to conclude that the PUC's actions in the July 28th Order and January 18th Order in any manner

meant to dismiss considering FCC ICC reform before embarking on further Pennsylvania access related rate rebalancing.

Second, the ALJ appears to interpret the PUC's stay of the Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. I-00040105, in August 2005 ("Rural Access Proceeding") as indicating that Verizon should proceed to further rate rebalancing without waiting for comprehensive ICC reform. R.D. at 59. Certainly, the decision to stay the Rural Access Proceeding, and ordering further investigation in this proceeding through its January 18th Order, does not mean that the PUC has prejudged the present proceeding. The PUC's various orders have effectively stayed or delayed access restructuring, not rushed to judgment on these issues.

Third, the ALJ seems to have categorically dismissed any possibility that Verizon could receive federal funding to assist in the reduction of Pennsylvania access charges through federal ICC reform. The ALJ explains, "Verizon is neither a small company nor an average schedule company that receives federal Universal Service Fund support."⁸ Id. The ALJ erroneously determined that, "Verizon and Verizon North are ineligible for these funds." Id. at 60. Thus, the ALJ seems to contend that, if the Verizon companies are not presently eligible for USF funding, then they will not be eligible under future FCC ICC reform.

The allegation that no Verizon company in Pennsylvania receives federal universal service funding is also factually incorrect. As the FCC explains in its 2004 Universal Service Report, Verizon North receives \$7,789,377⁹ in FCC High Cost Support as Interstate Access

⁸ While many of the small average schedule companies receive federal universal service support, whether or not a company's jurisdictional costs are set based upon its Part 36 cost study or average schedule cost assumptions is irrelevant as to whether telephone carriers will receive ICC support under an impending FCC ICC order.

⁹ This reflects payments in 2004 in the three Verizon North Pennsylvania Study Areas: \$3,370,953, Verizon North Inc.-Pa.; \$2,433,984, Verizon North Inc.-Pa. (Contel); and \$1,984,440, Verizon North Inc.-Pa. (Quaker State). Universal Service Monitoring Report, CC Docket 98-202, 2004, Table 3.27 at 3-112 (2004 USF Report), http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mr04-3.pdf

Support. The FCC notes that these payments relate to the creation of federal USF support in 2001 in order to fund reductions in interstate access charges. The FCC explains, “On May 31, 2000, the Commission established an explicit interstate access support (IAS) mechanism for price-cap carriers to replace the implicit support from interstate access charges. [extensive citations omitted].” *Id.*, Sec. 3, High Cost Support, n.30. Essentially, the FCC created IAS to recover a portion of the reduced access charges that it ordered.

Even if Verizon in Pennsylvania were not presently receiving USF support (and, in fact, Verizon North does) the FCC appears intent on funding ICC reform through new federal mechanisms. The PUC must recognize that the FCC will create some *additional* form of federal funding in order to accomplish state and federal ICC reductions. By the PUC’s acting in advance of an FCC ICC order, Verizon, and its customers, may well lose the opportunity to use such funding.

OCA witness Loube has explained how, under the ICF plan, Verizon can receive new universal service funding to the extent that it has already reached certain annual Subscriber Line Charge (“SLC”) benchmarks. OCA M.B. at 14; *citing* OCA St. 1R at 38-39. Dr. Loube in his testimony explained how the ICF plan would affect potential Pennsylvania funding if the ICF plan were approved:

If the Commission reduces state access rates for a year that turns out to be the base year for the FCC proceeding, then the total allowed revenue decreases. With a lower total allowed revenue, it is more likely that the SLC increase would recover the entire total allowed revenue and Pennsylvania carriers would not be able to dip into the federal universal service. Thus, if Pennsylvania initiates another step in access reductions before the FCC, it is possible that local rates and the SLC will both increase and Pennsylvania carriers will not receive any funding from the federal universal service fund. However, if the FCC proceeding is finalized prior to the Pennsylvania PUC implementing further

access reductions and local rate increases, then it may be possible for the SLC to increase and carriers will receive universal service funding and the local rate will not increase.

OCA St. 1R at 39. In this manner, if the PUC decides to increase local rates to fund access reductions outside of SLC increases, it will be more difficult to reach such annual SLC benchmarks and new forms of federal USF will be less available. Id. Dr. Loube explained:

Pennsylvania consumers may be better off if the PUC delays its action and allows the FCC to take the first step in rebalancing rates because the double recovery of any access revenue reduction will be avoided, any access revenue recovery may be spread across more lines, lowering the per-line increase, and there may be a possibility that Pennsylvania will receive universal service support to offset the access revenue reduction.

Id.

While the Recommended Decision opines that the form of the final ICC plan is uncertain, OCA notes that many of the ICC proposals also contain some form of expanded USF. R.D. at 58-59. While the form of ICC funding mechanisms may vary between plans, many of the plans do provide for federal mechanisms to support state ICC reform. OCA submits that any ICC plan will necessarily favor funding state access reductions that respond to the ICC order rather than access reductions that were approved before the FCC ICC order was issued. It is more likely that an ICC mechanism will support access reductions taking place after the order, rather than at some point before the order was issued. The FCC is unlikely to establish prospective funding for actions that have already occurred. Now that the FCC, through the efforts of NARUC and the stakeholder parties are moving closer to issuing an ICC order, it would be unfortunate if Pennsylvania were to lose substantial funding simply because it decided to move in advance of the FCC, perhaps by only a matter of months.

Fourth, the ALJ notes that the contention to defer PUC action on access reform is based on the argument that “the FCC could decide to preempt the state Commission’s jurisdiction to address intrastate access charges.”¹⁰ R.D. at 59. The ALJ also explains that the FCC may not create a unified ICC system or preempt state action as there are other proposals “which would require the state and the FCC to coordinate any access reform.” R.D. at 59. Thus, the Recommended Decision suggests that deferral is necessary only if the FCC preempts state action. OCA submits that the same problems of coordinating federal benefits to pay for state access reductions will develop whether the FCC preempts the states or merely attempts to coordinate with state activity and encourage state access reform. Either way, the FCC must face the problem of how to fund state access reductions that are either compelled by preemption or encouraged by the FCC. Under either path, the PUC must consider the best way to maximize federal ICC funding available in Pennsylvania.

The PUC should seek to ensure that Pennsylvania consumers are best positioned to use these funds no matter how they are created. No matter what jurisdictional approach the FCC takes, the funding issue will remain. From the range of current proposed plans, it is clear that the FCC will create some type of funding mechanism in any likely ICC reform. It may be that the

¹⁰ As noted in the Recommended Decision, many of the parties in this case, *i.e.*, AT&T and MCI, have filed Comments at the FCC as the Intercarrier Compensation Forum (ICF) exhorting the FCC to preempt the states and enter an order eliminating intrastate access charges. In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Comments of the Intercarrier Compensation Forum at 6 (May 23, 2005).

The ICF Comments state “[A] uniform regime must apply the same rate consistently across all carriers, technologies, and services [and] unify interstate and *intrastate* compensation systems.” *Id.* at 12 (emphasis added). The ICF argues that “section 251(b) (5) clearly provides the [FCC] with authority to preempt intrastate access regimes *in toto* in order to replace them with a uniform intercarrier compensation system...”. *Id.* at 76. AT&T admits that it has proposed to the FCC that it should preempt state authority while also going to the states pressing for reductions in the same rates without waiting for FCC action. AT&T St. 1.1-R at 13. Qwest has similarly filed Comments at the FCC arguing that the FCC must reduce all forms of Intercarrier Compensation (ICC), including intrastate access charges. R.D. at 38.

While the OCA, through the National Association of State Utility Consumer Advocates (NASUCA), has argued that the FCC has no authority to compel intrastate access reductions, R.D. at 27, it is still preferable to await the FCC decision to see what, if any, further action is necessary for the Commission to take.

FCC will not force state access rates downward through preemption. Even so, the FCC may still persuade the states voluntarily to reduce such rates. In no manner does the failure to order FCC preemption resolve the central funding issue.

The ALJ recommends resolving one aspect of the funding issue by asserting that the PUC can implement access rate rebalancing and, if later federal funding appears, the PUC can retroactively “adjust any rate increases to customers to prevent double recovery.” R.D. at 60. OCA submits that the PUC should not complicate this process by 1) ordering increases and decreases in PUC tariffed local and access rates, 2) waiting for and tracking parallel federal efforts that accomplish the same thing, and 3) implementing state rate adjustments in order retroactively to resolve differences between FCC and PUC mechanisms. Such a telephone rate “tracker” mechanism would be unprecedented and needlessly complex.

OCA notes that the ALJ rejected a similar tracking mechanism related to changes in billing determinants for Verizon access reductions because of the “volatility of the industry,” “end user ability to change packages and carriers,” and the fact that there is “no provision for recouping amounts that are over recovered” in the rate mechanism. These same problems are likely to apply to a rate mechanism designed to track and reconcile FCC and PUC intrastate ICC rate recovery mechanisms as well. R.D. at 61.

Such a PUC rate tracker would also raise issues of changing line counts, numbers of access minutes and differences between projections used by the PUC and FCC to set the same rates. It would be confusing to consumers to order local rate increases and then reduce such increases later when federal funding appears. It is also impossible to determine whether an FCC order would even allow the PUC to apply federal funds in order to reduce previously ordered local rate increases. Given that the FCC may prohibit Pennsylvania carriers from applying for

federal funding to replace access revenue previously eliminated through a Pennsylvania order, the Recommended Decision may well cause Pennsylvania carriers and consumers to forfeit federal support. The OCA submits that the most reasonable and prudent way to conform PUC proposed rate rebalancing and the rate changes and funding mechanisms to be proposed by the FCC is to wait until the FCC order is issued and respond accordingly. In this manner, the PUC can best make certain that full funding is obtained for the same access rate reductions that may be proposed both by the PUC and FCC.

Exception No. 2 – The ALJ Erred In Determining That The IXC’s Have Met Their Burden Of Proving In This Remanded Proceeding That Further Intrastate Access Reductions Will Bring Benefits To The Customers In The Toll Market. ALJ R.D. at 68-69; OCA M.B. at 17-23; OCA R.B. at 5-9.

A. Introduction.

In the Recommended Decision, the ALJ recommends a potential increase in residential basic local service rate of as high as \$1.50 per month. R.D. at 68-69. Before proceeding with continued access reductions, the Commission must consider what benefit, if any, consumers will receive from lower access charges and higher local rates.

The ALJ correctly noted that, in this remanded phase of the proceeding, it is the IXCs that have the burden of proof because they are requesting that Verizon’s existing rates be changed. *Id.* at 17; *citing*, 66 Pa.C.S. § 332(a). The ALJ also noted, “in cases where the tariff has already been approved by the Commission the burden is greater because the proponents have to prove by a preponderance of the evidence that the existing rates are unreasonable, unjust or in violation of a Commission regulation or Order.” *Id.*; *citing*, Duquesne Light Co. v. Pa.P.U.C., 715 A.2d 540 (Pa Commw. 1998). The record in this proceeding demonstrates that the IXCs have not met this heightened burden.

The OCA submits that the ALJ's recommended basic local service rate increases are not in the public interest and should be rejected because they will not bring benefits to customers in the toll market. Instead, these increases will simply raise local rates and further depress basic service penetration. The IXCs have not met their burden of proving in this remanded proceeding that further reducing intrastate access charges at this time is in the public interest.

B. The Stand-Alone Interexchange Market No Longer Exists, And Further State Access Reductions Will Not Revive It.

The Commission must be aware that the landscape of the long distance industry has changed dramatically as AT&T and MCI, soon to be a subsidiary of Verizon, have exited the mass market. *See*, OCA M.B. at 17-21. The stand-alone long distance industry no longer exists and further state access reductions will not revive it. The long-time attempt by this Commission and the FCC to maintain a competitive IXC market, through access rate reductions and other efforts have not been successful. The IXC industry can no longer sustain itself on a stand-alone basis. This change of fortune has much more to do with the overall change in the telecommunications market that is evidenced by the recent mega-mergers of various telecommunications giants, including those involved in this proceeding, than with the level of intrastate access rates in Pennsylvania.

Both AT&T and MCI have provided several reasons for leaving the mass-market. As OCA witness Dr. Loubé testified, "each carrier noted that there has been increased competition from intermodal carriers" and that "they have stated that it is very important to be able to compete in more than just the stand-alone long distance market." OCA St. 1R at 23. Dr. Loubé tied AT&T and MCI leaving the market to the elimination of the unbundled network element platform ("UNE-P") by the FCC, which provided entry into the local exchange market. *Id.*; *see also*, OCA St. 1R-R at 9-13. Dr. Loubé added:

The IXCs' problems in the Pennsylvania long distance market are linked to losing the opportunity to purchase UNE-P. The IXCs remained in the long distance market as long as they believed that they had the opportunity to use UNE-P. Once UNE-P was no longer available, AT&T and MCI announced their withdrawal from the consumer long distance markets.

OCA St. 1R-R at 9.

Dr. Loube's testimony is confirmed by the affidavit of AT&T witness John C. Polumbo in the SBC/AT&T merger proceeding recently approved by the FCC.¹¹ This affidavit was provided in response to discovery in this proceeding. In the affidavit, the AT&T witness states that AT&T's revenues and the number of customers it serves have decreased significantly over the last two years. OCA M.B. at 22-23.¹² This Commission has recently noted the decline of AT&T in particular when approving the acquisition of AT&T by SBC.¹³

In the recent SBC/AT&T merger proceeding, the Commission noted, *inter alia*, that the number of Pennsylvania customers taking AT&T's basic local exchange service dropped 11 percent from August 2004 to March 2005 and their business customers using UNE-P based service dropped nearly 6 percent. SBC/AT&T Merger Order at 31. The Commission also noted that, at the end of January 2005, AT&T had a reduction of nearly two-thirds of stand-alone long distance customers from January 2001. Id. at 36. In addition, AT&T expected its consumer services revenue to fall to a reduction of over 57% from 2003 levels. Id. at 37. The Commission

¹¹ In the Matter of SBC Communications, Inc. and AT&T Corps. Application for Transfer of Control, Docket No. WC-05-65, Memorandum Opinion and Order (rel. Nov. 17, 2005).

¹² Citing, AT&T Response to Set One of OCA's Interrogatory No. 1. The entire Polumbo affidavit was admitted into the record of this proceeding as an attachment to the Rebuttal testimony of Verizon witnesses Dean and Kane, Verizon St. 1.1 and is referred to here as "Polumbo affidavit."

¹³ Joint Application of SBC Communications, Inc. and AT&T Corp., Together with its Certificated Pennsylvania Subsidiaries for Approval of Merger, Docket Nos. A-311163F0006, *et al.* (entered Oct. 6, 2005) ("SBC/AT&T Merger Order"). Many of the details as discussed by the Commission in the SBC/AT&T proceeding are proprietary in that proceeding. However, the Polumbo affidavit, *supra*, made part of the record in this proceeding, illustrates the recent state of AT&T as a result of the competitive environment for telecommunications services in Pennsylvania and nationwide. As Mr. Polumbo, the President and CEO of AT&T Consumer Services, indicated, AT&T customers are canceling their services with AT&T so that "AT&T's customer base is eroding away quickly." Polumbo Affidavit at ¶ 35. The Polumbo Affidavit also details AT&T's recent losses in the "local and all-distance markets", "stand-alone long-distance market" and revenues. Id. at ¶¶ 36-38.

noted that AT&T had reduced its number of employees devoted to marketing and customer care and retired much of the physical infrastructure necessary to support its mass-market efforts. Id. at 37.

Common sense dictates that, if two of the largest long distance providers in Pennsylvania are no longer competing in the interexchange mass market, a decision which the companies themselves have deemed is “irreversible,” then raising residential basic local exchange rates to offset reductions in intrastate access charges for companies who are no longer competing in the long distance market will provide no benefit to consumers. As Dr. Loube testified, “now that the major carriers that pay those access charges are leaving the consumer market, much of the reason for reducing access charges also is removed.” OCA St. 1R at 24.

The OCA submits that reducing Pennsylvania’s intrastate access charges at this time will do nothing to reverse the nationwide situation for the IXCs. At this point, any intrastate access rate reductions ordered by this Commission will be immaterial.

C. Intrastate Access Rate Reductions Ordered By This Commission Will Not Revive The IXC Industry.

In this proceeding, the IXCs have argued that further reductions in intrastate access charges will somehow revive competition for the provision of local telecommunications services. For example, Qwest has argued, “Pennsylvania consumers will never truly enjoy vigorous local or long distance competition until the implicit subsidies in Verizon’s intrastate access charges are made explicit through reducing the charges to parity with interstate rates.” July 28th Order at 17. Qwest has also argued in this proceeding “while a rational rate structure for access charges will benefit interexchange competition by eliminating the opportunity for some competitors to cheat and will level the playing field with new technology providers, the real benefit for consumers will be enhanced local service competition.” Qwest St. 2 at 12.

However, further intrastate access rate reductions will not revive local competition in Pennsylvania. As indicated above, the recent mega-mergers have illustrated the decline of AT&T and MCI, two of the three parties that have advocated for further intrastate access reductions in this proceeding. This market failure has more to do with the overall change in the competitive environment that has promoted the string of “mega-mergers.” As Dr. Loubé testified, “the most significant recent events are the announcements by the two leading interexchange carriers, AT&T and MCI, that they are pulling out of the mass market interexchange markets.” OCA St. 1R at 21.

The ALJ noted AT&T’s admission “that it has halted all marketing efforts to its traditional long distance (including toll) customers, stopped attempting to compete on price and selectively raised prices.” R.D. at 38, n.51. The ALJ further noted that “according to AT&T itself, ‘[t]he inevitable effect of these actions is that AT&T’s mass market customer base will dwindle away over time through churn.’” *Id.*; *citing*, Verizon St. 1.1 Remand at 29. Further reducing Pennsylvania’s intrastate access rates in this proceeding will not reverse the fact that AT&T no longer competes in the mass market.

Now that AT&T has been acquired by SBC, any access reductions ordered as part of this proceeding will flow through to SBC’s bottom line.¹⁴ This is particularly true as stand-alone long distance service becomes extinct and will be consumed by bundled package pricing. MCI, which was recently acquired by Verizon, is in a similar situation. As Verizon and MCI noted in their merger proceeding then-pending before the FCC, “to the extent that customers continue to purchase wireline local and long-distance services, they are increasingly purchased and supplied on an integrated basis from a single provider.” *See*, OCA St. 1R at 23. Record evidence

¹⁴ The OCA recognizes that the surviving entity after the acquisition of AT&T by SBC is now called AT&T, but refers to SBC’s name for the purposes of these Exceptions.

demonstrates that intra-state access rates are not the reason that these large carriers determined to exit the long-distance mass market. *Id.* Moreover, without the ability to bundle UNE-P based local service with their long distance service, the IXC's have withdrawn from the local market.

Furthermore, Dr. Loube testified that IXC's have developed plans based on nationwide costs and marketing considerations. *Id.* at 26. Dr. Loube's testimony is based in part on the Exceptions filed in the initial phase of this proceeding. *Id.*, *citing*, Qwest Exceptions at 6. As a result, actions of one state commission cannot have a significant effect on the price of IXC charges because of the national pricing plans offered by IXC's. Therefore, while actions taken by the FCC may have a significant impact on the overall telecommunications market, Pennsylvania access revisions will not have a material effect. OCA M.B. at 20.

D. Recent Intrastate Access Charge Reductions Have Not Produced Long-Distance Rate Reductions.

The IXC's have previously argued that reducing intrastate access rates will enhance competition. *See e.g.*, July 18th Order at 24. For example, Qwest has argued that access reductions will mean that consumers will "truly enjoy vigorous local or long distance competition." Qwest Exc. at 3. Despite these promises from the IXC's of the benefits of reduced access rates, the record evidence in this proceeding details that long distance rates in the mass market have increased not decreased. As access charges have gone down, access rate reductions have not promoted long distance rate reductions. OCA M.B. at 17-18. This is true even after the reduction of intrastate access charges ordered by the Commission in the initial phase of this proceeding.

The ALJ notes that, in the initial phase of this proceeding, Qwest assured the Commission that "customers will experience toll rate reductions that balance out any offsetting rate increases. The consumer is the ultimate winner in all aspects of this proposal." R.D. at 53;

citing, Qwest St. 1 at 7, 10, *see also*, OTS M.B. Remand at 8. The ALJ noted that MCI stated, “[a] reduction in access charges will benefit all consumers of intrastate long distance service.” *Id.* at 54; *citing*, MCI St. 1 at 10, 16; *see also*, OTS M.B. Remand at 10. The ALJ states that “due to the February 2005 access charge reductions, MCI now pays \$2.9 million less per year to Verizon,” *Id.*, but these savings have not been passed through to consumers, despite the prior promises to do so. *See*, OTS M.B. Remand at 10.

Regrettably, most IXC’s in this proceeding provided little data on the issue of long distance rate reductions when requested in discovery. It is clear, however, from public data made part of the record in this proceeding by OCA witness Dr. Loube, that AT&T, Qwest and MCI now each charge their existing mass-market customers a flat rate monthly “regulatory assessment fee,” an “in-state connection fee” and other monthly recurring charges. These monthly charges have created a trend of *increasing* monthly long distance bills for consumers. OCA St. 1R-R at 25. Record evidence further demonstrates that, when these additional fees are included in the IXC’s revenue, the average revenue per minute increases and the IXC’s rates and margins have *increased*. OCA St. 1R-R at 12.

The lone IXC that did provide relevant information regarding monthly recurring charges was AT&T. Through discovery, OCA witness Dr. Loube was able to compare AT&T revenue per minute, access cost and margins *excluding* and *including* the monthly recurring charges.

[BEGIN PROPRIETARY]

AT&T Revenue Per Minute, Access Cost and Margin, <i>Excluding</i> In-State Connection Fee Revenue			
Year	Rev. Per Min.	Access Cost Per Minute	Margin
2001			
2002			
2003			
2004			

AT&T Revenue Per Minute, Access Cost and Margin, <i>Including</i> In-State Connection Fee Revenue			
Year	Rev. Per Min.	Access Cost Per Minute	Margin
2001			
2002			
2003			
2004			

[END PROPRIETARY] OCA Exhibit RL-2R.¹⁵ The record evidence demonstrates that the 2005 data will continue the trend of increasing toll revenue for AT&T as AT&T increased its monthly recurring charges for many of its toll plans by one dollar effective May 1, 2005 and its regulatory assessment fee from 50 cents to \$1.49 per month effective April 1, 2005. OCA St. 1R at 25.

Significantly, the ALJ only cited to the first chart in the Recommended Decision that shows the decrease in average per minute revenues excluding the monthly recurring charge. *See*, R.D. at 46. Had the ALJ included in the Recommended Decision the data provided in OCA Exhibit RL-2R, she would have concluded that, in fact, when considering the monthly recurring charges, the average AT&T revenue per minute increases and the IXCs' rates and margins have *increased*. Therefore, only if the growing revenues from AT&T's long distance monthly surcharges are excluded, can long distance rates be shown to decline. Any rate comparison that eliminates much of the long distance revenues is a meaningless comparison given current long distance pricing.

The ALJ recognizes the OCA's argument with regard to the monthly recurring charges and the admission by AT&T witness Oyefusi who "openly acknowledged that his revenue per minute analysis did not include the In-State Connection Fee and that, if it did, it would have an

¹⁵ *Citing*, AT&T response to OTS Set 1, Data Request No. 4 and AT&T responses to OCA Set 3, Data Request Nos. 1 and 2, respectively.

upward effect on AT&T's intrastate average revenue per minute." R.D. at 47, n. 76. However, the ALJ erroneously concludes that, overall, the record indicates that the effects of bundled calling plans offset the monthly recurring charges. Id.

Relying on bundled calling as an offset to monthly recurring charges is not a valid comparison. The ALJ concluded that "the IXCs did provide evidence that the additional unlimited calling plans are a result of the Phase I reductions." R.D. at 65. If customers are moving to certain bundled plans for intrastate and interstate calling that do not include increasing surcharges, this would not demonstrate that Pennsylvania access charge reductions are flowing to their customers. The fact that there are additional unlimited calling plans does not mean that those unlimited calling plans are a result of the Pennsylvania access reductions. In addition, without any data, the existence of such plans does not demonstrate that access rates are flowed through to customers on a per minute or even bundled package basis. The record evidence demonstrates that the IXC long distance rates have increased because of the monthly recurring charges that the IXCs have added. The Commission should reject the ALJ's determination that prior intrastate access rate reductions led to these other packages being offered. In fact, there exists no substantial record evidence to support that determination.

The ALJ simplifies the market realities in this era of competitive alternatives. It must be recognized that the bundled plans are part of a nationwide marketing scheme that is based on the use of UNE-P to provide local service. The elimination of UNE-P means that the bundles will no longer be supported by the IXCs and, therefore, relying on the bundles to conclude that IXC rates are declining is not reasonable. If customers are moving to certain bundled plans for intrastate and interstate calling that do not include increasing surcharges that does not demonstrate that Pennsylvania access charge reductions are flowing to their customers and the

IXCs. Merely because the national market is moving to unlimited calling plans coincident with intrastate access rate reductions does not mean that access reductions are flowing through to Pennsylvania consumers. Nor does it mean that Pennsylvania intrastate access rate reductions have caused telephone companies in Pennsylvania to sell bundled packages.

Ultimately, the ALJ erred in determining that the IXC's have met their burden of proving in this remanded proceeding that further intrastate access reductions will bring any benefits whatsoever to Pennsylvania consumers.

E. Offsetting Any Intrastate Access Rate Reduction With Increases To The Residential Basic Local Service Rate Will Cause Greater Concern For Universal Service.

The Recommended Decision should be rejected because it will put greater pressure on universal service in Pennsylvania because fewer consumers will be able to afford basic local telephone service if they are required to pay higher local rates. The Commission should be concerned that increasing residential basic local service rates to offset reductions in intrastate access rates is not in the public interest because it will hinder universal service efforts contrary to Chapter 30 and Act 183.¹⁶

OCA witness Dr. Loube has presented evidence showing that the percentage of households in Pennsylvania with any type of telephone service has been decreasing over the past few years to its lowest point in the last fifteen years. OCA St. 1R at 27-28.¹⁷ This evidence was prior to the recent increase ordered to take effect in February 2005 as a result of the July 28th Order. Id. at 28. If residential basic local service rates are further increased by up to an additional \$1.50 per month, as recommended by the ALJ in her Recommended Decision, then

¹⁶ 66 Pa. C.S. § 3011(2).

¹⁷ *Citing*, Alexander Belifante, "Telephone Subscribership in the United States (Date through March 2005)." FCC Industry Analysis and Technology Division, May 2005, Table 3. The number of households with at least one telephone includes those households with only cellular service and with only Voice over Internet Protocol service ("VoIP").

the number of households in Pennsylvania with at least one telephone will continue to decrease. Universal service principles will be jeopardized if the Commission implements further increases to residential basic local service as recommended by the ALJ. The Commission must recognize the record evidence in this proceeding that indicates the detriment to universal service in Pennsylvania that the ALJ's recommendation may have.

F. IXCs With Affiliated Local Companies Have Inconsistently Argued Here That Intrastate Access Rate Reductions Should Be Implemented In Pennsylvania, But Have Not Implemented Intrastate Access Rate Reductions In Their Home State.

The record in this proceeding also demonstrates that the IXCs that have been actively advocating for a reduction or elimination of access charges in Pennsylvania, and that are affiliated with incumbent local exchange carriers in other parts of the country, have themselves not reduced their intrastate access rates in their incumbent service territory.

The ALJ recognized this inconsistency in the Recommended Decision with regard to Qwest's arguments. R.D. at 39. The ALJ stated that Qwest "contends that the policy of contribution through high switched access rates to offset low basic exchange rates no longer fulfills any public policy objective." *Id.*; *citing*, Qwest M.B. on Remand at 11. The ALJ then noted that

Qwest's argument lacks credibility because the record shows that Qwest still maintains high intrastate access rates in the majority of its ILEC states. While Qwest argues that refraining from lowering intrastate access rates in Pennsylvania now will "widen the gap" between PUC and FCC policies, Qwest is content to wait for the FCC and keep that "gap" in the vast majority of states where it operates as an ILEC and so there is no reason for Qwest to resist waiting for the FCC in Pennsylvania as well.

Id.; *citing*, Verizon M.B. on Remand at 31-32 and Qwest M.B. on Remand at 22.

OCA submits that many of the IXCs advocating for access reductions have not demonstrated that they have achieved the same reductions in their affiliated local companies.

These IXCs should not be demanding here in Pennsylvania what they will not provide in their own territory.

G. Conclusion.

The ALJ erred in recommending a potential increase in residential basic local service rates of as high as \$1.50 per month to offset intrastate access charge reductions. This increase will not benefit consumers. Record evidence demonstrates that access reductions have not brought benefits to mass-market customers in the toll market. Additionally, the Commission should not reduce access rates and increase residential basic local service rates because increasing rates continue to be a concern for universal service. The IXC's have not met their burden of proving in this remanded proceeding that further intrastate access reductions will bring benefits to the customers in the toll market. Therefore, the Recommended Decision should be rejected because it is not in the public interest.

Exception No. 3 – The ALJ Erred In Recommending That The Carrier Charge Be Eliminated. The Carrier Charge Properly Recovers A Reasonable Share Of Loop Costs From The Interexchange Carriers. ALJ R.D. at 63-64; OCA M.B. at 23-39.

In the Recommended Decision, the ALJ recommends, “the carrier charge ... should be removed within six months to a year after the Commission’s order in this matter.” R.D. at 64. However, the record evidence in this proceeding demonstrates that the elimination of the carrier charge is in error because all users of the local loop have an obligation to pay for non-traffic sensitive costs. Therefore, the ALJ’s determination regarding this issue must be reversed.

The ALJ noted that the public advocates contend that the IXCs should pay for a portion of the loop although “the trend seems to be toward eliminating this charge.” R.D. at 63. The ALJ noted that in the Global Order, the carrier charge was changed from a per minute to a per line charge. Id. The ALJ stated, “although it made sense at the time, this change has proven to

be costly.” Id. The ALJ then concluded, “the IXCs have proven that the carrier charge is no longer [a] valid way to address this matter. Consequently, the cost must be paid by the end user.” Id.

The OCA is concerned that the Recommended Decision appears to use a problem of rate design as a reason to shift all loop costs to basic service customers. The ALJ’s concern appears to be based on rate structure; that is, whether the access revenue should be recovered on a per line basis or a per minute basis. Without resolving that issue, the ALJ simply requires end users to pay all of the cost and, thereby, inappropriately absolving the IXCs of any responsibility to pay their share of the loop costs.

Instead of fixing the perceived rate design issue, the ALJ passes the entire cost of the loop on to the consumers. As discussed below, this recommendation violates substantial legal precedent that provides that the loop cost should be shared among all the users, including the IXCs. The ALJ’s conclusion seems to be entirely based upon the rate design of the recovery mechanism, *i.e.*, a fixed cost recovered through a fixed monthly charge that increases on a per minute basis as minutes fall. Whether or not this is the best rate design as minutes decline, IXCs should continue to pay for the loops they use in some manner.

The OCA provided extensive legal precedent from this Commission and elsewhere that requires IXCs to share in the non-traffic sensitive costs of the local loop. The ALJ, however, fails to follow this substantial legal precedent. Instead, the ALJ merely notes the perceived difficulty in charging IXCs to use the local loop given the changes in the industry. R.D. at 63. The ALJ also applies the decreasing trend in access minutes as support for eliminating all loop contribution through the carrier charge. Id.¹⁸

¹⁸ OCA is uncertain concerning the ALJ’s reference to the diminishing number of access lines because of the recent mega-mergers of SBC Communications with AT&T Corp and Verizon and MCI. R.D. at 63. Perhaps the ALJ

What is clear is that the ALJ has not provided a sufficient basis for the Commission to reverse its long-standing position that all users of the local loop have an obligation to pay for some portion of non-traffic sensitive costs.¹⁹ Clearly, the ALJ has not cited to sufficient record evidence that would reasonably support shifting all of the carrier charge, and related loop costs, on Verizon customers.

Furthermore, the ALJ's reasoning is contrary to decades of jurisprudence from this Commission and other state and federal agencies and courts, including the United States Supreme Court, which says that all users of the local loop have an obligation to pay for non-traffic sensitive costs. The OCA provides a detailed discussion of this precedent in its Main Brief. OCA M.B. at 23-27.²⁰ Most significant, however, is the Commonwealth Court's decision in the appeals of the Commission's 1999 Global Order.²¹

meant the diminishing number of access *minutes*, not access *lines*, as a result of these mega-mergers. Even so, only the merger of Verizon and MCI may tend to reduce access minutes on the Verizon network, not the merger of SBC and AT&T.

¹⁹ Furthermore, the record evidence that is cited by the ALJ contains typographical errors in recording applicable rates. In the chart on page 64 of the Recommended Decision, the ALJ indicates that the intrastate rate for local switching is [BEGIN PROPRIETARY]

[END PROPRIETARY] as provided in MCI Main Brief at 8. Further, the carrier charge shown in the same chart is [BEGIN PROPRIETARY]

[END PROPRIETARY] as provided in MCI Main Brief at 8.

The Recommended Decision at 43 also reflects an error made in the AT&T M.B. at 17. The AT&T chart, republished in the Recommended Decision, shows [BEGIN PROPRIETARY]

[END PROPRIETARY] per

minute rate in the AT&T Testimony at AT&T St. 1.2-R at 13.

²⁰ See e.g., Pa. P.U.C., et al v. Bell Atlantic – Pennsylvania, Inc., Opinion and Order, Docket No. R-00963550 et.al. at 23-24 (December 16, 1996)(the allocation of 100% to one component renders the Rate Rebalancing proposal of Bell inherently flawed”); Universal Service Investigation, Docket No. I-00940035, Opinion and Order at 12 (August 31, 1995 (“We agree with the PTA and the OCA that local loop costs are joint or shared costs since the local loop is jointly utilized to provide a wide array of telecommunications services, among which are basic universal services”); Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035, Order at 82-83 (January 28, 1997) (“We reaffirm our findings in our September 5, 1995 Order at Docket No. L-00950105 that the local loop is a “joint cost”, not a direct cost of providing only those services included in the definition of B[asic] U[niversal] S[ervice]. It is used for a variety of services other than BUS and must be allocated among the services which utilize it.”). For FCC precedent, see also, In the Matter of: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 676, 678 (August 8, 1996); In the Matter of NYNEX Telephone Companies Petition for Waiver, 10 FCC Rcd. 7445 at ¶ 39 (May 4, 1995); and In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC-Docket No. 01-338 (rel. August 21, 2003); and

In that decision, the Commonwealth Court upheld the Commission's conclusion that IXCs should contribute to loop costs through access rates. In the appeal of the Global Order, AT&T argued that the Commission's decision to set access rates above incremental costs was illegal. In rejecting AT&T's appeal, the Commonwealth Court noted the testimony of the OCA witness regarding AT&T's request to reduce access rates to incremental cost. The Commonwealth Court wrote:

[t]he Office of Consumer Advocate responds to AT&T by submitting that there is no legal authority requiring the PUC to reduce access rates to the incremental cost of access service. OCA witnesses testified that such a reduction could require customers other than the long distance carriers to pay all of the joint and common costs of the network and therefore should be rejected. The logic of that analysis commends it.²²

The decision of the Commonwealth Court on this point in the Global Appeal Order is illuminating. The Commonwealth Court decided:

One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost, but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support. The record here confirms the soundness of the PUC's view, based on evidence from consumer witnesses, that *users of all services, including access, should share in the payment of total network costs, with the cost of the local loop included as an element of that total network.*²³

Thus, it is clear that the Commonwealth Court has ruled that all users of the network should pay a portion of network costs, including the local loop. It is entirely appropriate and necessary that

In the Matter of Access Charge Reform, Sixth Report and Order, CC Docket No. 96-262, FCC 00-193, released May 31, 2000, ¶11. *See also*, 47 C.F.R. § 36.154. For United States Supreme Court precedent, *see also*, Smith v. Illinois Bell Telephone, 282 U.S. 133, 51 S.Ct. 65, 75 L.Ed. 255 (1930) (the loop cost must be recovered from both the intrastate and interstate jurisdictions).

²¹ Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 763 A.2d 440, 480 (Pa.Cmwltth 2000) ("Global Appeal Order"), *vacated in part, sub nom. MCI Worldcom Inc. v. Pa. Public Utility Commission*, 844 A.2d 1239 (Pa. 2004) (State court lacked jurisdiction to review unbundled network elements decision)(emphasis added).

²² Id.

²³ Id. (emphasis added).

access services should contribute to the cost of the loop. Loop facility costs must be allocated to all services, including access service, which employ the local loop facility. That is the law as explained by the Commonwealth Court.

The OCA has also shown, in addition to this substantial legal precedent, that the IXCs' loop contribution should not be eliminated because the IXCs' argument that access rates subsidize local service is without merit and should be rejected. The record in this proceeding supports a finding that residential consumers are not receiving a subsidy and the IXCs are not paying a subsidy. OCA M.B. at 32. OCA witness Dr. Loube has shown that the cost estimate for Verizon basic local residential service as determined by the FCC is **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** so that the rate for residential basic local service is not set below the incremental cost of the service. OCA St. 1R at 5-17.²⁴ Therefore, residential basic local service cannot be receiving a subsidy. *Id.* at 7-12.

Dr. Loube testified that residential customers already are paying approximately 90% of the cost of the local loop while IXCs are only paying 10%. Dr. Loube noted that the Verizon PA and Verizon North average monthly residential revenue per-line for flat rate local service is **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per month, respectively, on average. OCA St. 1R at 11. Dr. Loube also determined that the average access revenue per line is only **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**. *Id.* at 14. This further confirms that residential basic service revenue is far greater than the

²⁴ Dr. Loube presented evidence that the incremental network cost of Verizon basic service is **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** based on the current rates for UNEs for switching, transport and tandem services and Verizon's usage patterns. OCA St. 1R at 9; *citing*, OCA Exh. RL-2. Therefore, to include marketing costs of \$0.09 and forward-looking customer operations costs of \$1.24, as previously determined by the FCC, the estimate for Verizon basic local residential service is **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**. *Id.* at 11.

incremental cost of service and that IXCs are not paying a subsidy. This analysis supports the conclusion that local rates are not subsidized by access charges.²⁵

The ALJ's recommendation to eliminate the carrier charge is shortsighted. The Commission should consider that the modern network is increasingly one of large fixed costs that should not be paid for entirely by local service. This fact becomes more obvious when considering that the modern telecommunications network does much more than provide simple local voice communications. OCA M.B. at 32-33. Dr. Loube testified that Verizon is offering video services in some places where it has installed a new fiber to the premises network and is actively seeking authority to provide cable television services wherever the network is constructed. OCA St. 1R at 13. Federal law specifically requires that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. 47 U.S.C. § 254(k). As more services are provided over the local loop, it becomes apparent that increasing portions of the loop costs should be recovered from non-voice services. Thus, the direction of network technology is to reduce local basic telephone rate responsibility for the loop rather than increasing it as the Recommended Decision proposes. OCA M.B. at 32-33.

As such, the ALJ erred in recommending that IXCs should not contribute to loop cost recovery through such mechanisms as the carrier charge. All users of the local loop have some responsibility to pay for a portion of the non-traffic sensitive costs. The ALJ's recommendation is contrary to decades of jurisprudence from state and federal courts and agencies, including this Commission and the Commonwealth Court, that require all users of the local loop to pay for

²⁵ Record evidence further demonstrates that the carrier charge is a reasonable method to recover a portion of the shared cost of the network from all of the users of the network so that every user of the network contributes to the shared cost. OCA M.B. at 35-36; *see also*, OCA St. 1R at 19.

non-traffic sensitive costs. The ALJ has neither recognized nor distinguished this precedent.

The ALJ's recommendation to eliminate the carrier charge must be reversed.

Exception No. 4 - The ALJ Erred In Limiting The Number Of Lines On Which Any Revenue-Neutral Rate Increase Could Be Calculated. ALJ R.D. at 66-67; OCA M.B. at 42-43; OCA R.B. at 9-11.

In the Recommended Decision, the ALJ denies the request of several parties to have the Commission order revenue-neutral recovery calculated based on all lines served by Verizon. R.D. at 67. The ALJ determines that the Commission cannot order Verizon to include competitive services in a calculation of the necessary rate rebalancing. Id. The Recommended Decision should be rejected. It is blatantly discriminatory and unfair to charge all of the costs of access reductions to only a portion of access lines. Customers purchasing both competitive and noncompetitive service generate switched access revenue that would be reduced by the Recommended Decision. Such a determination is also flatly illegal because it requires non-competitive local service customers to subsidize competitive services. 66 Pa. C.S. §3016(f).

The ALJ fails to recognize that her Recommended Decision is self-defeating and will continue to become increasingly so over time as the sale of bundled competitive packages continues to grow. As more customers switch to bundled packages of services, classified as competitive, the number of non-competitive customers will decrease. Over time, that decreasing number of non-competitive customers will bear more and more of any burdens created by revenue-neutral rate increases. This increased burden will arise because of fewer customers paying to recover the same revenue-neutral increase created by intrastate access reduction. As this burden increases, more customers will either drop their service because the price is too high or otherwise switch to the competitive bundled packages. Losing these customers will create a cycle of increasing the burden on a decreasing number of noncompetitive customers.

For example, if \$50 million per year was required to make any intrastate access revenue reductions revenue-neutral to Verizon and the \$50 million was recovered from 5 million Verizon non-competitive customers (*i.e.*, they do not subscribe to bundles, but purchase noncompetitive local service), then each of those 5 million customers would pay \$10 per year.²⁶ However, if one million of those customers move to competitive bundles, then the remaining 4 million customers suddenly find themselves responsible to pay \$12.50 per year -- \$10 for their own access line and \$2.50 for their neighbor who happens to subscribe to the bundled service. If one-half of the customers subscribe to bundled service then the remaining half of the customers will pay \$20. This vicious circle would continue as a declining number of basic non-bundled customers pay for 100% of the access charges on the entire system. This absurd result is not only illegal and unfair, but also self-defeating in the end.

The OCA submits that, if the Commission decides to implement intrastate access reductions and use rate rebalancing to do so, then it must use a more complete line count to do so. As Dr. Loubé testified: “While it is not appropriate for the PUC to order such rebalancing at this time, if the PUC mandated rebalancing, then the revenue neutral rate increase should be determined by counting all lines. This would mean calculating local rate increases for protected noncompetitive lines based upon a calculation that included bundled competitive services.” OCA St. 1R at 38. Dr. Loubé added, “basic noncompetitive customers should only be required to pay the portion of any access reduction that is attributable to their lines.” *Id.*

Calculating the necessary noncompetitive rate increase based upon all lines does not require the PUC to order rate increases for competitive services. Dr. Loubé explained:

Q. Are you proposing that the PUC should order a rate increase for competitive services?

²⁶ The \$50 million access revenue reduction in this example is based on the common line and switched access revenue associated with competitive customers as well as non-competitive customers.

A. No. It is up to Verizon if it seeks to recover those lost revenues from bundled service customers. I am proposing that basic noncompetitive customers should only be required to pay the portion of any access reduction that is attributable to their lines. Customers served by those lines should not have to pay for the portion of access reductions attributable to lines that are used with competitive services.

Id. The PUC need not order rate increases for competitive lines, but it also must not shift all access rate reductions related to competitive lines to protected noncompetitive services.

However, the Recommended Decision ignores this record evidence. The Recommended Decision also ignores the impact of Chapter 30, Act 183 or the federal Telecommunications Act of 1996²⁷ that prohibit the subsidies that the Recommended Decision would create. Section 3016(f) (1) of Act 183 prohibits an incumbent local exchange carrier “from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services.” 66 Pa. C.S. § 3016(f) (1). Additionally, Section 254(k) of TA-96 requires that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. 47 U.S.C. § 254(k). As such, as access revenue generated by competitive lines are reduced, the customers served by non-competitive lines should not be paying for that reduction.

The Commission recently recognized the impact of Section 3016(f) (1) on incumbent telephone companies in the context of lost toll revenue created because of extended area service (“EAS”) cases.²⁸ In Billet, the Commission rejected a proposed settlement regarding a requested extension of an exchange’s local calling area. As part of the settlement, the complainants agreed to the application of a surcharge that would recover the lost toll revenue created because of the

²⁷ 47 U.S.C. §§ 151, *et seq.* (“TA-96”).

²⁸ *See, Jeb Billet, et al. v. The United Telephone Company of Pennsylvania*, Docket No. C-00014854, *et al.*, Opinion and Order (entered Apr. 8, 2005)(“Billet”).

extension of the local calling area. In rejecting the Petition for Reconsideration filed by the local exchange carriers involved, the Commission determined that

Under price cap regulation, the Company is not guaranteed to recover lost competitive revenues via increases to protected, noncompetitive services when a competitive service is replaced with a noncompetitive service such as in the case of [extended area service]. Specifically, Section 3016(f)(1) of Chapter 30 prohibits revenues earned or expenses incurred in conjunction with noncompetitive services from subsidizing competitive services. Since United's basic local exchange services are protected, noncompetitive services pursuant to the definition of "Protected Service" in Section 3012 of Chapter 30, and United's toll services are competitive pursuant to the definition of "Competitive service" in Section 3012 of Chapter 30, we are statutorily prohibited to permit United to recover its lost toll revenues through any increases in basic local exchange rates. Therefore, if United desires to recover its lost competitive toll revenue, it must do so by increasing rates of other competitive services or by other means, and not by increasing rates for its protected noncompetitive basic local exchange services.

Id. at 13 (citations omitted). This determination is directly relevant to the ALJ's recommendation in this proceeding to use protected, non-competitive basic local exchange service increases to insulate competitive bundled lines from the loss of access revenues directly related to those lines. OCA emphasizes that all of Verizon's switched access revenue is classified as non-competitive. The access revenue generated by competitive bundles represents a growing amount of access revenue. Just as the Commission correctly recognized that basic local service rates could not subsidize lost toll revenues because of the implementation of EAS, nor can basic, non-competitive local service rates subsidize competitive rates from bearing any portion of the revenue reduction related to access charges generated by competitive lines.

Calculating the required local revenue by using all lines would also be consistent with Section 3017(a) of Act 183. Section 3017(a) states that the Commission may not require a local exchange telecommunications company to reduce access rates except on a revenue neutral basis.

66 Pa. C.S. § 3017(a). Section 3017(a), however, does not mandate that the Company must recover all reduced access charges from non-competitive rates. To the extent that access reductions are associated with lines used for non-competitive services, then the revenue neutral rebalancing should be charged to those lines. To the extent that access reductions are associated with lines used for competitive bundled services, however, it is up to Verizon to collect any rebalancing shortfall from those customers.

This is exactly how the SLC works. That is, the SLC is calculated based on allocating costs across all access lines. The FCC does not “order” Verizon or any other carrier to collect those charges. Yet, Verizon, and most other carriers, apply a uniform SLC to all customers – competitive and non-competitive alike.

Nor does Section 3017(a) prohibit the Commission from imputing recovery on an equal basis from competitive rates. The Commission may not prohibit Verizon from recovering its access reductions from competitive services. The Recommended Decision confuses the inability to order increases from competitive rates with imputing competitive rate increases as part of a process assigning equal increases to all lines. Whatever limits Verizon has placed upon itself for competitive services is part of a competitive process. Verizon may increase rates on competitive lines as contracts expire or may choose not to recover that portion of the increase.

This is also yet another reason to wait for the FCC to act on the ICC NPRM where all lines will be required to pay for access reductions. *See*, Exception No. 2, *supra*. As OCA witness Dr. Loubé testified concerning the ICC reform plans that the FCC is currently considering, the major plans would spread any cost recovery through an increase to the SLC and federal universal service. OCA St. 1R at 36, 41. The number of access lines that pay the SLC is clearly larger than the number of lines that Verizon is suggesting in this proceeding should be

used for Pennsylvania access rate rebalancing. All lines also pay for federal universal service. The ICF plan, for example, includes competitive lines in the recovery calculations. Therefore, waiting for the FCC to act on the ICC FNPRM would better determine the number of lines over which any cost recovery would be spread, likely decreasing any particular increase that an individual consumer may pay.

In addition to violating rules prohibiting non-competitive services from subsidizing competitive services, excluding competitive lines from their share of the revenue-neutral rate increase is discriminatory. While Verizon is not compelled to implement any revenue-neutral rate increase to offset the recommended intrastate access reductions on its competitive customers, Verizon should not be allowed to shift all revenue responsibility for access reductions from competitive to noncompetitive lines. Such revenue shifting would unfairly subsidize competitive services at the expense of non-competitive services. Doing so would be discriminatory against non-competitive customers who are protected under Act 183.

As noted above, for interstate access, Verizon charges all of its customers, both its competitive and non-competitive customers, the SLC that is the funding mechanism used to compensate Verizon for its interstate access costs. Similarly, Verizon should not be allowed in this proceeding to increase the burden for access costs only on its non-competitive customers by limiting the number of access lines upon which the ALJ's recommended residential rate increase should be calculated.

The OCA also references the Commonwealth Court decision in Barasch v. Pa.P.U.C., 533 A.2d 1108, 111 Pa.Cmwlth 339 (1987) ("Barasch"), as prohibiting the Commission from requiring non-competitive customers from making up the difference for a charge that Verizon would not apply to its competitive customers. In Barasch, the Commission approved a rate

increase request by Continental Telephone Company, but established a rate structure that specifically excluded the Emmaus exchange from receiving the increase because of substandard service received by the customers in that exchange.²⁹ Instead, the Commission spread the portion of the rate increase that the Emmaus customers would have paid over the remaining Continental customers. The OCA appealed.

In reversing the rate design established by the Commission, the Commonwealth Court determined that Section 1304 of the Public Utility Code prohibited any rates that grant an unreasonable preference or advantage to any person or that maintains an unreasonable difference in rates as to localities.³⁰ The Commonwealth Court agreed that it would be unfair to assess the Emmaus exchange customers any portion of the rate increase since they were receiving substandard service.³¹ However, the Commonwealth Court held that charging the non-Emmaus customers more than the allowed rate increase to make up for what the Emmaus customers were not paying “imposes an unreasonably high rate on the non-Emmaus customers due to Continental’s failure to maintain adequate service to the Emmaus exchange.”³² The Commonwealth Court added, “the record in this case is devoid of any evidence or basis to support the premium rate charged to the non-Emmaus customers for their merely adequate service.”³³

Similarly, the record evidence in this proceeding does not support charging non-competitive customers for more than their share of any basic local service rate increase that offsets any intrastate access reductions. Such a disproportionate increase violates Section 1304, which continues to apply to non-competitive rates, and cannot be allowed by this Commission.

²⁹ *Id.* at 1109-1110.

³⁰ *Id.* 1110-1111; *citing*, 66 Pa.C.S. § 1304.

³¹ *Id.* at 1111.

³² *Id.* 1112.

³³ *Id.*

As such, the OCA submits that the Recommended Decision should be rejected because it inappropriately limits the number of access lines over which any revenue neutral rate increase would be calculated to offset the proposed intrastate access reduction.

Exception No. 5 - The Proposed Rate Design And Procedure Should Be Modified If Any Access Revisions Are Ordered By The Commission. ALJ R.D. at 68-69.

The OCA advocates that the PUC should not approve any access reductions through rate rebalancing at this time. While maintaining that position, the OCA also excepts to the proposed rate design and rate increase process set forth within the Recommended Decision in the event that any increases are ordered.

A. Residential And Business Lines Should Pay An Equal Amount Per Line For Any Increase.

Without any discussion in the body of the Recommended Decision, the Ordering Paragraphs contain a proposed rate design that was not otherwise discussed in the Recommended Decision and is not supported by any substantial evidence. The ALJ proposes that the local rate increases related to the elimination of the carrier charge shall be first be recovered from the R-1 rate at a maximum increase of \$1 per line. R.D. at 68. The remaining lost revenues will be recovered from business line rate increases. Id. at 69. The remaining non-carrier charge rate increases are to be recovered in the amount of the first \$.50 per line from Residential customers and all remaining recovery from Business customers. Id. As the OCA and other parties have contested the number of lines that will be used to recover any rate increase, it is difficult to determine the per line charge that will be applied under this recommendation.

There is no basis for such discrimination between the charges recovered from Residential or Business lines. The Recommended Decision must be reversed because it is not based on substantial record evidence. Pennsylvania law requires that administrative decisions be based on

evidence and not on positions that have not been sustained by record evidence. Shaffer v. Commonwealth Telephone Co., Docket No. C-00924648 (Opinion and Order entered on Jan. 24, 1995); *citing*, Pa. Social Services v. Pa. Labor Relations Bd., 481 Pa. 81, 392 A.2d 256 (1978).. Failure to base its decision on record evidence constitutes reversible error on appeal. Id. The Commission has previously recognized that “by issuing a decision based on something other than the record, we open ourselves to a challenge that our decision was not based on sufficient evidence.” Norfolk & W.R. Co. v. Pa.P.U.C., 489 Pa. 19, 413 A.2d 1037, 1047 (1980).

While it may have been intended as a means to limit the impact upon Residential customers, the effect will likely be to force Residential customers to pay for a disproportionate amount of such a rate increase. There is no record evidence that supports such rate design. As the access rate reductions relate to both Residential and Business lines, the fairest rate design would be to apply such rate increases on an equal and nondiscriminatory basis to all lines that serve both Business and Residential customers.

B. The PUC Should Order Any Local Rate Increases To Be Calculated Based Upon The Most Current Information Available When The Increases Are Implemented.

The Recommended Decision proposes that Verizon’s carrier charge should be eliminated from six months to a year after a final order in this case and its remaining access charges reduced one to two years after such order. R.D. at 68-69. OCA supports the proposal to not require all rate increases to take place at the same time and would support the proposed delay in implementation.

However, the OCA submits that the PUC should recalculate any required per line rate increases at the time such increases are to be implemented. OCA St. 1R at 42. Because market trends diminish lost access revenue per line, the effect of reducing access revenue should be recalculated when the increases are scheduled to be implemented. Id. Calculating current local

rate increases to be implemented in the future is likely to overstate the rate increases necessary to achieve a given access rate reduction.

Rather than presently calculating the amount of local rate increases necessary to reduce access charges six months to two years in the future, the PUC should order that Verizon must calculate the amount of local rate increases with the latest data available at the time such local rate increases shall be implemented. This data would include access revenues and line counts. Again, however, this calculation must include all access lines, not just lines used for non-competitive basic service. Given the overall decline in access revenue, such a delayed recalculation would more accurately reflect the amount of increases necessary to implement such reductions at the time they are to be applied to consumers.

C. The PUC Should Allow A Period Of 20 Days With 10 Day Exceptions In Order To Assure Compliance With A PUC Order Concerning A Rate Increase Followed By Notice To Consumers.

The Recommended Decision also proposes that any such rate increase filing should be “based upon a one-day tariff compliance filing” regarding each of the proposed increases. The OCA is concerned that a one-day compliance filing will not offer sufficient time to review any issues that may arise concerning the accuracy of the compliance filing. The OCA advocates that Verizon should file its proposed rate calculations upon 20 days notice followed by potential compliance exceptions 10 days later, similar to current rules at 52 Pa. Code § 5.592. Given the changing parameters that may be involved in any Verizon filing, the PUC should allow a period for rate review and not the one-day filing proposed in the Recommended Decision. Following the determination of the applicable per line increase 20 days after the filing, Verizon should then give 30 days notice as recommended. R.D. at 68-69.

Further, Verizon should include the billing parameters and other supporting workpapers used to calculate the related rates in the compliance filing. OCA is concerned that sufficient data should be filed to allow the parties and the PUC sufficient time to analyze and review such proposed rate increases before consumer notice is made. This will better ensure that any rates calculated will be accurate.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the Pennsylvania Office of Consumer Advocate respectfully files these Exceptions in response to the Recommended Decision on Remand of Administrative Law Cynthia Williams Fordham. The OCA submits that the Recommended Decision should be rejected because it is not in the public interest. The Recommended Decisions will not yield any consumer benefits. In particular, the Commission should wait until the Federal Communications Commission determines what access reductions, if any, may be necessary. Furthermore, the Recommended Decision should be rejected because it would eliminate the carrier charge that effectively recovers a reasonable share of loop costs from interexchange carriers and uses the Recommended Decision uses an inappropriate rate design to recover lost access revenues.

Respectfully submitted,



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Dated: January 9, 2006
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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 Exceptions on Remand, 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 9th day of January, 2006.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF
PENNSYLVANIA, LLC,

v.

VERIZON NORTH INC.

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Docket No. C-20027195

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXCEPTIONS OF VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC.

EXPURGATED VERSION

DOCUMENT
FOLDER

DOCKETED

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Pursuant to 52 Pa. Code § 5.533, Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”) (collectively “Verizon”) hereby except to portions of the Recommended Decision on Remand of Administrative Law Judge Cynthia Williams Fordham issued on December 7, 2005 (“RD”).

The Commission should follow its own recent decision and reject the RD’s recommendation to reduce Verizon’s intrastate access rates. The RD makes this recommendation even though there is a pending Federal Communications Commission (“FCC”) comprehensive intercarrier compensation proceeding that will fully address the issues in this case. Last August, the Commission concluded that in the face of this FCC proceeding, it did not make sense for the Commission to move forward with its review of the access rates of all other Pennsylvania ILECs. It would be a clear error to treat Verizon differently – especially since it will be end-users who will pay the price for this precipitous action. After all, Chapter 30’s revenue neutrality requirement mandates that any reduction of Verizon’s intrastate access rates must be accompanied by retail rate increases. Accordingly, the RD’s recommended action is, in light of the FCC’s pending proceeding, premature. The record in this proceeding discloses no public benefit to an immediate reduction in intrastate access rates, and the Commission should do in this case what it has already done in its corresponding rate case – stay the proceeding pending the outcome of the FCC’s comprehensive review.

INTRODUCTION

The RD recommends that this Commission reduce Verizon’s intrastate access rates by removing approximately \$60 million in revenue from access rates charged to interexchange carriers (“IXCs”), to be offset by a total of \$1.50 per month increases to

basic residential rates and the remainder to basic business rates. The Commission should reject this recommendation – particularly since less than one year ago the Commission effectively raised basic retail and business rates by \$0.80 to offset the Phase I reduction of approximately \$50 million in access revenue.¹

As Verizon and the public parties (Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”) and Office of Trial Staff (“OTS”)) pointed out, any additional reduction in access rates is premature at this time because the FCC is in the process of completing its proceeding in which it is addressing comprehensive changes to all types of intercarrier compensation.² The FCC may well preempt this Commission’s jurisdiction over intrastate access rates, but even if it leaves a role for state commissions in this process, the FCC will mandate or at the very least provide guidance on the changes to Verizon’s intrastate access rates and the mechanism for rebalancing the revenue to coordinate with the FCC’s overall plan for intercarrier compensation. The FCC’s action is thus likely to render the RD’s rebalancing recommendation moot. In fact, this Commission has already stayed its consideration of intrastate access rebalancing for all non-Verizon ILECs to coordinate its actions with the FCC’s, and there is no reason why the Commission should adopt a different approach with respect to Verizon’s access rates.³

¹ See VZ Remand Main Brief at 9.

² *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (FNPRM Rel. March 3, 2005).

³ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, No. 1-00040105 (Opinion and Order entered August 30, 2005) (“Rural Access Stay Order”) Ordering ¶ 6 (staying proceeding for 12 months with a provision to “entertain future requests for further stays . . . for good cause shown and for the purposes of coordinating this Commission’s actions with the [FCC’s] ruling in its *Unified Intercarrier Compensation* proceeding.”)

The record fails to demonstrate any compelling reason why Verizon's intrastate access rates should not stay at present levels until the FCC completes its proceeding. Inexplicably, the RD finds that the Commission should not wait for the FCC even though it acknowledges that "Verizon has presented evidence to show that its intrastate access rates are well below the national average." (RD at 64). Having been decreased by ***approximately \$140 million*** since the *Global Order*,⁴ Verizon's intrastate access rates are among the very lowest in Pennsylvania – much lower than the rates of the vast majority of the other ILECs subject to the proceeding that the Commission stayed. The RD also correctly observes that the Commonwealth Court found this Commission to have broad discretion to set access rates, including pricing access above cost.⁵ (RD at 66). Obviously the Commission has the discretion to leave the rates at their present level and would commit no legal error by doing so.

On the record before it, the Commission cannot conclude that there are sufficient benefits from the rebalancing proposed by the RD to justify increasing retail rates again so soon after the last increase. While the parties might disagree on the details, it is an uncontroverted certainty that 66 Pa. C. S. § 3017 requires revenue neutrality so that end users will experience retail rate increases if any rebalancing is ordered. The Commission should also take notice of the fact that rate increases over the next 6 months to two years, as recommended by the RD, will dovetail with other retail rate increases under the operation of Verizon's Chapter 30 price stability mechanism. 66 Pa. C.S. § 3015(A).⁶

⁴ See VZ St. 1.1 Remand (Kane/Dean Rebuttal) at 12.

⁵ See *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000).

⁶ On December 30, 2005 Verizon PA and Verizon North notified the Commission that the inflation rate for the twelve months ending June 30, 2005 has resulted in a positive Price Change Opportunity

Indeed, the possibility of multiple rate increases from the operation of different parts of Chapter 30 was a central concern that caused the Commission to stay the other ILECs' access case.⁷ Additionally, as it did in staying the other ILECs' access case, the Commission must consider the potential for confusion and complication if it gets ahead of the FCC or acts inconsistently with the FCC's ultimate policy in this area, including the risk of losing future federal universal service money or other alternative funding sources that could obviate or reduce the needed rate increases.

In the face of these compelling reasons why the Commission should not act on access rates at this time, those parties that seek immediate reductions have offered only amorphous contentions that there would be some benefit from rushing ahead with access reductions, claims that were credited but not thoroughly analyzed by the RD. They simply do not survive scrutiny. The Commission remanded this case specifically for analysis of the "merits" of the competing arguments not provided in the first RD, but advocates of immediate reductions failed to provide convincing justifications for their position, and therefore the RD on remand does not provide this Commission with any meaningful judgment about the substance of the policy arguments and never clearly states what benefits Pennsylvania telephone consumers would gain from an immediate rate rebalancing.

The RD accepts the rate reductions proffered by the IXCs but fails to examine the substance of their arguments and demonstrates no concrete benefits to Pennsylvania from getting ahead of the FCC and reducing intrastate access rates now. Accordingly, the

("PCO") that Verizon proposed to recover through rate increases effective March 1, 2006 for Verizon Pa and April 15, 2006 for Verizon North.

⁷ Rural Access Stay Order at 15.

Commission should reject the RD's recommendation and close or stay this proceeding. If it determines to go forward with rate rebalancing, however, then the Commission still should alter certain aspects of the recommendation.

First, the Commission should limit any rebalancing to eliminating the carrier charge, and should reject the RD's second step of reducing rates again to match the level of interstate access rates. Eliminating the carrier charge will already save the IXCs approximately \$35 million in access costs, and there is no reasoned basis to attempt to match rates that are currently subject to a parallel FCC proceeding considering radical alterations to the interstate rate structure. Second, particularly given the other rate increases just implemented or under consideration, the Commission should phase-in any rebalancing over a longer period of time than the RD proposes, consistent with the position the IXCs have taken before the FCC. Third, the Commission should not set the amount of the increase to basic residential rates in advance as the RD recommends.

EXCEPTIONS

Exception No. 1: Verizon Expects To The Recommendation To Rebalance Access Rates Without Waiting For The FCC To Complete Its Intercarrier Compensation Proceeding

A. Background

On July 28, 2004, the Commission approved a partial settlement advocated by Verizon and the public parties that reduced Verizon's access rates by approximately \$50 million, partially offset by retail rate increases of \$0.80 per line, per month. These rate changes were implemented less than one year ago, in February of 2005. This rebalancing resulted in uniform access rates and rate structure for the two Verizon companies (in compliance with a condition of the Bell Atlantic/GTE merger) and reduced the IXC-

portion of Verizon North's Carrier Charge from \$7.40 per line per month to equal Verizon PA's Carrier Charge of \$0.58.⁸

The IXCs had argued that this reduction should only be considered a "first step," and contended that in future steps the carrier charge should be eliminated entirely and access rates reduced to "cost." Rather than closing the case, the Commission remanded to the ALJ for a recommendation on "the merits of each of the Parties' positions" regarding whether or not access rates should be further reduced, because it found that although she "explained in detail each of the various Parties' positions" she did not make "specific recommendations" on the IXCs' arguments. (07/28/04 Order at 16, 19).

At that time the Commission did not know that the FCC was about to embark upon its own more comprehensive investigation of intercarrier compensation that would encompass the very same issues it had asked the ALJ to address on remand. By January of 2005, however, the Commission became aware that an industry group had made a comprehensive proposal to the FCC that included preemption of state commission authority over intrastate access rates. In a January 18, 2005 Order the Commission recognized the potential impact on this remand proceeding of new developments in the federal arena and expanded the scope of the remand, noting that "[w]e are especially concerned about any impact" of this industry proposal "jurisdictionally on access charge regulation in Pennsylvania, our ability to further reduce or restructure intrastate access charges, and whether any FCC action may lead to a double recovery by the LECs in Pennsylvania in light of the remanded proceeding, and if the FCC permits intrastate access charges to be offset by increases to the federal SLC." The Commission therefore

⁸ VZ St. 1.0 Remand (Kane Direct) at 9 and Exhibit Kane-1.

expanded the scope of this Phase II remand proceeding to “address[] the impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding.”

(1/18/05 Order at 14).

On March 3, 2005 the FCC issued a Further Notice of Proposed Rulemaking (“FNPRM”) seeking comments from the industry on a number of issues that could impact the very same intrastate access charges that are the subject of this proceeding and could alter or eliminate this Commission’s jurisdiction over these issues.⁹ For example, the FCC sought comments on its own legal authority to reform intrastate compensation mechanisms that have traditionally been handled by state commissions. (¶35, 80, 82). It specifically asked the parties to comment on whether the FCC has authority to replace intrastate access regulation with some alternative mechanism. (¶79). The FCC also asked the parties to address the question of how it might offset any revenues lost from reductions to intrastate access rates, including the possibility of subscriber charges and universal service funding, (¶114), and whether the FCC should create a federal mechanism to offset any lost intrastate revenues, or whether the states should be responsible for establishing alternative cost recovery mechanisms for LECs within the intrastate jurisdiction. (¶115).

Approximately one hundred parties filed comments on May 23, 2005 and reply comments on July 20, 2005 – including Verizon and the IXC parties to this case.¹⁰ While

⁹ *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92 (Rel. March 3, 2005).

¹⁰ Verizon and Qwest filed individual comments, while AT&T and MCI filed comments as members of the Inter-carrier Compensation Forum (“ICF”). Verizon’s Comments are attached as Exhibit Kane-2 to Verizon St. 1.0 Remand. Qwest’s comments are attached as Exhibit Kane-4 to Verizon St.1.0 Remand. The ICF comments are attached as Exhibit Kane-3 to Verizon St. 1.0 Remand. Comments

the FCC has not set a deadline for its own action, statements by individual Commissioners have urged that the FCC reach a prompt resolution.¹¹

B. The RD Erred In Failing To Wait For The FCC To Rule

The RD recommends that the Commission rebalance rates now and not wait for the FCC to rule, but the reasons provided by the RD to support this conclusion do not survive scrutiny.

First, the RD recommends that the Commission forge ahead with rate rebalancing now because the FCC proceeding is “very complex” and it is not certain what the FCC will do or when it will rule. (RD at 58-59). The Commission rejected this precise argument when it stayed the other ILECs’ access proceeding over the IXCs’ vehement objections. In their joint filing opposing the stay Qwest, AT&T and MCI argued that “it may take years for the FCC to finalize its actions. There is no reason for this Commission to delay taking action in Pennsylvania on these critical issues at this time,”¹² but the Commission nonetheless stayed the proceeding. The RD relied only on speculation from the IXCs suggesting that the FCC will not act quickly, not on any facts. The only facts of record regarding the FCC’s intentions do not support the RD’s decision not to wait. The FCC proceeding has been fully briefed, and individual FCC Commissioners have indicated that the agency is taking this matter seriously and have

were also filed by the National Association of Regulatory Utility Commissioners (“NARUC”) and the National Association of State Utility Consumer Advocates (“NASUCA”), among many others.

¹¹ For example, when the FCC announced its FNPRM, FCC Commissioner Copps issued a statement that “[i]ntercarrier compensation is a must-do item for this Commission this year. It should be our number one telecommunications priority.” *See also Speech of Commissioner Copps to Federal Communications Bar Association*, TR Daily, March 28, 2005. VZ St. 1.0 Remand (Kane Direct) at 11, n.5.

¹² *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, No. I-00040105, Answer of Qwest, etc., to Motion to Defer, filed June 3, 2005 at 7.

urged that the FCC reach a resolution promptly.¹³ In any event, it is precisely because these issues are complex and involve not only Pennsylvania intrastate access rates but also other types of intercarrier compensation outside the scope of this Commission's authority that the Commission should wait for the FCC to act even if it requires some time for the FCC to complete a thorough review.

Second, the RD relies on the mistaken premise that this Commission has somehow already concluded that it should not wait for the FCC, but the Commission has made no such determination. The RD incorrectly concludes that the Commission, when it stayed the rural carriers' access case in August of 2005, "could have stayed the instant proceeding" but chose not to do so. (RD at 59). But this is not the case. To the contrary, the only issue before the Commission at that time was ALJ Colwell's recommendation *not* to stay the rural carriers' access case – a recommendation the Commission rejected. This separate Verizon access case was not before ALJ Colwell and not before the Commission at that time, because the question of whether to wait for the FCC was still before ALJ Fordham. Thus, procedurally the Commission could not have stayed *this* case at that time because this case was not before it.

The RD also wrongly concludes that because the Commission's July 28, 2004 Order rejected the original RD's recommendation to close this case, that this Commission had already decided not to wait for the FCC proceeding. (RD at 59). The RD misconstrues the Commission's prior orders. In July of 2004 the comprehensive nature and scope of the FCC proceeding was not apparent, but when it realized that the FCC might address intrastate access charges, might implement a federal funding mechanism to

¹³ VZ St. 1.0 Remand (Kane Direct) at 11.

replace intrastate access charges, and might even preempt state commissions, this Commission promptly expanded the remand to address “the impact the FCC action may have on our jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding.” (1/18/05 Order at 14). Clearly it was an option open to the ALJ in this remand to recommend that the Commission make *no* further access reductions pending the outcome of the FCC case, because the Commission in its January 18, 2005 Order denied the IXCs’ request that the Commission itself simply direct further access reductions. Instead, the Commission asked the ALJ to further develop the record, consider “the merits of each of the Parties’ positions,” (07/28/04 Order at 19), and make a recommendation including specifically the impact of the FCC action.

Indeed, the Commission rejected the same argument in staying the other ILECs’ access case. The IXCs suggested there that “the Commission knew about the existence of the FCC intercarrier compensation rulemaking when it opened this proceeding” on December 20, 2004, and thus by opening the case anyway must have decided to proceed without waiting for the FCC.¹⁴ The Commission rejected this argument and nonetheless decided to stay the rural ILECs’ access proceeding in August of 2005.

Third, the RD attempts to distinguish the Verizon access case from the rural ILECs’ access case by noting in passing, with no discussion of the import of these facts, that “Verizon is neither a small company nor an average schedule company that receives federal Universal Service Fund support.” (RD at 59). The RD later concludes that “the issue of being ineligible for universal service funds if the Commission acts at this time” is

¹⁴ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, No. I-00040105, Answer of Qwest, etc., to Motion to Defer, filed June 3, 2005 at 4, 5.

irrelevant because “Verizon and Verizon North are ineligible for these funds.” (RD at 60). This statement is factually incorrect, because Verizon North does currently receive federal universal service fund (“USF”) support to replace revenue lost by past FCC reductions in interstate access rates.¹⁵ Furthermore, the RD does not examine the issue at all and misses the entire point of the argument – an argument this Commission fully understood in its order staying the rural ILECs’ access case. The issue is *not* just what federal USF funding the Verizon companies receive now, but rather the issue is that the FCC may well provide USF support or some other funding mechanism to replace revenue lost from future reductions it might require to intrastate access charges as an outcome of its proceeding, and those mechanisms could potentially apply to either Verizon company regardless of whether it receives funds now.¹⁶ By reducing intrastate access rates now, without waiting for the FCC, the Commission would be recovering revenue from Pennsylvania consumers through rate increases that, had it waited, it might have recovered from the federal USF or other funding sources without raising Pennsylvania tariffed end-user rates.¹⁷ Because under the RD’s plan the rate rebalancing would already have occurred, that revenue would likely not be considered a part of any recovery process the FCC puts in place and the end-user rate increases would not be undone.

The RD dismisses with minimal explanation the arguments raised by OCA that reducing Verizon’s intrastate access rates now could jeopardize future federal universal

¹⁵ http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mr04-3.pdf

¹⁶ It is not idle speculation that a federal funding mechanism to replace intrastate access charges might be forthcoming. Rather, the FCC’s FNPRM specifically asked how it might offset any revenues lost from reductions to intrastate access rates, including the possibility of subscriber charges and universal service funding, (¶114), and whether the FCC should create a federal mechanism to offset any lost intrastate revenues. (¶115).

¹⁷ See, e.g., OCA Remand Main Brief at 14.

service funds or result in double recovery from end users, setting aside these concerns because “the access reforms will be based on the access charges in effect at the time of the reform,” but of course that is the problem. (RD at 60). The OCA made virtually the identical arguments in the rural ILECs’ access case, and the Commission found this prospect to be of grave concern, finding that “the OCA clearly and persuasively demonstrates the risks to the end-user ratepayers of the rural ILECs if this investigation were allowed to proceed while the FCC’s Unified Intercarrier Compensation proceeding was still pending.” (Rural Access Stay Order at 16). The Commission noted that “potentially increased federal USF finding may not apply to rural ILEC intrastate access charge reductions that will be put in place prior to the conclusion of the FCC’s proceeding,” (*id.* at 17), the same concern the OCA raised here. The Commission also relied on the same potential double recovery argument that the OCA made here, and concluded that “the interests of the rural ILEC ratepayers will be seriously prejudiced if this investigation is not coordinated with the ongoing FCC Unified Intercarrier Compensation proceeding.” (*Id.*) The RD’s cursory dismissal of the significant risks of failing to coordinate with the FCC in this case cannot be squared with the Commission’s recognition of the potential for ratepayer prejudice in getting ahead of the FCC on intrastate access issues.

Fourth, in deciding not to wait for the FCC the RD did not address the fact that at the same time that the IXCs are demanding immediate access reductions from this Commission, they are telling the FCC to preempt this Commission.¹⁸ If the FCC accepts

¹⁸ The ICF argues that the FCC should “preempt intrastate access regimes in toto,” and that “every intrastate intercarrier compensation mechanism across the country must be made identical, not just to each other, but to the federal system as well.” (Verizon St. 1.0 Remand, Exhibit 3, ICF Comments at 76). Similarly Qwest argues that “[t]he FCC has plenary jurisdiction over” state access charges and,

these arguments, all of the Commission and party efforts expended in this case could be wasted because the Commission will lose its authority over intrastate access rates. The RD dismisses the possibility of federal preemption by noting that it is also possible that the FCC will not preempt, (RD at 59), but this does not address the serious risks of administrative waste, nor does it recognize that even if it does not preempt the FCC will provide guidance and possible funding mechanisms that should be coordinated with this Commission's actions.

The IXCs are also suggesting that the FCC take a more leisurely schedule for rate reductions that undermines the credibility of their demands for immediate action by this Commission. While the IXCs are insisting that this Commission take action immediately and that the matter is so urgent that the Commission cannot even wait for the outcome of the FCC proceeding, they are not demanding the same rushed process from the FCC. Rather, the ICF plan allows a phase-down with three years to achieve a single termination rate for all traffic, and then a transition period where this uniform rate is gradually reduced to "shift[] cost recovery to end users" culminating in a bill and keep regime as of July 1, 2011. (Verizon St. 1.0 Remand, Exhibit 3, ICF Comments at 6 and Appendix C at 6). Qwest also allows for a transition period of three years. (Verizon St. 1.0 Remand, Exhibit 4, Qwest Comments at 7). Since they are willing to have the FCC assume jurisdiction over intrastate access rates and take from three to six years to reduce them, their claims that it is urgent for this Commission to act immediately without awaiting the outcome of the FCC case lack credibility. Moreover, while the IXCs are urging this

if necessary, the FCC also "has the authority to preempt state access charges." (Verizon St.1.0 Remand, Exhibit 4, Qwest Comments at 5). Qwest argues that all access payments should "be subject to federal jurisdiction," which "includes replacement of intrastate access tariffs . . . with the charging structure described herein." (Id.).

Commission to get ahead of the FCC on this issue, they are also urging the FCC to take “rapid and decisive action,” (Verizon St. 1.0 Remand, Exhibit 4, Qwest Comments at 1), which only increases the likelihood that the efforts before this Commission will be wasted.

Accordingly, the Commission should reject the RD’s recommendation to forge ahead without waiting to coordinate its actions with those of the FCC and instead should act consistently with its decision in the other ILECs’ access case and refrain from making any substantive decision regarding further access rate rebalancing now, to allow the FCC time to act in its parallel proceeding.

Exception No. 2: Verizon Expects To The Recommendation To Rebalance Access Rates Because The IXC Proponents Have Not Demonstrated That Such A Rebalancing Is In The Public Interest At This Time

The RD agrees with the IXCs that intrastate access rates should be reduced now, and recommends a two-step reduction first eliminating the carrier charge and then matching interstate rates. While the RD correctly recognized that the IXCs, as the proponents of this rate rebalancing, have the burden of proof, and that any decision to rebalance rates must be supported by substantial evidence, (RD at 18), the RD does not explain what public benefit would result from its proposed rebalancing or what “substantial evidence” supports the need for these rates to change now without waiting for the FCC.

The RD recites without analysis the IXCs’ rhetorical claims that access rates are too high, but these claims are notably short on any details establishing precisely how immediate access rate reductions will actually benefit Pennsylvania end users or

demonstrating any specific harm that would result from leaving rates at current levels until the FCC completes its intercarrier compensation proceeding.

The record does not demonstrate that end-users will enjoy lower rates as a result of these proposed access reductions – and significantly neither the IXC's nor the RD claims that rates will be lowered. While in the past the IXC's have specifically touted potential toll rate reductions as the primary consumer benefit that would flow from access reductions,¹⁹ Qwest now accuses OTS of making a “simplistic” argument in expecting access reductions to translate dollar for dollar in toll reductions. (Qwest Remand Main Brief at 20). The public parties – the OCA, OSBA and OTS – have effectively demonstrated that the IXC's have shown no toll rate reductions, either from the Phase I access reduction of approximately \$50 million that was implemented in February of 2005, or from the proposed further reductions.²⁰

This Commission's own holdings and the IXC's admissions on the record demonstrate that toll services to end users are priced based on what the market will bear – not based on the magnitude of any particular ILEC's intrastate access charges.²¹ One example of that fact is AT&T's history of passing through to its end users its own supposed “cost” of paying intrastate access charges to Verizon and the other ILEC's in the

¹⁹ See, e.g., Qwest Phase I Reply Brief at 10 (“reductions in intrastate access charges should result in a decrease in the rates end-users pay for toll services. The interexchange market, however, is sufficiently competitive to ensure flow-through without the need for carriers to document flow-through to state commissions.”)

²⁰ See, e.g., OTS St. 1-SD (Kubas Dir.); OTS St. 1-Supp.-R (Kubas Rebuttal); OTS St. 1-Supp.-SR (OTS Surrebuttal); OCA St. 1R (Loube Dir.) at 24-28.

²¹ This Commission has already determined that “IXC's are setting their rates on a national level using flat rates that have no relationship with the access rates of any specific ILEC.” *Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers*, No. M-00960799; *Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§3005(b) and 3005(g)(2)*, No. L-00990141 (Opinion and Order entered January 29, 2002) at 14.

form of an "In-State Connection Fee" of \$1.95 per month "to help recover" rates "AT&T is charged by your local telephone company in Pennsylvania to carry your AT&T in-state long distance and local toll calls over its lines."²² AT&T's witnesses admitted in Phase I that AT&T charges the same fee state-wide, so that notwithstanding Verizon's comparatively low access rates, end users in Verizon territory are paying a higher In-State Connection Fee to compensate AT&T for the substantially higher access rates it pays to the rural ILECs.²³ Even after Verizon reduced its own access rates substantially after Phase I, this fee was not reduced.²⁴ AT&T has obviously concluded that the toll market in Verizon's territory will bear paying rates reflective of higher access rates than Verizon actually charges, casting doubts on all of AT&T's complaints about its inability to compete under Verizon's current rates. Therefore, AT&T's own admissions show that there is no urgency to lowering Verizon's access rates at this time.

Given the IXCs' recognized national pricing strategies, any isolated decrease in Pennsylvania intrastate access rates at this time outside the context of the FCC's more comprehensive reform efforts would be, at best, spread over the entire country *with minimal to no impact on Pennsylvania end users.*²⁵ Qwest admits that "IXCs price their

²² VZ Phase I Cr. Ex. 1. *See also* VZ Phase I Cr. Ex. 2 (AT&T intrastate tariff imposing In-State Connection Fee); VZ Phase I Cr. Ex. (material from AT&T's website demonstrating that its fee varies among states and that Pennsylvania's fee is among the highest).

²³ Phase I Tr. 274; 322; 326-27.

²⁴ AT&T reported in response to Verizon's discovery requests in Phase II that the \$1.95 In-State Connection Fee continues to appear in its tariff at PA PUC No. 22, Section 1, First Revised Sheet 58, and that AT&T is currently assessing this fee in Pennsylvania. (See VZ. St. 1.1 Remand, Kane/Dean Exhibit 2). AT&T provided discovery responses showing the monthly revenue, in millions of dollars, from the In-State Connection Fee for each month from March of 2003 (when it was instituted) through May of 2005. (See *id.*) For example, in 2004 AT&T's revenue per month from the In-State Connection Fee ranged from a low of [BEGIN AT&T PROPRIETARY] [END AT&T PROPRIETARY] Its annual revenue from the In-State Connection Fee in 2004 was [BEGIN AT&T PROPRIETARY] [END AT&T PROPRIETARY].

²⁵ VZ St. 1.1 Remand (Kane/Dean Rebuttal) at 4.

services in the aggregate.” (Qwest Remand Main Brief at 17). OCA points to the testimony of its expert, Dr. Loube, demonstrating that “reducing Pennsylvania’s intrastate access rates will not benefit customers because IXCs have developed service plans based on nationwide costs and marketing considerations,” so that the actions of one state reducing rates “cannot have a significant effect on the price” of toll service.²⁶ Indeed, MCI admits that prices for all inclusive packages allowing for unlimited long distance and local calling “vary slightly from state to state,”²⁷ effectively conceding that IXCs price their all inclusive packages as uniformly as possible, spreading their costs of doing business nationally, rather than within each particular state. The IXCs have not demonstrated that further access reductions are necessary to spur competition, or that consumers would benefit from further access reductions.²⁸

The RD does not analyze the merits of the competing arguments, and dismisses with no explanation the detailed evidence showing that consumers have *not* enjoyed lower toll rates as a result of past access reductions and are not expected to do so from the reductions sought here. Without tackling the substance of the issue, the RD simply states that “the IXCs did provide evidence that the additional unlimited calling plans are a result of the Phase I reductions.” (RD at 65). But the IXCs provided no such evidence. No link was proven between the level of access rates and the availability of any particular calling plans.²⁹ As Verizon explained, lower cost alternative calling plans have been and continue to be available to end users without any further reduction to access rates and no

²⁶ OCA Remand Main Brief at 20; *see also* Verizon Remand Main Brief at 19.

²⁷ MCI St. 1.0 Remand (Rebuttal) at 9.

²⁸ In fact, Qwest admitted in Phase I that “fierce competition” among the approximately 500 certificated IXCs in Pennsylvania is bringing the IXCs “average rate per minute down in Pennsylvania year after year.” Qwest Phase I Main Brief at 23. .

²⁹ VZ St. 1.2 Remand (Kane/Dean Surrebuttal) at 7.

party has demonstrated that any new, lower cost plans were introduced as a result of the last rebalancing.³⁰

Unable to rely on cost savings to end users as a benefit of the access reductions they seek, the IXCs appealed to arguments about more efficient markets and reduced arbitrage incentives – arguments the RD did not examine in any detail. In particular, the RD did not address the crucial issue with respect to all of these arguments – that if any such beneficial results are possible, they are only likely to occur if the whole intercarrier compensation system is reformed uniformly, which can *only* be done by the FCC because this Commission alone lacks jurisdiction to address all of the relevant types of compensation. (See Verizon Remand Main Brief at 16-17; Verizon Remand Reply Brief at 6-12). For this reason it is not surprising that the arguments that the IXCs make to this Commission are the same arguments they are simultaneously making to the FCC, where they are asking that agency to assume jurisdiction over the intrastate access rates at issue here and preempt this Commission. The Commission should allow the FCC to resolve the merits of these arguments at this point.

Specifically, AT&T argues that under the current pricing structure traditional IXCs cannot compete with wireless carriers, e-mail, voice over IP and virtual FX. (AT&T Remand Main Brief at 6, 12-13; *see also* MCI Remand Main Brief at 6-7).³¹ The

³⁰ *Id.*

³¹ AT&T contends that the “proof” of the advantages of these other methods of communications over AT&T’s traditional long distance business is “in the numbers,” pointing to AT&T’s declining access minutes. (AT&T Remand Main Brief at 14). However, AT&T admitted in response to discovery that it has halted all marketing efforts to its traditional long distance (including toll) customers, stopped attempting to compete on price and selectively raised prices. According to AT&T itself, “[t]he inevitable effect of these actions is that AT&T’s mass market customer base will dwindle away over time through churn,” and “AT&T is simply no longer attempting to win new customers.” (See VZ St. 1.1 Remand, Exhibit 1, AT&T Response to OCA Set 1, No. 1 and attached affidavit of John C. Polumbo, ¶ 9 and 17). Obviously, it is AT&T’s own business decision to abandon the traditional long distance market that has caused its decline in minutes, and it therefore cannot follow that all IXCs

ICF – of which AT&T is a member – argued to the FCC in its Comments in support of comprehensive intercarrier compensation reform by that agency, that “[a] uniform regime must apply the same rate consistently across all carriers, technologies and services, unify interstate and intrastate compensation systems, and rationalize network interconnection rules, ending ‘artificial regulatory distinctions.’”³² Only the FCC can implement a “uniform” regime of the type the IXCs have argued to the FCC is necessary to correct the problems they perceive. Moreover, since the IXCs have not demonstrated that isolated rate reductions by this Commission would impact the larger market problems they perceive, they certainly have not shown that any such “benefits” would flow down to the end-user customer.

Qwest contends that an intrastate access reduction would eliminate “inconsistency between jurisdictions” and reduce “opportunities for arbitrage,” (Qwest Remand Main Brief at 5), arguing that the difference between interstate and intrastate rates creates an incentive for what Qwest euphemistically calls “arbitrage” – where IXCs “disguise” calls as interstate or local to evade the tariffed access rates that they should be paying for this traffic. (Qwest Remand Main Brief at 13). These are precisely the same problems that Qwest has asked the FCC to address, contending in its Comments before that agency that “the entire system is fatally flawed,” and that “the need for rapid and decisive action by the [FCC] to rationalize the system of intercarrier compensation is one of the most pressing issues currently before the FCC.”³³ As Qwest’s FCC comments implicitly

would be experiencing the same level of decline as AT&T. See VZ St. 1.1 Remand at 29. AT&T’s affidavit demonstrates that forces much larger than intrastate access rates are transforming the communications marketplace, and did not single out the level of Pennsylvania’s intrastate access rates as a specific factor in its decision. Verizon Remand Main Brief at 18-19.

³² Verizon St.1.0 Remand, Exhibit 3, ICF FCC Comments at 12.

³³ Verizon St.1.0 Remand, Exhibit 4, Qwest FCC Comments at 1.

recognize, only a comprehensive decision addressing all types of intercarrier compensation will truly address the concerns raised by Qwest – and only the FCC can make such a decision.

Verizon’s Pennsylvania intrastate access charges are well below the national average,³⁴ and Qwest’s argument that they must immediately be reduced lacks credibility based on Qwest’s own actions in other states. The record shows that Qwest itself (which operates as an ILEC in many other states) still maintains above-cost intrastate access rates in the majority of its ILEC states, and generally has not lowered its intrastate rates to match interstate rates.³⁵

Qwest also contends that IXCs are being treated unfairly, and that the Commission should as a policy matter reduce intrastate access rates because it is not “competitively neutral” to depend only on intrastate toll service to fund universal service. (Qwest Remand Main Brief at 10). What Qwest fails to acknowledge, however, is that even interstate services still contribute to universal service, but this contribution has been made explicit through interstate subscriber line charges (“SLCs”).³⁶ Thus, it is not “only” intrastate access service that is contributing to universal service. Qwest similarly contends that the policy of contribution through high switched access rates to offset low basic exchange rates no longer fulfills any public policy objective. (Qwest Remand Main

³⁴ See OCA Remand Main Brief at 7 and note 8 (noting that the average intrastate access charges for large ILECs are approximately 2.5 cents per minute). See also *id* at 40 (explaining that under the NASUCA plan presently before the FCC there would be “no change” in Verizon’s Pennsylvania intrastate access rates for a few years because those rates are already relatively low compared to the national average).

³⁵ In response to discovery requests in Phase II, Qwest has acknowledged that in 12 of the 14 states in which Qwest does business as an ILEC it still has not reduced its intrastate access rates to parity with its interstate access rates, as it demands this Commission require of Verizon here. See VZ St. 1.1 Remand (Kane/Dean Rebuttal) at 9 and Kane/Dean Exhibit 3; Phase I Tr. 382.

³⁶ See Verizon Phase I Main Brief at 8 (noting that the FCC has reduced interstate access charges and replaced that revenue with federal SLCs that are charged directly to the end-user customers).

Brief at 11). However, as discussed above, Qwest has been content to allow its intrastate rates to be priced higher than interstate rates – presumably reflective of the same policy it criticizes here – in 12 of its 14 ILEC states. Moreover, the Commonwealth Court has already upheld as reasonable the Commission’s decision to price intrastate access above costs to subsidize other services. On appeal, AT&T faulted the Commission’s *Global Order* for failing to reduce access rates to “cost.”³⁷ The Court held that the Commission was *not* required to reduce access rates to “cost,” but rather, it is within this Commission’s sound discretion to determine where to draw the line at which access rates subsidize other costs. The Court cautioned the Commission to consider all relevant interests in drawing that line:

One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost, but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support.³⁸

As the Commonwealth Court noted, “[t]he record here confirms the soundness of the PUC’s view, based on evidence from consumer witnesses, that *users of all services, including access, should share in the payment of total network costs, with the cost of the local loop included as an element of that total network.*”³⁹ For this reason, the RD correctly concluded that “the Commission is not required to reduce access charges to costs” and that “the IXCs failed to prove that access charges should be at cost.” (RD at 66). However, in recommending a substantial rebalancing of approximately \$60 million in revenue currently supported by intrastate access rates the RD failed to examine the

³⁷ *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000).

³⁸ *Id.*

³⁹ *Id.* (emphasis added).

issues that the Commonwealth Court directed the Commission to consider in pricing access, such as what level of support is necessary to other areas of the system. The RD is thus not supported by substantial evidence.

The RD simply failed to address the argument that the IXCs had shown no public benefit from isolated access reductions – and particularly no benefit that justifies rushing to rebalance rates now and getting ahead of the FCC. Accordingly, the Commission should reject the RD’s recommendation.

Exception No. 3: Verizon Excepts To The RD’s Conclusion That The Record Does Not Show The Cost Of Eliminating The Carrier Charge, And To Certain Errors Regarding The End User Rate Increases Necessary To Offset Access Reductions

The RD concluded that “[i]n the record, the parties do not provide evidence regarding the cost to the end user if the carrier charge were eliminated.” (RD at 63). While the RD is generally correct in concluding that “the revenue required for rebalancing after eliminating the carrier charge is less than the amount to bring intrastate access charges to interstate levels,” (RD at 64), the RD erred in concluding that the record did not demonstrate the precise revenue needed to eliminate the carrier charge. The record information regarding the estimated total annual revenue for the carrier charge for Verizon PA and Verizon North together is **[BEGIN PROPRIETARY]** **[END PROPRIETARY]**.⁴⁰ The record shows this revenue should be spread over **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** lines.⁴¹ If the increase were applied to evenly to tariffed basic residential and business local service rates, based on the record’s estimated number of

⁴⁰ See Qwest St. 2.0 Remand (McIntyre Rebuttal) Attachment 1 (VZ Response to Qwest I-1).

⁴¹ See VZ St. 1.2 Remand at 13.

lines paying those tariffed rates, the increase to eliminate the carrier charge would be \$0.88 per line, per month (which complies with the RD's requirement that the increase to residential rates should be no more than \$1).

At this point the access and retail volume information in the record is approximately one year old. If a rebalancing were required, Verizon would of course use current access revenue and retail line counts, which are likely to be different from this information since the record indicates that both access revenue and retail line counts are shrinking. (See Verizon Remand Main Brief at 37-38). Nonetheless, the record information gives a general order of magnitude of the rate increase that would be required.

The RD also concludes that "the cost to the end user would be between \$0.95 and \$1.50 per line if intrastate access charges were reduced to interstate levels." (RD at 63). The record actually shows that the cost would be \$1.59 per line per month, using the volume information in the record and assuming the increase is spread evenly across business and residential lines. (See VZ St. 1.2 Remand at 14). Again, depending on volumes at the time any rebalancing is actually implemented, the increase per line could be higher. Also, if the residential increase were capped at \$1.50 per the RD's recommendation, the business increase would be higher.⁴²

⁴² The split of how many residential and business lines are included in the total [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] lines, which would be necessary to calculate the increase to business lines, does not appear in the record. Logically, however, the business increase would be higher than \$1.59 if the residential increase were limited to \$1.50.

Exception No. 4: If The Commission Rebalances Verizon's Access Rates At This Time (Which It Should Not Do), Verizon Expects To The Recommendation To Reduce Them To Mirror Current Interstate Rates

The RD erred in recommending that the Commission eliminate Verizon's carrier charge within 6 months to one year, instead of waiting for the outcome of the FCC proceeding. This holding is puzzling in light of the RD's recognition that "Verizon has presented evidence to show that its intrastate access rates are well below the national average." (RD at 64). Indeed, the record shows that Verizon's \$0.58 carrier charge is well below the carrier charges of the majority of other Pennsylvania ILECs – and yet the Commission has stayed consideration of reducing those carrier charges pending the outcome of the FCC proceeding. For example, there are several ILECs with carrier charge rates over \$10.00.⁴³ The larger Pennsylvania ILECs still have significantly higher carrier charges than Verizon. According to the tariff information in the record, Sprint's carrier charge is \$7.19, Alltel's is \$4.88 and Commonwealth's is \$7.00.⁴⁴

The RD concludes that Verizon's carrier charge should be eliminated because given wireless and other technologies "it is difficult to continue to charge the IXCs for using the local loop," and that "the cost must be paid by the end user." (RD at 63). For the reasons discussed above, this recommendation is not supported by substantial evidence and should be rejected at this time.

However, even if the Commission determines to eliminate the carrier charge, it should not take the additional step of reducing rates to match (current) interstate rates. In

⁴³ VZ St. 1.0 Remand (Kane Direct) at 10. For example, based on their publicly available Pennsylvania Telephone Association (PTA) access tariff, Palmerton has a Carrier Charge of \$11.28, South Canaan has a Carrier Charge of \$11.35, Citizens of Kecksburg has a Carrier Charge of \$11.18, Yukon Waltz has a Carrier Charge of \$11.45, Armstrong PA has a Carrier Charge of \$15.11 and Ironton has a Carrier Charge of \$17.99. *Id.* at 10, n. 3.

⁴⁴ *Id.* at 10-11.

addition to recommending that Verizon eliminate its carrier charge, at a revenue cost of almost \$35 million and a retail rate increase of \$0.88 per line per month, the RD finds that Verizon should “reduce its intrastate charges to interstate charge levels within one to two years after the final Order in this matter.” (RD at 66). The additional revenue to reduce rates to match (current) interstate rates after eliminating the carrier charge would be [BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY] based on the volume information in the record. If the increase were spread evenly between basic tariffed business and residential rates, it would require an additional increase of \$ 0.69, but if the residential portion of the increase were capped at \$0.50, as the RD recommends, the business increase would be much higher. Again, an update based on volumes current at the time any such rebalancing were implemented would certainly yield different numbers, but the record may provide a general order of magnitude of the required increases.

The RD provides no explanation as to why this additional reduction beyond the elimination of the carrier charge is necessary or appropriate, stating only that “based on the evidence in the record,” Verizon should reduce its intrastate charges to interstate charge levels. (RD at 66). It is not clear what “evidence” supports the need for this further reduction. Qwest, the primary advocate for matching interstate rates, had argued that matching interstate rates was a means of “removing implicit subsidies” from the intrastate rates, i.e., moving them closer to cost. (Qwest Remand Main Brief at 5). But the RD rejected the argument that access rates should be priced at “cost,” recognizing that “the Commission is not required to reduce access charges to costs and that it is within the Commission’s discretion to determine where to draw the line at which access

rates subsidize other costs,” and that “the IXCs failed to prove that access charges should be at cost.” (RD at 66).⁴⁵ The RD never examined what “implicit subsidies” would actually be removed by matching interstate rates, nor did it consider the factors that the Commonwealth Court discussed in connection with this Commission’s exercise of pricing discretion. Moreover, for the reasons discussed above, the IXCs have not demonstrated a benefit to consumers from shifting revenue from access to retail rates at this time.

In any event, even if the Commission thought there was some rational basis to eliminate the carrier charge, there is no basis to attempt to “match” a set of rates that is currently under examination by the FCC for a major alteration. Indeed, even in Phase I the IXCs admitted that interstate access rates were likely to continue to change.⁴⁶ Therefore, even if it eliminates the carrier charge the Commission should wait for the outcome of the FCC proceeding before deciding what, if anything, to do next with intrastate access rates.

The equities also weigh against adopting Qwest’s proposal to match interstate rates. In Phase I, Qwest’s witness admitted that even though Qwest has come to Pennsylvania to demand that Verizon lower its intrastate access rates to the same level as its interstate rates, Qwest, which itself operates as an ILEC in many states, has not rebalanced its own intrastate access rates to the same level as interstate rates in all of

⁴⁵ Apparently Qwest is using interstate rates as a proxy for moving closer to cost based rates, but the record shows that Verizon’s interstate rates are not based on any cost study and were never intended to be reflective of costs. Rather they were the product of a negotiated settlement, and in fact the interstate local switching rate is actually below Verizon’s intrastate access costs. (VZ Phase I Main Brief at 48).

⁴⁶ See Qwest Remand Main Brief at 20 (contending that “the FCC appears to continue moving in a direction that significantly reduces interstate switched access rates.”)

those states.⁴⁷ In response to discovery requests in Phase II, Qwest has acknowledged that in 12 of the 14 states in which Qwest does business as an ILEC it still has *not* reduced its intrastate access rates to parity with its interstate access rates, as it demands this Commission require of Verizon here.⁴⁸

Accordingly, the Commission should reject the RD's recommendation to match interstate access rates.

Exception No. 5: If The Commission Rebalances Verizon's Access Rates At This Time (Which It Should Not Do), Verizon Expects To The Recommendation To Phase In The Rate Rebalancing Over An Unreasonably Short Period

The RD correctly noted that if there is to be a rate rebalancing, then "there is still a concern about rate shock and universal service," so that rates should not be increased immediately. (RD at 64). Notably, less than one year ago basic residential and business rates were increased by \$0.80 per line, per month to rebalance the \$50 million in access revenue saved by the IXC's as a result of Phase I. Moreover, the Commission is currently considering other basic retail rate increases under the operation of Verizon's Chapter 30 price stability mechanism. 66 Pa. C.S. § 3015(A).⁴⁹ The possibility of multiple rate increases from the operation of different parts of Chapter 30 was a central concern that caused the Commission to stay the other ILEC's' access case where those carriers were subject to similar increases from the operation of the price stability mechanism.⁵⁰

⁴⁷ See, e.g., Phase I Tr. 382.

⁴⁸ See VZ St. 1.1 Remand (Kane/Dean Rebuttal) at 9 and Kane/Dean Exhibit 3.

⁴⁹ On December 30, 2005 Verizon PA and Verizon North notified the Commission that the inflation rate for the twelve months ending June 30, 2005 has resulted in a positive Price Change Opportunity ("PCO") that Verizon proposed to recover through rate increases effective March 1, 2006 for Verizon PA and April 15, 2006 for Verizon North.

⁵⁰ Rural Access Stay Order at 15.

The RD therefore erred in giving only 6 months to one year to eliminate the carrier charge. (RD at 64). Rather, as discussed above, the IXC's are willing to have the FCC assume jurisdiction over intrastate access rates and take from three to six years to reduce them. Given the other rate increases just implemented or under consideration, there is no reason this Commission should act more quickly to reduce access rates here than the IXC's have advocated to the FCC.

Exception No. 6: If The Commission Rebalances Verizon's Access Rates At This Time (Which It Should Not Do), Verizon Expects To The Limitation On The Portion Of The Increase That May Be Assigned To Residential Rates

The Commission should reject the RD's proposal to limit the amount of any increase to basic residential rates at \$1.00 for the first step and \$0.50 for the second, with the remainder applied to business rates. Because the record shows that both access revenue and retail lines are shrinking, the actual access revenue and retail line count at the time any rebalancing is implemented will be different from the numbers in the record. It is possible that the RD's limitation could result in residential rates bearing a disproportionate share of the increase, or in business rates bearing a disproportionate share of the increase. For example, if the residential line count decreases faster than the access revenue to be recovered, then limiting the residential increase to \$1.50 could leave business rates with a much higher increase than residential rates. If the opposite occurs, and access revenues decrease faster than line counts, then residential rates could be made to bear most or all of the increase because a \$1.50 increase to rates being paid by a comparatively larger number of residential lines could yield close to enough revenue to cover the access decrease.

The Commission must comply with the mandate of 66 Pa. C.S. § 3017 that “[t]he commission may not require a local exchange telecommunications company to reduce access rates except on a revenue-neutral basis.” The RD correctly recognized that this Commission can only increase rates that it regulates. (RD at 67). The Commission places the increase on particular rates, not particular lines; any individual customer is always free to switch to bundled or packaged service plans or even to another carrier if it does not wish to pay the rate. It will require some flexibility in the rate design to maximize the likelihood of revenue neutrality.

Instead of imposing potentially counterproductive limitations on rate structure, the Commission should limit itself to providing guidance on what access rates should be reduced (if any) and what retail rates should be increased, but should allow Verizon to make a proposal for distributing the increase between business and residential rates.

CONCLUSION

For the foregoing reasons, the Commission should reject the RD’s recommendation to rebalance access rates at this time and should close or stay this proceeding pending the outcome of the FCC’s intercarrier compensation proceeding.


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Date: January 9, 2006



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

IN REPLY PLEASE
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January 9, 2006

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the
Exceptions in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Robert V. Eckenrod
Prosecutor
Office of Trial Staff

DOCUMENT
FOLDER

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Enclosure

- c: Parties of Record
- Wendell F. Holland, Chairman
- James H. Cawley, Vice Chairman
- Bill Shane, Commissioner
- Kim Pizzingrilli, Commissioner
- Terrance J. Fitzpatrick, Commissioner
- Cheryl Walker Davis, Director, OSA

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of
Pennsylvania, Inc.

v.

Verizon North, Inc.

Docket No. C-20027195

ORIGINAL

EXCEPTIONS
OF THE
OFFICE OF TRIAL STAFF

DOCUMENT
FOLDER

Johnnie E. Simms
Chief Prosecutor

Robert V. Eckenrod
Prosecutor

Office of Trial Staff
Pennsylvania Public
Utility Commission

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Harrisburg, PA 17105-3265

Dated: January 9, 2006

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I. INTRODUCTION

This proceeding ultimately had its genesis in the Commission initiated investigation regarding access charges at Docket No. M-00021596 (“*Generic Access Charge Investigation*”) in January 2002 to accommodate the access charge investigation required by the *Global Order*¹ that established a schedule by which access charges of all local incumbent carriers operating in Pennsylvania were reduced. Additionally, by Order entered on November 4, 1999 at Docket No. A-310200F0002, *et al.* (Merger Order), the Commission approved the Bell Atlantic/GTE merger and specifically required that a proceeding be commenced for determining the statewide rates for access charges based upon a consolidated company cost study.²

On March 21, 2002, AT&T filed a formal complaint in this proceeding against Verizon North seeking to require Verizon North’s access charges reduced to Verizon PA’s levels pursuant to the requirements as spelled out in the Commission’s *Merger Order*. A Notice of Intervention was filed on behalf of Office of Consumer Advocate (“OCA”) on April 10, 2002. Initially, AT&T’s formal complaint was dismissed by the presiding ALJ, but it was subsequently reinstated by Commission Order entered on December 24, 2002. That Order also bifurcated the access charge investigation so that all matters pertinent to Verizon access charge issues would be litigated in the instant proceeding.

¹ See *Re Nextlink Pennsylvania, Inc.* 93 PaPUC 172 (September 30, 1999); 196 P.U.R. 4th 172, *aff’d sub nom, Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa. Cmwlth. 2000), *vacated for lack of jurisdiction, MCI WorldCom, Inc. v. Pennsylvania Public Utility Commission*, 844 A.2d 1239 (Pa. 2004).

² See *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, 1999 Pa. PUC LEXIS 86 (November 4, 1999). Verizon PA is the company formerly known as Bell Atlantic-Pennsylvania, Inc., and Verizon North is the company formerly known as GTE-North, Inc.

On December 30, 2002, Verizon PA and Verizon North filed a Joint Petition (“Verizon Joint Petition”) regarding the further reduction of their access charges pursuant to the *Merger Order*, the *Global Order*, and the *Generic Access Charge Investigation*. This Joint Petition was ultimately published in the *Pennsylvania Bulletin* on January 18, 2003 at 33 Pa. B. 502. Comments were filed by the OCA, AT&T Communications of Pennsylvania, Inc. (“AT&T”), Sprint Communications Company & United Telephone Company of Pennsylvania (“Sprint/United”), the Rural Telephone Company Coalition (“RTCC”), the Office of Small Business Advocate (“OSBA”) and Qwest Communications Corporation (“Qwest”).

In resolution of the Verizon Joint Petition, both Verizon PA and Verizon North agreed to one proposed access charge reduction plan. However, Qwest, OCA, Office of Trial Staff (“OTS”), OSBA, AT&T and MCI WorldCom objected to Verizon’s submission with regard to one issue or another. For its own part, OTS requested that the Commission deny Verizon’s Joint Petition because, *inter alia*, no cost studies were filed to support the proposal and other rates besides residential rates could be increased, including business and optional services. OTS also requested that the Commission reject Verizon’s proposed elimination of the carrier charge.

Because there were still contested, material factual issues, the Commission referred Verizon’s Joint Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision. The Verizon Joint Petition, as well as Verizon’s compliance with access charge parity as prescribed by the *Merger Order*, was consolidated with the instant Complaint proceeding. The matter was assigned to

Administrative Law Judge Cynthia Williams Fordham for development of a Recommended Decision.

A prehearing conference was held on May 29, 2003, which included participation on behalf of Verizon, AT&T, OCA, OTS, OSBA, Qwest, RTCC, Sprint, and MCI. Ultimately, evidentiary hearings were held in this matter on August 25 and 26, 2003. Witnesses for Verizon, AT&T, MCI, Qwest, OTS, OCA and OSBA were cross-examined. Written testimony and exhibits were entered into the record.

A Recommended Decision was issued on November 18, 2003. Exceptions were filed by AT&T, MCI, OSBA and Qwest. Reply Exceptions were filed by OCA, OSBA, OTS and Verizon. Subsequently, Verizon, OSBA and OCA filed a Joint Petition for Resolution of Litigation on February 26, 2004.

The Commission entered an Order on July 28, 2004 that granted the proffered Joint Petition for Resolution and, consequently, permitted Verizon to reduce and restructure its access charges by allowing them to file a revenue-neutral, rate rebalancing filing in which the net revenue reductions from access charge increases and decreases would be offset with revenue increases gained from an increase in monthly dial tone line rates residential and business customers. Thus, the requirement of "access parity" spelled out in the *Merger Order* was achieved. Significantly, however, the Commission disagreed with the ALJ's recommendation to conclude the case, stating that there were policy issues and other access charge concerns that were raised by the parties in the filing of their Exceptions, but which were not specifically resolved by the recommendation from the ALJ. Specifically, the Commission was concerned with the "next steps"

regarding further access charge reform and, accordingly, remanded the proceeding to the ALJ for further development of the record and the issuance of a recommended decision.

Verizon filed a Petition for Reconsideration requesting that the Commission reconsider its decision to remand the case to the ALJ. By Order entered November 23, 2004, the Commission denied Verizon's request. Subsequently, on November 22, 2004, AT&T, MCI and Qwest filed a Joint Petition requesting that February 1, 2005 be established as the compliance filing deadline for Verizon and that the remand proceeding be conducted as expeditiously as possible. By Order entered on January 18, 2005, the Commission granted the Joint Petition with respect to these requests, but denied the Petitioners' request for retroactive rates to February 1, 2005, if Verizon fails to comply by that date, and also denied the Petitioners' request to terminate the remand proceeding. Additionally, in response to OCA's concern regarding the developments in the federal arena which might impact the remand proceeding, the Commission directed the presiding ALJ to expand the scope of the proceeding with regard to any FCC activity concerning the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004 and to address the impact that any FCC action might have on the Commission jurisdictional responsibilities. Consequently, Verizon complied with the July 28, 2004 Order, restructuring access charges and increasing basic local exchange rates in February 2005.

In accordance with a Prehearing Order issued by the presiding ALJ, a prehearing conference was held on February 17, 2005 with Verizon, AT&T, MCI, Qwest, OTS, OCA, OSBA and the Rural Telephone Company Coalition participating. Some of the parties expressed concern in scheduling of further hearings while the FCC proceeding

relating to intercarrier compensation was still moving forward and could, conceivably, result in duplicative efforts in both the state and federal arenas. Given these developments, the ALJ directed the parties to address this issue and a further prehearing conference was scheduled for March 21, 2005.

The further prehearing conference was convened as scheduled and OTS, Verizon, AT&T, Qwest, MCI, the Rural Telephone Company Coalition, OSBA, and OCA participated. There, several of the parties, namely Verizon, OSBA, OCA and OTS, reiterated their desire to defer the present proceedings to such time as the FCC would provide further direction on its position with regard to intercarrier compensation.³ In any event, a procedural schedule was ultimately established and hearings were scheduled to be held on July 19-20, 2005. The ensuing testimony and exhibits of the active parties were entered into the record.

In the interim, the parties were able to agree to a stipulation of the written testimony in the record and agreed to waive cross-examination of witnesses. However, Qwest filed a Motion to Strike Testimony of several parties, including OTS, arguing that the preferred testimony went beyond the scope of the instant proceeding. Qwest's Motion was argued at the hearing and was ultimately denied.

A Recommended Decision was ultimately issued by the ALJ on December 7, 2005. By agreement of the parties, and for good cause shown, the filing period for

³ As of the further prehearing conference, the FCC, in the matter of intercarrier compensation, had issued an order setting a comment schedule for the parties which would have convened with reply comments due in the latter part of June, 2005.

Exceptions and Reply Exceptions in this proceeding were extended to January 9, 2006 and January 25, 2006, respectively.

II. EXCEPTIONS

Preliminary Statement of the Office of Trial Staff

The Office of Trial Staff (“OTS”) was created by the Legislature in July of 1986 and charged with the responsibility of protecting the public interest. Specifically, Section 306 of the Public Utility Code states that “[t]he Office of Trial Staff shall be responsible for and shall assist in the development of, challenge of and representation on the record of all matters in the public interest in all commission proceedings”⁴ with limited exceptions.

1. The ALJ Improperly Concluded That Pennsylvania Customers Have Received Direct Benefits From Prior Reductions in Intrastate Access Charges.

OTS Main Brief, pp. 7-11
OTS Reply Brief, pp. 1-3
Recommended Decision, p. 47

In its case in chief, AT&T argued that certain data provided by it in this proceeding is conclusive that the highly competitive long distance market is working as the Commission intends and that customers have received the direct benefit of access charge reductions. On the contrary, Verizon and the public advocates, including OTS, argued that Pennsylvania consumers have failed to see any such direct benefits. In evaluating these arguments, the ALJ noted in her Recommended Decision that the public

⁴ 66 Pa. C.S. § 306(b)(1).

advocates have not presented any evidence to support these claims. Further, the ALJ noted that:

...AT&T's intrastate revenue per minute has declined, while during this same period its average access cost per minute has increased—proving once and for all that AT&T's toll customer in Pennsylvania are paying less for intrastate toll service and have received the full benefit of intrastate access reductions (and more).

R.D. fn. 76.

Here, the ALJ has improperly shifted the burden of proving such claims upon the public advocates. In order to reach such a conclusion, the ALJ relied upon a chart provided by AT&T as set forth on page 46 of the Recommended Decision. However, as described by OTS Witness Kubas in OTS Statement No. 1, at page 4, 7 and 13, and also by the Office of Consumer Advocate in its Main Brief at page 20, this chart is inconclusive and fails to tell the whole story. First and foremost, the revenue per minute figures do not include the additional fees, taxes and monthly plan charges routinely added to consumer's bills, rendering AT&T's comparison of "revenue per minute" and "access rates" meaningless.

Secondly, this chart only is relevant for AT&T, but it appears that the ALJ used the conclusions drawn from this chart to make a blanket finding that all of the IXC's Pennsylvania consumers received direct benefits from access charge reductions. However, no such evidence exists for either MCI or Qwest. In fact, during the discovery phase of this proceeding, OTS requested that these IXCs show how customers had benefited, and neither provided any evidence to support their claims. See OTS Statement No. 1, pp. 5,9.

Finally, in this section of the Recommended Decision, the ALJ failed to show the connection between minutes of use and the carrier charge. Since the carrier charge is a flat “per line” rate, the more minutes of use the IXC’s carry, the cheaper the carrier charge rate is on a “per minute” basis. See AT&T Main Brief, p. 16. When the carrier charge flat rate remains the same, the “per minute” rate IXC’s actually pay will increase if the number of minutes is less. In 2004, AT&T voluntarily decided to stop marketing toll service to customers in Pennsylvania. As a result, AT&T’s claim that its “average access rate per minute is increasing” is entirely based upon its own business decision to exit the mass toll market. With this in mind, the Commission should not reward the IXC’s for their own failed business plans by lowering access charges further and increasing basic local exchange rates.⁵ Clearly, such an action would be unreasonable and not in the public interest.

2. The ALJ Erroneously Recommended the Elimination of the Carrier Charge
Recommended Decision, pp. 63-67

The ALJ noted that with the changes in the communications industry and the emergence of wireless carriers that use the local loop without paying the carrier charge, it would be improper to continue to charge the IXC’s for using the local loop as well. As such, she recommended that the Commission abolish the carrier charge within six months.

⁵ Interestingly, the ALJ appear to accept this concept by recommending the rejection of AT&T’s position that the February 2005 rebalancing (as well as any future rebalancing) be “trued-up” each year to reflect lost minutes of use. See R.D. p. 61. This same theory applies to AT&T’s argument here as well.

It would appear from the discussion that the ALJ's conclusion in this regard is based on the theory that if a cost is improperly recovered in the interstate arena, then such cost would also be improperly recovered in the intrastate arena as well. Yet, this conclusion is without merit. The simple fact is that the IXCs use the local loop in a different manner than the other technologies and, as such, they should pay for that use. In particular, wireless carriers have a different set of costs and different means to recover costs through interconnection agreements with the ILECs. Additionally, a good portion of wireless service does not even utilize the local loop since many of those calls are made from wireless to wireless customers.

The Commission has a clear choice with regard the carrier charge. Either continue to require the IXCs to pay their share of local loop usage or have customers subsidize the loss in revenue with another increase in basic local exchange rates without a corresponding decrease in IXC toll rates, fees, taxes or surcharges. Elimination of the carrier charge was considered and rejected by the Commission in Phase I of this proceeding. There is no compelling reason in this phase of the proceeding for the Commission to act differently.

3. The ALJ Erroneously Determined that Verizon Should Reduce its Intrastate Access Charges to Mirror Interstate Access Charges

Recommended Decision, pp. 64-66.

The ALJ recommended that the Commission require Verizon to reduce its intrastate access to interstate charge levels within one to two years after the final Order in this matter. R.D. p. 66. However, in reviewing the Recommended Decision, it is not

entirely clear how the ALJ reached such a conclusion especially considering that she had previously found that Verizon had presented evidence to show that its intrastate access rates were well below the national average. R.D., p. 65. Additionally, Verizon and OTS submitted evidence which showed that Qwest, one of the IXC's in this proceeding charges intrastate access rates that fail to mirror interstate access rates in those states where it operates as an ILEC. See Verizon M.B. Remand, pp. 31-32; OTS M.B. Remand, p. 9. Ceding to the recommendation of the ALJ in this proceeding would be tantamount to duplicity since one of the complainant IXC's fails to follow its own proposals.

In addition, the ALJ supported her conclusion based upon her finding that the IXC's have provided evidence that Phase I rate reductions have resulted in additional unlimited calling plans. Yet, quite the contrary is true. The fact is there is no such evidence in the record. Since February 2005, the IXC's have not lowered any rates, fees or surcharges and in fact, AT&T and MCI have actually increased some of the monthly fees and surcharges that customers pay.

Finally, the ALJ also reasoned that since the IXC's have not proven that access charges should be based on total element long run incremental cost ("TELRIC"), then lowering intrastate access charges to interstate levels is a reasonable compromise. See R.D., p. 65. It is perplexing that not proving something is somehow the basis for recommending a similar less dramatic action be taken. In other words, the notion that lowering access rates partially is acceptable because the IXC's have failed to prove that access rates should be almost eliminated is somewhat unreasonable and not in the public interest.

III. CONCLUSION

For the reasons set forth herein, the Office of Trial Staff respectfully requests that the Commission grant the aforementioned OTS Exceptions to the Recommended Decision of the Administrative Law Judge.

Respectfully submitted,



Johnnie E. Simms
Chief Prosecutor

Robert V. Eckenrod
Prosecutor

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: January 9, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions**, dated January 9, 2006, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

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Dated: January 9, 2006
Docket No. C-20027195



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January 25, 2006

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ORIGINAL

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

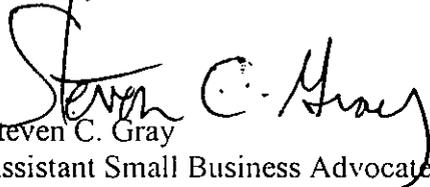
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Dear Secretary McNulty:

Enclosed for filing are the original and nine (9) copies of the Reply Exceptions on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

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

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: Cheryl Walker Davis, Director
Office of Special Assistants

Allen G. Buckalew

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF
PENNSYLVANIA, INC.

v.

VERIZON NORTH INC.

:
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Docket No. C-20027195

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REPLY EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

DOCKETED
JAN 30 2006

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Dated: January 25, 2006

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III. CONCLUSION.....6

I. Introduction

On July 28, 2004, the Pennsylvania Public Utility Commission (“Commission”) granted the Petition for Resolution of Litigation filed by Verizon Pennsylvania Inc. and Verizon North Inc. (collectively “Verizon”), the Office of Small Business Advocate (“OSBA”), and the Office of Consumer Advocate (“OCA”) in the original access charge case at this docket number.

In addition, the Commission remanded the case to the Office of Administrative Law Judge for the further development of a record, and issuance of a recommended decision, on issues that were not decided in the July 28, 2004, Opinion and Order. The issues on remand include (but are not limited to) the consideration of specific access charge reduction proposals, the removal of implicit subsidies from access charges, and the reduction or elimination of the carrier charge.

On August 9, 2004, Verizon filed a Petition for Reconsideration with the Commission. Verizon contended that the Commission was in error when it remanded the proceeding for further development of the record and the issuance of a recommended decision. On November 23, 2004, the Commission denied Verizon’s Petition for Reconsideration.

On November 22, 2004, AT&T Communications of Pennsylvania LLC (“AT&T”); MCI WorldCom Communications, Inc. (“MCI”); and Qwest Communications Corporation (“Qwest”) filed a Joint Petition for Clarification with the Commission. The Joint Petition requested a date certain by which Verizon would implement the access charge reductions required by the July 28, 2004, Opinion and Order. The Joint Petition also requested that the Commission complete the access reform

process by either promptly commencing the remand proceeding or adjudicating the matter based upon the record developed in the original proceeding. On January 18, 2005, the Commission entered an Opinion and Order that granted in part, and denied in part, the Joint Petition.

On February 17, 2005, and April 4, 2005, prehearing conferences were held before Administrative Law Judge (“ALJ”) Cynthia Williams Fordham.

On May 10, 2005, ALJ Fordham issued Prehearing Order #3, which set forth the procedural schedule for this remand proceeding.

On June 8, 2005, the OSBA submitted the direct testimony of Allen G. Buckalew. On June 29, 2005, the OSBA submitted the rebuttal testimony of Mr. Buckalew.

The hearings (scheduled for July 19 and 20, 2005, in Harrisburg) were cancelled.

On August 17, 2005, the OSBA submitted a main brief in this proceeding.

On August 31, 2005, the OSBA submitted a reply brief in this proceeding.

On December 7, 2005, ALJ Fordham issued a Recommended Decision (“RD”).

On January 9, 2006, the OSBA submitted exceptions in response to the RD.

The OSBA submits the following reply exceptions in response to the exceptions of other parties.

II. REPLY EXCEPTIONS

1. **Verizon's recommendation to make its own proposal for distributing any rate increase due to access charge reductions between business and residential customers should be rejected. (Verizon Exception No. 6)**

The OSBA agrees with Verizon that the Commission should reject the ALJ's recommendation to cap Verizon's residential rates when distributing any rate increase due to reductions in access charges. Verizon Exceptions, at 28. See also, OSBA Exceptions, at 18-20.

However, the OSBA respectfully disagrees with Verizon that this issue should be left to "Verizon to make a proposal for distributing the increase between business and residential rates." Verizon Exceptions, at 29. It is unclear, based upon the record, what recommendation Verizon might make. Furthermore, it is equally unclear whether Verizon would heed the unrebutted testimony of OSBA witness Allen G. Buckalew, wherein he points out that Verizon's business customers are already paying more than Verizon's cost to provide them with local exchange service. See OSBA Statement No. 1 (remand), at 8-9.

Instead, if the Commission decides to eliminate Verizon's carrier charge, to reduce Verizon's remaining access charges to interstate levels, or both, the OSBA respectfully requests that the Commission reject Verizon's proposal and order that the rate increase be spread equally over the residential and business local exchange rates until the conclusion of a further remand proceeding that will address the appropriate allocation of the local exchange rate increase between Verizon's residential and business customer classes.

Verizon would be free to make an allocation proposal as part of that further remand proceeding, but any allocation proposed by Verizon could not be approved unless Verizon proved that the allocation is just and reasonable. See 66 Pa. C.S. §§ 1301 and 3015(g).

2. The OCA's recommendation to distribute any rate increase due to access charge reductions between business and residential customers on an equal basis should be rejected. (OCA Exception No. 5A)

The OSBA agrees with the OCA that the Commission should reject the ALJ's recommendation to cap Verizon's residential rates when distributing any rate increase due to reductions in access charges. This is particularly true because, as the OCA points out, such a rate cap may result in rate discrimination between Verizon's customer classes. OCA Exceptions, at 35-36. See also, OSBA Exceptions, at 18-20.

However, the OSBA respectfully disagrees with the OCA that "the fairest rate design would be to apply such rate increases on an equal and nondiscriminatory basis to all lines that serve both Business and Residential customers." OCA Exceptions, at 36. The OCA recommendation ignores the unrebutted testimony of OSBA witness Buckalew that Verizon's business customers are already paying more than Verizon's cost to provide them with local exchange service. See OSBA Statement No. 1 (remand), at 8-9.

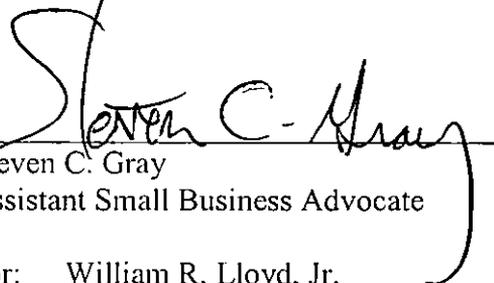
Instead, if the Commission decides to eliminate Verizon's carrier charge, to reduce Verizon's remaining access charges to interstate levels, or both, the OSBA respectfully requests that the Commission reject the OCA's proposal and order that the rate increase be spread equally over the residential and business local exchange rates only until the conclusion of a further remand proceeding that will address the appropriate allocation of the local exchange rate increase between Verizon's residential and business customer classes.

III. Conclusion

WHEREFORE, the OSBA respectfully requests that the Commission:

1. Grant the exceptions filed by the OSBA on January 9, 2006;
2. Deny Verizon's Exception No. 6 to the extent set forth herein; and
3. Deny the OCA's Exception No. 5A to the extent set forth herein.

Respectfully submitted,



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Dated: January 25, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply Exceptions of the Office of Small Business Advocate by e-mail and first class mail upon the persons addressed below:

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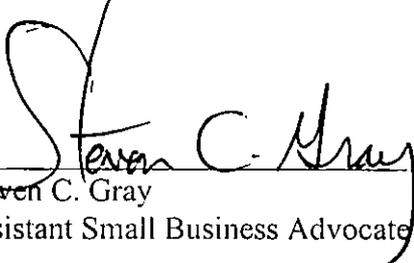
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Date: January 25, 2006



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IN REPLY PLEASE
REFER TO OUR FILE

January 25, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

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

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Dear Secretary McNulty:

Please be advised that the Office of Trial Staff will not be filing Reply
Exceptions in the above-referenced proceeding. As evidenced by the attached Certificate
of Service, all parties in this proceeding are being duly served with a copy of this letter.

Sincerely,

Robert V. Eckenrod
Prosecutor
Office of Trial Staff

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c: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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Chief Prosecutor

Robert V. Eckenrod
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Office of Trial Staff

Dated: January 25, 2006
Docket No. C-20027195

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF
PENNSYLVANIA, LLC,

v.

VERIZON NORTH INC.

:
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:

Docket No. C-20027195

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JAN 25 2006

VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC.
REPLIES TO EXCEPTIONS

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Counsel for Verizon
Pennsylvania Inc. and
Verizon North Inc.

Date: January 25, 2006

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INTRODUCTION

The Exceptions of Verizon Pennsylvania Inc. (“Verizon PA”) and Verizon North Inc. (“Verizon North”) (collectively “Verizon”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and the Office of Trial Staff (“OTS”) to the ALJ’s Recommended Decision (“RD”) make clear that the Commission should reject the ALJ’s recommendation to prematurely rebalance access rates again now – particularly so close on the heels of the last major rebalancing, a rebalancing that transferred over \$50 million in revenue from access rates to basic local rates. This and the other substantial access reductions over the past six years have left Verizon with access rates that are “well below the national average” (RD at 64) and among the very lowest in Pennsylvania. As these parties convincingly explained, the record demonstrates no urgent reason to reduce them again before the FCC finalizes its review of intercarrier compensation arrangements on a nationwide basis.

As the Exceptions demonstrated, the FCC is presently considering comprehensive changes to multiple types of intercarrier compensation arrangements that will likely include intrastate access rates. Only such a comprehensive solution that rationalizes compensation arrangements for all service providers could achieve the types of benefits the interexchange carriers (“IXCs”) tout and the RD wishes to achieve. By contrast, implementing isolated intrastate access reductions in Pennsylvania now will not likely benefit consumers but will instead certainly increase their rates, pursuant to the revenue neutrality requirement of 66 Pa.C.S. § 3017.

For these same reasons, this Commission has already stayed its consideration of intrastate access rebalancing for all other ILECs in Pennsylvania. The Commission has

done so in order to coordinate its actions with the FCC's, and there is no valid reason for it to adopt a completely different approach with respect to Verizon's access rates.¹ As Verizon has already explained, grave risks, such as the possible loss of federal funding sources that might have reduced the required end-user rate increases, accompany any rush by the Commission to take action before the FCC enacts a more comprehensive solution. The Commission has already heeded these risks in staying its parallel access case involving all other ILECs in the state, and it should do the same in this case.

Not content with an RD that generally ruled in its favor, Qwest Communications Corporation ("Qwest") filed two Exceptions to the RD, both of which are baseless. First, Qwest demands that the Commission accelerate the RD's already too ambitious schedule for rate rebalancing. And while it is easy to understand the private benefits that Qwest would obtain by speeding up the process, Qwest fails to present any tangible public benefits that would accompany this hasty rebalancing. Qwest's position here is also inconsistent with its advocacy before the FCC, where it and other IXCs have proposed a much more leisurely schedule for the FCC to reduce the same access rates. The motives for Qwest's inconsistent position are easily understood, because it allows Qwest to maintain higher intrastate access rates in the vast majority of states where it operates as an ILEC, and to seek the rapid acceleration of access reductions only in those states where it is not the ILEC. Second, Qwest contends that Verizon, not Qwest, had the burden of proof, but this assertion is not only wrong but academic. Regardless of which

¹ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, No. 1-00040105 (Opinion and Order entered August 30, 2005) ("Rural Access Stay Order").

party has the burden, the record amply demonstrates that the Commission should defer taking any action until the FCC resolves the intercarrier compensation issues.²

While OSBA and OCA agree with Verizon that the Commission should not rebalance rates now,³ they raise several incorrect claims in their Exceptions to which Verizon must respond. First, if a rebalancing were to occur, OCA and OSBA attempt to minimize the required increases to noncompetitive residential and business rates by arguing that the Commission should pretend that some of the revenue-neutral offset will be absorbed by increasing rates for competitive services. But they undercut their own argument, since they both concede that the Commission cannot regulate competitive rates and that Verizon would not really be able raise competitive service rates to recover the lost access charge revenues. Their position violates the revenue neutrality requirement of

² Verizon does not disagree with AT&T Communications of Pennsylvania LLC (“AT&T”) on the one substantive issue to which it excepts. Verizon does take issue, however, with AT&T’s introductory statements that are intended to support the RD. AT&T repeats its usual anti-access charge rhetoric but ignore the arguments that overwhelmingly counsel in favor of waiting for the FCC. AT&T does not tell a complete story, complaining, for example, that its access minutes have declined (AT&T Exceptions at 3), but failing to mention its own decision to halt marketing efforts for its traditional long distance (including toll) services. (It cannot follow from AT&T’s unilateral action that all IXCs are experiencing the same level of decline as AT&T). See VZ St. 1.1 Remand, Exhibit 1, AT&T Response to OCA Set I, No. 1 and attached affidavit of John C. Polumbo, ¶¶ 9 and 17. The record also shows that the only long distance consumer service AT&T is actively marketing in Pennsylvania is a “voice over IP” service. Because AT&T refuses to pay intrastate access charges in connection with this offering, transfer of customers to this product would also make AT&T’s access minutes appear to be declining. See VZ St. 1.1 Remand, at 30. Similarly, AT&T complains that due to its declining access minutes it is paying more than it anticipated for the carrier charge (AT&T Exceptions at 2), but it was AT&T – not Verizon – that argued for the Commission to alter what Verizon had until the *Global Order* charged as a “per minute” carrier common line charge, to make it a “per line” carrier charge, which was to AT&T’s financial advantage at that time. (AT&T Brief at 15). AT&T knowingly took the risk that if access minutes decreased this financial advantage might disappear.

³ While Verizon and the OSBA agree that the Commission should refrain from any rate rebalancing until the FCC rules in its intercarrier compensation proceeding, OSBA inexplicably contends that one reason in support of a stay of this case is that the Verizon consolidated loop case “will help determine Verizon’s appropriate access rates.” (OSBA Exceptions at 5). That UNE loop pricing case in fact has *no* relationship to this case. First, as the RD rightly concluded, the FCC’s TELRIC UNE pricing methodology is not appropriately used to determine the “cost” of access and the FCC itself has declined to use it for that purpose. (RD at 65). Even if UNE rates were relevant to access costs, however, the consolidated loop case will only price UNE loops, whereas the present and former UNE elements analogous to access service are switching, transport and (some IXCs have argued) reciprocal compensation, none of which will be priced in the consolidated loop case.

66 Pa. C.S. § 3017 and is inconsistent with Verizon's Chapter 30 plans and with this Commission's past practice, all of which require access reductions to be rebalanced by increases to rates for other noncompetitive services that are within this Commission's jurisdiction to regulate. OSBA also ignores applicable law and contends that the Commission should require Verizon to lower the competitive toll rates of its long distance affiliates but, again, these are rates that this Commission cannot regulate. These parties' wishful assertions only implicitly acknowledge what this Commission already knows – there is no way for the Commission to reduce Verizon's access rates without also producing increased retail rates.

REPLIES TO EXCEPTIONS

Reply to Qwest Exception No. 2: There Is No Basis To Accelerate The RD's Already Ambitious Timetable for Implementing Rate Changes

Not satisfied that the RD recommends that the Commission implement its proposed access reductions on an accelerated pace at odds with the Commission's approach to all other ILECs, Qwest now demands that the Commission act considerably faster than the RD recommends and implement the entire rebalancing (including substantial end-user rate increases) in six months. (Qwest Exceptions at 3-8).

Qwest contends that intrastate access reductions are "long overdue" and that "over six years ago" the Commission recognized that there should be some reductions in Verizon's intrastate access rates, implying that the Commission has taken no action on this issue in the past six years and must rush to do so now. (Qwest Exceptions at 4). But Qwest fails to mention that in those six years the Commission already has reduced access rates, and IXC's have enjoyed *approximately \$140 million* in cost savings as the result of access reductions implemented by Verizon. Less than a year ago, the Commission again

reduced access rates, providing Qwest and other IXC's with substantial savings exceeding \$50 million dollars. As discussed in the Exceptions of Verizon and the public parties, the record does not establish end-user benefit from these reductions. Qwest also fails to acknowledge that as a result of these prior substantial access reductions Verizon's "intrastate access rates are well below the national average," (RD at 64), and among the very lowest in Pennsylvania. Indeed, they are much lower than the rates of the vast majority of the other ILECs in Pennsylvania, whose access investigation the Commission stayed.⁴

While Qwest has opposed all efforts to leave current rates in place pending conclusion of the ongoing FCC proceeding, and now even proposes to accelerate the ALJ's own ambitious schedule, its arguments are contradicted by its own actions. The record shows that at the same time it has come to Pennsylvania seeking to reduce Verizon's ILEC access rates, which are already below the national average, Qwest is content to allow its own intrastate access rates to remain higher than interstate rates indefinitely in the vast majority of states where it operates as an ILEC.⁵ Its plea for haste here is simply opportunistic and should be rejected.

Qwest also complains that the ALJ's recommended schedule, which would have Verizon eliminate the carrier charge within six months to one year and match interstate rates within one to two years of the Commission's final order, "would allow Verizon to continue avoiding [access] reform until 2008." While Qwest suggests that two years is

⁴ Equally baseless is AT&T's complaint that the Commission has somehow "failed to act" on the findings in its *Global Order*, without acknowledging the substantial access reductions it has enjoyed over the past six years. (AT&T Exceptions at 1). The only thing AT&T proves is that no matter how far or how fast the Commission reduces access rates, AT&T will never be satisfied.

⁵ Qwest has acknowledged that in 12 of the 14 states in which it operates as an ILEC it has not reduced its intrastate access rates to parity with its interstate access rates, as it demands this Commission require of Verizon here. VZ St. 1.1 Remand (Kane/Dean Rebuttal) at 9 and Kane/Dean Exhibit 3.

an outrageously long time to accomplish these access reductions, in fact, under the circumstances presented here two years is too short a time to accomplish such a substantial rate rebalancing. As Verizon explained in its Exceptions, if the Commission determines to proceed with rate rebalancing now (which it should not), it should phase in the rate changes over a longer time than the RD proposed, particularly since the last rebalancing was accomplished less than one year ago at an increase of \$.80 increase per line. (Verizon Exceptions at 27-28; see also OSBA Exceptions at 10).

Qwest dismisses as inconsequential the ALJ's concern that an immediate substantial local rate increase to offset the entire \$60 million of revenue that she recommends be removed from access rates might cause "rate shock" to end users. (Qwest Exceptions at 5). However, the Commission must consider more than Qwest's own narrow financial interests in lowering its own access costs. In particular, unlike Qwest, the Commission must consider the impact these reductions will have on end-users who, under 66 Pa.C. S. § 3017, must pay higher rates to offset access reductions. The Commonwealth Court has affirmed this Commission's broad discretion in this area – which would include determining the timing of any rebalancing so as not "to eliminate the support such revenue provides to other areas of the system that need that support."⁶ Moreover, the OCA has submitted evidence in the record supporting the ALJ's finding of a danger of rate shock.⁷

Qwest cavalierly dismisses the fact that the Intercarrier Compensation Forum ("ICF") (of which AT&T is a member) has asked the FCC to assume jurisdiction over

⁶ *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000).

⁷ *See, e.g.* OCA Exceptions at 20-21.

intrastate access rates and take six years to reduce them. It contends that the ICF position is not relevant, characterizing it as “merely a proposal” that the FCC has not yet accepted. (Qwest Exceptions at 6). Qwest misses the point, and never explains why it is so urgent for this Commission to act in *six months* when the IXCs are content to allow the FCC to take *six years* to reduce the same rates. The point is not whether the FCC will adopt that timetable, but rather that many IXCs have told the FCC that such a timetable is acceptable while making the opposite argument here. Before the FCC, Qwest itself has proposed a transition period of three years – not the six months it is urging here.⁸ Qwest has not explained why three years is an acceptable time frame for the FCC, but not for this Commission.⁹

Qwest claims that in an October 27, 2004 letter to Qwest, “Verizon has admitted” that the Phase I rate rebalancing “could have been implemented in three months.” (Qwest Exceptions at 7). Again, Qwest misrepresents the facts. First, although a courtesy copy was sent to Commission staff, the letter is not formally in the record, it is not properly cited, and cannot be relied upon for decision-making purposes. Second, the letter does *not* say that Verizon could have implemented the last rebalancing in three months. Rather, it explains why Verizon required at least six months from entry of the Commission’s order to implement the retail rate increases under the circumstances

⁸ Verizon St. 1.0 Remand, Exhibit 4, Qwest Comments at 7.

⁹ Qwest relies upon a California recommended decision that it contends recommends access reductions to be implemented within 30 days of a commission order. (Qwest Exceptions at 7). This California RD, like ALJ Fordham’s RD here, has been challenged in comments to the full commission and is not a final opinion of California Public Utility Commission. The method of recovering the end user rate increases is one of the issues in dispute before the California Commission, but under the RD’s proposal those end-user rate increases would not be implemented in 30 days, only the access decreases would be. In Pennsylvania, section 3017 requires the increases and decreases to take effect at the same time. Accordingly, this California RD does not support Qwest’s argument to accelerate the RD’s timetable here.

presented there. Third, the relevant question is not how quickly Verizon is capable of physically changing its billing systems and notifying its customers – although the Commission must provide appropriate time for billing system changes and customer notification. Rather, the question is whether the extreme haste advocated by Qwest is in the public interest, and it is not.

Accordingly, for the reasons discussed above and in Verizon’s Exceptions, the Commission should not undertake any rate rebalancing until the FCC completes its intercarrier compensation proceeding. If the Commission does determine to proceed with rebalancing now, it should deny Qwest’s request to speed up the timetable set forth in the RD, and should instead grant Verizon’s Exception No. 5 and slow down the process for implementing any required rate changes.

Reply to Qwest Exception No. 1: The RD Correctly Concluded That The IXCs That Are Proposing The Rate Decreases Have The Burden Of Proof In This Proceeding

The RD correctly concluded as a matter of law that the IXCs had the burden of proof in challenging Verizon’s tariffed access rates. (RD at 17). Even though the RD concluded (at least implicitly) that the IXCs had met their burden with respect to the access rate rebalancing that it recommended, Qwest again is not satisfied and excepts to this holding. Qwest contends that under 66 Pa.C.S. § 315(a) Verizon had the burden of proving that its tariffed access rates are just and reasonable. (Qwest Exceptions at 2-3).

The general rule, set forth in 66 Pa. C.S. § 332(a), is that “the proponent of a rule or order has the burden of proof.” A limited exception to that rule appears in 66 Pa. Code § 315(a), where the public utility has the burden of proof in “any proceeding upon motion of the commission, involving any proposed or existing rate.”

Although the IXCs are the “proponents” of proposed access rate reductions and retail rate increases here, Qwest stretches to fit this case into the limited statutory exception. Qwest argues that because the *Global Order* “prompted” this proceeding and because, after the first RD, the Commission remanded the matter to the ALJ for consideration of the merits of the IXCs’ arguments, this case is a “proceeding upon the motion of the commission” in which the utility has the burden of proof. Qwest’s strained argument is refuted by the caption and docket number of this case, which is “AT&T versus Verizon” docketed as a “C” (for Complaint) proceeding. Moreover, the specific purpose of this remand proceeding was to address the merits of “those policy issues and other access charge concerns that were *raised by the IXCs* in their Exceptions.”¹⁰

Here Verizon’s access rates are existing tariffed rates, and Verizon has not proposed to change them. Rather, the IXCs are challenging these existing rates, contending they are no longer reasonable. In this situation the complaining IXCs, not Verizon, have the burden of proof, as the RD rightly concluded. In the words of the Commonwealth Court:

Where a customer is heard to complain concerning a *proposed* change in rate, the burden of proof is upon the public utility to show that the proposed rate is just and reasonable. Where the complaint involves an *existing* rate, however, the burden then falls upon the customer to prove that the charge is no longer reasonable.

Brockway Glass Co. v. Pennsylvania Public Utility Commission, 633 Pa. Commw. 238, 243, 437 A.2d 1067, 1070 (1981) (emphasis in original). *See also Schellhammer v. Pennsylvania Public Utility Commission*, 157 Pa. Commw. 86, 629 A.2d 189 (1993) (customer complaining about an existing rate has the burden of proof).

¹⁰ 7/28/04 Order, ordering ¶6 (emphasis added).

In this instance, however, Qwest's exception is academic. Whichever group the Commission deems to have the burden of proof, the record still overwhelmingly demonstrates that the Commission should *not* rush to further lower access rates and increase end-user rates before the FCC acts in its intercarrier compensation proceeding.

Reply to OSBA Exception No. 6 and OCA Exception No. 4: The RD Correctly Concluded That The Commission May Only Increase Rates Within Its Jurisdiction And Cannot Direct Verizon To Increase Rates for Competitive Services

If this Commission were to require rate rebalancing now, without waiting for the FCC to complete its intercarrier compensation proceeding (which it should not), then it is statutorily required to raise rates for other non-competitive services in order to off-set the reduction to access rates. If the Commission determines to go forward with rate rebalancing over the objections of OCA and OSBA, they contend that the Commission should artificially reduce the amount of the increase to basic residential and business rates by "allocating" a portion of the revenue to be offset to competitive services. The RD rightly rejected this argument, holding that these parties had "failed to show that the Commission can order Verizon to include competitive services in the rate rebalancing." (RD at 67).

As in previous cases where it has authorized revenue-neutral rate rebalancing, if the Commission determines that access rates should be reduced, it must raise tariffed rates for basic noncompetitive residential and business local services. This would result in the increase being placed on the same category of residential and business rates used for the earlier Phase I rebalancing. Not only did OCA and OSBA agree to the category of rates that were subject to the increase in Phase I, but the increase was approved by the Commission. That approach was consistent with the way in which revenue neutral rate

increases have been designed in other Chapter 30 rate rebalancings.¹¹ There is no basis to depart from this method of rate increases for Phase II. At the time Verizon submitted its testimony in this Phase II proceeding, it estimated that there were approximately

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PROPRIETARY] lines that use those basic tariffed residential and business services that would be subject to the rate increases.¹²

OCA contends that the Commission should calculate the revenue neutral rate increase required by 66 Pa. C.S. § 3017 as if it were spread across both competitive and non-competitive “lines.” OCA takes this position even though it acknowledges that the Commission cannot actually raise Verizon’s rates for competitive services to capture the required revenue. (OCA Exceptions at 28-35). OSBA similarly contends that the Commission “should calculate the increase in local exchange rates based upon the total number of Verizon access lines (both contract and non-contract),” so that a share of the revenue is placed on “contract” lines even if Verizon cannot actually collect that revenue from those customers. (OSBA Exceptions at 16-17).

As these parties must concede, 66 Pa. C.S. §3017 mandates that “[t]he commission *may not* require a local exchange telecommunications company to reduce access rates *except* on a revenue-neutral basis.” (emphasis added).¹³ Accordingly, if the

¹¹ VZ St. 1.1 Remand at 35. See, e.g., *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596 (Opinion and Order entered July 15, 2003) (“*Sprint/RTCC Settlement Approval Order*”) at 10 (“although our approval of the Joint Proposal will allow the rural ILECs and Sprint/United to raise their local residential monthly service rates up to a cap of \$18.00 per month, (\$2.00 more than the current \$16.00 cap), this increase is incremental so as to avoid customer rate shock”).

¹² See Verizon St. 1.1 Remand at 34.

¹³ OCA’s complaint that the requirement of revenue neutrality might over time cause increasingly larger rate increases on a decreasing number of noncompetitive lines (OCA Exceptions at 28) is actually a

Commission lowers access rates, it must raise other rates to recover the same revenue. OCA's and OSBA's suggestion that the Commission should pretend that competitive or contract lines are paying a portion of the revenue in order to minimize the increase to rates for non-competitive services, even while admitting that the Commission cannot actually increase rates for competitive services, is a violation of the plain language of the statute.

The RD correctly understood what OCA and OSBA fail to acknowledge. The Commission determines which *rates* to increase, not what specific customers or lines will pay. It may only increase those rates over which it has jurisdiction, primarily the rates for basic *non-competitive* residential and business services. The Commission has no authority to raise the rates for competitive services. Chapter 30 provides that Verizon may price *competitive* services "at the company's discretion," and so the Commission may not mandate the level of those rates. 66 Pa. C.S. § 3016(e)(1). *See also* 66 Pa. C.S. § 3019(g) ("The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate competitive services except as set forth in this chapter.")

Not only is the Commission statutorily prohibited from raising rates for competitive services, but the Commission also cannot place portions of the revenue-neutral offset on services that the uncontested evidence demonstrates will *not* actually produce the required revenue. This is because such a rebalancing would not be revenue neutral. The statutory mandate given this Commission when calculating a rate rebalancing is that it *must* be designed to achieve revenue neutrality. 66 Pa. C.S. § 3017.

challenge to the requirements of the Chapter 30 statute, not to any matter that is within this Commission's discretion to alter.

In other words, the Commission must design the rebalancing so that Verizon will actually recover the lost access revenue through increases in some other rates. The undisputed record here demonstrates that “not all lines can receive a rate increase. Lines that are subject to contractual agreements cannot raise their rates, and lines subject to competitive pressures are not subject to rate regulation and cannot be expected to accept an increase without being lost to a competitor.”¹⁴ Accordingly, a paper exercise of allocating revenue to such lines would not actually achieve revenue neutrality and would violate 66 Pa. C.S. § 3017.¹⁵

OCA’s and OSBA’s proposal is also contrary to Verizon PA’s Chapter 30 plan, which only allows “revenue neutral adjustments to the rates of its *noncompetitive* services,” (p.12), and Verizon North’s Chapter 30 Plan, which provides for “tariffs proposing to rebalance and/or restructure its rates for *noncompetitive* services.” (p. 14). Neither plan allows the Commission to rebalance rates by reducing rates for a noncompetitive service and increasing rates for competitive services. If, as OCA posits, the Commission reaches a point where it believes the rate increase for noncompetitive services is too large (which, as discussed below, is not the case now), then the answer is to reconsider whether to rebalance the rates at all. It is not, however, an available option for the Commission to choose to violate the revenue neutrality requirements of Section 3017.

¹⁴ VZ St. 1.1 Remand at 34.

¹⁵ OCA’s reliance on an extended area service (“EAS”) case in which the Commission declined to allow Sprint/United to raise protected noncompetitive rates to recover lost competitive toll revenues is completely misplaced. (OCA Exceptions at 30-31). First, there is no statutory mandate requiring revenue neutrality in an EAS case, as there is here with access reductions through 66 Pa.C.S. § 3017. Second, here Verizon would be rebalancing revenues from one noncompetitive service (access) to other noncompetitive services, a concept specifically allowed under Chapter 30 and both Verizon Chapter 30 plans.

OSBA and OCA also contend that placing the offsetting increases on only “non-contract lines” would violate Chapter 30’s prohibition, at 66 Pa. C. S. § 3016(f)(1), that revenues earned or expenses incurred in conjunction with “protected services” may not be used to “subsidize” competitive services. (OSBA Exceptions at 15; OCA Exceptions at 30). “Protected services” are basic dial tone line, touch tone and switched and special access services provided to residential and business customers. 66 Pa. C.S. § 3012.

This argument incorrectly presumes that after an increase to basic service rates, these “protected services” would somehow be priced above cost, and therefore would be able to provide a subsidy to competitive services. The record demonstrates that this premise is incorrect. The record shows instead that basic local service is priced below cost and is receiving a subsidy.¹⁶ Verizon’s cost studies show that the actual cost of providing basic residential service is **[BEGIN VERIZON PROPRIETARY]**

[END VERIZON PROPRIETARY].¹⁷ The record in Phase I showed that Verizon’s weighted average rate for residential basic local service was \$12.55 for Verizon North and \$13.31 for Verizon PA.¹⁸ Even with the addition of the \$0.80 price increase ordered in Phase I, these rates are still well below cost.¹⁹ Similarly, the statewide average cost of providing basic business dial tone line and port service was **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON**

¹⁶ See VZ Phase I St. 3.0 (Taylor) at 12 (explaining that a service is subsidized when its price is below the TSLRIC per unit of the service, but the firm earns sufficient revenue from all its services to at least break even. The TSLRIC for basic residential local exchange service is significantly greater than its revenues, so it is a subsidized service).

¹⁷ VZ Phase I St. 2.0 at 20.

¹⁸ VZ Phase I St. 1.1 at 18.

¹⁹ Just this month the Commission took “administrative notice that [Verizon’s] tariffed individual residential local exchange service rates are reasonable and below the established Universal Service cap of \$18.00 per month.” *Joint Application of Verizon Communications Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, No. A-310580F0009 (Opinion and Order entered January 11, 2006) at 43 (“VZ/MCI Merger Order”).

PROPRIETARY], plus additional costs for usage.²⁰ OSBA has not demonstrated that protected business services would be priced above costs, even following rate rebalancing.²¹ Accordingly, the prohibition on “cross-subsidization” is irrelevant because these services are being subsidized, not providing a subsidy.²²

The Commission should deny the OCA’s and OSBA’s Exceptions and affirm the RD’s conclusion that any rate increases must be made to basic noncompetitive residential and business service rates, and not to rates for competitive services.

Reply to OSBA Exception No. 8: This Commission Lacks Authority To Require Verizon To Lower The Competitive Toll Rates Of Its Long Distance Affiliates, As The OSBA Suggests

OSBA contends that the PUC should direct Verizon to reduce the long distance (presumably intrastate toll) rates of its affiliates to flow through to end users any savings due to access reductions of those affiliates. (OSBA Exceptions at 21). This suggestion is beyond the Commission’s authority, for toll services are competitive services beyond this Commission’s authority to regulate. See 66 Pa.C.S. § 3018(a) (“Interexchange services provided by interexchange telecommunications carriers shall be competitive services.”);

²⁰ VZ Phase I St. 2.0, Exhibit 2.

²¹ The Commission took administrative notice in the merger proceeding that Verizon PA’s currently effective tariffs contain rates that range between \$10.28 to \$14.23 per month for individual flat-rate residential service and between \$17.93 and \$25.43 per month for individual standard-rate business service. VZ/MCI Merger Order at 43, n. 22. These rates are well below the costs of service described above.

²² OSBA argues that because some access revenue comes from lines that are purchasing competitive basic service, the portion of the access revenue allocated to those lines should not be rebalanced to basic noncompetitive rates. (OSBA Exceptions at 15). This argument misapprehends the entire reason why the IXCs are advocating and the Commission is considering removing “implicit subsidies” from access rates. The IXCs contend that they are paying higher access rates on all lines to subsidize below-cost noncompetitive basic service rates. The transfer of this revenue from access rates to noncompetitive basic service rates would be intended to bring those noncompetitive basic local service rates more in line with their underlying costs. The access revenues are not tied to a particular line and the type of local service purchased by that line is irrelevant. *See, e.g., Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000) (recognizing that it is within this Commission’s sound discretion to determine where to draw the line at which access rates subsidize other costs).

66 Pa.C.S. § 3018(b)(1) (“The commission may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return, operating margin or earnings for interexchange competitive services or otherwise regulate interexchange competitive services except as set forth in this Chapter.”)

OSBA’s argument is also directly contrary to 66 Pa. C. S. § 3017. The Legislature enacted an absolute rule that *all* access reductions must be revenue neutral to the ILEC. It did not carve out the type of exception the OSBA seeks to create here relating to separate companies that might be affiliated with the ILEC in some way, thereby permitting the Commission to disallow a portion of the revenue neutral rate increase. This Commission is not free to alter the statute in the manner OSBA advocates.

In any event, as Verizon discussed in its Exceptions, long distance services are typically priced on a nationwide basis, given requirements for rate averaging and to enable the carrier to spread its underlying costs nationally. Given that Verizon’s Pennsylvania intrastate access rates are already below the national average, long distance carriers are unlikely to actually be charging higher toll rates in Pennsylvania because of the intrastate access rates they are paying to Verizon. (See Verizon Exceptions at 15-16). If this issue is of concern to the Commission, then it simply provides another reason to wait for the FCC to resolve all of the complex issues relating to intercarrier compensation rather than rush to reduce intrastate access rates now.

Reply to AT&T Exception No. 1; OSBA Exception No. 7 and OCA Exception No. 5: The Commission Should Reject The RD’s Cap On Residential Price Increases

While the parties disagree on whether rate rebalancing should be implemented in the time frame contemplated by the RD, almost every party to this proceeding has taken

exception, for one reason or another, to the RD's proposal to cap any residential increase at \$1.00 and then \$.50. (See Verizon Exceptions at 28; OCA Exceptions at 35; OSBA Exceptions at 18; AT&T Exceptions at 4). As OCA correctly summarized, "it is difficult to determine the per line charge that will be applied under this recommendation." (OCA Exceptions at 35). Verizon agrees that it is premature to judge what an appropriate increase or cap might be. As Verizon explained in its Exceptions, the Commission should reject the specified cap on the residential increase because some flexibility will be required in designing a new rate structure to maximize the likelihood of revenue neutrality required by 66 Pa. C. S. § 3017. Instead of imposing artificial and potentially counterproductive limitations on rate structure, the Commission should allow Verizon to make a proposal as part of the compliance phase of this proceeding for distributing the increase between business and residential rates. There is no need for yet another remand proceeding to address the allocation of increases between residential and business customers, as the OSBA suggests. (OSBA Exceptions at 20).

For the same reasons, the Commission should reject the OCA's argument that the Commission should preordain without seeing the final numbers that rate increases will be distributed "equally" among business and residential services. It should instead preserve maximum flexibility in this regard. (OCA Exceptions at 36). Verizon agrees with OCA, as discussed in Verizon's Exceptions, that if and when any rebalancing occurs it should be based on information about current service volumes and not on the stale information in the record. (OCA Exceptions at 36) Accordingly, the Commission should wait to review the current volume information before considering any limitations on how

rebalancing might occur and how rate changes will be distributed between basic noncompetitive residential and business services.

Finally, if the Commission chooses to set time frames for evaluation of a compliance filing, as OCA suggests, (OCA Exceptions at 37), then it still must ensure that both the access reductions and retail rate increases go into effect at the same time (as required by 66 Pa. C.S. § 3017), including whatever time is needed for customer notification.

CONCLUSION

The Commission should reject the RD's recommendation to rebalance access rates at this time and should close or stay this proceeding pending the outcome of the FCC's intercarrier compensation proceeding. If the Commission does determine to rebalance rates, then it should deny the other parties' Exceptions consistent with the discussion above.



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January 25, 2006

VIA HAND DELIVERY

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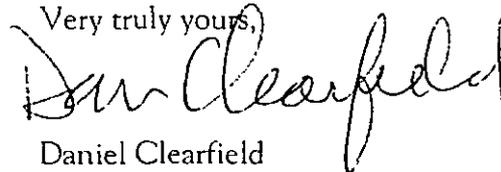
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Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon North Inc., Verizon Pennsylvania, Inc.
Docket No. C-20027195 (Remand Phase)

Dear Secretary McNulty:

On behalf of AT&T Communications of Pennsylvania, Inc., enclosed for filing please find an original and nine copies of its Reply Brief on Exceptions which contain Proprietary Information with regard to the above-referenced matter. Also enclosed for filing is an original and nine copies of a public version. A copy has been served in accordance with the attached Certificate of Service.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosure

cc: Certificate of Service w/enc.
Hon. Cynthia W. Fordham w/enc.

HAR:634S6.1/ATT004-225805

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania,
Inc.

v.

Verizon North, Inc.
Verizon Pennsylvania, Inc.

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: Docket No. C-20027195
: Remand Phase
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REPLY BRIEF ON EXCEPTIONS OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC

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Date: January 25, 2005

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I. INTRODUCTION

The ALJ's Recommended Decision to eliminate the Carrier Charge within a year and to reduce the remaining traffic sensitive access rates to interstate levels within two years constitutes a reasonable balancing of the IXCs' need for access reductions with Verizon's need to recover that lost revenue in a reasonable and sustainable manner. Neighboring states have implemented similar access reductions in recent months,¹ apparently preferring to implement their own access reforms rather than wait on an uncertain FCC result on an uncertain timetable.² Pennsylvania should do the same.

This Commission has been careful to build an exhaustive record on access matters. In January 1997 (in a docket opened in 1994), the Commission took tentative steps towards access reform, noting that its decision was only a first step intended to "provide some relief until we

• ¹ See, e.g., Virginia State Corporation Commission, Case No. PUC-2004-00092, *Application of Verizon Virginia, Inc. and Verizon South, Inc. For Approval of a Plan for Alternative Regulation*, Final Order, January 5, 2005; Public Service Commission of West Virginia, Case No. 00-0318-T-GI (reopened), *et al.*, Verizon West Virginia Inc., f/k/a Bell Atlantic – West Virginia, Inc., *General Investigation Regarding Possible Reductions in BA-WV's Intrastate Access Charges*, Commission Order, March 21, 2005, Maryland Public Service Commission, Case No. 8745, *et al.*, *In the Matter of Provision of Universal Service to Telecommunications Consumers*, Order No. 80407, November 23, 2005.

• ² Verizon, joined by the public advocates, urges this Commission to wait on the FCC to complete its Intercarrier Compensation proceeding before resolving this case. There is no reason, however, for any further delay. The record is fully developed, the ALJ's Recommended Decision establishes a well reasoned basis for resolving the issues, and this Commission has a duty to render a decision that serves the interests of Pennsylvania consumers. Given the myriad uncertainties surrounding the FCC's intercarrier compensation reform proceeding, any suggestion that a Commission decision here could somehow harm Pennsylvania consumers – such as, e.g., one public advocate's suggestion that reducing access in this proceeding might somehow impair Pennsylvania's ability to draw from some yet-to-be determined federal compensation reform fund (OCA Exceptions at 6, 7) can be summarily dismissed as nothing more than rank speculation.

have an opportunity to complete our intrastate access charge reform docket.”³ ALJ Schnierle’s 1998 *Recommended Decision* in the subsequent access reform docket underscored the need for action, finding that it “is no longer practical” for access to subsidize loop costs and other services, and that any effort to perpetuate such subsidies is “doomed to failure in a competitive market.”⁴ A year later, in its *Global Order*, this Commission endorsed Judge Schnierle’s findings and again acknowledged the need to reform Pennsylvania’s intrastate access charges in the interest of promoting competition.⁵ The *Global Order*, in turn, spawned the long list of access investigations, access collaboratives and access complaints cited in the procedural history of ALJ Fordham’s December 7, 2005 *Recommended Decision* in this docket.⁶

During the dozen years or so that access issues have been so thoroughly investigated, IXC’s have watched their customers, minutes, and revenues disappear⁷ as a host of wireless carriers, cable companies, and internet service providers have captured ever-larger shares of the telecommunications market. The undisputed record evidence established that AT&T’s intrastate access minutes from Verizon decreased from almost [BEGIN PROPRIETARY]

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- ³ *In re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. I-00940035, January 28, 1997, Commission Order, at 105.
 - ⁴ *Generic Investigation of Intrastate Access Charge Reform*, Docket No. I-00960066, Recommended Decision, June 30, 1998, at 50-53.
 - ⁵ *In re: Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PUC 172 (September 30, 1999) (*Global Order*); 196 P.U.R.4th 172, *aff’d sub nom. Bell Atlantic – Pennsylvania, Inc. v. PUC*, 763 A.2d 440 (Pa. Commonwealth 2000), *alloc. granted*.
 - ⁶ RD at 1-9.
 - ⁷ OAO Record Exhibit 6; AT&T St. 1.2-R at 13-14. See related discussion in AT&T Exceptions at 2, 3.

[END PROPRIETARY] over a three year time period.⁸

The new entrants are succeeding not because they provide better service, but because they are not hamstrung with the same high access costs as IXCs. The ALJ's *Recommended Decision* is a reasonable attempt to correct this cost disparity so that Pennsylvania consumers can continue having wireline long distance service as an available option, while phasing in the reductions over time to allow local exchange carriers the reasonable ability to recover lost access revenues from other sources.

II. THE COMMISSION SHOULD ADOPT THE ALJ'S RECOMMENDATION TO REFORM ACCESS OVER A TWO YEAR PERIOD.

Despite the overwhelming evidence documenting how nimble intermodal competitors have been able to leverage their cost advantage to capture customers, minutes, and revenues, there are, curiously enough, still parties advocating more caution and "gradualism" when it comes to access reform. Verizon, joined by the public advocates, again urges the Commission to wait on the FCC to complete its intercarrier compensation reform docket.⁹ At this point,

⁸ AT&T St. 1-R at 10; AT&T St. 1.2-R at 14, 15.

⁹ Verizon Exceptions at 6-14; OCA Exceptions at 3-11; and OSBA Exceptions at 3-5. These parties also argue that the Commission impliedly indicated that access reform should await FCC action because the Commission stayed the rural carrier access proceeding. *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, No. I-00040105. The circumstances in the *Rural Carriers* case and this one are easily distinguished. In that case, the Commission decided it would not start its review of the rural carrier access issues until the FCC completed its work. Here, however, the Commission is completing a case that, for all practical purposes, has been ongoing for over twelve years (*see pp. 1-2, infra.*) As the *Recommended Decision* correctly observes, the instant proceeding is a follow-on to the *Phase 1* access reform proceeding, which in turn is a follow-on to the Global Order and its predecessors. And, it must be noted, the Commission easily could have stayed this proceeding at the time that it stayed the rural carrier investigation, but

however, no one knows when the FCC will act, or what it will do.¹⁰ In sharp contrast, this Commission has all the tools it needs to take action. Where the Commission has before it a substantial record, developed over more than a decade, culminating in an ALJ *Recommended Decision* crafting a well-reasoned, balanced and appropriate plan for resolving Pennsylvania access issues, there is no reason to wait on the FCC. Faced with a choice is between resolving a Pennsylvania problem based on Pennsylvania facts in a manner that serves the long term interests of Pennsylvania's consumers, or deferring to a federal agency whose work is far from complete and whose results remain unknown,¹¹ the decision is not difficult.

The only other argument the public advocates can muster against access reductions is their shopworn and widely discredited claim that long distance carriers should bear their "fair

chose not to do so. RD at 59. Additionally, again as the *Recommended Decision* indicates, Verizon is in a much different posture than any of the rural carriers, in that it is neither a small company nor an average schedule company that receives USF monies. *Id.* The two proceedings are quite distinguishable, and it is clear that the Commission intended resolve this one without waiting on the FCC or anything else.

- ¹⁰ The *Recommended Decision* correctly recognizes that the Intercarrier Compensation Forum ("ICF") proposal to the FCC provides for a timeline to reduce intrastate access charges to interstate rates over a six year period commencing in 2005. RD at 66. However, that is just a *proposal* to the FCC. As the *Recommended Decision* again correctly notes, it is but one of many complex proposals before the FCC (none of which Verizon has proposed or endorsed). The FCC has not adopted this or any other proposal, and "no one can predict when the FCC will act." RD at 58, 59. It is now 2006. If this Commission were to await FCC action, the access reform commenced in 1994 could be postponed to 2012 or beyond. As Qwest eloquently states, "[U]sing a proposal submitted to the FCC that has yet to be adopted by the FCC is entirely inappropriate." Qwest Exceptions at 6.
- ¹¹ The public advocates' speculation that Pennsylvania may somehow qualify for more USF funding by delaying its decision here is merely that -- speculation. It is not a reason to further delay access reform for Verizon.

share” of loop costs.¹² The argument has always been bad economics. Loop costs are caused when a customer orders a loop; those costs do not vary whether a customer uses the loop entirely for local calls, entirely for long distance calls, or not at all. The public advocates’ argument for allocating loop costs among services is, at bottom, nothing more than an effort to shift local service costs onto long distance customers. All that accomplishes, however, is to keep long distance rates too high and, as the evidence shows, bare long distance carriers to competition from wireless, e-mail and internet providers that are not saddled with access subsidies. The plain truth is that while the cross-subsidies the public advocates crave may have been workable in the monopoly era, they cannot be sustained in today’s highly competitive intermodal market,¹³ a

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- ¹² OCA Exceptions at 22; OSBA Exceptions at 6. It is telling that Verizon does not join in that argument. Verizon long ago acknowledged that the loop is not a shared cost to be allocated among various services. *See, e.g.,* Reply Brief of Verizon Pennsylvania Inc. and Verizon North Inc., *AT&T Communications of Pennsylvania, LLC. v. Verizon North Inc.*, Docket No. C-20027195 at (2003)(agreeing that the Commission is not required to allocate the cost of the loop, and that "the [public] advocates fail to recognize that this Commission has moved beyond the outdated theory of price regulation...that artificially depressed basic local service rates by ‘allocating’ substantial portions of network costs to other services, such as access." *Id.* at 12).
 - ¹³ Verizon Exceptions at 21 and OCA Exceptions at 22. These parties incorrectly argue that Pennsylvania customers have not benefited from past access charge reductions, an assertion the *Recommended Decision* rejected based on substantial evidence that interexchange carriers introduced additional unlimited calling plans as a result of the Phase 1 access reductions. RD at 65. Curiously, OCA adds an additional argument that access charges should not be reduced because the carriers that would receive the benefit are essentially already dead and cannot be revived. OCA Exceptions at 14. Taken at face value, this argument proves conclusively why access reform is due. The argument, however, is inaccurate. AT&T, for one, is not dead. It still provides long distance services to a sizable number Pennsylvania business and residential customers (although, as the evidence shows, high access charges are shrinking the numbers). The fact is that AT&T, Qwest and other carriers retain significant wireline businesses, remain very much alive, and will be able to compete more effectively with a reduced cost structure that does not saddle them with inappropriate access subsidies that their competitors do not incur.

point the *Recommended Decision* readily acknowledges.¹⁴ And it is equally true that ridding access of subsidies will not necessarily mean higher telephone bills. Even if local rates increase, the lower access costs will enable wireline providers to offer toll services and packaged local and toll services more competitively, which will tend to encourage sustainable, additional competition for these services. Pennsylvania consumers will be beneficiaries of these changes, not victims.

III. VERIZON SHOULD BE GIVEN DISCRETION TO REBALANCE RATES TO OFFSET ACCESS REDUCTIONS.

Verizon will need to adjust its basic local exchange rate to offset the impact of access reductions and to more properly align the costs of providing service with those parties deriving the benefits of that service.¹⁵ The traditional regulatory approach of using subsidies from access charges to defray the cost of local service has kept local service rates artificially low and IXC toll rates artificially high. Back when there was little or no real competition for either service, this was a sustainable policy alternative.

Today's vigorously competitive market, however, has made that approach an anachronism. In competitive markets, prices move towards cost. Access reform can help make wireline long distance carriers meaningful competitors once again by eliminating the subsidies

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- ¹⁴ "Although the IXCs pay for using the loop, there is no proposal to charge the wireless and other technologies for using the same facilities. This negates the public advocates' argument that the loop is a joint cost that must be shared by all who use it." RD at 63.
 - ¹⁵ Verizon correctly argues that the *Recommended Decision's* limitation on raising residential rates as part of access reform rebalancing is unwarranted and potentially counter-productive. With access revenue and lines shrinking, artificial limitations on rebalancing revenues could cause either business or residential lines to bear a disproportionate share of the necessary increase, depending on which line counts shrunk more quickly going forward. Verizon Exceptions at 28.

that have been inherent in carrier access charges. At the same time, however, the Commission needs to give Verizon flexibility to recoup lost subsidy revenues, as required by 3017(a) of the Public Utility Code, 66 Pa. C.S. § 3017(a). The ALJ's attempt to place limits on Verizon's ability to recover its lost access revenue, therefore, is error.

Certain parties bemoan any rise in end user local service rates, citing concerns of "rate shock" and "gradualism."¹⁶ These parties continue to misapprehend the economic realities before them. By any measure, local rates are very reasonable now and will continue to remain quite reasonable following necessary rebalancing. Adopting the ALJ's recommendations will mean that, over a two year period, Verizon's local rates will increase an average of only **[BEGIN PROPRIETARY]** **[END PROPRIETARY]** per line.¹⁷ That does not necessarily mean that customers will see that much of an increase on the bottom line of their telephone bills. As more competitors offer full service, local and toll, at a bundled price, any increases in local rates effectively will be ameliorated by decreases in the toll portion of the any-distance package. Here again, these changes will benefit Pennsylvania consumers.

• ¹⁶ *E.g.*, OSBA Exceptions at 10.

• ¹⁷ *See* RD at 49 and related record citations.

IV. CONCLUSION

The Commission should adopt the ALJ's recommended decision to eliminate the Carrier Charge within a year and to reduce the remaining traffic sensitive access rates to interstate levels within two years. This measured approach more than satisfies the public advocates' demands for "gradualism," while helping to ensure that Pennsylvania consumers continue to have wireline long distance services available to them.

Respectfully submitted,



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Dated: January 25, 2006

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I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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January 25, 2006

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DOCUMENT
FOLDER

ORIGINAL

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 on Remand in the above-captioned proceeding.

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

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures

cc: All parties of record
Hon. Cynthia Fordham, ALJ
*68614

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania :
Inc. :

v. :

Verizon North Inc. :

Docket No. C-20027195

ORIGINAL

REPLY EXCEPTIONS ON REMAND OF THE
OFFICE OF CONSUMER ADVOCATE

DOCUMENT
FOLDER

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I. INTRODUCTION

On December 7, 2005, the Office of Administrative Law Judge issued the Recommended Decision on Remand of Administrative Law Judge Cynthia Williams Fordham. This Decision is in response to an Order entered by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) dated July 28, 2004.¹ In the July 28th Order, the Commission permitted Verizon Pennsylvania Inc. and Verizon North, Inc. (collectively referred to as “Verizon”) to reduce and restructure its intrastate access charges by allowing Verizon to file a rate rebalancing filing reducing access and raising local rates. The July 28th Order also remanded the case back to ALJ Fordham for the further development of a record, and issuance of a recommended decision, on issues that were not decided in the July 28th Order.² In addition, in an Order dated January 18, 2005 the Commission denied the later request of the interexchange carriers (“IXCs”) to order further access reductions without hearing.³ The January 18th Order also specifically expanded the scope of the proceeding to address the significant activity currently underway at the Federal Communications Commission (“FCC”) concerning access charges.⁴

In her Recommended Decision on Remand, the ALJ, *inter alia*, recommends that the Commission adopt an Order that allows Verizon to raise its residential basic local service rate by up to \$1 per month to compensate for lost revenue from the elimination of the Verizon carrier charge within six months to one year. R.D. at 68. The Recommended Decision further recommends that the Commission allow Verizon also to raise its residential basic local service rate by up to an additional \$0.50 per month to compensate for lost revenue that results from “the

¹ AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195, Opinion and Order (entered July 28, 2004)(“July 28th Order”).

² Id. at 34.

³ AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195, Opinion and Order (entered Jan. 18, 2005)(“January 18th Order”).

⁴ In the Matter of Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking (rel. May 23, 2005)(“ICC FNPRM”); January 18th Order at 15.

additional intrastate access charge reductions” within one to two years. R.D. at 69. The Recommended Decision further provides that any remaining lost revenue that may arise as a result of these intrastate access charge reductions can be recovered from business line rate increases. Id.

On January 9, 2006, several parties to this proceeding filed Exceptions to the ALJ’s Recommended Decision.⁵ Exceptions were filed by the Office of Consumer Advocate (“OCA”), Verizon, the Commission’s Office of Trial Staff, the Office of Small Business Advocate (“OSBA”), Qwest Communications Corporation (“Qwest”) and AT&T Communications of Pennsylvania, Inc. (“AT&T”). In response to the Exceptions filed by other parties, the OCA files the following Reply Exceptions. As discussed further below, the OCA submits that some of the other parties’ Exceptions are contrary to the public interest and should be rejected.

II. SUMMARY

The OCA has contended in its Exceptions that the ALJ’s Recommended Decision should be rejected because, *inter alia*, it will not yield any benefits to Pennsylvania consumers. The OCA has shown that the ALJ’s Recommended Decision reduces the rates paid by IXCs – companies that no longer even exist on a stand-alone basis – while raising rates for residential basic service customers. The OCA has demonstrated through the testimony of OCA witness Dr. Robert Loube that, rather than rush to impose additional costs on basic service customers, the Commission should wait for the FCC to determine what access reductions, if any, may be appropriate as a part of comprehensive Intercarrier Compensation (“ICC”) reform. Failure to wait for the FCC Order may result in additional unnecessary costs being imposed on

⁵ The Office of Special Assistants approved an extension of time for the filing of Exceptions and Reply Exceptions via e-mail to all of the parties sent on December 20, 2005.

Pennsylvania customers and may reduce the ability of Pennsylvania customers to benefit from any federal universal service funding to compensate for access reform.

The OCA now responds to some of the Exceptions filed by other parties. In particular, Qwest has argued that the reductions in intrastate access rates ordered in the Recommended Decision are being implemented too slowly. Additionally, AT&T, Verizon and OSBA have each argued that any increase on residential consumers' rates should not be limited to \$1.50.

The OCA submits that the Commission should reject any argument that residential consumers should bear an even greater burden of rate increases than those proposed by the ALJ. Instead, if the Commission determines to implement any of the increases recommended by the ALJ, which the OCA submits it should not, any such increases should be spread evenly over all lines on a gradual basis. As such, it would be appropriate to apply the \$1.50 per line restriction to all lines. In no case should there be more accelerated or more substantial basic rate increases than those proposed by the ALJ.

III. REPLY EXCEPTIONS

Reply Exception No. 1 - Qwest's Exception That The Rate Increases Proposed In The Recommended Decision Should Be Implemented More Quickly Is Without Merit And Should Be Rejected. ALJ R.D. at 64, 66, 68-69; Qwest Exception No. 2.

In her Recommended Decision on Remand, the ALJ proposes that the carrier charge "should be removed within six months to a year after the Commission's order in this matter." R.D. at 64, 68. The ALJ also proposes that "Verizon reduce its intrastate charges to interstate charge levels within one to two years after the final Order in this matter." *Id.* at 66, 69. In response, Qwest filed an Exception arguing that "simply put, the timing in the Recommended Decision on Remand is too long and too undefined." Qwest Exc. at 3. Qwest argued that "the record provides no justification to support prolonging the reductions as suggested in the

Recommended Decision on Remand.” Id. Instead, Qwest argues that “Verizon must achieve complete implementation [of the increases] no later than six months from the issuance of the final order on remand.” Id. at 6.

The OCA will not reargue its position why *any* increase in residential basic local service rates to offset intrastate access charge reductions is without merit and should be rejected. The OCA has clearly enunciated those positions in its Exceptions filed on January 9th. However, the OCA files this Reply to Qwest’s Exception to submit that Qwest’s demand for quick increases in residential basic local service rates is contrary to the public interest. If the Commission determines to increase basic local service rates to offset reductions in intrastate access charges, which the OCA submits it should not, record evidence in this proceeding demonstrates that such increases should be implemented, at a minimum, no sooner than proposed by the ALJ, if not over a longer period.

Verizon and the OSBA have made several compelling arguments in their Exceptions as to why the timing proposed by the ALJ is too quick. Verizon noted that, if the Commission rebalances Verizon’s access rates at this time, which Verizon also believes should not be done, then the recommended period to phase in the rebalancing is too short. Verizon Exc. at 27-28. Verizon notes that basic residential and business rates were increased by \$0.80 per line less than one year ago in Phase 1 of this proceeding and that the Commission is currently considering other basic retail rate increases now pending under Verizon’s Chapter 30 Plan. Id. at 27. Verizon correctly cautions that the Commission should not order potentially four rate increases on customers in too short a period of time: the first increase a result of the Phase I reductions, the second increase a result of eliminating the carrier charge, the third increase a result of

Verizon's Chapter 30 filing, and the fourth increase a result of reducing intrastate charges to interstate charges. Id.; *see also*, OSBA Exc. at 10.

The OSBA, which also opposes any increase in basic local service rates, has shown in its Exceptions that the "principle of 'gradualism' requires that the carrier charge be eliminated over a longer period than six months to a year." OSBA Exc. at 10. The OSBA makes the same argument with regard to the two year time period allowed to reduce intrastate access rates to interstate levels. Id. at 14. The OSBA also notes with regard to both of the ALJ's recommended increases that the FCC is considering intercarrier compensation plans that will reduce access charges over a six year period. Id. at 10, 14; *see also*, Verizon Exc. at 28. The OSBA contends that a rate increase spread over six years, rather than six months, as Qwest proposes, would be much more in line with the concept of gradualism. Id. at 10.

The points raised by Verizon and the OSBA are valid reasons why the Commission should not rush to increase basic local service rates even as rapidly as the ALJ recommended. The ALJ also expressed concerns about rate shock and universal service as reasons for establishing the timing for the rate increases she is proposing. R.D. at 64. The reasons set forth by the ALJ, Verizon and the OSBA regarding the time period in which any basic local service rates would be implemented are important. However, Qwest argues that concerns about rate shock and universal service are "unsubstantiated." Qwest Exc. at 4. As support, Qwest cites to the time period that led to the access reductions implemented in the initial phase of this proceeding. Id. at 4-6. Qwest's continued opposition concerning the timing of past access reductions does not support a more rapid imposition of rate increases now. The Commission should be mindful of the gradual implementation of past access charge reductions, but should not use such history to support rapidly increasing consumers' basic local service rates again in this

remand. That is particularly true now, while the comprehensive FCC review is still pending and premature actions could harm Pennsylvania consumers unnecessarily.

If the Commission determines to implement the basic local service rate increases proposed by the ALJ in the Recommended Decision to offset any reductions in intrastate access charges, then such increases should be implemented no sooner than the schedule proposed by the ALJ. Qwest's Exception to the contrary is without merit and should be rejected.

Reply Exception No. 2 - The Commission Must Ensure That Customers Pay No More Of An Increase Than \$1.50 Per Line. ALJ R.D. at 68-69; Verizon Exception No. 6; AT&T Exception No. 1; OSBA Exception No. 7.

In her Recommended Decision on Remand, the ALJ, *inter alia*, recommends that the Commission adopt an Order that allows Verizon to raise its residential basic local service rate by up to \$1 per month to compensate for lost revenue from the elimination of the Verizon carrier charge within six months to one year. R.D. at 68. The Recommended Decision further recommends that the Commission allow Verizon also to raise its residential basic local service rate by up to an additional \$0.50 per month to compensate for lost revenue that results from "the additional intrastate access charge reductions" within one to two years. R.D. at 69. The OCA has shown how these recommendations are contrary to the public interest for a variety of reasons and should be rejected. The OCA has also argued that the first \$1.50 of access rate rebalancing should not come from residential customers exclusively, but should be spread over all lines that generate access revenues. OCA Exc. at 28-36. However, the OCA supports the overall limit on residential consumers to \$1.50 that is effectively created by the Recommended Decision and submits that this limitation should be applied to all lines in order to limit the potential overall extent of access rate reductions.

The OCA notes initially that it is difficult to determine whether the \$1.50 limit on residential basic service will be triggered by any proposed access rate rebalancing. Based upon the number of lines used to calculate the access related increases and the period when the reduction is calculated, the \$1.50 ceiling may be an important protection. Because of this uncertainty, the OCA supports the continuation of this rate limit.

Verizon, AT&T and the OSBA have excepted to the ALJ's recommendation to limit any increases to residential basic local service rates to \$1.50 and argued that residential customers should be liable for more, if necessary, to offset reductions in intrastate access charges. The OCA opposes the \$1.50 increase in residential basic local service rates; the OCA certainly opposes any increase greater than \$1.50. The OCA emphasizes that the size of required rate increase is difficult to determine. In order to resolve this question, however, the OCA submits that the \$1.50 per line limit should apply to all lines, business and residential.

Verizon argues in its Exception that "if the residential line count decreases faster than the access revenue to be recovered, then limiting the residential increase to \$1.50 could leave business rates with a much higher increase than residential rates." Verizon Exc. at 28. Likewise, Verizon argues that if the opposite occurs, then residential rates could bear most or all of the increase. Id. Verizon contends that the Commission should "allow Verizon to make a proposal for distributing the increase between business and residential rates." Id. at 29. The OCA submits that any increase on either residential or business lines for basic local service rates beyond \$1.50 is too burdensome, particularly when considering that the record evidence, in fact, supports no increase being imposed at all. While the OCA strongly opposes any rate increase being applied at this time, the OCA also opposes removing the \$1.50 maximum increase cap on such increases.

AT&T has argued that the ALJ erred in limiting Verizon's ability to recoup access reductions from its residential customers. AT&T Exc. at 4-5. First, AT&T argues that there should be no limit because "there is no longer any need for or rationale to support regulatory policies that subsidize local service rates with above-cost rates." *Id.* at 4. However, record evidence demonstrates that residential customers are not receiving a subsidy and the IXC's are not paying a subsidy. OCA St. 1R at 5-17. Second, AT&T argues that the ALJ "apparently fails to recognize that nothing in the law minimizes, limits or otherwise restricts the extent of rebalancing necessary to align rates and costs more equitably." AT&T Exc. at 4. However, in making this argument, AT&T fails to consider that Section 1301 of the Public Utility Code requires rates to be just and reasonable. 66 Pa.C.S. § 1301. The Commission cannot arbitrarily raise basic local service rates simply because it would be good for IXC's. And, third, AT&T argues that "the robustly competitive market will operate to establish the proper pricing levels for local and toll services." AT&T Exc. at 5. However, the OCA submits that there is no record evidence in this proceeding that supports a finding of any such "robustly competitive" local market that will restrict any increase in basic local service rates if the ALJ's \$1.50 limit were not in place. Basic service remains "protected" under Chapter 30 of the Public Utility Code. There is nothing to suggest that basic local service is ready to be declared competitive, particularly when Verizon's most active former competitors like AT&T and MCI have abandoned the residential local service market.

Finally, the OSBA argues in its Exception that "the 'cap' rate increase for any particular class of customer is pure speculation." OSBA Exc. at 19. The OSBA also notes that the ALJ's recommended rate structure is not based on record evidence and that the total dollar amount of the carrier charge and access charge revenue is not clearly established. *Id.* Instead, the OSBA

recommends that “the rate increase be spread equally over the residential and business local exchange rates until the conclusion of a further remand proceeding that will address the appropriate allocation of the local exchange rate increase.” *Id.* at 20. As a result, the OSBA is not arguing that the \$1.50 rate cap is too low. Rather, the OSBA’s position appears to be that the \$1.50 limit is not supported by the record evidence and that all residential and business lines should share in any increase equally.

The OCA agrees that all lines should bear the impact of access increases. As noted above, any increase on residential or business basic local service rates beyond \$1.50 is too burdensome when the record evidence, in fact, supports no increase being imposed at all. Accordingly, the \$1.50 limit should be applied to all lines.

As such, no party has provided any reason why the burden on residential or business customers should be greater than \$1.50. The OCA proposes that no lines should bear the burden of an increase greater than \$1.50. The Commission must ensure that all customers pay no more than the \$1.50 increase suggested by the Recommended Decision, if they are to pay any increase at all.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate continues to submit that the Recommended Decision should be rejected because it is not in the public interest. The Recommended Decision will not yield any consumer benefits. In particular, the Commission should wait until the Federal Communications Commission determines what access reductions, if any, may be necessary. If any local rate increases are ordered, however, they should be carefully

applied to all lines on a gradual basis and should be limited to no more than a total increase of \$1.50 per line.

Respectfully submitted,



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Dated: January 25, 2006
87240

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 on Remand, 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 25th day of January, 2006.

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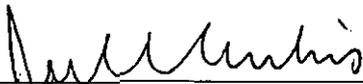
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January 25, 2006

VIA HAND DELIVERY

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ORIGINAL

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

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Replies to Exceptions of Qwest Communications Corporation in the above-captioned proceeding. Copies of the exceptions have been served in accordance with the attached Certificate of Service.

Very truly yours,


John F. Povilaitis

DOCUMENT
FOLDER

Enclosures
JFP:ck

c. The Honorable Cynthia W. Fordham
(Via overnight mail)

Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re The Joint Application of
Bell Atlantic Corporation and GTE
Corporation for Approval of Agreement
And Plan of Merger

AT&T Communications of Pennsylvania, Inc.
v. Verizon North, Inc.

Docket No. C-20027195

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REPLIES OF QWEST COMMUNICATIONS CORPORATION
TO EXCEPTIONS TO RECOMMENDED DECISION ON REMAND

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DOCKETED
JAN 30 2006

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January 25, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In Re the Joint Application of
Bell Atlantic Corporation and GTE
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And Plan of Merger

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Docket No. C-20027195

AT&T Communications of Pennsylvania, Inc.
v. Verizon North, Inc.

**REPLIES OF QWEST COMMUNICATIONS CORPORATION
TO EXCEPTIONS TO RECOMMENDED DECISION ON REMAND**

Qwest Communications Corporation ("Qwest") submits to the Pennsylvania Public Utility Commission ("Commission") its Replies to the Exceptions on the *Recommended Decision on Remand* of Administrative Law Judge ("ALJ") Cynthia Williams Fordham, which correctly directs Verizon Pennsylvania Inc. ("Verizon-PA") and Verizon North, Inc. ("Verizon-North") (collectively "Verizon") to remove its carrier charge,¹ and reduce its intrastate access charges to parity with its interstate rates in a revenue-neutral manner.²

On January 9, 2005, the parties filed Exceptions to the *Recommended Decision on Remand*, including Qwest, Verizon, the Office of Consumer Advocate ("OCA"), AT&T Communications ("AT&T"), the Office of Small Business Advocate ("OSBA") and the Office of Trial Staff ("OTS"). In its Exceptions, Qwest commended the ALJ for properly ordering the long overdue reform of Verizon's access rates, but also urged the Commission (1) to clarify that Verizon, not the interexchange carriers ("IXCs"), has the burden of proof in this matter, and (2) to establish clear deadlines by which Verizon must achieve the access charge reductions set forth

¹ *Recommended Decision on Remand* at 63-65.

² *Id.* at 64-66.

in the *Recommended Decision on Remand*.³ In turn, it appears that several other parties, namely Verizon and the OCA, use the Exceptions as an opportunity to re-litigate every issue resolved by the *Recommended Decision on Remand*, and attempt to continue to delay the long overdue access charge reform in Pennsylvania.

Qwest outlines in these Reply Exceptions the deficiencies in the arguments Verizon and the OCA continue to make in their Exceptions, but attempts to do so without merely re-filing its entire Initial and Reply Briefs. Instead, Qwest will focus on the most important issue for the Commission to consider to resolve this remand of this docket properly—Verizon has the burden to prove that the belated access charge reform is not in the public interest. With this premise, finally addressing the real issues through the assorted smoke screens and delay tactics raised by Verizon, OCA and OSBA becomes unequivocal.

I. THE COMMISSION MUST PROPERLY APPLY THE BURDEN OF PROOF.

As AT&T, OTS and Qwest explained in its Exceptions, the Commission initiated this docket as an investigation of Verizon's access charges, which according to Section 315(a) of the Public Utility Code gives Verizon the burden of proof.⁴ Pennsylvania case law clearly supports this result.⁵ Both the OCA Exception No. 2 and the Verizon Exception No. 2 attempt to put the onus on Qwest and the other IXCs, by claiming that the IXCs have not proven that finally

³ Qwest Exceptions at 1-7.

⁴ AT&T Exceptions at 1; OTS Exceptions at 1; Qwest Exceptions at 2-3.

⁵ *See, e.g. Sharon Steel Corp. v. Pa. Pub. Util. Comm'n*, 468 A.2d 860 (Pa. Cmwlth. 1983) (By ordering an investigation into the propriety of existing and proposed rates on commission motion, the Commission clearly placed the burden of justifying those rates upon the utility); *Carnegie Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 433 A.2d 938 (Pa. Cmwlth 1981) (Section 315(a) explicitly places upon the utility the burden of proving the reasonableness of its rates); *Johnstown v. Pa. Pub. Util. Comm'n*, 133 A.2d 246 (Pa. Super. 1957) (Where the rate proceeding is the result of a voluntary change in rates to which a complaint is filed or the result of an investigation ordered by the commission on its own motion, the utility is required to substantiate the proposed rates).

achieving reductions in Verizon's access charges is in the public interest through benefits to IXC customers.⁶

Though this burden of proof does not lie with the IXCs, the record demonstrates that the IXCs have explained repeatedly the benefits arising from finally achieving access charge reform in Pennsylvania.⁷ Indeed, the Commission itself recognized in its *Global Order* that "implicit subsidy charges such as access charges . . . impede competition in the telecommunications market,"⁸ because "[a]s implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC's service territory".⁹ There is no question that the record supports achieving access charge reform in a revenue-neutral and competitively-neutral manner being in the public interest, as it is the sole reason the Commission initiated this docket so many years ago.

However, the Commission's initiation of this docket alone gives Verizon the burden to prove that access charge reform is not in the public interest. In turn, as the advocate for Pennsylvania consumers, the OCA would be the main proprietor of information indicating how such reform might impact consumers. In other words, if any support for continuing to delay access charge reform existed, then OCA would be the party with access to the information, and the responsibility to put such information into the record. In spite of having the burden of proof and the access to information to generate such proof, the record remains absolutely void of any proof from Verizon, OCA or any other party to combat the Commission's conclusion, or the

⁶ Verizon Exceptions at 14-24; OCA Exceptions at 11-22.

⁷ Qwest Main Brief on Remand at 8-28; Qwest Reply Brief on Remand at 3-10; AT&T Main Brief on Remand at 11-23; AT&T Reply Brief on Remand at 9-19; MCI Main Brief on Remand at 5-12; MCI Reply Brief on Remand at 2-6.

⁸ *Global Order* at 10.

⁹ *Id.*

IXCs' arguments, that achieving the long overdue access charge reform in Pennsylvania is anything but squarely within the public interest.¹⁰

Properly observing that the burden of proof lies with Verizon, and not the IXCs, will allow the Commission to unravel the convoluted arguments Verizon and OCA made in this docket, instead of providing any proof as to the public interest. Because Qwest in its Initial and Main Brief fully addressed each of the arguments raised in the Verizon and OCA Exceptions, Qwest will not use its Reply Exceptions to repeat those extensive explanations. However, it is important to identify where Verizon and OCA continue to avoid satisfying this burden by either failing to justify avoiding the necessary access charge reform, or by completely ignoring the numerous justifications on the record negating their arguments.

A. THE IXCS DO NOT HAVE TO PROVE THAT A DOLLAR-FOR-DOLLAR REDUCTION OCCURRED IN ORDER FOR THE COMMISSION TO ACHIEVE ACCESS CHARGE REFORM.

Verizon and OCA argue against reducing Verizon's access charges by asking the Commission to require the IXCs to prove that their interexchange customers will receive a dollar-for-dollar savings with the access charge reductions before achieving such reform. This is the most prominent example of Verizon and OCA attempting to shift the burden of proof in this docket to the IXCs. In fact, OSBA goes so far as to suggest an ordered flow-through of reductions in its Exceptions, despite the fact that there is no support for imposing such mechanism on the record.¹¹ Not only is the level of IXC rates in Pennsylvania deregulated,¹² but it is also not dispositive on the need to reduce Verizon's access charges in a revenue-neutral manner. Despite Verizon's insinuations that more information about the level of IXC rates in

¹⁰ Qwest Main Brief on Remand at 7, 22-25; Qwest Reply Brief on Remand at 6.

¹¹ OSBA Exceptions at 24.

¹² See 66 Pa. C. S § 3018(b)(1); Qwest Main Brief on Remand at 4, 20; Qwest St. No. 2-R at 14; Qwest Motion to Strike at 4.

Pennsylvania would somehow bolster their position,¹³ the ALJ properly recognized the irrelevance of these IXC rates during discovery matters dating back to June 2005.¹⁴ It is unclear why the parties continue to point to the level of IXC rates in lieu of satisfying their burden of proof.

OCA goes on to argue against access charge reform because “[c]ommon sense dictates that, if two of the largest long distance providers in Pennsylvania are no longer competing in the interexchange mass market, a decision which the companies themselves have deemed is ‘irreversible’, then raising residential basic local exchange rates to offset reductions in intrastate access charges for companies who are no longer competing in the long distance market will provide no benefit to consumers.”¹⁵ The Commission should reject this argument for several reasons. First, the “irreversible” decision AT&T and MCI made was not to leave “the interexchange mass market”, it was to leave the retail local exchange market. Second, in continuing to claim that AT&T and MCI were leaving the interexchange market, the OCA has yet to address the arguments Qwest made that the participation of AT&T and MCI in the retail local exchange market is irrelevant in the discussion of appropriate access rates for Verizon, that discontinuing marketing efforts does not equate to relinquishing an imbedded customer base, or that CLEC access lines have steadily increased in Pennsylvania.¹⁶

Even if AT&T and MCI were leaving the interexchange market in addition to the local market, OCA’s statement continues to be more nonsensical than common sense. It defies logic that carriers leaving the interexchange market would harm local customers through unjustified

¹³ Verizon Exceptions at 14-17.

¹⁴ Qwest Main Brief on Remand at 20.

¹⁵ Verizon Exceptions at 14.

¹⁶ Qwest Rebuttal Testimony on Remand at 13 *citing* FCC Trends in Telephone Service (June 21, 2005).

revenue-offsetting local rate increases. Conversely, local rates would not increase as much. Carriers purchase switched access from Verizon to provide interexchange services. Carriers who leave the interexchange market stop purchasing switched access from Verizon. If carriers leave the interexchange market, the amount of Verizon's revenue associated switched access *decreases*. For the sake of this argument, if AT&T and MCI had left the interexchange market and their customers did not choose another IXC, the decrease in switched access revenue requiring a corresponding local rate offset would result in a smaller increase to consumers' local rates. However, this entire debate is irrelevant because AT&T and MCI continue to provide long distance service to Pennsylvania consumers.

B. QWEST HAS REDUCED ITS ILEC ACCESS CHARGES WHERE REVENUE AND COMPETITIVE NEUTRALITY EXISTS.

Verizon and OCA further attempt to conceal their inability to satisfy the burden of proof in this matter by pointing to Qwest not having reduced its access charges in every state with its ILEC operations.¹⁷ As explained in the Qwest Rebuttal Testimony, the Qwest Initial Brief, the Qwest Surrebuttal Testimony on Remand, and now its Reply Exceptions on Remand, the record shows that Qwest has achieved reform of its ILEC in-region access charges where given the opportunity for a revenue-neutral offset.¹⁸ Despite Qwest's repeated explanation of this on the record, Verizon and OCA have failed to mention or redress this point. Perhaps, more telling is that Verizon and OCA have refused demonstrate how Qwest's access charges in states like Montana and North Dakota make access charge reform unnecessary in Pennsylvania, where Verizon has successfully ensured that mechanisms do exist for competitive and revenue neutral reductions.

¹⁷ Verizon Exceptions at 20-21, 26-27; OCA Exceptions at 21; Verizon Reply Exceptions at 5.

¹⁸ Qwest St. No. 1 at 3, 6, Qwest Initial Brief at 17-19, Qwest St. No. 3-R at 3-11.

C. REQUIRING ONLY IXCS TO SUBSIDIZE LOCAL SERVICE IMPEDES IXCS' ABILITY TO COMPETE WITH OTHER SERVICES NOT SUBJECT TO ACCESS CHARGES.

OCA and Verizon also encourage the Commission to overlook their failure to satisfy the burden of proof in this docket, by questioning the legitimacy of subsidization while refusing to address the negative impact of requiring the IXCs to subsidize local service.¹⁹ There is no question that Verizon's access charges cover more than the costs associated with carrying the IXC traffic.²⁰ The competitive neutrality argument made by the IXCs, which Verizon and OCA fail to address, is that no providers using the facility other than the IXCs are forced to subsidize local service.²¹ In fact, the Exceptions of OCA and Verizon essentially verify that such discrimination exists, and therefore the Commission has the obligation to remedy this discrimination.

OCA acknowledges that end user customers and IXCs are paying the entire cost of the loop,²² though increasing portions of the loop are being used for other services.²³ Requiring IXCs to pay loop costs through intrastate access charges while allowing all other providers to avoid such expense hinders the ability of the IXCs to compete with those providers.²⁴ OCA prefers to ignore this negative impact on competition in Pennsylvania, which Qwest proposes to remedy by reducing Verizon's access charges through a revenue-neutral offset to the end user.

¹⁹ OCA Exceptions at 23-25; Verizon Exceptions at 21.

²⁰ Qwest St. No. 1 at 7-9; Qwest Reply Brief at 6-9; Qwest Initial Brief on Remand at 14-17.

²¹ *Id.*

²² OCA Exceptions at 27 ("residential customers already are paying approximately 90% of the cost of the loop while IXCs are only paying 10%").

²³ OCA Exceptions at 27 ("as more services are provided over the local loop, it becomes apparent that increasing portions of the loop costs should be recovered from non-voice services.").

²⁴ Qwest St. No. 1 at 7-9; Qwest Reply Brief at 6-9; Qwest Initial Brief on Remand at 14-17.

In turn, Verizon attempts to counter Qwest's competitive neutrality argument by pointing out that interstate services contribute to universal service through interstate subscriber line charges ("SLC").²⁵ However, Verizon's position basically supports Qwest's argument for competitive neutral reform. The interstate SLC is the mechanism the FCC chose to remove the implicit subsidy from the interstate access charges. Similar to the competitive and revenue neutral mechanism Qwest proposes in this matter, the end users of interstate service pay the SLC, not just one of many providers using the facility to reach the end user, like the IXCs.

Most importantly, Verizon admits that "it is within this Commission's sound discretion to determine where to draw the line at which access rates subsidize other costs".²⁶ In its initiation of this docket, the Commission made such determination that the subsidization should be removed from the access charges. To accomplish this, the Commission must acknowledge that Verizon has failed to satisfy its burden of proof, and adopt the directives the *Recommended Decision on Remand* requiring Verizon to eliminate the carrier charge and reduce its intrastate access rates to parity with its interstate rates in a revenue-neutral manner.

II. VERIZON'S COMPLIANCE MUST BE COMPLETE WITHIN SIX MONTHS.

Verizon, OCA, and OSBA continue their attempts to delay the long overdue access charge reform in Pennsylvania. OCA proposes in its Exception No. 5 that the Commission modify certain procedures when reductions are ordered.²⁷ Simply put, the OCA seeks additional time to review the tariff filings made by Verizon to achieve the necessary access charge reductions, and corresponding revenue-neutral rate increases. Based on the language of the *Recommended Decision on Remand*, there should be no contention or controversy over what

²⁵ Verizon Exceptions at 20.

²⁶ Verizon Exceptions at 21.

²⁷ OCA Exceptions at 35.

changes will need to be reflected in Verizon's tariff filing eliminating the carrier charge and moving to parity with its interstate access rates. Qwest is indifferent on allowing OCA additional time for its review of the compliance documents, though the Commission must ensure that this additional time does not prolong the compliance process. Accordingly, Qwest continues to urge the Commission to establish a clear six-month deadline for Verizon to achieve its access charge reform, regardless of whether the Commission decides to accommodate the OCA suggestion for additional time for rate review.

In its Exceptions, Qwest pointed out the absolute need for an *immediate* timeframe for Verizon's compliance, but proposed a six month timeframe for complete compliance as a compromise.²⁸ In their Exceptions, Verizon, OCA, and OSBA suggest that three to six years would be a reasonable compliance period, using terms like "rush" and "accelerated" to describe any shorter timeframe.²⁹ The unreasonableness of their suggestion is obvious, especially when the record is completely void of any evidence of a negative impact on Pennsylvania consumers,³⁰ and when the only excuse the parties can point to is the failure to achieve access charge reform in Pennsylvania previously.³¹ Three years is **six times** as long as it took Verizon to comply with the Phase I reductions in this docket, and is **thirty-six times** longer than the amount of time Verizon is likely to have for similar access reductions in California.³² Of course, six years doubles that discrepancy. Adopting the proposal would establish in essence a compliance date **twelve years** after the initiation of its investigation.

²⁸ Qwest Exceptions at 6-8.

²⁹ Verizon Exceptions at 27; OSBA Exceptions at 10,14; OCA Reply Exceptions at 4-6; Verizon Reply Exceptions at 4-5.

³⁰ Qwest St. No. 2-R at 5-14; Qwest Initial Brief on Remand at 18-22.

³¹ OCA Reply Exceptions at 4-6; Verizon Reply Exceptions at 4-5.

³² Qwest Exceptions at 7.

Verizon's proposal for a three to six year compliance period essentially accomplishes what the Commission has expressly refused to do—wait on the FCC.³³ In addition, OCA threatens loss of substantial funding and pretends that FCC action is imminent.³⁴ Both Verizon and OCA conveniently ignore the clear Commission directive to the ALJ to consider any FCC action **“to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.”**³⁵ The FCC has still not resolved any issues in the intercarrier compensation matter. The Commission should not ignore its own directives for another six years, as well as the significant resources put into this proceeding over the past six years.

³³ *Verizon Exceptions* at 18-20, 25.

³⁴ *OCA Exceptions* at 3-11.

³⁵ *Opinion and Order* (January 18, 2005) at 16 (**emphasis added**).

II. CONCLUSION

Accordingly, Qwest urges the Commission to acknowledge that Verizon has failed to satisfy its burden of proof, and adopt the directives the *Recommended Decision on Remand* requiring Verizon to eliminate the carrier charge and reduce its intrastate access rates to parity with its interstate rates in a revenue-neutral manner within six months of its order.

Respectfully submitted,



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January 25, 2006

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document(s) in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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