

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications  
of Pennsylvania, Inc.

v.

Verizon North, Inc.

**DOCKETED** BTL  
JUN 21 2003

Docket Number

C-20027195

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PREHEARING ORDER #2

History

On December 30, 2002, Verizon Pennsylvania Inc. (Verizon-Pa.) and Verizon North, Inc. (Verizon-North) filed a separate Joint Petition (Verizon Joint Petition) regarding the further reduction of their access charges pursuant to the Bell Atlantic-Pa.-GTE Merger Order,<sup>1</sup> the Global Order of 1999<sup>2</sup>, and the generic access charge investigation at M-00021596. This joint proposal was published January 18, 2003 at 33 Pa. B. 502. Comments were filed by the Office of Consumer Advocate ("OCA"), AT&T Communications of Pennsylvania, Inc. ("AT&T"), Sprint Communications Co & United Telephone Co of Pa ("Sprint/United"), the Rural Telephone Company Coalition ("RTCC"), the Office of Small Business Advocate ("OSBA") and Qwest Communications Corporation ("Qwest").

The Global Order of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. That Order directed a Pennsylvania Universal Service Fund (PaUSF) be established to enable the rural incumbent local exchange carriers (ILECs) and Sprint/United to reduce access charges and intraLATA toll rates while

<sup>1</sup> *Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002, (November 4, 1999) (Merger Order).

<sup>2</sup> *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 (September 30, 1999) (Global Order); 196 P.U.R. 4<sup>th</sup> 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlt. 2000), *alloc. granted*.

keeping residential basic service prices under the \$16.00/month cap. The Global Order also required that an investigation be initiated in January 2001 to determine how the carrier charge (CC) pool can be reduced and to consider the appropriateness of a toll line charge to recover any resulting reductions.

The mandated access charge investigation was delayed because of Verizon's Section 271 hearings in January and February of 2001. In addition, the RTCC and Sprint/United were given time to prepare a settlement proposal in an effort to save time and costs involved with litigation and to narrow the issues. It was expected that the settlement proposal would take notice of the recent FCC's Multi-Association Group ("MAG")<sup>3</sup> and Access Charge Reform ("CALLS")<sup>4</sup> Orders which further reduced interstate access charges for rural and non-rural companies, respectively. The Commission opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by the Global Order in the form of a collaborative proceeding.

On March 21, 2002, AT&T filed a formal complaint against Verizon-North seeking to have Verizon-North's access charges reduced to Verizon-PA's levels pursuant to the requirements in the Commission's Merger Order at A-310200F0002.<sup>5</sup> The complaint was docketed at C-20027195. On April 10, 2002, the Office of Consumer Advocate ("OCA") intervened in this proceeding. The complaint, which was initially dismissed by Chief Administrative Law Judge Robert Christianson, was reinstated by Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation so that all Verizon matters, including the complaint, would be litigated at the C-20027195 docket.

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<sup>3</sup> *In re: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, November 8, 2001.*

<sup>4</sup> *In Re: Access Charge Reform, et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, May 31, 2000.*

<sup>5</sup> *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket No. A-310200F0002, etc. (Opinion and Order entered November 4, 1999) (Merger Order).*

On November 26, 2002, Verizon-Pa. submitted its annual Price Change Opportunity (PCO) filing requesting authority to use its \$17.7 million negative PCO money for 2003 to fund its contributions to the PaUSF. That filing was docketed at M-00031694 and P-00930715 (Verizon's Chapter 30 Plan docket). On January 31, 2003, AT&T filed a complaint at M-00031694C0001 challenging Verizon-Pa.'s proposal to use its negative PCO money to support Verizon's 2003 contribution to the PaUSF. On February 27, 2003, Verizon-Pa. filed an answer and motion to dismiss the complaint.

Although Verizon-Pa. and Verizon-North agreed to one proposed access charge reduction plan, Qwest, OCA, OTS, OSBA, AT&T and MCI WorldCom have objected to the Joint Petition. AT&T and MCI WorldCom emphasize the need to move switched access rates to cost. Qwest mentioned the need to mirror interstate access charges. AT&T, MCI WorldCom, OCA, and OSBA objected to the revenue-neutral reductions. OTS requested that the Commission deny Verizon's Joint Proposal for the following reasons: Verizon is subject to a rate freeze through December 31, 2003; no cost studies were filed to support the proposal; and other rates besides residential could be increased, including business rates and optional services, or Verizon could adjust the Price Stability Mechanism to get to revenue neutral. OTS requested that the Commission reject Verizon's proposed elimination of the carrier charge.

Given that there were contested, material factual issues, (i.e., what the cost of traffic sensitive rates are and how low the intrastate access charges should be), by Order entered May 5, 2003, the Commission referred the Verizon Joint Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision. The Commission consolidated the Verizon Joint Petition for Access Charge Reductions with the *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc* complaint at C-20027195 regarding Verizon-North's access charges pursuant to the Commission Order of December 24, 2002. The case at C-20027195 will also address Verizon's compliance with the Merger Order directive that Verizon-North and Verizon-Pa. have access charges which are at parity with each other. *In re the Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger* at Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002.

In accordance with the Commission's order, the matter was assigned to Administrative Law Judge Cynthia Williams Fordham.

Prehearing memoranda were submitted by Verizon, OCA, OTS, OSBA, RTCC, Sprint, AT&T, Qwest and MCI.

A prehearing conference was held on Thursday, May 29, 2003. The presiding officer, Suzan DeBusk Paiva, Esquire, representing Verizon, and Robert C. Barber, Esquire, representing AT&T, were in Philadelphia. Philip McClelland, Esquire, and Joel H. Cheskis, Esquire, representing OCA; Kenneth Mickens, Esquire, representing OTS; Angela Jones, Esquire, representing OSBA; John Povilaitis, Esquire, representing Qwest; Patricia Armstrong representing RTCC; Zsuzsanna E. Benedek, Esquire, representing Sprint; and Kathleen Misturak-Gingrich, Esquire, representing MCI, were in Harrisburg.

We discussed the following: a proposed plan and schedule of discovery; modifications to the discovery rules; a potential work stoppage by Verizon employees at midnight on August 2, 2003; the possibility of settlement; the issues; the amount of hearing time needed; proposed witnesses; the schedule for submission of testimony, hearings and briefs; Verizon's proprietary order; and training regarding the use of on line access to Verizon's cost studies.

*The following procedural schedule was established:*

Prehearing Conference	May 29, 2003
Initial Settlement Conference	June 5, 2003
Company Direct Testimony	June 25, 2003
Non-Company Rebuttal Testimony	July 18, 2003
All parties' Surrebuttal Testimony	August 4, 2003
Hearings for cross-examination of all witnesses, oral Rebuttal/Surrebuttal	August 25, 26, 27, 2003

Close of Record  
Main Briefs Due  
Reply Briefs Due

September 3, 2003  
September 16, 2003  
September 26, 2003

Any documents filed in this proceeding should be served on me at the Philadelphia office and the active participants. 52 Pa. Code §154(a) and (d).

On May 29, 2003, Thomas W. Snyder, Esquire filed a withdrawal of appearance on behalf of Qwest and John F. Povilaitis, Esquire, filed an entry of appearance on behalf of Qwest. Therefore, Mr. Povilaitis is recognized as counsel for Qwest and Mr. Snyder's appearance is withdrawn.

On May 29, 2003, a Motion for Admission Pro Hac Vice was filed by Mr. Povilaitis, counsel for Qwest Communications Corporation on behalf of Kristin Smith, Esquire. Since no objections have been filed, Ms. Smith is admitted to practice pro hac vice on behalf of Qwest Communications Corporation.

On June 2, 2003, a Motion for Admission Pro Hac Vice was filed by Kathleen Misturak-Gingrich, counsel for MCI WorldCom Network Services, Inc. on behalf of Michelle Painter, Esquire. Since no objections have been filed, Ms. Painter is admitted to practice pro hac vice on behalf of MCI WorldCom Network Services, Inc.

By June 3, 2003, the parties contacted the presiding officer to indicate that they did not object to the Protective Order proposed by Verizon. Accordingly, the protective order is granted. (The order is Order #3 in this proceeding.)

Since Russell M. Blau, Esquire, did not participate in the prehearing conference and it is clear that he is not representing any of the parties who participated in the prehearing, his name will be deleted from the service list. Please note that the following names have also been deleted: Steven C. Gray, Esquire, from OSBA and Carl D. Giesy, Esquire, from MCI.

Since documents can be submitted to the presiding officer and the participants by fax and e-mail, fax and e-mail addresses will be included on the service list. Please check the list for omissions and errors and contact my office to make corrections. My fax number is (215) 560-3133 and my e-mail address is [cfordham@state.pa.us](mailto:cfordham@state.pa.us).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Admission Pro Hac Vice filed by John F. Povilaitis, Esquire, on behalf of Kristin Smith, Esquire, is granted. Ms. Smith is admitted to practice pro hac vice on behalf of Qwest Communications Corporation in this proceeding.
2. That the Motion for Admission Pro Hac Vice filed by Kathleen Misturak-Gingrich, Esquire on behalf of Michelle Painter, Esquire, is granted. Ms. Painter is admitted to practice pro hac vice on behalf of MCI WorldCom Network Services, Inc. in this proceeding.
3. That the Protective Order proposed by Verizon is granted.
4. That pursuant to 52 Pa. Code §5.342(d), the Commission's regulations relating to discovery are modified to provide that:
  - a. Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service.
  - b. Objections to interrogatories shall be communicated orally within three (3) business days. Unresolved objections shall be served to the ALJ and the parties in writing within seven (7) calendar days of service. If the deadline falls on a weekend or a holiday, the objection is due the next business day.

- c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within five (5) business days of service of the written objections.
  - d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) business days of service of the motion.
  - e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days.
  - f. Requests for admission shall be deemed admitted unless they are answered within ten (10) days or objected to within five (5) days of service.
  - g. Answers to on-the-record data requests shall be served in-hand within seven (7) calendar days of the requests.
5. Testimony and briefs shall be filed according to the following schedule:

Company Direct Testimony	June 25, 2003
Non-Company Rebuttal Testimony	July 18, 2003
All parties' Surrebuttal Testimony	August 4, 2003
Hearings for cross-examination of all witnesses, oral Rebuttal/Surrebuttal	August 25, 26, 27, 2003
Close of Record	September 3, 2003
Main Briefs Due	September 16, 2003
Reply Briefs Due	September 26, 2003

6. Interrogatories and documents must be served by e-mail or fax with a confirming overnight copy. In accordance with the schedule set forth above, testimony is to be served and available to all parties no later than 4:30 p.m. on the date listed. If testimony is

served by e-mail or fax, a confirming overnight copy must be sent. The hard copy should be received no later than noon on the day after the due date.

7. In accordance with the schedule set forth above, briefs must be filed with the Secretary of the Commission in-hand no later than 4:30 p.m. on the date listed. The briefs served on the presiding officer and the other parties should be filed by e-mail with a confirming hard copy by overnight mail. In addition, each party is directed to file a copy of the brief on disk. The disks filed with the Secretary and the presiding officer should be in Word 2002 or a compatible format.

Date: June 9, 2003

  
Cynthia Williams Fordham  
Administrative Law Judge

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