



Petitioners' request that established February 1, 2005 as the compliance filing deadline date, notwithstanding any regulatory delays that might occur in the compliance review process. The Commission also granted the Joint Petitioners' request that the Remand proceeding be conducted in an expedited manner only to the extent that the Office of Administrative Law Judge was able to do so. However, the Commission denied the Joint Petitioners' request for (1) retroactive rates to February 1, 2005, if Verizon failed to comply by that date, and (2) termination of the Remand proceeding. Since there have been significant developments in the federal arena that might impact the remand proceeding, the Commission directed the presiding Administrative Law Judge to expand the scope of this 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 may have on the Commission's jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding, to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.

The first telephonic prehearing conference on remand was held on Thursday, February 17, 2005. The following parties participated: Verizon; AT&T; MCI; Qwest; OTS; OCA; OSBA; and the Rural Telephone Company Coalition. We discussed, among other things, the issues, witnesses and the FCC proceeding relating to the proposal submitted by the Intercarrier Compensation Forum on October 5, 2004.

A further telephonic prehearing conference on remand was held on Monday, April 4, 2005. Prior to the further prehearing conference, Qwest, Verizon and OCA filed supplemental prehearing memoranda. AT&T filed a statement in support of Qwest's supplemental prehearing memorandum. In addition, Verizon sent an e-mail regarding the FCC Order in the Intercarrier Compensation Case. The following parties participated in the prehearing conference: Verizon; AT&T; MCI; Qwest; OTS; OCA; OSBA; and the Rural Telephone Company Coalition.

During the April 4, 2005 prehearing conference, a procedural schedule was established. Sprint was designated as an inactive party. It was noted that inactive parties would not receive copies of the hearing exhibits or the briefs of the active parties.

The parties filed direct testimony in accordance with the procedural schedule.

The Motion of Qwest Communications Corporation to Strike Portions of the Remand Testimony of Verizon Pa, Inc, and the Office of Consumer Advocate and the Entire Remand Testimony of the Office of Trial Staff was filed on June 24, 2005. The Answer of the Office of Trial Staff to the Motion of Qwest Communications Corporation to Strike Remand Testimony was filed on July 5, 2005. The Answer of the Office of Consumer Advocate to Qwest's Motion to Strike was filed on July 7, 2005. Verizon filed the Opposition of Verizon Pennsylvania Inc. and Verizon North Inc. to the Motion of Qwest Communications Corporation to Strike Portions of Remand Testimony on July 11, 2005.

The parties filed rebuttal and surrebuttal testimony in accordance with the procedural schedule.

On July 11, 2005, Verizon filed the Motion of Verizon Pennsylvania Inc. and Verizon North Inc. to Strike Improper Legal Argument from Portion of the Remand Testimony of AT&T Communications of Pennsylvania, LLC.

Since the parties waived cross-examination of the witnesses, the in person hearing scheduled in Harrisburg for July 19, 2005 was changed to a telephonic hearing and the hearing scheduled for July 20, 2005 was cancelled. Written testimony and exhibits were entered into the record during the hearing on July 19, 2005. Verizon withdrew its Motion to Strike. Counsel for Qwest, Verizon, OCA and OTS presented oral argument on the Motion filed by Qwest.

## DISCUSSION

### Qwest's Motion-Position of the Parties

#### Qwest

Qwest contends that the ruling on this motion should be consistent with the Commission's characterization of the scope of the remand. Qwest argues that the Commission is seeking a recommendation on the issues that have already been the subject of testimony and argument: i.e. phasing in further access rate reduction; elimination of the carrier line charge; and the appropriateness of mirroring interstate access rates. Consequently, Qwest objects to evidence on new issues such as how access charge reductions should impact IXC long distance rates and whether access charge reductions must result in a mandated "flow through" to end-users.

Furthermore, Qwest 's posits that evidence on "flow-through" is not relevant to the proceeding because Section 3018 of the Public Utility Code prohibits the Commission from prescribing IXC long distance rates and requiring a "flow-through".

In its Motion, Qwest requests that Verizon's direct remand testimony on page 18 at lines 1-12, OCA's direct remand testimony on page 24, line 9 through page 28 line 11 and OTS's direct remand testimony be stricken. Specifically Qwest states that in Verizon's direct remand testimony on page 18 at lines 1-12 the witness addresses the issue of passing access charge reductions through to end-users. Qwest states that the witness admitted that raising the issue of "flow-through" would be inappropriate in the remand. Qwest objects to OCA's direct remand testimony on page 24 line 9 through page 28 line 11 because the witness addresses the impact of access charge reductions on long distance rates. Qwest requests that the entire OTS direct remand testimony be stricken because the witness focuses exclusively on the "flow-through" issue and calls for a mandated "flow-through" of access charge reductions.

Qwest contends that the level of long distance rates inside and outside of Pennsylvania are not at issue in this remand and, therefore, evidence concerning the rates is

beyond the scope of proper testimony. Qwest disagrees with the parties who suggest that the scope of the remand proceeding is broad.

Qwest cites to section 3018(a) of the Public Utility Code, 66 Pa. C. S. §3018(a) and states that the General Assembly declared that interexchange services provided by IXCs are competitive. Since Section 3018(b)(1) prohibits the Commission from setting IXC long distance rates, Qwest argues that this bars the Commission from ordering a “flow-through” of access charge rate reductions to end users.

### Verizon

Verizon recommends that Qwest’s motion be denied because Qwest wants the Commission to reduce the rates that the IXCs pay for access and increase the retail end-user rates *to rebalance that revenue without considering whether that rate rebalancing is in the public interest.* Verizon argues that the Commission must consider the public interest.

The question that Qwest wants to strike relates to whether the IXCs have articulated a reason for the urgency in additional intrastate reductions. Verizon’s witness states that the IXCs have failed to demonstrate that the end-users would benefit from the reductions. Verizon’s position is that the Commission should wait for the FCC to act. Verizon’s witness states that the Commission should be aware of whether the revenue lost from access reductions is going to increase the profit levels of the IXCs before deciding to reduce the access rates before the FCC issues its ruling on this matter.

Verizon argues that it is relevant whether the IXCs have shown that consumers would benefit from the access rate reduction. Verizon notes that Qwest’s witness testified that the one of the reasons that the instant proceeding should not be delayed to wait for a ruling in the FCC case is because of the impact on the Pennsylvania consumers. (Qwest Remand Statement 1, p.4 lines 9-12, p. 5 lines 10-13, Qwest Remand Statement 2, p. 1, lines 15-16).

Verizon denied that it is asking for a “flow through”. Since the testimony has been prepared and distributed, Verizon recommends that the Commission be allowed to review it and give it its proper weight. Verizon suggests that it is an erroneous assumption that the Commission has determined that there should be access reductions. The Commission could have made that calculation without a remand.

## OTS

OTS disagrees with Qwest’s position on the scope of this proceeding. OTS stated that while the issues that have already been the subject of testimony and argument are important, it should be noted that the Commission sought further articulation on certain issues of policy related to access charge reform. OTS believes that the success or failure of the initial access charge reforms should be considered before further access reforms are recommended.

OTS contends that the evidence is relevant pursuant to Rule 401 of the Pennsylvania Rules of Evidence. OTS notes that the Commission regulation at 52 Pa. Code §5.401 allows the admission of “relevant and material evidence” into the record.

OTS noted that while Section 3018(b)(1) of the Public Utility Code does not permit the Commission to require access charge reductions to flow through to end users, the Code does not require the Commission to reduce access charges any further.

OTS stated that Qwest raised the issue of “flow through” in the previous proceeding in Qwest Statement No. 1, p. 7. (Motion p. 5). Qwest promised that the consumers would experience toll rate reductions to offset any rate increases. OTS, as the party who has the obligation to protect the interests of all parties, contends that Mr. Kubas’ testimony provides evidence that should be considered in determining whether further access charge reductions are necessary and/or appropriate.

OTS contends that in its remand order, the Commission enlarged the scope of the proceeding. Since the benefits or harm realized by consumers are important factors, evidence regarding these issues should be included in the record for the Commission's consideration.

#### OCA

OCA argues that the motion limits the scope of the proceeding more narrowly than specifically requested by the Commission. The Commission directed that the ALJ consider the merits of each of the parties' positions and make a recommendation based on the record evidence. The Order does not support Qwest's view of the issues in this matter.

OCA states that in his testimony, Dr. Loubé shows how a reduction in Pennsylvania state access charges will not have a significant impact on the ultimate goal of reducing long distance prices. OCA contends that whether further access reductions should take place is not a new issue that is outside the scope of this case. The consumer benefits in the form of lower rates should be the principal factor considered in the remand proceeding. Dr. Loubé's testimony relates to the policy concerns raised by the IXCs in their exceptions and the impact of the prior access reductions on the consumer.

Furthermore, OCA stated that the term "flow-through" is not mentioned in the testimony.

Therefore, OCA requested that the Motion be denied on the basis that the testimony is relevant and within the scope of this proceeding.

#### Decision

With respect to the Verizon testimony, the witness is merely explaining why Verizon believes that the Commission should delay this proceeding and wait for the FCC to act. Qwest's witness testified that the Commission should not wait for the FCC's ruling because it would harm the consumers. Verizon should be able to refute that testimony with testimony

concerning whether the consumers are receiving a benefit. The witness explained that Verizon thought it was important for the Commission to know that the revenue lost from access reductions is increasing the profit levels of the IXCs. Accordingly, the testimony is not beyond the scope of the proceeding and Qwest's Motion to strike said testimony is denied.

With respect to the OCA's testimony, OCA's witness is providing information concerning the results of the previous access reduction. The consumers did not experience the rate reductions that were promised by some of the IXCs. Although the Commission does not have the authority to set long distance rates, the Commission can consider the effect of the reduced access charges on the residential consumer. Therefore, this evidence is relevant and within the scope of the proceeding. Consequently, Qwest's Motion to strike said testimony is denied.

With respect to the direct testimony of OTS witness Joseph Kubas, Qwest seeks to strike the entire testimony. OTS does have an obligation to protect the public interest in this matter. The information provided in this testimony is in response to statements made in the previous portion of the proceeding regarding the benefits to the consumers. Mr. Kubas is presenting evidence to show that the promised benefits were not realized. In the Commission Order, the Commission was concerned about the increases to residential and business service rates. It was noted that the Joint Petition for Resolution of Litigation limited the increases to residential and business customers. Consequently, testimony on the effects of the access reductions on residential and business customers is within the scope of this proceeding. Accordingly, Qwest's Motion to strike the testimony is denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Motion of Qwest Communications Corporation to Strike Portions of the Remand Testimony of Verizon Pa, Inc, and the Office of Consumer Advocate and the Entire Remand Testimony of the Office of Trial Staff is denied.

2. That Verizon's direct remand testimony on page 18 at lines 1-12 is admitted into the record.

3. That OCA's direct remand testimony on page 24, line 9 through page 28 line 11 is admitted into the record.

4. That OTS's direct remand testimony is admitted into the record.

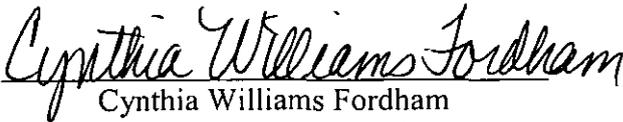
5. That briefs shall be filed according to the following schedule:

Close of Record	Friday, July 22, 2005
Main Briefs Due	August 17, 2005
Reply Briefs Due	Wednesday, August 31, 2005

6. 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 or a compatible format.

7. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: July 22, 2005

  
Cynthia Williams Fordham  
Cynthia Williams Fordham  
Administrative Law Judge

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

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**The Rural Telephone Company Coalition**