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May 17, 2006

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VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

DOCUMENT
FOLDER

Re: December 7, 2005 Recommended Decision on Remand
of Administrative Law Judge Cynthia Williams Fordham
in AT&T Communications of Pennsylvania, Inc. v. Verizon
North, Inc., Docket No. C-20027195

RECEIVED
2006 MAY 17 AM 11:37
PENNSYLVANIA
SECRETARY'S BUREAU

Dear Secretary McNulty:

The above-captioned Recommended Decision on Remand has been awaiting Commission action for five months. Qwest Communications Corporation ("Qwest") respectfully requests that the Pennsylvania Public Utility Commission ("Commission") place the December 7, 2005 Recommended Decision on Remand of Administrative Law Judge Cynthia Williams Fordham on the Public Meeting agenda for final disposition of this pending proceeding without further delay. A brief review of the procedural history of this proceeding demonstrates that such action is not only highly appropriate, but long overdue.

Access charges levels for Verizon Pa. Inc. and Verizon North, Inc. ("Verizon") were fully litigated before ALJ Fordham who issued a Recommended Decision on October 31, 2003. ALJ Fordham's procedural history of this proceeding commences with the Commission's *Global Order* of September 30, 1999, which promised a further access charge proceeding to determine additional access charge reductions.¹ This case represents that further proceeding, which is still not concluded.

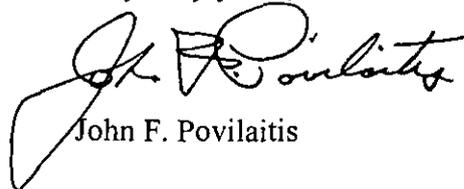
¹ RD at 1.

The Commission's order of July 28, 2004 on ALJ Fordham's initial Recommended Decision approved a reduction and restructuring of Verizon's access charges, but also remanded the case and directed the ALJ to consider issues not addressed in her earlier decision of October 31, 2003, such as specific access charge reduction proposals, the removal of implicit subsidies from access charges and the reduction or elimination of the carrier charge. The access charge reductions that were ordered by the Commission in July, 2004 were not implemented by Verizon until February, 2005, a delay of six months.² The Commission granted a joint request of AT&T, MCI and Qwest to conduct the remand proceeding in an expedited matter to the extent the Office of Administrative Law Judge was able to do so.³ Nevertheless it still took an additional eleven months, until December 7, 2005, for the Recommended Decision on Remand to be issued.

The ALJ has recommended in her decision that the carrier charge be eliminated, but not until six months to a year after the Commission's final order, and that Verizon reduce its intrastate charges to interstate access charge levels one to two years after a final Commission decision. Qwest did not agree with the length of these delays and filed Exceptions to these recommendations. The Commission should take into account the passage of time that has occurred since the RD was issued on December 7, 2005, when it considers whether any further delay in access rate reductions should be ordered. Qwest submits that if the Commission decides this case in June of 2006, it has already granted a six-month delay in the implementation of the lower access charge rates recommended by ALJ Fordham and no further delay is necessary or appropriate.

The process of access charge reform in Pennsylvania is an unfortunate story of delay and postponement of rate reductions. The latest chapter in that story should be brought to a close by Commission action on ALJ Fordham's Recommended Decision on Remand. Qwest respectfully requests that ALJ Fordham's Recommended Decision on Remand be decided without further delay.

Very truly yours,



John F. Povilaitis

Enclosures

JFP:ck

² RD at 4.

³ RD at 4-5.

c: Certificate of Service

The Honorable Wendell F. Holland, Chairman
The Honorable James H. Cawley, Vice-Chairman
The Honorable Bill Shane, Commissioner
The Honorable Kim Pizzingrilli, Commissioner
The Honorable Terrance J. Fitzpatrick, Commissioner

Cheryl Walker Davis, Director
Office of Special Assistants

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. C-20027195

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2006 MAY 17 AM 11:37
SECRETARY'S BUREAU

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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Date: May 17, 2006



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June 2, 2006

Via UPS Overnight Delivery

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

DOCUMENT
FOLDER

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

DOCKETED
JAN 12 2007

Dear Secretary McNulty:

On behalf of Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon"), I am responding to the May 17, 2006 letter of Qwest Communications Corporation ("Qwest") urging the Commission to decide the Exceptions to the December 7, 2005 Recommended Decision of ALJ Cynthia Williams Fordham in the above matter.

While there is no deadline for the Commission to decide this case, if the Commission chooses to act now then it should grant Verizon's Exceptions and close or stay this proceeding pending the outcome of the Federal Communications Commission's ("FCC") intercarrier compensation proceeding – which will comprehensively address all types of intercarrier compensation, including the intrastate access rates at issue in this case. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (FNPRM Rel. March 3, 2005).

Qwest demands that Verizon's access rates be reduced "without further delay" – which of course operates to Qwest's financial advantage – but Qwest glosses over or ignores the rest of the story, including the substantial considerations that counsel *against* precipitously rebalancing Verizon's intrastate access rates at this time.

Conveniently omitted from Qwest's "unfortunate story of delay and postponement," for example, is the fact that Verizon's intrastate access rates have already been decreased by *approximately \$140 million* since the *Global Order* – including the rebalancing early last year that reduced revenue from access by over \$50 million and increased basic local rates to recover that revenue. Qwest also ignores the fact that, as the RD itself noted, Verizon's intrastate access rates are already "well below the national average" (RD at 64) and among the very lowest in Pennsylvania. Qwest provides no

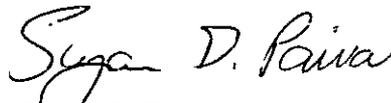
85

compelling reason why these rates cannot stay at this present, already below-average level until the FCC completes its proceeding.

Qwest takes the opportunity to fault the Commission and the ALJ for not acting faster, but Qwest fails to mention, much less to rebut, the substantial record evidence that supports waiting for the FCC. In fact, the record shows little consumer benefit to be gained from rushing ahead of the FCC, because isolated intrastate access reductions in Pennsylvania, without the more comprehensive action that only the FCC can take, are likely to have little market impact. In contrast, consumers are certain to experience costs from the demanded rebalancing, in the form of mandatory basic rate increases of as much as \$1.50 per line per month required by revenue neutrality mandate of 66 Pa.C.S. § 3017. The record also shows that there are grave risks that may accompany any rush by the Commission to get ahead of the FCC, such as the possible loss of federal funding sources as an alternative to these required end-user rate increases.

For these reasons, as set forth in the filed Exceptions, Verizon, OCA, OSBA and OTS agree that the Commission should wait for the FCC to complete its case. If the Commission chooses to render a decision on the RD now, then it should close or stay this matter pending the outcome of the FCC's intercarrier compensation proceeding.

Very truly yours,


Suzan D. Paiva

cc: The Honorable Wendell F. Holland, Chairman
The Honorable James H. Cawley, Vice-Chairman
The Honorable Bill Shane, Commissioner
The Honorable Kim Pizzigrilli, Commissioner
The Honorable Terrance J. Fitzpatrick, Commissioner
Cynthia W. Fordham, Administrative Law Judge
Attached Certificate of Service
Cheryl Walker Davis, OSA

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.' and Verizon North Inc.'s letter responding to the May 17, 2006 letter of Qwest Communications Corporation, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 2nd day of June, 2006.

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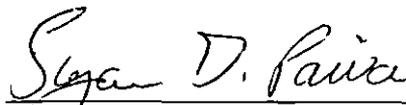
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June 15, 2006

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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17102

Re: December 7, 2005 Recommended Decision on Remand
of Administrative Law Judge Cynthia Williams Fordham
in AT&T Communications of Pennsylvania, Inc. v. Verizon
North, Inc., Docket No. C-20027195

SECRETARY'S BUREAU
2006 JUN 15 PM 2:18

Dear Secretary McNulty:

Qwest Communications Corporation ("Qwest") files this letter in response to Verizon Pennsylvania Inc.'s and Verizon North Inc.'s ("Verizon") June 2, 2006 response to the letter of Qwest filed on May 17, 2006 at the above-captioned docket. In its May 17th letter, Qwest respectfully requested that the Commission issue a decision without any further delay on the Recommended Decision on Remand ("R.D. on Remand") of Administrative Law Judge Cynthia Williams Fordham issued on December 7, 2005 in this matter.

Qwest files this letter to address mischaracterizations made by Verizon in its June 2nd response regarding the nature of Qwest's request for relief in its May 17th letter. Contrary to Verizon's erroneous representations, Qwest did not "demand that Verizon's access rates be reduced" without further delay. Rather, Qwest requested that the R.D. on Remand be placed on the public meeting agenda for disposition without any further delay. Because this case is in the "exceptions" phase, Qwest was wary of delving into the merits and was careful to draft its letter in a way that would not be interpreted as requesting access charges reductions. Rather, Qwest simply requested that ALJ Fordham's R.D. on Remand be decided without further delay. Thus, Qwest's letter was a request for Commission action, not a request for a desired outcome.

DOCUMENT
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DOCKETED
JAN 12 2007

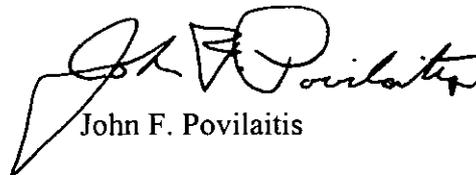
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In contrast, Verizon showed no such similar restraint in its June 2nd response by attempting to re-argue the merits of the case. Specifically, Verizon attempts to re-argue the merits of further access charge reduction and the merits of this Commission waiting to act in this proceeding until the FCC has acted. Qwest submits that such an approach is inappropriate in light of the Commission's *ex parte* rules and the fact that these issues have been fully litigated before the ALJ. Therefore, Verizon's arguments in this regard should be stricken from the record.

In any event, the record in this docket already contains arguments for staying this proceeding due to "imminent action" by the FCC. However, it is important to note that Qwest has responded consistently throughout this proceeding that the Pennsylvania Commission's access docket is close to completion, and further delay only heightens the chances of conflict with the potential for FCC action. Qwest continues to stand by these arguments that Pennsylvania's access docket should not be stayed, and it is not appropriate to reargue the issue at this point.

In addition, Verizon mischaracterizes Qwest's May 17th letter as faulting the Commission and the ALJ for not acting faster with respect to access charge reform. Qwest's May 17, 2006 letter contains no such language faulting or criticizing the Commission or the ALJ for not acting sooner in this proceeding. Rather, Qwest provided a procedural history of access charge reform that was provided in the R.D. on Remand and simply stated the fact that the process of access charge reform in Pennsylvania has previously been subject to delay and postponement. That is why Qwest respectfully requests Commission action on the ALJ's R.D. on Remand without further delay.

Very truly yours,



John F. Povilaitis

JFP:ck

c: Certificate of Service

The Honorable Wendell F. Holland, Chairman
The Honorable James H. Cawley, Vice-Chairman
The Honorable Bill Shane, Commissioner
The Honorable Kim Pizzingrilli, Commissioner
The Honorable Terrance J. Fitzpatrick, Commissioner

Cheryl Walker Davis, Director
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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania LLC :

v. :

Docket No. C-20027195

Verizon Pennsylvania Inc. and Verizon North Inc. :

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2005 JUN 15 PM 2:18

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Date: June 15, 2006



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<p>1. <u>REPORT DATE:</u> November 13, 2006</p>	<p>2. <u>BUREAU AGENDA NO.</u> NOV-2006-OSA-0353* (Revised)</p>
<p>3. <u>BUREAU:</u> Office of Special Assistants</p>	
<p>4. <u>SECTION(S):</u></p>	<p>5. <u>PUBLIC MEETING DATE:</u></p>
<p>6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: Legal Review:</p>	<p>November 9, 2006</p>
<p>7. <u>PERSONS IN CHARGE:</u> R. Marinko 3-3930/A. Arnold 7-8032</p>	<p>9. <u>EFFECTIVE DATE OF FILING:</u> n/a.</p>
<p>8. <u>DOCKET NO.:</u> C-20027195</p>	<p>DOCUMENT FOLDER DOCKETED DEC 14 2006</p>

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) AT&T Communications of Pennsylvania, Inc. (AT&T) v. Verizon North, Inc. (VZ North)

(b) On March 31, 2002, AT&T filed a Formal Complaint at Docket No. C-20027195 against Verizon North seeking that VZ-North's access charges be reduced to Verizon Pennsylvania Inc.'s (VZ PA) levels pursuant to the Commission's *Merger Order* at Docket No. A-310200F0002. AT&T's Complaint was initially dismissed and subsequently reinstated by Order entered December 24, 2002. On December 30, 2002, VZ PA and VZ North filed a Joint Petition for Access Reform in accordance with the *Merger Order*. That Order also bifurcated the generic access charge investigation at Docket No. M-00021596 so that all pertinent access charge matters pertaining to VZ PA and VZ North, including AT&T's Complaint and all matters relating to access charge parity resulting from the *Merger Order* would be litigated at Docket No. C-20027195. On November 18, 2003, ALJ Fordham's Recommended Decision was issued, wherein she, *inter alia*, denied the Joint Petition and recommended that the Commission adopt the Verizon/OCA proposal and mark the proceeding closed. Exceptions and Reply Exceptions were filed. On February 26, 2004, VZ PA and VZ North, the Office of Consumer Advocate and the Office of Small Business Advocate filed a Petition for Resolution of Litigation proposing, *inter alia*, the use of VZ PA's and

(continued on next page)

CONTINUED

11. MOTION BY: Commissioner Cawley
 Commissioner Pizzingrilli - Yes
 Commissioner Fitzpatrick - Yes
 Commissioner

SECONDED: Commissioner Chm. Holland

CONTENT OF MOTION: Postponement to Public Meeting of November 30, 2006 for the Commission's further consideration.

BTL

(continued from previous page)

VZ North's negative 2004 PCO monies and VZ PA's 2003 PCO carryover for access reform. By Order entered July 28, 2004, the Commission addressed Exceptions to the ALJ's Recommended Decision, granted the Joint Petition for Resolution of Litigation and further remanded certain matters to the Office of ALJ for further development of the record and issuance of a Recommended Decision on Remand. On December 7, 2005, ALJ Fordham's Recommended Decision on Remand was issued, wherein she recommended, *inter alia*, elimination of the Carrier Charge and reductions to traffic sensitive access charges to interstate levels. Exceptions and Reply Exceptions to the Recommended Decision on Remand were filed.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which grants the Parties' Exceptions, in part, and denies them, in part, and modifies the ALJ's Recommended Decision consistent with the discussion contained therein.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> November 14, 2006	2. <u>BUREAU AGENDA NO.</u> NOV-2006-OSA-0353* (Revised)
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u> (30) <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: Legal Review:	5. <u>PUBLIC MEETING DATE:</u> November 30, 2006
7. <u>PERSONS IN CHARGE:</u> R. Marinko 3-3930/A. Arnold 7-8032	9. <u>EFFECTIVE DATE OF FILING:</u> n/a.
8. <u>DOCKET NO.:</u> C-20027195	

DOCUMENT
FOLDER

DOCKETED
DEC 28 2006

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
© Recommendation

(a) AT&T Communications of Pennsylvania, Inc. (AT&T) v. Verizon North, Inc. (VZ North)

(b) On March 31, 2002, AT&T filed a Formal Complaint at Docket No. C-20027195 against Verizon North seeking that VZ-North's access charges be reduced to Verizon Pennsylvania Inc.'s (VZ PA) levels pursuant to the Commission's *Merger Order* at Docket No. A-310200F0002. AT&T's Complaint was initially dismissed and subsequently reinstated by Order entered December 24, 2002. On December 30, 2002, VZ PA and VZ North filed a Joint Petition for Access Reform in accordance with the *Merger Order*. That Order also bifurcated the generic access charge investigation at Docket No. M-00021596 so that all pertinent access charge matters pertaining to VZ PA and VZ North, including AT&T's Complaint and all matters relating to access charge parity resulting from the *Merger Order* would be litigated at Docket No. C-20027195. On November 18, 2003, ALJ Fordham's Recommended Decision was issued, wherein she, *inter alia*, denied the Joint Petition and recommended that the Commission adopt the Verizon/OCA proposal and mark the proceeding closed. Exceptions and Reply Exceptions were filed. On February 26, 2004, VZ PA and VZ North, the Office of Consumer Advocate and the Office of Small Business Advocate filed a Petition for Resolution of Litigation proposing, *inter alia*, the use of VZ PA's and VZ North's negative 2004 PCO monies and VZ PA's

(continued on next page) Order Doc. No. 608502v1 Calendar Doc. No. 638775v1

11. MOTION BY: Commissioner Cawley

Commissioner Pizzingrilli - Yes
Commissioner Fitzpatrick - No
Commissioner

SECONDED: Commissioner Chm. Holland

CONTENT OF MOTION:

RJP

CONTINUED ON NEXT PAGE

(continued from previous page)

(b) 2003 PCO carryover for access reform. By Order entered July 28, 2004, the Commission addressed Exceptions to the ALJ's Recommended Decision, granted the Joint Petition for Resolution of Litigation and further remanded certain matters to the Office of ALJ for further development of the record and issuance of a Recommended Decision on Remand. On December 7, 2005, ALJ Fordham's Recommended Decision on Remand was issued, wherein she recommended, *inter alia*, elimination of the Carrier Charge and reductions to traffic sensitive access charges to interstate levels. Exceptions and Reply Exceptions to the Recommended Decision on Remand were filed.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which grants the Parties' Exceptions, in part, and denies them, in part, and modifies the ALJ's Recommended Decision consistent with the discussion contained therein.

CONTENT OF MOTION:

1. The instant proceeding be stayed pending the outcome of the FCC's *Intercarrier Compensation* case at CC Docket No. 01-92 or for a period of one year, whichever is earlier.
2. The Commission Staff from the Office of Special Assistants and the Law Bureau be hereby directed to monitor developments in the FCC's *Intercarrier Compensation* proceeding.
3. Upon the expiration of the twelve-month stay of the instant proceeding or the issuance of an FCC ruling in the *Intercarrier Compensation* case, whichever occurs earlier, the parties to this proceeding be directed to submit status reports to the Commission pertaining to common or related matters in the instant proceeding and the FCC's *Intercarrier Compensation* case and the need for any coordination of such matters or any new issues that may arise once the instant proceeding becomes reactivated. Such status reports will be due thirty days prior to the expiration of the one-year stay of the instant proceeding or thirty days after the FCC ruling in its *Intercarrier Compensation* case, whichever occurs earlier.
4. Upon the receipt of the of the status reports described in moving Paragraph No. 3 above, the Office of the Special Assistants and the Law Bureau be directed to prepare a Staff recommendation for the Commission's timely consideration at a Public Meeting that would reactivate the instant proceeding and either dispose of the outstanding substantive issues with additional and updated input by the parties in the form of additional briefs and evidentiary written submissions, or refer the matter to the Office of Administrative Law Judge in a second remand proceeding.
5. The intrastate carrier access charges of Verizon Pennsylvania Inc. and Verizon North Inc. not be modified at this time.
6. The Office of the Special Assistants prepare the appropriate Order consistent with this Motion.

Dissenting Statement of Commissioner Terrance J. Fitzpatrick attached.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

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

PUBLIC MEETING Nov. 30, 2006
NOV-2006-OSA-0353 R*
C-20027195

**DISSENTING STATEMENT OF
COMMISSIONER TERRANCE J. FITZPATRICK**

This case involves the further reduction of Verizon's intrastate access charges. I support the staff recommendation in this matter and therefore respectfully dissent from the Motion adopted by the Majority.

Staff recommends eliminating Verizon's carrier charge, but delaying a decision regarding the remaining intrastate traffic-sensitive charges for 12 months or until the Federal Communications Commission (FCC) resolves its intercarrier compensation proceeding,¹ whichever occurs first. The Majority votes to suspend the entire proceeding for 12 months.

I believe the staff recommendation provides a reasonable compromise for the parties, while still enabling this Commission to continue its on-going efforts over the last 10 years to reduce access charges and create a more level playing field among competitors. Most parties agree that intrastate access charges paid by interexchange carriers (IXCs) to local exchange companies are used to subsidize basic local phone service to keep those rates low. It was possible to enforce this policy when telephone service was regarded as a natural monopoly. Since the passage of the federal Telecommunications Act of 1996, however, this Commission has acknowledged that to promote competition, intrastate access charges must be closer to access costs. To accomplish that goal, we have consistently reduced Verizon's access charges.

I agree with the Administrative Law Judge and the staff position that it is time for Verizon to remove the carrier charge as an anti-competitive subsidy. The simple fact is that IXCs must pay this charge while wireless and cable companies do not. Yet, IXCs face stiff competition from these companies for the same calls, not to mention competition from other telecommunications providers offering services like Voice over Internet Protocol. By adopting the staff recommendation today, we would be taking another meaningful step toward reducing these subsidies and creating a more competitive market where companies could compete on equal ground.

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (FNPRM Rel. March 3, 2005).

I also think we should move forward because we have a developed record before us, unlike the rural access proceeding which this Commission suspended – with my support - for an additional year earlier this month.² I supported this second suspension, in part, because there finally appears to be some movement at the FCC on the so-called Missoula Plan. Nonetheless, we simply don't know when the FCC will act. The Verizon case has been ongoing for several years and is ripe for a decision. It is our responsibility to move forward and render one.

DATE: November 30, 2006

Terrance J. Fitzpatrick
Terrance J. Fitzpatrick
Commissioner

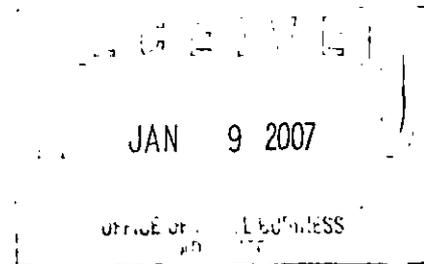
² *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund*, Docket No. I-00040105.

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 an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 8, 2007 at Docket No.C-20027195 on behalf of:

W LLOYD S GRAY A JONES ESQUIRES
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

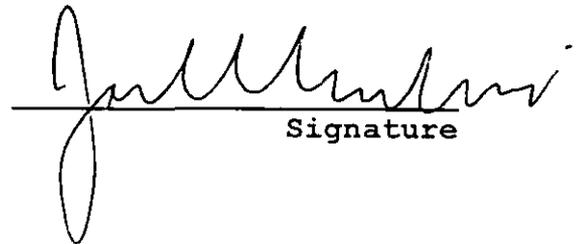
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SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 8 day of Jan, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 8, 2007 at Docket No.C-20027195 on behalf of:

PHILIP F MCCLELLAND JOEL H CHESKIS
SHAUN A SPARKS BARRETT C SHERIDAN
555 WALNUT STREET 5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

DOCUMENT
FOLDER

AND NOW, to wit, this 9th day of January, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 8, 2007 at Docket No.C-20027195 on behalf of:

C HOFFMAN J SIMMS K MELILLO R ECKENRO
PENNSYLVANIA PUBLIC UTILITY COMMISSIO
PO BOX 3265
HARRISBURG PA 17105-3265

Chere R. G.

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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P. P. U. C.

COMMONWEALTH OF PENNSYLVANIA

DATE: January 8, 2007
SUBJECT: C-20027195
TO: Office of Administrative Law Judge
FROM: James J. McNulty, Secretary

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2007 JAN 11 AM 11:29
SECRETARY'S BUREAU

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

The Commission at Public Meeting held November 30, 2006 adopted an Opinion and Order in the above entitled proceeding

Please direct your attention to Paragraph 6 for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
KEYSTONE BUILDING 2ND FLOOR

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature) *Veronica Smith*

(date) 1/10/07

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DOCKETED
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OFFICE OF C.A.L.J.
07 JAN -9 PM 9:05
PA PUC

COMMONWEALTH OF PENNSYLVANIA

DATE: January 8, 2007
SUBJECT: C-20027195
TO: Law Bureau
FROM: James J. McNulty, Secretary

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

The Commission at Public Meeting held November 30, 2006 adopted an Opinion and Order in the above entitled proceeding

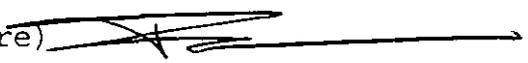
Please direct your attention to Paragraph 6 for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
KEYSTONE BUILDING 2ND FLOOR

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature) 

(date) 1-10-07

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LAW BUREAU

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JAN 18 2007

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> January 4, 2005	2. <u>BUREAU AGENDA NO.</u> JAN-2005-OSA-0015*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-4827 Mgr/Spvr: Legal Review: A. Arnold	January 13, 2005
7. <u>PERSONS IN CHARGE:</u> DR. Marinko 3-3930/A. Arnold 7-8032	9. <u>EFFECTIVE DATE OF FILING:</u> February 1, 2005
8. <u>DOCKET NO.:</u> -C-2007195; P-00930715; C-20027195 P-00001854	

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania Inc., *et al.* (Joint Petition of AT&T Communications of Pennsylvania, LLC, MCI WorldCom Communications, Inc. and Qwest Communications Corporation for Clarification of the Commission Order Entered July 28, 2004).

(b) On November 22, 2004, AT&T Communications of Pennsylvania, LLC, MCI WorldCom Communications, Inc. and Qwest Communications Corporation filed a Joint Petition for Clarification of the Commission's July 28, 2004 Order at the above-captioned proceedings regarding the compliance obligations of Verizon Pennsylvania Inc. and Verizon North Inc. Answers were filed jointly by Verizon Pennsylvania Inc. and Verizon North Inc. on December 1, 2004, and by the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OSA) on November 29, 2004, and November 30, 2004, respectively.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which grants the Joint Petition, in part, and denies it, in part, consistent with the discussion contained therein.

Order Doc. No. 515239v1

Calendar Doc. No. 516472v1

11. MOTION BY: Commissioner Chm. Holland
 SECONDED: Commissioner Bloom

Commissioner Thomas - Recusing
 Commissioner Pizzingrilli - Yes
 Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

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DOCKETED
MAR 03 2005

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER LLP

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800 NORTH THIRD STREET
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January 23, 2007

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WYOMISSING, PENNSYLVANIA
19610-1208
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VIA HAND DELIVERY

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

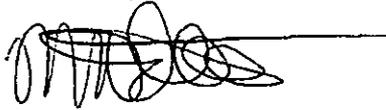
ORIGINAL

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 three (3) copies of the Petition for Reconsideration of Qwest Communications Corporation in the above-captioned proceeding. Copies of the petition have been served in accordance with the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

Enclosures
MAT:ck

c. Certificate of Service

The Honorable Wendell F. Holland, Chairman
The Honorable James H. Cawley, Vice-Chairman
The Honorable Kim Pizzingrilli, Commissioner
The Honorable Terrance J. Fitzpatrick, Commissioner

Robert A. Marinko – Office of Special Assistants
Bohdan R. Pankiw – Chief Counsel
Frank Wilmarth – Deputy Chief Counsel

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11

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR RECONSIDERATION
OF QWEST COMMUNICATIONS CORPORATION**

AND NOW, Qwest Communications Corporation ("Qwest"), intervenors in this proceeding, hereby petition the Pennsylvania Public Utility Commission ("Commission") pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), and 52 Pa. Code § 5.572, for reconsideration and amendment of the Opinion and Order entered by the Commission in this proceeding on January 8, 2007 ("January 8th Order" or "Order"), and in support thereof represent as follows:

Qwest is seeking reconsideration of the Commission's January 8th Order because the Order contains errors of law. The Order violates due process by failing to reach a decision on the merits of what the Commission has acknowledged is a rate investigation.¹ Although the Commission has consistently maintained throughout this proceeding and as far back as the *Global Order* that Verizon's intrastate access rates are unreasonably high, it has declined to act in this remand and set the proper level of these rates. The

¹ The Commission noted in its Order that Verizon has the burden of proof on the justness and reasonableness of its access rates because this proceeding is a Commission investigation into access charges.

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Commission's failure to act violates Qwest's right to a timely decision on the merits under Section 315 of the Public Utility Code ("Code") and as required by due process.

In addition, the Order violates due process by depriving Qwest of a meaningful opportunity to be heard on the impact of the Missoula Plan filing in the federal intercarrier compensation docket on this remand proceeding, which is one of the primary justifications given by the Commission for the 1-year stay. The Commission's use of the Missoula Plan proposal is improperly based on extra-record evidence as neither Qwest nor the other parties were provided with any opportunity as part of this proceeding to address the potential impact of the Missoula Plan. For example, Qwest was denied the opportunity to explain that the Missoula Plan proposal is only one plan of many that is currently being considered by the Federal Communications Commission's ("FCC") and that there is no probative evidence the plan will be adopted. Because of these errors of law, the Commission's January 8th Order should be reconsidered.

For relief, Qwest requests that the Commission eliminate the Carrier Charge. With the uncertainty surrounding the impact of any FCC action on intrastate access rates, Qwest is willing to forego its right to pursue a further reduction in the traffic or usage-sensitive intrastate access rates to interstate levels as part of this proceeding. In addition, if the Commission agrees to eliminate the Carrier Charge as endorsed by Commissioner Fitzpatrick in his dissenting statement, Qwest would support a closing of this proceeding. Rather than keeping the proceeding open to await action at the federal level, which at this point, could take years, if ever, to materialize, the Commission could simply close this proceeding and avoid the ongoing uncertainty associated with the stay.

I. BACKGROUND

1. On December 30, 2002, Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North Inc. ("Verizon North" and collectively "Verizon") filed a Joint Petition regarding the further reduction of their intrastate access charges.² The Joint Petition was filed pursuant to *the Bell Atlantic-Pa.-GTE Merger Order*,³ the *Global Order* of 1999,⁴ and the *Generic Access Charge Investigation*, all of which recognized the need for and the Commission's commitment to reducing intrastate access charges in Pennsylvania.⁵ As part of its commitment in the *Global Order* to reduce intrastate access charges that were viewed as an impediment to competition in the telecommunications market, the Commission specifically contemplated elimination of the Carrier Charge.⁶ Thus, as far back as 1999, this Commission articulated a policy of reducing intrastate access charges, which included the potential elimination of the Carrier Charge.

2. Although Verizon PA and Verizon North agreed to one proposed access charge reduction plan, the public advocates and several Interexchange Carriers ("IXCs"), including Qwest, objected to the Joint Petition. Because there were contested, material factual issues (i.e., what the cost of traffic sensitive rates are and to what level the intrastate access charges should be reduced), the Commission referred the Joint Petition

² Prior to the filing of the Joint Petition, AT&T Communications of Pennsylvania, Inc. filed a formal complaint against Verizon North on March 21, 2002 ("AT&T Complaint") seeking to have Verizon North's access charges reduced to Verizon PA's levels pursuant to the requirements in the Commission's *the Bell Atlantic-Pa.-GTE Merger Order*, *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*").

³ *Merger Order*.

⁴ *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.Cmwlth. 2000), *alloc. granted*.

⁵ *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc.

⁶ *Global Order* at 24, 60.

to the Office of Administrative Law Judge ("OALJ") for evidentiary hearings and a recommended decision. The Commission consolidated the Joint Petition with the AT&T Complaint, and the matter was assigned to Administrative Law Judge ("ALJ") Cynthia Williams Fordham.

3. Following discovery, hearings and briefing, the ALJ issued a Recommended Decision on October 31, 2003. The decision adopted uniform access rates for both Verizon PA and Verizon North and initiated reductions in Verizon PA's intrastate access charges based on a settlement reached by the Office of Consumer Advocate ("OCA") and Verizon. Neither the IXC intervenors nor the Office of Small Business Advocate ("OSBA") supported the settlement. Exceptions were filed to the Recommended Decision.

4. On February 26, 2004, Verizon, OSBA and OCA filed a Petition for Resolution of Litigation. In the petition, Verizon and the public advocates proposed to adopt uniform access rates and rate structures for the two Verizon companies and reduce Verizon North's carrier line charge equal to that of Verizon PA. Petitioners requested, *inter alia*, that the Commission adopt the same level of access charge reductions as authorized in ALJ Fordham's Recommended Decision but with the additional limitation that increases to business basic local service rates would be no greater than the increases to residential basic local service rates.

5. By Order entered on July 28, 2004, the Commission took the first step towards meaningful access charge reform in Pennsylvania by adopting the Petition for Resolution that was filed by Verizon, OCA and OSBA. The Commission essentially established parity between the Verizon PA and the Verizon North existing Traffic

Sensitive Access Charges and the Carrier Charge rate per minute without a significant rate increase on residential and business local exchange customers. The access charge reductions were made on a revenue-neutral basis with the understanding that no more than \$40 million would be shifted to residential local service rate increases, and increases to business lines would be no more than \$1.00 per line.⁷

6. In the July 28, 2004 Order, the Commission, however, reversed the ALJ recommendation to close the case and directed the ALJ to consider certain issues the raised by AT&T, MCI WorldCom Communications, Inc. and Qwest (the “IXCs”) that were not addressed in her earlier decision.⁸ The Commission described the issues remaining to be resolved as including, *inter alia*, “AT&T’s two-step access charge reduction proposal, the removal of all implicit subsidies from access charges and the reduction and possible elimination of the Carrier Charge. Thus, the Commission reaffirmed its interest in eliminating the Carrier Charge. The Commission noted that the parties had expended “significant resources” on issues that did not receive the “benefit of a recommended decision”⁹ on these remaining issues.

7. Verizon PA and Verizon North subsequently sought reconsideration of the July 28, 2004 Order. By order entered November 23, 2004, the Commission denied the reconsideration and confirmed its decision to remand the proceeding for issuance of a recommended decision on policy issues including: “(1) a recommendation of the ‘next steps’ for access reform; (2) a recommendation on whether access charges should be

⁷ July 28, 2004 Order at 36.

⁸ Id. at 15-16.

⁹ Id. at 16.

reduced 'to cost'; and (3) a recommendation on the elimination of the carrier charge."¹⁰ Once again, the Commission maintained its support for the potential elimination of the Carrier Charge.

8. As of November of 2004, the July 2004 access rate reductions approved by the Commission had yet to be implemented by Verizon. Concerned with this failure to timely implement the rate reductions, the IXCs filed a Joint Petition for Clarification on or about November 17, 2004 requesting: (1) that the Commission set February 1, 2005 as the compliance filing deadline; (2) that the compliance rates be made retroactive to February 1, 2005, if necessary; (3) that termination of the remand and further reduction of access rates be based on the record compiled to that point in time; and (4) that the remand be completed on an expedited basis. By Order entered on January 18, 2005, the Commission granted the Joint Petition for Clarification, in part, and established February 1, 2005 as the compliance filing date and directed the remand be conducted "in an expedited manner" to the extent OALJ was able to do so.¹¹

9. In addition, the Commission rejected any notion that the remand proceeding should be placed on hold, pending action by the FCC.¹² In response to the argument of OCA that the remand should consider FCC activity relating to the Intercarrier Compensation Forum proposal presented to the FCC on October 5, 2004, the Commission stated the following:

¹⁰ November 23, 2004 Order at 3.

¹¹ January 18, 2005 Order at 15.

¹² At the federal level, in March of 2005, the FCC opened a Further Notice of Proposed Rulemaking ("Intercarrier Compensation Case"), *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Adopted February 10, 2005, Released March 3, 2005. The aforementioned Intercarrier Compensation Forum ("ICF") proposal was made part of this docket. The Intercarrier Compensation Case remains pending.

Finally, we shall direct the presiding Administrative law Judge assigned to this case to expand the scope of this proceeding with regard to any FCC activity concerning the proposal submitted by the Inter-carrier Compensation Forum on October 5, 2004, and to address the impact that any 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, to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding;

(Emphasis added). Thus, the Commission expressed a clear intent that FCC action would only be relevant to the access charge remand proceeding if and when the FCC issued a final order prior to the issuance of any Recommended Decision in the remand case.

10. After yet another round of testimony and briefing, the ALJ subsequently issued her Recommended Decision on Remand dated December 7, 2005. In the decision, the ALJ recommended, *inter alia*:

- That the Commission should move forward with additional access charge reform for Verizon and deny the requests of those Parties' who argued to stay the instant investigation until after the FCC makes a ruling in the ICR proceeding (R.D.-R at 58-60);
- That, within six months to a year after the Commission's Order in this matter is entered, Verizon's Carrier Charge of \$0.58 per minute should be eliminated and the cost associated with the local loop, which is currently being recovered by the Carrier Charge, should be paid by the local end user customers (equivalent to a maximum of \$0.95 per line per month) rather than by the IXCs. (R.D.-R at 63-64);
- That the Commission should require Verizon to reduce the remaining intrastate traffic sensitive access charges to interstate levels within one to two years after the final Order in this matter is entered. (R.D.-R at 65 - 66).

11. Various parties, including Qwest, filed exceptions to the Recommended Decision on Remand. In its Exceptions on Remand, 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 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 in the Recommended Decision on Remand. In contrast to Qwest's narrow and focused approach with its Exceptions on Remand, other parties such as Verizon and OCA chose to use the exceptions process more broadly as a means to attempt to re-litigate nearly every issue raised in the Recommended Decision on Remand.

12. As of May, 2006, the Commission had yet to adjudicate the Exceptions on Remand. As a result, Qwest filed a letter with the Commission on May 17, 2006 respectfully requesting that the Commission place the December 7, 2005 Recommended Decision on Remand on the Public Meeting agenda for final disposition without further delay.

13. Over six months later and more than one year after the issuance of the Recommended Decision on Remand, the Commission issued an order entered on January 8, 2007 regarding the Exceptions on Remand. In the Order, the Commission failed to reach a decision on the merits and specifically, on the further access charge reductions recommended by the ALJ. Instead, the Commission chose to stay the proceeding, pending the outcome of the FCC's Intercarrier Compensation Case or for a period of twelve (12) months from the date of entry of the Order, unless extended by Commission Order, whichever is earlier.

14. In support of its stay, the Commission cited to the pending Intercarrier Compensation Case and specifically, the potential impact of the Missoula Plan¹³ on

¹³ On July 24, 2006, the National Association of Regulatory Utility Commissioners ("NARUC") Task Force on Intercarrier Compensation ("NTFIC") filed a proposal with the FCC known as the Missoula Plan. The plan is one of numerous proposals regarding comprehensive intercarrier compensation reform. However, the plan is far from a consensus plan, and given the history of the IC Docket, a unified plan may take years to materialize and to resolve, likely, in the appellate courts. The FCC opened the IC Docket in 2001 and at this point, the proceeding remains pending without any definitive resolution on intercarrier compensation.

Pennsylvania's access charge remand proceeding.¹⁴ However, neither Qwest nor the other parties were provided with any opportunity as part of the remand proceeding to address the potential impact of the Missoula Plan on Verizon's Pennsylvania intrastate access rates.

15. In his dissenting statement, Commission Fitzpatrick supported the recommendation of staff to eliminate Verizon's Carrier Charge, but also, to delay a decision regarding the remaining intrastate traffic-sensitive charges for 12 months or until the FCC acts, whichever occurs first. According to Commissioner Fitzpatrick, the time is now to remove the Carrier Charge as an anti-competitive subsidy and to take another meaningful step toward creating a more competitive market where companies could compete on equal ground.¹⁵ Commission Fitzpatrick further reasoned that the decision is ripe for a decision on the merits. As noted by the Commissioner, it is unknown when the FCC will act, and it is time for the Commission to move forward and render a decision.¹⁶

16. In other proceedings, the Commission has recently affirmed its commitment in the *Global Order* to reduce intrastate access charges. As recently as November 2006, the Commission ordered expedited hearings into the issue of Denver & Ephrata Telephone & Telegraph Company, Conestoga Telephone Company and Buffalo Valley Telephone Company request to raise their intrastate access charges. In the order opening this investigation, the Commission stated:

It is important to note that since the *Global Order* of September 30, 1999, this Commission has been lowering intrastate access charges in an effort to transition from a monopolistic to a competitive environment in rural areas within the Commonwealth. Generally, since *Global*, we have only

¹⁴ January 8, 2007 Order at 35-36.

¹⁵ November 30, 2006 Dissenting Statement of Terrance J. Fitzpatrick at 1.

¹⁶ Id. at 2.

discussed the reduction of access charges. The fact that we never expressly stated that increases to access charges were precluded until the next investigation was held, does not mean the Commission intended to carve out an exception to our general public policy rule of lowering intrastate access charges and allow for intermittent increases to intrastate access charges with rural ILEC PSI filings.¹⁷

Although this investigation is focused on rural companies rather than Verizon, the above language represents recent confirmation that the Commission still stands by its policy in the *Global Order* to reduce intrastate access charges in order to enhance movement to a competitive environment.

17. This rather lengthy procedural history shows that further reductions to Verizon's intrastate access charge reductions have merit and are long overdue. This procedural history further shows the Commission's ongoing support to eliminate the Carrier Charge as an anti-competitive subsidy. Thus, at a minimum, the Commission should render a decision on the merits to eliminate the Carrier Charge.

II. ARGUMENT

A. Legal Standard

18. In determining whether to grant or deny reconsideration, the Commission applies the standard articulated in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

¹⁷ Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund; Docket No. I-00040105. (November 15, 2006)

Parties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ... what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

Duick, 53 Pa. P.U.C. at 559. Thus, under the *Duick* standard, the Commission considers whether there is newly discovered evidence, errors of law or changes in circumstances that warrant another Commission review or whether the petition raises "new and novel arguments" not previously heard or not addressed by the Commission. *Advocates for True and Open Competition v. Equitable Gas Company, a division of Equitable Resources*, 1997 Pa. PUC LEXIS 3.

19. The Commission's January 8th Order violates due process by failing to reach a decision on the merits of a rate investigation. Although the Commission has consistently maintained in this case and as far back as the *Global Order* that current access charges are unreasonably high, it has declined to act on remand to set the proper level of these rates. The Commission's failure to act violates Qwest's right to a timely decision on the lawfulness and reasonableness of the Verizon access rates under Code Section 315 and as required by due process. In addition, the Order violates due process by failing to provide Qwest with a meaningful opportunity to be heard on the impact of the Missoula Plan filing in the Intercarrier Compensation Case on this proceeding, which is one of the primary justifications for the 1-year stay cited by the Commission in its Order.

B. The Commission's January 8th Order violates due process by depriving Qwest of a timely adjudication on the reasonableness of Verizon's intrastate access charge rates.

20. Under Pennsylvania law, a party before an administrative agency is entitled to a timely adjudication on the merits of a proceeding. *See Morganelli v. Casey*, 646 A.2d 744 (Pa. Cmwlth. 1994). With respect to rate investigation, the General Assembly has specified that the Commission has a duty to provide a timely decision regarding the reasonableness of rates. Under Section 315 of the Code, which governs the burden of proof in rate investigations, the Commission is required to "give to the hearing and decision of any such [rate] proceeding preference over all other proceedings, and decide the same as speedily as possible." 66 Pa. C.S. § 315.

21. Qwest acknowledges that no specific date is set by law for Commission action in a fully litigated investigation of rates outside of general rate increase request situations. However, the Commission must still act in a reasonable period of time, even where no specific statutory deadline is set. Otherwise, it is subject to mandamus:

[A]lthough the laws normally do not specify a time limit within which an adjudicative agency or a court must issue a decision after hearing a case, the failure to decide within a reasonable time is subject to correction by a mandamus order commanding that the case shall be decided. Although no statute sets any specific time limit within which a trial court must hear and dispose of cases before it, the Supreme Court in *Commonwealth ex. rel. Duff v. Keenan*, 347 Pa. 574, 33 A.2d 244 (1943) directed a common pleas court judge to hear and decide 28 civil cases which had been pending for periods ranging from one year to four years, and to do so within 60 days.¹⁸

22. Furthermore, a delay in the administrative process can constitute a violation of due process. *See Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 546-47 (1985). The Commonwealth Court has stated that the type of due process

¹⁸ *Morganelli*, 646 A.2d 744.

necessary in a Commission proceeding depends upon the circumstances of what is at issue:

‘[D]ue process is flexible and calls for such procedural protections as the particular situation demands.’¹⁹

23. In evaluating whether proper due process has been provided, it is necessary to consider the governmental interest involved and the impact of the agency’s action on a party:

‘[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.’²⁰

The “government function” at issue in this case is determining the just and reasonable level of access rates, which has a direct impact on Qwest. Thus, Qwest clearly has a right under both Code Section 315 and due process to a timely adjudication on the merits in the access charge remand and in particular, on the recommended elimination of the Carrier Charge.

24. The Commission's investigation into Verizon's intrastate access rates has been anything but speedy. As previously noted, this docket is a direct descendant of the *Global Order* issued in 1999, which commenced “the laborious process of implementing access charge reform,”²¹ and AT&T's complaint initiated in 2002, which sought a reduction of Verizon North's intrastate access rates. The record of this case makes clear that the Commission and the parties have already twice invested in the most expensive form of Commission investigation, a trial-type proceeding with testimony and briefing

¹⁹ *Barasch v. Pa. Pub. Util. Comm'n*, 546 A.2d 1296 (Pa. Cmwlth. 1988).

²⁰ *Id.*

²¹ Order at 20-21.

followed by an ALJ decision.²² Moreover, an outcome on the merits will be further delayed as a result of the Commission decision in the January 8th Order to re-examine Verizon's intrastate access rates one year from now, with the requirement of a third round of evidence, briefing and ALJ recommendation. Such a delay could ultimately result in a decision on the merits that is 10 years after the issuance of the *Global Order* and the Commission's initial commitment to reduce access charges. Such a delay is a clear violation of Qwest's statutory and due process right to a timely adjudication on the justness and reasonableness of Verizon's intrastate access rates.

25. In this case, the Commission has not acted in a reasonable period of time and this inaction has had a material negative financial impact on Qwest. As a carrier that is certificated to provide interexchange service in Pennsylvania, there is no question that Qwest is harmed by the Commission's failure to substantively address the level of Verizon's intrastate access rates. However, under the current terms of the Commission's January 8th Order, the process to consider such action would not even begin for another year.

26. A delay in rendering a decision on the just and reasonable level of Verizon's intrastate access charges also harms Qwest because such reductions would most likely not be made retroactive. In the aftermath of the July 28, 2004 Order, the Commission rejected Qwest's request to make Verizon's compliance access rate reductions retroactive, even though a significant delay occurred between the order to reduce those rates and the effective date of Verizon's compliance filing. In addition, Chapter 30 of the Code requires any decrease in access rates to be revenue neutral,

²² Hearings on direct, rebuttal and surrebuttal testimony were held in August of 2003. After the Commission's remand, written testimony was again submitted in July of 2005. Main and reply briefs were submitted for the second time in August of 2005.

requiring rate increases to other Verizon services.²³ In a competitive environment, it is unlikely that the Commission would approve a retroactive decrease to Verizon's access rates, given this revenue neutral legal requirement and its impact on other Verizon rates. Thus, any access charge rate relief arising out of this proceeding would most likely only be prospective and would only occur after the Commission has rendered a decision on the just and reasonable level of Verizon's access rates.

27. The Commission is obligated to render a decision on the justness and reasonableness of Verizon's intrastate access rates. Qwest is harmed by the Commission's failure to apply its acknowledged policy of reducing those rates to promote competition and reflect costs. In the *Global Order*, the Commission referred to intrastate access rates as being many multiples of their costs. The Commission has a more than adequate record on which to determine where access rates should be set and has had more than enough time to reach a decision on the merits in this case. Although general rate increase requests under Section 1308 of the Code often contain numerous complex issues, these cases are resolved in seven months of investigation. In this case, the proper level of Verizon's intrastate access rates has been the subject of investigation for over 7 years, and the government function of evaluating the proper level of Verizon's access rates should be completed now.

C. The Commission's January 8th Order violates due process by depriving Qwest of the opportunity to be heard on the potential impact of the filing of the Missoula Plan on the access charge remand proceeding.

28. It is fundamental that procedural due process rights require, *inter alia*, that a party be provided with notice and opportunity to be heard prior to an

²³ 66 Pa. C.S. § 3017(a)

adjudication.²⁴ See *Cmwlth. v Thompson*, 444 Pa. 312 at 316. Due process requires not just "any" hearing, but rather, an "appropriate" hearing. *Fiore v. Commonwealth of Pennsylvania, Board of Finance and Revenue*, 534 Pa. 511, 516, 633 A.2d 1111, 1114 (1993). The United States Supreme Court has stated that the hearing must be "meaningful" and "appropriate to the nature of the case." *Bell v. Burson*, 402 U.S. 535, 542, 91 S. Ct. 1586, 1591, 29 L. Ed. 2d 90, 96 (1971) (citations omitted). Consistent with *Bell*, Pennsylvania courts have recognized that with regard to the opportunity to be heard the "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Cresco, Inc. v. Pa. Pub. Util. Comm'n*, 622 A.2d 997 (Pa. Cmwlth. 1993). Thus, Qwest clearly has a right to a meaningful opportunity to address whether the Missoula Plan should serve as a basis to further delay a decision on the merits in the access charge remand proceeding.

29. The January 8th Order violates due process by denying Qwest a meaningful opportunity to be heard on the impact of the Missoula Plan filing at the FCC as part of the remand proceeding.²⁵ One of the primary justifications for the 1-year stay cited by the Commission was the potential impact of the FCC's Intercarrier Compensation Case and specifically, the Missoula Plan proposal on intrastate access

²⁴ Due process attaches when a liberty or property interest may be affected. *Morrissey v. Brewer*, 408 U.S. 471 (1972). Intervenor Qwest is certificated telecommunications carrier in Pennsylvania that is authorized to provide local exchange and interexchange service in the Commonwealth, and the Commission's decision in this case will have a direct impact on Qwest's Pennsylvania intrastate revenues. Furthermore, the General Assembly has provided Qwest with procedural due process protections. Under Pennsylvania administrative agency law, no adjudication of a Commonwealth agency is valid unless reasonable notice of the hearing and an opportunity to be heard are provided. 2 Pa. C.S. § 504.

²⁵ Qwest concedes that in September of 2006 the Commission did hold a "workshop" on the Missoula Plan. However, consistent with applicable law, the workshop participants were expressly prohibited from commenting on the impact of the Missoula Plan on pending cases, which included the access charge remand proceeding.

rates. However, this justification is improperly based on extra-record evidence as neither Qwest nor the other parties were provided with any opportunity as part of this proceeding to address the potential impact of the Missoula Plan on Verizon's Pennsylvania intrastate access rates.

30. With an opportunity to address this issue, Qwest could have raised numerous arguments to support why the Commission should issue a decision on the merits, regardless of the filing of the Missoula Plan at the FCC. For example, notwithstanding the arguments in the first instance as to the likelihood, or lack thereof, that the Missoula Plan will be adopted, Qwest could have cited to the Commission's powers under Code Section 314 to address the Commission's concerns at pages 34-35 of the January 8th Order that it would be unable to recover under the "Early Adopter" fund.

31. In rejecting Qwest's request that intrastate access rates be in parity with FCC rates, the Commission's Order illogically reasons that Pennsylvania could be penalized by an intercarrier compensation regime crafted by the FCC because the Commission took steps to place intrastate access charges more in line with interstate access rates. Speculation by the Commission as to a negative outcome of the FCC intercarrier compensation docket is not a valid basis on which to allow unjust and unreasonable intrastate access charges to continue. This is particularly true when considering that Section 314 of the Code specifically authorizes the Commission to investigate interstate rates and approach the appropriate federal regulatory body for relief when it is necessary.²⁶ The Commission is already participating in the FCC's intercarrier

²⁶ 66 Pa. C.S. § 314.

compensation docket, has submitted comments to the FCC and can advocate an outcome in that docket that not only avoids harm, but promotes Pennsylvania's interests.

III. REQUESTED RELIEF

32. Reconsideration of the January 8th Order is necessary and appropriate to cure its legal errors. Namely, reconsideration is necessary due to the violation of due process that has occurred as a result of the Commission's failure to issue a timely decision on the merits as to the proper level of Verizon's intrastate access rates. Qwest seeks a ruling on the proper level of Verizon's access rates so that this docket may be concluded. Dating back to the *Global Order*, the Commission has affirmed and reaffirmed its policy of reforming access rates by lowering those rates. As recently as its investigation into the actions of certain RLECs to increase their access rates, the Commission has confirmed this policy.

33. Although Qwest does not agree that the existence of the Intercarrier Compensation Case and the submission of the Missoula Plan justifies the Commission's failure to issue a decision on the merits after years of expensive litigation of this issue, it acknowledges that there is uncertainty as to where FCC rates and policy on access and universal service will go in the next few years. Therefore, a reasonable and acceptable outcome in this case would be to eliminate the fixed carrier access charge, which is the first step of ALJ Fordham's access reform recommendation, and the closing of this docket.²⁷ This partial access reform mitigates the impact of lowering Verizon's rates on other services and is short of the full parity with interstate access rates that Qwest advocated and the ALJ adopted.

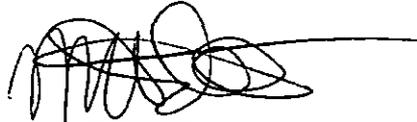
²⁷ Commissioner Fitzpatrick dissent urged elimination of the carrier charge citing the anti-competitive nature of the charge. It did not go so far as to urge a full conclusion to the docket.

34. Closing this investigation docket would provide a significant administrative benefit to the parties and the Commission. By closing out this case, the Commission would be relieved of the ongoing need to reassess as part of this docket whether any further action is warranted, and no further access charge reductions would, in fact, occur at this docket. Moreover, if the Commission re-examines access charges in the future, it could coordinate that investigation with actual FCC action, rather than speculation about potential FCC action, as it has attempted to do in this case.

WHEREFORE, Qwest respectfully requests that the Commission reconsider its January 8th Order entered at the above-captioned docket, adopt ALJ Fordham's recommendation to eliminate Verizon's fixed carrier access charge and finally conclude this investigation of Verizon's intrastate access rates.

Dated: January 23, 2007

Respectfully submitted,



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**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).

VIA FIRST CLASS AND ELECTRONIC

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Date: January 23, 2007



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Counsel for
Qwest Communications Corporation

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COMMONWEALTH OF PENNSYLVANIA

DATE: January 25, 2007

SUBJECT: C-20027195

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *KB*

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

Attached is a copy of a Petition for Reconsideration, filed by Qwest Communications Corporation in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ
OTS

ksb

DOCUMENT
FOLDER

DOCKETED
JAN 25 2007

BTL

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: January 24, 2007	2. BUREAU AGENDA NO. JAN-2007-OSA-0028*
3. BUREAU: Office of Special Assistants	5. PUBLIC MEETING DATE: January 26, 2007
4. SECTION(S):	
6. APPROVED BY: Director: C.W. Davis Mgr/Spvr: Legal Review: A. Arnold 7-8032	5. PUBLIC MEETING DATE: January 26, 2007
7. PERSONS IN CHARGE: R. A. Marinko 3-3930	
8. DOCKET NO.: C-20027195	EFFECTIVE DATE OF FILING: N/A DOCUMENT FOLDER

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. (Verizon North) and Verizon Pennsylvania Inc. (Verizon PA) (**Petition for Reconsideration**)

(b) On January 23, 2007, Qwest Communications Corporation (Qwest) filed, pursuant to 52 Pa. Code Section 5.572, a Petition for Reconsideration of the Commission's Opinion and Order entered January 8, 2007, which stayed Verizon PA's and Verizon North's access charge investigation pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, or for one year from the date of entry of that Order, whichever is earlier.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which grants Qwest's Petition for Reconsideration pending review of, and consideration on, the merits.

DOCKETED
FEB 01 2007

Order Doc. No. 651722v1

Calendar Doc. No. 651711v1

11. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Cawley
 Commissioner Pizzingrilli - Yes
 Commissioner Fitzpatrick - Yes
 Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

BTL

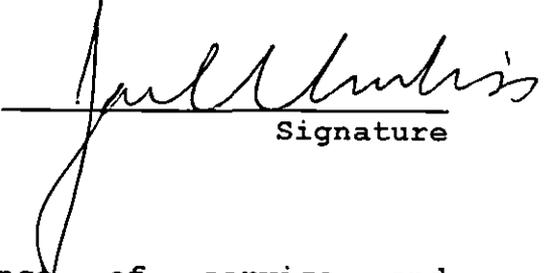
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29 day of Jan, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 26, 2007 at Docket No.C-20027195 on behalf of:

PHILIP F MCCLELLAND JOEL H CHESKIS
SHAUN A SPARKS BARRETT C SHERIDAN
555 WALNUT STREET 5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923

OCA



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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JAN 29 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

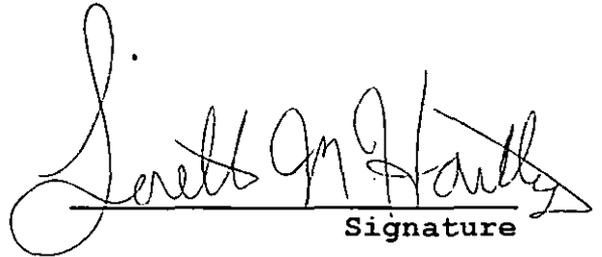
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29 day of January, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 26, 2007 at Docket No.C-20027195 on behalf of:

C HOFFMAN J SIMMS K MELILLO R ECKENRO
PENNSYLVANIA PUBLIC UTILITY COMMISSIO
PO BOX 3265
HARRISBURG PA 17105-3265

OTS


Signature

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Harrisburg, PA 17105-3265

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P.U.C.

2007 JAN 29 PM 2:59

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

DOCUMENT FOLDER

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

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 26, 2007 at Docket No.C-20027195 on behalf of:

JAN 26 2007

W LLOYD S GRAY A JONES ESQUIRES
SUITE 1102 COMMERCE BUILDING
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HARRISBURG PA 17101

OSBA

Signature

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JAN 29 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BA

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29th day of January, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of January 26, 2007 at Docket No.C-20027195 on behalf of:

OFFICE OF ADMINISTRATIVE LAW JUDGES
PO BOX 3265
HARRISBURG PA 17105-3265

ALJ

Therese Buzi
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

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BA

February 2, 2007

Daniel P. Delaney
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Via Hand Delivery

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

ORIGINAL

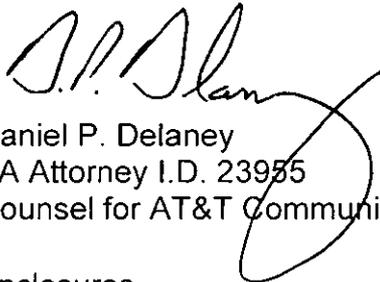
Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. and
Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed for filing please find an original and three copies of the Answer of AT&T Communications of Pennsylvania, Inc. to the Petition for Reconsideration filed by Qwest Communications Corporation in the above captioned matter.

Copies of this document have been served on the parties to this matter as indicated on the enclosed Certificate of Service.

Very truly yours,



Daniel P. Delaney
PA Attorney I.D. 23955
Counsel for AT&T Communications of Pennsylvania, Inc.

Enclosures

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

Docket Number
C-20027195

ORIGINAL

ANSWER OF
AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.
TO QWEST'S PETITION FOR RECONSIDERATION

AT&T Communications of Pennsylvania, Inc. ("AT&T") files this Answer in support of Qwest Communications Corporation's ("Qwest") Petition for Reconsideration in the above-captioned case. The Commission should grant Qwest's Petition and should eliminate the Carrier Charge rate element for both Verizon Pennsylvania Inc. and Verizon North Inc. (collectively "Verizon"). At the same time, the Commission should ensure that Verizon has the ability, should it elect to use it, to recoup lost Carrier Charge revenues from its own end-user customers.

DOCUMENT
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I. QWEST'S PETITION MEETS THE DUICK STANDARD

Qwest's Petition for Reconsideration properly meets the *Duick* standard. A Petition for Reconsideration pursuant to 66 Pa. C.S. §703(g), "may properly raise matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part."¹ A party may not simply

¹ *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (Dec. 17,1985).

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raise the same arguments that the Commission considered prior to issuing its order. The Commission has held:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .²

Qwest's Petition raises arguments that could not have been considered previously by the Commission because, as Qwest correctly argues in its Petition, the Commission's decision relied on factors that were never addressed by the parties. The Commission based its decision to delay access reform partially on "the recent activities at the FCC" and specifically, the Missoula Plan filing which occurred well after the record in this case had been closed.³ The Commission also relied on its November 15, 2006 decision to further delay the Rural Access Charge Investigation,⁴ here again, an action which the Commission took well after the record in this proceeding had been closed. Despite intending to rely on extra-record evidence and activity, however, the Commission did not give the parties to this proceeding any opportunity to comment on the Missoula Plan, recent activity at the FCC or the applicability of the Commission's decision in the rural carrier access case. Thus, Qwest's Petition raises issues that were not previously addressed by the parties and it therefore meets the *Duick* standard.

² *Duick*, 56 Pa. PUC at §59.

³ *Opinion and Order*, January 8, 2007 at 33.

⁴ *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund*, Docket Nos. I-00040105, R-00061377 et al., Order entered November 15, 2006.

II. THE COMMISSION SHOULD GRANT QWEST'S REQUEST TO ELIMINATE THE CARRIER CHARGE

AT&T agrees with Qwest that the Commission erred in its decision to delay further reduction of Verizon's access rates. The Commission's decision to delay action for another twelve months, or until the FCC acts in its intercarrier compensation reform proceeding, is not only contrary to this Commission's stated policy, it also does nothing to resolve competitive market distortions harming Pennsylvania consumers.

Access reform and the elimination of implicit subsidies has been a policy of this Commission for at least the past seven years. This case had its genesis from the 1999 *Global Order*.⁵ In that Order, the Commission recognized the need to eliminate implicit subsidies, and specifically the carrier charge"⁶ At the time of the *Global Order*, the Commission recognized that "there have been various significant regulatory developments in both the federal and state arenas that require the elimination of implicit subsidies."⁷ Because the Commission did not fully reduce access rates to cost in the *Global Order*, the Commission ordered an investigation by January 2001 to "presumably eliminate all subsidies in the access charge rate structure."⁸ The Commission therefore anticipated removing all subsidies from access charges by 2001 – six years ago.

In remanding this case for a second round of hearings, the Commission stated that, "consistent with the Telecommunications Act of 1996, as well as our *Global Order*,

⁵ See *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.Cmwlth. 2000), *vacated for lack of jurisdiction, MCI WorldCom, Inc. v. Pa.PUC* 844 A2d 1239 (Pa. 2004) ("Global Order").

⁶ "We believe that the sooner that we resolve the reduction and possible elimination of the carrier pool, the better it would be for the competitive environment in Pennsylvania., *Global Order at 59*.

⁷ *Id.* at pg. 26 (emphasis added).

it has been this Commission's policy to work toward the elimination of implicit subsidies that may exist in access charge rates."⁹ The Commission also found that "based on our previous goal in the *Global Order* that we may eventually dissolve the Carrier Charge, we believe it is in the best interest of the public for the ALJ to address and recommend a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge in the next phase of the investigation."¹⁰

There is no question that interexchange carriers ("IXCs") face a significant competitive disadvantage in the market as a result of the disparate call termination rates paid by different classes of carriers. AT&T and other interexchange carriers have been losing traffic, and are continuing to lose traffic, to wireless carriers, VoIP providers and e-mail, not because those technologies are more efficient or provide a higher quality of service, but because those technologies are not saddled with the access costs that burden the IXCs. The current access charge system, where the implicit subsidies intended to help keep basic local telephone service affordable are leveled *exclusively* on the wireline IXCs, is both discriminatory and, ultimately, unsustainable. The Commission should act now to curtail this regulatory favoritism.

Doing so will benefit Pennsylvania consumers. For one thing, a reduction in access expenses in Pennsylvania will generate reductions in wireline long distance rates for Pennsylvania consumers. Those reductions, in turn, will force competing technologies to look for ways to reduce their costs, enhance their efficiency, deliver innovative new offerings and, in general, better meet the needs of Pennsylvania

⁸ *Id.* at pg. 59 (emphasis added).

⁹ Phase I Order at 19 (footnote excluded).

communications users, both business and residence. That is how competitive markets operate. Regulatory handicapping, however, such as imposing costs on one class of carriers that others do not face, distorts the market. When one class of competitors faces regulatory burdens others do not, the firms competing with the burdened class do not have to try as hard to win customers.

In its January 2007 decision, the Commission did not address the inherently discriminatory and anticompetitive effects of having different schemes of intercarrier compensation for the same type of traffic. The Commission did not address the dramatic effect such an unlevel playing field has had on IXCs, and the effects of continuing to perpetuate this discriminatory treatment through further delay in access reform. Ending years of unfair competitive advantages is certainly a compelling policy goal that should be a priority for this Commission.

AT&T agrees with Qwest that the Commission's justifications for further delaying access reform in Pennsylvania are not valid. Most importantly, as Qwest's Petition emphasizes, the Commission relied on matters that the parties did not have an opportunity to discuss or provide comments on. As a result, the Commission's decision to delay further access reductions due to recent activity at the FCC and the rural access charge investigation was erroneous and should be reversed.

As history has proven, there is no way to predict when the FCC will act, or what the FCC will do when it does act. At the time this case was litigated in mid-2005, many parties insisted that the FCC was extremely close to acting on intercarrier compensation reform and therefore urged this Commission to delay issuing a decision on Pennsylvania access reform. It has now been nearly two years and the FCC has still not acted, and it is

¹⁰ *Id.* at 20.

not clear when it will act. Even when the FCC does act, it is nothing but pure speculation to assume that reducing access rates in this proceeding will somehow impair Pennsylvania's ability to draw from an undetermined federal compensation reform fund. Such conclusions *falsely assume that the FCC will punish states who have done the right thing by reducing access rates.* There is simply no evidence or basis for concluding that Pennsylvanians will be harmed by reducing access rates at this time. To the contrary, all of the evidence presented in this case demonstrated that reduced access rates will benefit consumers and competition.

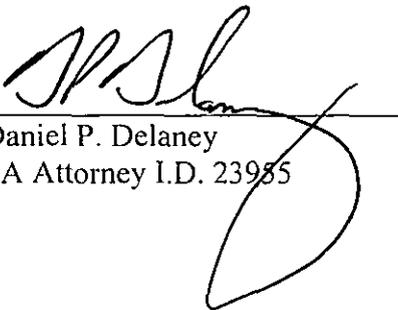
The Commission also erred in relying on its decision in the rural access investigation as a basis for delaying action in this case. The rural access case is at a completely different posture than this matter and therefore should not have been used as a basis for delaying a reduction in Verizon's access rates. Unlike in this case, there has been no evidence presented in the rural access case, meaning that, in the rural proceeding, the Commission would have to develop an extensive record before it would be in a position to render a decision, including, for example, an analysis of how its action would affect the small companies and/or average schedule companies that receives USF monies. In this case, however, there has been significant evidence presented throughout multiple phases, such that the Commission has a fully developed record by which it can make a decision without additional delay. And, as the Commission well knows, Verizon is neither a small company nor one that receives USF payments.

AT&T supports Qwest's request for this Commission to reverse its January 8, 2007 Order, eliminate Verizon's Carrier Charge, and enable Verizon to replace the implicit subsidies it will lose with explicit end-user charges. This Commission

recognized the need to eliminate the Carrier Charge over seven years ago. It perpetuates an unjust, discriminatory and unwarranted burden on wireline IXCs that severely hinders their ability to compete in the Pennsylvania telecommunications market.

WHEREFORE, for the reasons stated herein, AT&T Communications of Pennsylvania, Inc. requests that the Commission grant Qwest's Petition for Reconsideration, eliminate Verizon's Carrier Charge, and afford Verizon an opportunity to recoup revenues through explicit charges on its end-user customers, should Verizon find it necessary to do so.

Respectfully submitted,



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Dated: February 2, 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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AT&T Communications of
Pennsylvania, Inc.

v.

Verizon North Inc. and Verizon
Pennsylvania Inc.

Docket No. C-20027195

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed, in accordance with the requirements of Section 1.54 (relating to service by a party).

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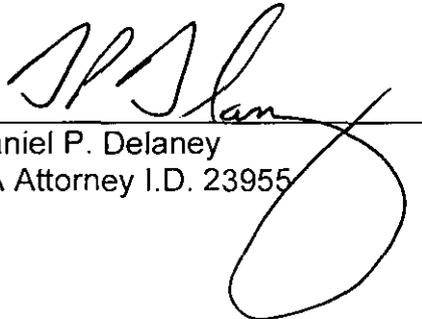
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Dated: February 2, 2007



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ORIGINAL

February 2, 2007

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**DOCUMENT
FOLDER**

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

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Answer in Opposition to the Petition for Reconsideration of Qwest Communications Corporation 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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CERTIFICATE OF SERVICE

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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 Answer in Opposition to the Petition for Reconsideration of Qwest Communications Corporation, 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 2nd day of February, 2007.

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***indicates receiving proprietary
information if applicable**

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
FEB 06 2007

AT&T Communications of Pennsylvania :
Inc. :

v. :

Verizon North Inc. :

Docket No. C-20027195

ORIGINAL

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE IN OPPOSITION
TO THE PETITION FOR RECONSIDERATION OF
QWEST COMMUNICATIONS CORPORATION

Pursuant to Section 5.572(e) of the Pennsylvania Public Utility Commission ("Commission") regulations, the Office of Consumer Advocate ("OCA") hereby files this Answer in Opposition to the Petition for Reconsideration filed by Qwest Communications Corporation ("Qwest") on January 23, 2007. In response to the Petition, the OCA submits as follows:

I. INTRODUCTION

On January 8, 2007, the Commission entered an Order in the above-captioned proceeding staying the proceeding pending the outcome of the intercarrier compensation proceeding before the Federal Communications Commission ("FCC")¹ regarding the same subject, or for a period of one year, whichever is earlier. In response to that January 8th Order, Qwest filed the instant

¹ In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92. Further Notice of Proposed Rulemaking (rel. March 3, 2005) ("ICC Proceeding").

Petition for Reconsideration on January 23, 2007. As discussed further below, Qwest argued in its Petition that, among other things, “the Order violates due process by depriving Qwest of a meaningful opportunity to be heard on the impact of the Missoula Plan filing in the federal intercarrier compensation docket.” Petition at 2.² Qwest therefore asks the Commission to reconsider its January 8th Order. On January 26, 2007, the Commission entered an Order granting Qwest’s Petition for purposes of maintaining jurisdiction if a Petition for Review is timely filed and pending review and consideration of Qwest’s Petition on the merits.

In response to Qwest’s Petition, the OCA files this Answer to the merits of that Petition.

II. SUMMARY

Qwest’s Petition for Reconsideration must be denied on the merits. The Commission has correctly determined to stay the instant proceeding pending the outcome of the FCC’s intercarrier compensation (“ICC”) proceeding, or one year, whichever is earlier. It would not be sound public policy, and in fact may prejudice Pennsylvania consumers, for the Commission to modify Verizon’s intrastate access rates in this proceeding in advance of any resolution by the FCC of the complex ICC issues that the FCC continues to consider. Doing so could, among other things, lead to higher rates for Pennsylvania consumers purchasing protected noncompetitive local services. During the course of the litigation in this proceeding, the parties addressed the ICC proposal advanced by the Intercarrier Compensation Forum (“ICF”).³ The ICF and the Missoula Plan share many of the same features. In fact, the introduction of the

² The Missoula Plan proposal was submitted to the FCC in the ICC proceeding by a group of telecommunications companies as a comprehensive approach to unify intercarrier charges for the majority of telephone lines and moves all intercarrier rates charged for all traffic closer together. The Missoula Plan contains provisions that affect matters that are under state jurisdiction.

³ 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 advocated for a reduction in large telephone companies’ access charges, a uniform regime that applies the same rate consistently across all carriers, technologies and services and preempts intrastate access regimes.

Missoula Plan does not raise any new significant issues that Qwest has not already had an opportunity to respond to in this phase of the remanded proceeding. The same concerns set forth in the PUC order regarding taking action in advance of the FCC ruling on the ICF proposal would also generally apply with regard to an FCC ruling concerning the current consideration of the Missoula Plan.

The Commission must also reject Qwest's proposal to close this docket in exchange for an elimination of the carrier charge. Qwest offers no new arguments concerning why the carrier charge should be eliminated that it has not already advanced in the underlying proceeding. The carrier charge is an efficient cost recovery mechanism and should not be eliminated at this time.

Finally, Qwest's Petition does not offer any valid reason why the Commission was incorrect in its review of the pending Missoula Plan and should be rejected.

III. ANSWER

A. The Commission's Decision To Stay This Proceeding Is Sound And Should Not Be Disturbed.

In its Petition, Qwest argues that the Commission's January 8th Order violates its due process rights by depriving Qwest of the opportunity to be heard on the potential impact of the filing of the Missoula Plan in the FCC's ICC proceeding on this access charge remand proceeding. Petition at 15-18. More specifically, Qwest argues that it "clearly has the right to a meaningful opportunity to address whether the Missoula Plan should serve as a basis to further delay a decision on the merits in the access charge remand proceeding." Id. at 16. Qwest continues: "With an opportunity to address this issue, Qwest could have raised numerous arguments to support why the Commission should issue a decision on the merits, regardless of the filing of the Missoula Plan at the FCC." Id. at 17. Qwest's arguments are without merit and

should be rejected. The Commission's decision to stay the instant proceeding is sound and should not be disturbed.

The OCA has demonstrated in the remanded proceeding at this docket that the Commission should wait for the FCC to act on its ICC proceeding regarding what access reductions may be appropriate because some of the plans presented to the FCC for consideration in that proceeding will impact both interstate and intrastate access rates. OCA M.B. on Remand at 5-17. During the course of the litigation, there was no question that the ICF plan being considered by the FCC would affect intrastate access rates. Many of the proposals submitted to the FCC would likely have a substantial impact on intrastate access reform, the very issue at the heart of this proceeding. Id. at 6. The OCA noted that the FCC may, in fact, seek to preempt state action on the matter of intrastate access charges. Id. at 5-9. In particular, Qwest itself has advocated in its Comments to the FCC in that proceeding that the FCC has the authority to adopt a plan that affects intrastate intercarrier traffic. Id. at 7-8. As explained in the January 8th Order, these same features have raised Commission concerns regarding the currently pending Missoula Plan.

The OCA has also previously noted that it would not be sound public policy, and in fact would prejudice consumers, for the Commission to modify Verizon's access rates in this proceeding in advance of the FCC proceeding because doing so could lead to *higher* rates for Pennsylvania consumers purchasing protected noncompetitive local services. Id. at 9-13. If the Commission lowers Verizon's intrastate access rates now through a revenue neutral offsetting increase in basic local rates, Pennsylvania consumers could also pay for the intrastate access rate reduction through an increase in the federal Subscriber Line Charge ("SLC") at the same time. Id. at 9. If any Commission action is not timed correctly with FCC action, both the FCC's and

this Commission's proposed offsetting local rate increases may each pay for the same Pennsylvania intrastate access reductions. Id. at 9-10. Vice Chairman Cawley recognized this situation when he noted in the rural access charge investigation that "ratepayers may bear the same burden twice from the same reduction in intrastate access charges if such reductions are not simultaneously coordinated between this Commission and the FCC." Id. at 10.⁴ The rural access charge investigation is also currently stayed pending the outcome of the FCC's ICC proceeding. Again, the Commission noted similar concerns regarding the Missoula Plan.

The OCA has demonstrated that it would not be sound public policy for the Commission to further adjust Verizon's access rates in this remanded proceeding in advance of the FCC proceeding because doing so may foreclose an opportunity for Pennsylvania to receive federal Universal Service Funds ("USF"). Id. at 14. It is clear that the higher the intrastate access charges are going into such federal reform, the more likely that a state will qualify for additional USF funds flowing from the FCC Order. Id. If The Commission acts prior to the FCC, such USF funding will be less likely to come to Pennsylvania. Id. The OCA also recommended that the Commission wait to further reduce Verizon's access charges because waiting will further diminish the amount of revenue required to offset access reductions. Id. at 15-16. The record evidence in this proceeding demonstrates that total access revenues are declining and therefore the amount of revenues that must be recovered to fund a particular access rate reduction will also decline. Id. at 15.

The OCA emphasizes that the ICF and Missoula Plan each share these common problems. These same reasons in support of a stay of the instant proceeding apply in light of the FCC's consideration of the Missoula Plan that the Commission mentions in its January 8th Order.

⁴ Quoting, Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers, and the Pennsylvania Universal Service Fund, Docket No. 1-00040105 (Motion of Vice Chairman James H. Cawley).

Many of the same issues that support staying the instant investigation that were previously addressed in this proceeding are also present in the Missoula Plan. The Missoula Plan seeks to unify intercarrier compensation rates, provide an ability to recover those reduced rates through explicit means, move rates for all traffic closer together and establish uniform default interconnection rules. As with other proposals the FCC is considering in its ICC proceeding, virtually all aspects of the Missoula Plan could have a significant impact on access reform. The Missoula Plan will affect both interstate and intrastate access rates and both interstate and intrastate USFs. Vice Chairman James H. Cawley has previously recognized that the Missoula Plan contains provisions “affecting matters that are under this Commission’s jurisdiction such as the setting of intrastate carrier access charges.”⁵

The Missoula Plan seeks to eliminate differences between intrastate access, interstate access, and reciprocal compensation or intercarrier compensation rates depending on the type of carrier. Carriers’ SLCs may change and a new Restructure Mechanism to help carriers replace revenues lost as a result of the plan will be instituted. It would be unreasonable, unproductive and inefficient for this Commission to further reduce Verizon’s access charges in advance of the FCC’s consideration of the Missoula Plan, particularly in light of the potential for the FCC to preempt state action on intrastate access regulations. Even if the FCC does not fully preempt state commissions in this area in the ICC proceeding, it may offer guidelines to the states for access reform or encourage other reforms through incentive mechanisms in a manner that could significantly impact Pennsylvania carriers and consumers.

The OCA emphasizes that, while the plan endorsed by parts of the industry may have changed from the ICF to the Missoula Plan, many of the competing proposals and the issues

⁵ Re: FCC Intercarrier Compensation – Workshop and Solicitation of Comments on the Missoula Plan, Docket No. M-00061972 (Motion of Vice Chairman James H. Cawley).

themselves remain the same. The high potential for pending FCC action in this area and on these same issues warrants the stay imposed by this Commission on January 8th regardless of whether the stay is based on the ICF or the Missoula Plan.

As such, Qwest's Petition for Reconsideration should be denied on the merits because Qwest has already had an opportunity to address these same issues in this proceeding. There is nothing in the Missoula Plan that is relevant to a request for reconsideration that Qwest did not already have an opportunity to address in this remanded proceeding in light of the other plans that were already being considered by the FCC.

Moreover, Qwest has already argued many of the issues now appearing in the current Petition. Qwest previously has argued that lowering Verizon's intrastate access rates achieves certain public policy goals regarding competitive neutrality. Qwest M.B. on Remand at 8-22. As discussed further below, Qwest also previously argued that the Commission should eliminate the carrier charge in this proceeding and that Verizon's intrastate access rates must be at parity with its interstate access rates. Qwest R.B. on Remand at 3-11. Qwest argued that reducing Verizon's intrastate switched access rates is consistent with FCC policy (even while the FCC was determining what that policy is). Each of Qwest's arguments in response to the other plans being considered by the FCC is applicable to the Missoula Plan.

In light of these arguments already in the record of this proceeding, the Commission was correct in staying the proceeding. The Commission's January 8th Order was sound public policy and based on substantial record evidence. The Missoula Plan was not sufficiently distinct from the other plans considered by the FCC in its intercarrier compensation plan such that Qwest was disadvantaged by not being able to address the specific issues of the Missoula Plan on this proceeding. The Commission's decision in its January 8th Order could have easily been based on

the other numerous plans that the FCC was considering, other than the Missoula Plan. The general issues of preemption, double-recovery, etc. are virtually identical and the fact that the Commission's decision referred to the Missoula Plan as the basis for its decision in its January 8th Order was not significant.

Any further development of an evidentiary record in this proceeding at this time will likely become moot or outdated given the numerous issues likely to be considered by the FCC as it reviews the Missoula Plan and other plans it is considering in its ICC proceeding. If changes are made to Verizon's intrastate access rates and the Pennsylvania USF in this proceeding, Verizon's consumers, who have already encountered local service increases in order to offset prior intrastate access rate reductions, may receive no credit for such reform under the Missoula Plan. Furthermore, consumers may face increased SLCs or other rate increases independent of whatever action this Commission takes.

As with the other plans the FCC is considering in its ICC proceeding, Pennsylvania carriers and consumers will lose the opportunity to benefit fully from increased federal funding simply because the Commission may have moved too quickly in reducing their access rates before the Missoula Plan was put in place. Funding from the Missoula Plan's Restructuring Mechanism may be reduced significantly or eliminated entirely for some carriers, and funding from Early Adopter Funds will not replace local Pennsylvania rate increases. It would therefore not only be prudent to stay the current proceeding, as the Commission has done, but it would also be sound public policy to wait until the FCC has addressed these issues in its proceeding.

Therefore, the Commission was correct in its January 8th Order in staying the instant proceeding pending the outcome of the intercarrier compensation proceeding before the FCC

regarding the same subject, or for a period of one year, whichever is earlier. The Commission should affirm its decision by dismissing Qwest's Petition for Reconsideration.

B. Qwest's Suggestion That The Record In This Proceeding Can Be Closed If The Carrier Charge Is Eliminated Is Without Merit And Should Be Rejected.

In its Petition, Qwest argues that "a reasonable and acceptable outcome in this case would be to eliminate the fixed carrier access charge, which is the first step of ALJ Fordham's access reform recommendation, and the closing of this docket." Petition at 18-19. This argument is a reiteration of Qwest's prior argument in this proceeding that intrastate access rates should match interstate rates where there currently is no interstate carrier charge. *See*, Qwest Exc. at 8. However, this argument should be rejected because there is substantial record evidence in this proceeding that demonstrates that the carrier charge is an efficient cost recovery mechanism and should not be eliminated.

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 makes a contribution to the shared cost. The carrier charge is not a subsidy because it is a "payment towards partial recovery of the shared costs of the loop" and "cannot be a subsidy to the local residential customers because the rates for local residential service are above the incremental cost of service." OCA St. 1R at 18.

The carrier charge is efficient because the loop charges should be flat-rated rather than recovered through a per minute rate because loop costs do not vary with usage. *See*, In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-292 (rel. May 16, 1997) at ¶ 6. In fact, the record in this proceeding demonstrates that interexchange carriers have imposed flat-rated charges that will collect more than the carrier charges in some cases. OCA St.

1R at 19.⁶ *Collecting traffic-sensitive costs through a non-traffic sensitive rate element distorts price signals and the situation is of particular concern because the interexchange carriers' charges are increasing even as flat rate access charges are declining. Id.*

As such, the OCA submits that the carrier charge need not be eliminated or reduced, despite Qwest's position that it will accept the elimination of the carrier charge in exchange for closing the record. The carrier charge is an efficient cost recovery mechanism. It is reasonable to collect this revenue through the carrier charge to spread the cost of using the network amongst the users of the network. Moreover, the effect of eliminating the carrier charge while other FCC ICC revisions are pending presents the same type of potential for harm that support the application of a stay.

The Commission should affirm its January 8th decision by dismissing Qwest's Petition for Reconsideration.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Commission reject the Petition for Reconsideration filed by Qwest Communications Corporation in response to the Commission's Order entered January 8, 2007 in the above-referenced proceeding. The Commission correctly determined in the January 8th Order to stay

⁶ For example, record evidence demonstrates that AT&T charged its customers a \$1.95 in-state connection fee and MCI also had a \$1.95 in-state access recovery fee to recover Pennsylvania access charges. OCA St. 1R at 19. Dr. Loube noted the inefficiencies of such non-traffic sensitive charges because they were greater than Verizon's \$0.58 carrier charge and therefore recovered more than the Verizon carrier charge. *Id.*

the instant proceeding pending the outcome of the FCC's Intercarrier Compensation Proceeding regarding the same issues or for one year, whichever is earlier.

Respectfully submitted,



Joel H. Cheskis (Atty I.D. # 81617)
Assistant Consumer Advocate

For: Irwin A. Popowsky
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Dated: February 2, 2007
92520

Suzan DeBusk Paiva
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February 2, 2007

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Via UPS Overnight Delivery

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

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 the original and three copies of the Answer of Verizon Pennsylvania Inc. and Verizon North Inc. to the Petition for Reconsideration of Qwest Communications Corporation, in the above-captioned matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Suzan D. Paiva/gob
Suzan D. Paiva

**DOCUMENT
FOLDER**

SDP/slb
Enc.

DOCKETED
FEB 05 2007

Via E-Mail and First Class USPS
cc: The Honorable Cynthia Fordham
Attached Certificate of Service

BTL

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.' and Verizon North Inc.'s Answer to the Petition for Reconsideration of Qwest Communications Corporation, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 2nd day of February, 2007.

VIA E-MAIL AND FIRST CLASS USPS

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC. TO THE
PETITION FOR RECONSIDERATION
OF QWEST COMMUNICATIONS CORPORATION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date: February 2, 2007

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Attorney for Verizon Pennsylvania Inc. and
Verizon North Inc.

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FEB 05 2007

INTRODUCTION

The Petition for Reconsideration (“Reconsideration Petition” or “Reconsideration Pet.”) of Qwest Communications Corporation (“Qwest”) does not present anything new to warrant the Commission reconsidering its Order entered on January 8, 2007 in this matter (the “Order”). Even if it did present new arguments, Qwest’s filing still offers no convincing rationale for the Commission to rescind or otherwise modify its Order. Accordingly, the Reconsideration Petition should be denied.

Contrary to Qwest’s contentions, the Commission has already required major reductions in the access charges of Verizon Pennsylvania Inc. and Verizon North Inc. (collectively “Verizon” or “the Verizon companies”) during the seven years since the Commission’s 1999 *Global Order*. As Verizon reminded Qwest in its letter to the Commission dated May 31, 2006, Verizon’s intrastate access charges have been reduced by approximately \$140 million *per year* since the *Global Order*. These reductions add up to a cumulative decrease of over \$600 million from 2001-2006. Indeed, the present proceeding is “on remand” precisely because the Commission previously entered an order on July 28, 2004 in which Verizon’s access charges were substantially reduced and restructured, effective February 1, 2005. On remand, the Commission ordered further review of access charges. Accordingly, Qwest’s repeated mischaracterizations of the Commission’s major reductions to Verizon’s access charges since the *Global Order* ring hollow. The Commission’s decision to order a temporary stay of this proceeding works no injustice on Qwest.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ARGUMENT

I. QWEST'S RECONSIDERATION PETITION RAISES NO NEW ARGUMENTS.

Qwest quotes from the Commission's opinion in *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. PUC 553 (1982), wherein the Commission stated, "[a] petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.... [P]arties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Id.* at 559 (internal quote marks omitted). Qwest's quotation omitted the Commission's very next sentence from the *Duick* opinion, where the Commission further explained, "[a]bsent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error." *Id.* In other words, to justify revisiting and rescinding a prior order, the Commission expects a party seeking such relief to present it with some new consideration that the Commission did not already hear in reaching its initial decision, not merely to rehash old arguments or disagree with the Commission's decision.

Qwest failed to do so. Its Reconsideration Petition does not present any new argument that the Commission had not already considered. Qwest essentially argues two points in its Reconsideration Petition to conclude that the Order does not comport with due process, but neither of these two points is new. First, it suggests that the

Commission's decision for a temporary stay of this access charge proceeding unlawfully delays further access charge changes. Second, it claims that it has not had the opportunity to address the impact on this case of the so-called "Missoula Plan" proposal from the Intercarrier Compensation proceeding pending before the Federal Communications Commission ("FCC").

Qwest has already made these arguments and the Commission has already considered both in reaching its Order. First, Qwest has argued frequently that the Commission should not delay bringing this proceeding to a final closure through lowering Verizon's access charges. *See, e.g.,* Replies of Qwest to Exceptions to Recommended Decision on Remand at 3, 8, Docket No. C-20027195 (Jan. 25, 2006) ("*Qwest Replies to Exceptions*") (arguing against "continuing to delay access charge reform" and against the alleged "attempts to delay the long overdue access charge reform in Pennsylvania" by Verizon, the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA")).

Second, the "Missoula Plan" is just one of many proposals presented to the FCC in its Intercarrier Compensation proceeding. Indeed, Qwest seems to understand well the limited significance, both qualitative and quantitative, of proposals before the FCC; it described to this Commission another such proposal before the FCC as "merely a proposal submitted to the FCC, not a mandate[] adopted by the FCC" and only "one of the numerous proposals" before the FCC.¹ Exceptions of Qwest to Recommended

¹ These arguments included in Qwest's brief – even though they pre-dated the filing of the Missoula Plan itself – refute Qwest's claim now in its Reconsideration Petition that "Qwest was denied the opportunity to explain that the Missoula Plan proposal is only one plan of many that is currently being considered by the Federal Communications Commission[] ('FCC') and that there is no probative evidence the plan will be adopted." Reconsideration Pet. at 2. On the contrary, Qwest had already explained explicitly in this case that there were "numerous" proposals before the FCC and that those proposals are not necessarily what the FCC may ultimately adopt.

Decision on Remand at 6, Docket No. C-20027195 (Jan. 9, 2006) (“*Qwest Exceptions*”). Here, the Commission’s Order did not depend on the Missoula Plan per se – rather, it depended on the pendency of the FCC’s proceeding in which the Missoula Plan and numerous other proposals are being considered. Though it is certainly true that the Missoula Plan itself was not filed in the FCC proceeding until after the parties in the instant proceeding had filed their exceptions to the Recommended Decision, the parties here had already argued in their briefs why the pendency of the FCC Intercarrier Compensation proceeding and its many proposals should, or should not, affect the timing and substance of access charge changes in Pennsylvania. *See, e.g., id.* at 6 (arguing against “[i]naction on the Recommended Decision on Remand while the FCC proceeds,” against “[k]eeping Verizon’s intrastate access rates in transition for another year or two” based on issues being considered by the FCC, and against “[u]sing a proposal submitted to the FCC that has yet to be adopted by the FCC”); *Qwest Replies to Exceptions* at 10 (urging the Commission not to “wait on the FCC”).

Because the Commission took into account both of the points that Qwest has already briefed in this case, the Reconsideration Petition presents no novel arguments, and the Order should not be disturbed on reconsideration.

II. THE COMMISSION’S DECISION TO STAY THE PROCEEDING TEMPORARILY PENDING FCC ACTION WAS WELL WITHIN THE COMMISSION’S DISCRETION.

Even assuming that Qwest’s Reconsideration Petition had presented new arguments to the Commission – which it did not – the Reconsideration Petition does not provide any convincing rationale for the Commission to reach a different result than it ordered on January 8, 2007. Qwest claims that it is deprived of due process in the

absence of an immediate final decision and closure of this proceeding, yet that claim ignores both the history of access charges in Pennsylvania and the nature of the actual decision in the Order. Absent exceptional statutory deadlines, agencies are generally afforded discretion regarding the timing of regulatory actions. “[E]ven if an agency considers a particular problem worthy of regulation, it may determine for reasons lying within its special expertise that the time for action has not yet arrived.... The circumstances in the regulated industry may be evolving in a way that could vitiate the need for regulation” *Natural Res. Def. Council v. SEC*, 606 F.2d 1031, 1046 (D.C. Cir. 1979). Pennsylvania courts have recognized an “inherent power of administrative agencies to control their own dockets.” *Snyder Mem’l Health Ctr. v. Department of Pub. Welfare*, 898 A.2d 1227, 1229 (Pa. Commw. Ct. 2006). And, although an agency’s discretion to control its own docket is not unfettered and, to be sure, not always as broad as a court’s, nevertheless a tribunal’s “broad discretion to stay proceedings” is “incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

The history of Commission action on Verizon’s access charges in the Commonwealth is not one of years of inattention or inaction as Qwest suggests. As described above, Verizon’s access charges have been reduced by approximately \$140 million in annual revenue since the 1999 *Global Order*. These reductions have been driven by the efforts of the Commission, starting – but hardly ending – with the *Global Order*. The Commission held hearings and received testimony and briefs regarding Verizon’s access charges in 2003, with Qwest’s participation. *See* Order at 5. The Administrative Law Judge (“ALJ”) issued a recommended decision in November 2003, and, following exceptions, the Commission entered its order on July 28, 2004 accepting

Verizon's proposal to reduce and restructure Verizon's access charges. *Id.* at 6. The July 28, 2004 order also remanded the case for further record development before the ALJ and to address certain parties' arguments on whether additional future reductions were necessary. On remand, another hearing was held in 2005, and more evidence and briefs were submitted, including by Qwest. *Id.* at 8-9. The ALJ issued a recommended decision on remand in December 2005, and exceptions and replies were submitted in 2006, including by Qwest. *Id.* at 9. At the same time, the Commission and parties were all keenly aware that the FCC was examining access charges nationwide in its Intercarrier Compensation proceeding and that proposals under consideration included federal preemption of intrastate access charge regulation. Verizon and Qwest were among the roughly 100 parties that filed comments in the FCC's proceeding in 2005. *Id.* at 12-13.

Against this backdrop of extensive activity on access charges by both the state and federal commissions, the Commission is clearly not delaying unduly further consideration. The Commission ordered only a temporary stay of its own proceedings in recognition of the potential impact of the ongoing FCC proceedings. The stay is to remain in effect only until the earlier of an FCC decision or twelve months, absent further order. In the meantime, the Commission Staff must monitor developments in the FCC proceedings. The parties must submit status reports to the Commission concerning common or related matters between the state and federal proceedings. Rather than abandoning its consideration, the Commission has chosen, as it should, to continue to evaluate the reasonableness of rates in the context of the wider interests at stake, given the various proposals before the FCC. For example, absent a coordinated approach, the Commission has expressed genuine concern about such possible consequences as

excessively increased local exchange rates (so-called “double-recovery”), unnecessary administrative complexity, loss of (or decrease in) federal support for Verizon’s Pennsylvania operations, and increased burden on Pennsylvania vis-à-vis other states to support federal universal service mechanisms. *Id.* at 34-37. The reasonableness of Verizon’s access rates cannot be properly evaluated with feigned blindness to the ongoing FCC proceeding.

III. QWEST HAS HAD, AND WILL HAVE, AMPLE OPPORTUNITIES TO ADDRESS THE IMPACT OF WHAT MAY HAPPEN AT THE FCC, INCLUDING WITH RESPECT TO THE MISSOULA PLAN PROPOSAL.

Qwest’s due process complaints concerning its alleged lack of opportunity to address the Missoula Plan, though different than its complaints about delay, fare no better. “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Barasch v. Pennsylvania PUC*, 119 Pa. Commw. 81, 546 A.2d 1296, 1303 (Pa. Commw. Ct. 1988) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), and *Pennsylvania Coal Mining Ass’n v. Insurance Dep’t*, 370 A.2d 685, 691 (Pa. 1977)), *clarified in part and reargument denied in part*, 550 A.2d 257 (Pa. Commw. Ct. 1988), *appeal denied*, 567 A.2d 655 (Pa. 1989). Generally speaking, Qwest is correct that due process usually calls for notice and an opportunity to be heard, but with an important qualification – “due process requires notice and an opportunity for a hearing, the nature and timing of which may depend on the particular circumstances and interests affected.” *DeFeo v. Sill*, 810 F. Supp. 648, 656 (E.D. Pa. 1993). Under the particular circumstances of this case and the competing interests of all stakeholders (including the public), Qwest has had, and will have, ample opportunities to address the impact of the FCC’s proceedings, including with respect to the Missoula Plan proposal.

First, Qwest itself emphasizes in its Reconsideration Petition that the Missoula Plan is only one proposal out of many that may or may not be adopted by the FCC. Reconsideration Pet. at 2. But Qwest is wrong that it was denied the opportunity to raise that point with the Commission. As noted earlier, Qwest explicitly did argue to the Commission in its exceptions that there have been “numerous proposals” submitted to the FCC (even before the Missoula Plan was added to the pile) and that the Commission should not base its Order here on something that is “merely a proposal ... that has yet to be adopted by the FCC.” *Qwest Exceptions* at 6; *see also* Reply Brief on Remand of Qwest at 5, Docket No. C-20027195 (Aug. 31, 2005) (“*Qwest Reply Brief*”) (“Qwest has also pointed out repeatedly that there are a large number of differing proposals [at the FCC], and it is too early to determine which proposals are under serious consideration.”).

Second, the fact that the Missoula Plan is merely a proposal, which the FCC may or may not adopt, undermines Qwest’s assertion that the Commission unduly based its decision on the Missoula Plan without giving Qwest an opportunity to be heard as to the Plan’s impact. The Commission’s Order mentions the Missoula Plan as one example of the proposals before the FCC which could lead to undesirable consequences for Pennsylvania if the Commission does not coordinate its access charge review with the FCC’s. The “numerous” other proposals before the FCC on which Qwest did comment in its briefs likewise contain similar features that may threaten Pennsylvania with similar undesirable consequences. In short, the Missoula Plan itself was not the underlying basis for the Order; it was the uncertainty and risk inherent in certain features of the Missoula proposal and others like it.

The Commission recognized that the FCC's actions are unknown at this time and may be harmful to the interests of Pennsylvania stakeholders if the Commission acts precipitously in advance of the FCC. And while Qwest may disagree with the Commission's decision for a temporary stay, it certainly had – and loudly exercised – its opportunity to be heard as to whether the Commission ought to wait for the FCC to act on the basis of that uncertainty. In its Main Brief on Remand, Qwest argued against “hold[ing] further access charge reform in Pennsylvania in abeyance until this complex proceeding is fully completed” at the FCC. Main Brief on Remand of Qwest at 26, Docket No. C-20027195 (Aug. 17, 2005). Qwest contended instead that “the Commission can control the uncertainty of the outcome of the Intercarrier Compensation Docket by taking the initiative and minimizing the impact” of access changes “by moving ahead quickly with further access charge reform.” *Id.* at 25. In its Reply Brief on Remand, Qwest argued again that the Commission should proceed with its review of access charges, “REGARDLESS OF THE ACTIVITY AT THE FCC,” and that “The Uncertainty of Whatever the FCC Will Decide” should not slow the Commission. *Qwest Reply Brief* at 5; *see also id.* at 5-6. And again, after the recommended decision was issued, Qwest argued that “[t]he FCC has still not resolved any issues in the intercarrier compensation matter” and that the Commission should not “wait on the FCC.” *Qwest Replies to Exceptions* at 10. Though Qwest may not be satisfied that the Commission decided to stay this case temporarily pending a decision by the FCC based on the uncertainty of the various proposals before the FCC and the potential consequences for

Pennsylvania, Qwest cannot complain that it did not have an opportunity to be heard on this issue in this case.²

Qwest has, accordingly, had ample opportunity to be heard within this case itself to meet due process standards. On top of that, Qwest has had additional opportunities to make its views known to the Commission on the same issue. And though these other opportunities may be beyond the record in this docket, they do help inform “the particular circumstances” of this case and the resulting “nature and timing” of the opportunity to be heard within the case that due process requires. *DeFeo*, 810 F. Supp. at 656. First, the Commission entered an order on August 23, 2006, in which it recognized that the *Missoula Plan* filing may affect Pennsylvania and therefore invited all interested parties, specifically including telecommunications providers, to participate in a public workshop and provide comments and presentations on the *Missoula Plan*. Order, *In the Matter of FCC Intercarrier Compensation Proceedings at FCC in CC Docket No. 01-92: The Missoula Plan*, Docket No. M-00061972 (Pa. PUC Aug. 23, 2006). Qwest had the opportunity to present its views on the plan, including how the proposal may affect access charges in Pennsylvania, yet it chose not to submit written comments or make a workshop presentation.

Second, in the Order, the Commission also expressly based in part its decision to stay this case on the similarities that caused it to stay the Rural ILEC Access Charge Investigation. Order at 36. In doing so, the Commission recognized that, in their

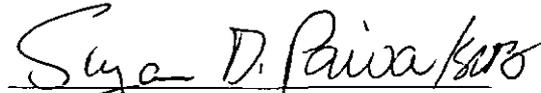
² By order entered on January 26, 2007, the Commission granted the Reconsideration Petition “pending review of, and consideration on, the merits.” Order at 2, Docket No. C-20027195 (Jan. 26, 2007). Thus, even if Qwest previously did not have an adequate opportunity to be heard as to the impact of the *Missoula Plan* to satisfy the threshold of due process (which it did), Qwest has now had more than an adequate opportunity to be heard on this issue through the Commission’s consideration of its Reconsideration Petition.

exceptions to the recommended decision, the OSBA, Verizon, and the OCA had all pointed to the Rural ILEC investigation in support of a similar stay in this case. *Id.* at 28-29. Qwest, of course, had the opportunity to respond to these arguments in its reply to the exceptions, and yet its *Qwest Replies to Exceptions* was conspicuously silent on these arguments. Subsequently, after the Missoula Plan was filed at the FCC in 2006, the Commission decided to extend the stay of the Rural ILEC investigation. Qwest filed an “Answer” in opposition to the Rural ILECs’ motion for a further stay. Answer of Qwest to the Motion to Further Stay, *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Pa. PUC Sept. 12, 2006). In that Answer, Qwest argued to the Commission that the Missoula Plan proposal does not support a further stay of the Rural ILEC Access Charge Investigation. *Id.* at 2, 4, 7-8. Thus, although this Answer was filed in another docket concerning the stay of a different case, the Commission certainly was aware of Qwest’s arguments against a stay with respect to the Missoula Plan when it decided a few months later in the Order in the present case to stay the similar Verizon investigation.

CONCLUSION

For the foregoing reasons, the Commission should deny the Petition for Reconsideration of Qwest Communications Corporation.

Date: February 2, 2007



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Attorney for Verizon Pennsylvania Inc. and
Verizon North Inc.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> April 13, 2007	2. <u>BUREAU AGENDA NO.</u> APR-2007-OSA-0096*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: Legal Review: A. Arnold 7-8032	April 24, 2007 DOCUMENT FOLDER
7. <u>PERSONS IN CHARGE:</u> R.A. Marinko 3-3930	9. <u>EFFECTIVE DATE OF FILING:</u>
8. <u>DOCKET NO.:</u> C-20027195	N/A DOCKETED MAY 01 2007

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. (Verizon North) and Verizon Pennsylvania Inc. (Verizon PA) (**Petition for Reconsideration**)

(b) On January 23, 2007, Qwest Communications Corporation (Qwest) filed, pursuant to 52 Pa. Code Section 5.572, a Petition for Reconsideration of the Commission's Opinion and Order entered January 8, 2007, which stayed Verizon PA's and Verizon North's access charge investigation pending the outcome of the FCC's *Unified Intercarrier Compensation* proceeding at CC Docket No. 01-92, or for one year from the date of entry of that Order, whichever is earlier.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order that denies the Petition for Reconsideration.

11. **MOTION BY:** Commissioner Chm. Holland Commissioner Pizzigrilli - Yes
 Commissioner Fitzpatrick - No
SECONDED: Commissioner Cawley Commissioner

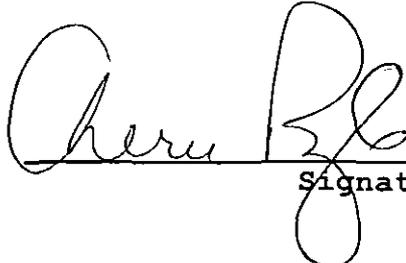
CONTENT OF MOTION: Staff recommendation adopted.

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 25th day of April, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of April 24, 2007 at Docket No.C-20027195 on behalf of:

OFFICE OF TRIAL STAFF
BOX 3265
KEYSTONE BUILDING
2ND FLOOR
HARRISBURG PA 17105-3265



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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07 APR 25 AM 7:09
PA PUC
OFFICE OF TRIAL STAFF

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24 day of April, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of April 24, 2007 at Docket No.C-20027195 on behalf of:

OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
5TH FLOOR
FORUM PLACE
HARRISBURG PA 17101-1923

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APR 25 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

BTL

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 an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of April 24, 2007 at Docket No.C-20027195 on behalf of:

OFFICE OF SMALL BUSINESS ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

APR 24 2007

[Signature Line]

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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APR 25 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

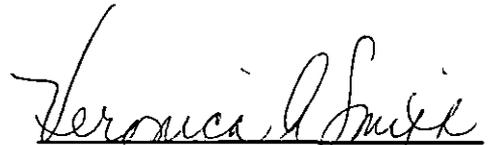
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24th day of April, 2007,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of April 24, 2007 at Docket No.C-20027195 on behalf of:

OFFICE OF ADMINISTRATIVE LAW JUDGE
PA PUBLIC UTILITY COMMISSION
PO BOX 3265
HARRISBURG PA 17105-3265

DOCUMENT
FOLDER


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU
PA PUC

2007 APR 25 AM 11:13

RECEIVED

RECEIVED
OFFICE OF C.A.L.J.
07 APR 24 PM 2:51
PA PUC

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: August 27, 2008	2. BUREAU AGENDA NO. 1167655-OSA-0013
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: C.W. Davis 7-1827 Mgr/Spvr: R.A. Marinko 3-3930 Legal Review: J. Nase 7-3490	September 11, 2008
7. PERSONS IN CHARGE T. Farrar 3-5941	9. EFFECTIVE DATE OF FILING: N/A
8. DOCKET NO.: C-20027195	

10. (a) **CAPTION (abbreviate if more than 4 lines)**
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) AT&T Communications of Pennsylvania, LLC (AT&T) v. Verizon North Inc. and Verizon Pennsylvania Inc. (Verizon)

(b) On March 21, 2002, AT&T filed a Formal Complaint seeking to have Verizon North's access charges reduced to Verizon PA's levels. By Order of December 24, 2002, the Commission bifurcated the generic access charge investigation so that all Verizon matters, including AT&T's Formal Complaint, would be litigated at Docket Number C-20027195 and the rural ILEC access charge investigation would continue being litigated at Docket Number M-00021596. On November 18, 2003, Administrative Law Judge (ALJ) Cynthia Williams Fordham issued a Recommended Decision, to which Exceptions were filed. By an Opinion and Order entered on July 28, 2004, the Commission remanded the case to further develop the record and to address additional issues. ALJ Fordham subsequently issued a Recommended Decision on Remand, to which Exceptions were filed. In an Opinion and Order dated January 8, 2007, the Commission ordered a stay pending further developments in the FCC's *Intercarrier Compensation Proceeding* at CC Docket No. 01-92 or for a period of one year, whichever is earlier. Parties were required to file status reports thirty days prior to the end of the one-year period, or within thirty days after the FCC issued a ruling in the Intercarrier Compensation Proceeding. Status reports were filed by various Parties on December 7, 2007. Along with those status reports, Verizon and Qwest Communications Corporation (Qwest) filed Motions to Stay the proceeding pending further development at the Federal level. AT&T and Sprint opposed the Motions, while Embarq did not oppose an additional Stay.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order that grants Verizon's and Qwest's Motions to issue a further Stay in the instant proceeding, consistent with the discussion therein.

11. **MOTION BY:** Commissioner Chm. Cawley
SECONDED: Commissioner VC Christy
 Commissioner Powelson - Yes
 Commissioner Pizzingrilli - Yes
 Commissioner Gardner - Yes

CONTENT OF MOTION: Staff recommendation adopted.

COMMONWEALTH OF PENNSYLVANIA

DATE: September 12, 2008
SUBJECT: C-20027195
TO: Director, Bureau/Office of Law
FROM: James J. McNulty, Secretary

DOCUMENT
FOLDER

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

The Commission at Public Meeting held September 11, 2008 adopted an order in the above-entitled proceeding.

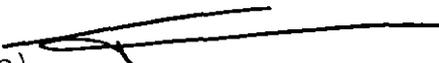
Please direct your attention to the "Ordering Paragraph(s)" for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
2nd Floor Keystone Building

Thank you for your cooperation in this matter.

Receipt acknowledged:

(signature) 

(date) 9-22-08

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2008 SEP 25 AM 8:10
PA. P.U.C.
SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

DOCUMENT
FOLDER

AND NOW, to wit, this 16 day of Sept, 2008,

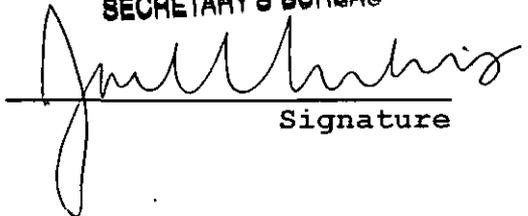
the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of September 12, 2008 at Docket No.C-20027195 on behalf of:

RECEIVED

SEP 17 2008

C-20027195
PHILIP F MCCLELLAND JOEL H CHESKIS
SHAUN A SPARKS BARRETT C SHERIDAN
555 WALNUT STREET 5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

FOLDER

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

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of September 12, 2008 at Docket No.C-20027195 on behalf of:

C-20027195
W LLOYD S GRAY A JONES ESQUIRES
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

SEP 15 2008

PA PUBLIC UTILITY COMMISSION

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> April 28, 2010	2. <u>BUREAU AGENDA NO.</u> 1167655-OSA
3. <u>BUREAU:</u> Office of Special Assistants	5. <u>PUBLIC MEETING DATE:</u> May 6, 2010
4. <u>SECTION(S):</u>	6. <u>APPROVED BY:</u>
6. <u>APPROVED BY:</u> Director: C. W. Davis 7-1827 Mgr/Spvr: R. A. Marinko 3-3930 Legal Review:	
7. <u>PERSONS IN CHARGE:</u> M. Samuel 3-0697	9. <u>EFFECTIVE DATE OF FILING:</u>
8. <u>DOCKET NO.:</u> C-20027195	

- 10. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc. and Verizon Pennsylvania Inc. (**Verizon Access Charge Investigation**)

(b) On 8/12/09, Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (collectively, Verizon), filed a Status Report and Motion to Extend the Stay (Motion) of its Access Charge Investigation. On 8/12/09, AT&T Communications of Pennsylvania Inc., (AT&T) and Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communication of the Mid-Atlantic, Inc. and NPCR, Inc. (collectively, Sprint) also filed Status Reports and Qwest Communications Company filed a letter in lieu of a Status Report. On 9/1/09, Verizon filed an Answer to the Status Reports of AT&T and Sprint, and AT&T and Sprint filed their Answers to Verizon's Motion. On 9/2/09, a Joint Answer was filed by the Pennsylvania Telephone Associations and The United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order which denies Verizon's Motion for further stay and assigns the matter to the Office of Administrative Law Judge for the conduct of any necessary hearings and the issuance of a Recommended Decision on all outstanding matters.

Law Bureau Concurrence:


 Elizabeth H. Barnes
 Assistant Counsel

11. MOTION BY:	Commissioner Chm Cawley	Commissioner
		Commissioner Gardner - Yes
SECONDED:	Commissioner VC Christy	Commissioner Powelson - Yes

CONTENT OF MOTION: Staff recommendation adopted.



h6p 5-29-10
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 19, 2010

Mary Jane Phelps, Director
Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

ORIGINAL

Re: Notice
In re: AT&T Communications of PA, Inc. v.
Verizon North Inc., and Verizon PA, Inc.
Docket No. C-20027195

Dear Ms. Phelps:

Enclosed please find two (2) copies of the Commission's order in the above-captioned proceeding. The Commission requests that this order be published as a notice in the Pennsylvania Bulletin.

Very truly yours,

Karen O. Moury
Director of Operations

Enclosure

cc: Regulatory Coordinator DelBiondo
Docketing ✓

71

PAINTER LAW FIRM, PLLC

13017 DUNHILL DRIVE
FAIRFAX, VIRGINIA 22030

MICHELLE PAINTER
ATTORNEY AT LAW

ORIGINAL

703.201.8378
FAX 703.688.5030
E-mail: painterlawfirm@verizon.net

June 8, 2010

RECEIVED

JUN 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Via Overnight Delivery

Suzan DeBusk Paiva
Verizon
1717 Arch Street, Floor 17W
Philadelphia, PA 19103

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

Dear Suzan:

Please find enclosed AT&T's 2010 First Set Of Interrogatories And Request For
Production Of Documents Addressed To Verizon in the above-referenced matter.

Please contact me if you have any questions or concerns with this matter.

Very truly yours,



Michelle Painter

cc: The Honorable Cynthia Fordham (Cover Letter and Cert. of Service only)
Rosemary Chiavetta (Cover Letter and Cert. of Service only)
Certificate of Service

Enclosure

SERVICE LIST

I hereby certify that I have this day caused a true copy of AT&T's 2010 First Set of Interrogatories and Request for Production of Documents to Verizon to be served upon the parties of record in Docket No. C-20027195 in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55 in the manner and upon the parties listed below.

Dated in Fairfax, VA on June 8, 2010

VIA E-MAIL AND FIRST CLASS MAIL

Norman Kennard
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
Harrisburg, PA 17108
Phone – 717-255-7627

Suzan D. Paiva
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Harrisburg, PA 17120
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Harrisburg, PA 17101
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Harrisburg, PA 17101
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John F. Povilaitis
Ryan, Russell, Ogden & Seltzer
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Harrisburg, PA 17102
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Renardo L. Hicks
Stevens & Lee
17 North Second St. 16th Floor
Harrisburg, PA 17101

Sue Benedek
CenturyLink
240 North Third Street
Harrisburg, PA 17101

RECEIVED

JUN 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


Michelle Painter

PAINTER LAW FIRM, PLLC
13017 DUNHILL DRIVE
FAIRFAX, VIRGINIA 22030

RECEIVED

JUN 15 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MICHELLE PAINTER
ATTORNEY AT LAW

703.201.8378
FAX 703.968.5036
E-mail: painterlawfirm@verizon.net

June 15, 2010

Via Overnight Delivery

ORIGINAL

The Honorable Cynthia Fordham
Pennsylvania Public Utility Commission
801 Market St.
Philadelphia, PA 19107

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

Dear Judge Fordham:

This letter responds to Verizon's June 14, 2010 letter to you regarding the scheduling of a pre-hearing conference. In that letter, Verizon requests that a pre-hearing conference not be scheduled for three more months, until September 2010, purportedly to avoid having to litigate two cases concurrently. None of the reasons Verizon advances for delaying a prehearing conference have any merit, however, and AT&T reiterates its request that Your Honor schedule such a conference at your earliest opportunity.

As an initial matter, it is worth noting that the Commission's Order lifting the stay in this case was entered over a month ago, on May 11, 2010. Verizon would thus have the Commission wait at least four full months before even holding a conference with the parties to discuss how to conduct this proceeding. This is on top of the nearly five years the case already has been stayed. The Commission's decision *lifted* the stay; Verizon seeks essentially to reinstate the stay for four months.

Nothing in the Commission's May 11, 2010 Order contemplates or justifies such additional delay. Indeed, the only reference to scheduling in that Order – the statement that hearings shall not be held until issuance of the Recommended Decision in Docket No. I-00040105 – was plainly directed to the conduct of evidentiary hearings, not a preliminary conference merely to address scheduling and other procedural matters.

The specific reasons Verizon cites for delaying the preliminary conference are meritless. For example, and contrary to Verizon's suggestion, attending a pre-hearing conference can hardly be called a "heavy burden." A pre-hearing conference is generally a short conference in which parties discuss administrative and scheduling issues – this is neither difficult nor time-consuming. Drafting pre-hearing memoranda in anticipation of a pre-hearing conference also is not a difficult or time-consuming endeavor. The parties are all experienced litigators that can certainly handle such ministerial matters. More importantly, holding a pre-hearing conference in the next week or two will not in any way interfere with the RLEC access case at Docket No. I-00040105. As of June 3, 2010, that case has been fully briefed, and at this time there is absolutely no action required by any of the parties until after August 5, 2010.

Similarly, there is no reason to postpone a pre-hearing conference so that the parties can account for the Recommended Decision in the RLEC access case. To the extent any party intends to address that

decision in this case, that would not be done in a pre-hearing conference. Whatever schedule is developed in this case can ensure that the parties will have an opportunity to address the Recommended Decision in whatever evidentiary filings they ultimately may make. There is no reason to wait to resolve scheduling and other procedural matters until after that decision issues.

Verizon recognized in the RLEC access case that intrastate access reform benefits consumers throughout Pennsylvania. AT&T agrees. Now that the Commission has also agreed and lifted the stay in this case, there is no reason to postpone the largely routine matter of simply setting a schedule. As Verizon noted, AT&T has commenced discovery in this matter, and is ready to move forward. We thus request that Your Honor schedule a pre-hearing conference to resolve any procedural matters and to establish a schedule that will bring this case to a prompt resolution.

Very truly yours,


Michelle Painter

cc: Certificate of Service
Rosemary Chiavetta, Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true copy of AT&T's Letter to ALJ Cynthia Fordham to be served upon the parties of record in Docket No. C-20027195 in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55 in the manner and upon the parties listed below.

Dated at Fairfax, VA this 15th day of June, 2010.

VIA E-MAIL AND FIRST CLASS MAIL

Norman J. Kennard, Esquire
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212 Locust Street, Suite 500
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nkennard@thomaslonglaw.com

Joel Cheskis, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
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jcheskis@paoca.org

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Verizon
1717 Arch Street
Philadelphia PA 19103
(215) 466-4755
Suzan.D.Paiva@Verizon.com

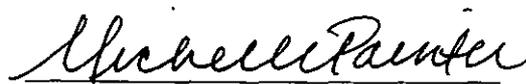
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rlh@stevenslee.com


Michelle Painter

RECEIVED

2010 SEP 30 AM 11:08

PA P.U.C.
SECRETARY'S BUREAU

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
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www.stevenslee.com

ORIGINAL

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

September 29, 2010

The Honorable Cynthia Fordham
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia, PA 19107

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

Dear Judge Fordham:

On behalf of my client Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint"), this letter is forwarded to your attention to urge that a pre-hearing conference be promptly scheduled in the above-captioned matter. Both AT&T and Verizon have previously written to you expressing opposing opinions regarding when to initiate proceedings in the instant docket by scheduling a prehearing conference.¹ In Verizon's letter, it expressed a desire not to have a prehearing conference scheduled in advance of the Reply Exceptions in the Commission's Rural ILEC Access Investigation (Docket No. I-00040105). The date to file such Reply Exceptions has now passed. At this point in time, there is no longer any reason to postpone scheduling a prehearing conference in the instant docket.

The Commission lifted its stay in the instant docket in a May 11, 2010 Order ("May Order"). In lifting the stay, the May Order indicated that hearings in the instant docket should not be scheduled "until after the issuance of a Recommended Decision by the Presiding Administrative Law [Judge] in the Rural ILEC Access Charge Investigation at Docket No. I-00040105."² Administrative Law Judge Melillo's Recommended Decision was released on August 3, 2010, Exceptions thereto were filed on September 2, 2010, and Reply Exceptions were

¹ See AT&T's letter dated June 10, 2010 and Verizon's letter dated June 14, 2010.

² May Order at 24.

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Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

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STEVENS & LEE
LAWYERS & CONSULTANTS

ALJ Fordham
September 29, 2010
Page 2

filed on September 17, 2010. At this juncture, there is no longer any remaining scheduled activity in the Rural LEC Access Investigation.

In its June 14, 2010 letter, Verizon indicated that in its May Order the Commission expressed a desire not to require the parties to litigate two cases concurrently, as well as its desire to avoid placing a heavy burden on the parties. Surely even Verizon would presently agree that the lack of any scheduled activity ensures that concurrent litigation is no longer a danger and the dual dockets can no longer be deemed a "heavy burden" as there is no more scheduled activity in the Rural LEC Access Investigation.

Indeed, Verizon's letter concluded by indicating that "[s]cheduling the prehearing conference for September would provide for the most orderly and efficient handling of these two cases. It will also allow for the parties to account for the ALJ's recommendation on similar issues ... and positions taken in any exceptions in that case." Sprint contends that the concerns Verizon expressed are no longer at issue, and there no longer remains any reason to further delay scheduling a prehearing conference in the instant case.

The parties advocating access rate reform have patiently awaited their "day in court," and now that the day is near at hand, they are eager to present their cases. Verizon's request to delay scheduling a prehearing conference until September has been honored – and likely exceeded as September rapidly draws to a close. The Commission desires to receive a Recommended Decision regarding reform of Verizon's intrastate switched access rates, and all that remains is for the instant case to recommence. To that end, Sprint urges Your Honor to please promptly schedule a prehearing conference so activity in the instant docket can begin in earnest.

Respectfully submitted,

STEVENS & LEE


Michael A. Gruin

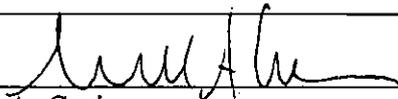
cc: Secretary Chiavetta
Certificate of Service

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy by U.S. Mail, First Class, of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party)

Norman J. Kennard, Esquire Thomas, Long, Niesen & Kennard 212 Locust Street, Suite 500 Harrisburg, PA 17108	Michelle Painter, Esquire Painter Law Firm, PLLC 13017 Dunhill Drive Fairfax, VA 22030 (703) 201-8378
D. Clearfield, Esq. A. Kohler, Esq. Eckert Seamans 213 Market Street, 9th Floor PO Box 865 Harrisburg, PA 17108-0865	Joel H. Cheskis, Esq. Office of Consumer Advocate 555 Walnut Street 5th Floor Harrisburg, PA 17101-1923
Steven C. Gray, Esquire Office of Small Business Advocate 300 North 2 nd St, Suite 1102 Harrisburg, PA 17101	John F. Povilaitis, Esq. Ryan Russell Ogden & Seltzer LLP 800 North Third Street, Suite 101 Harrisburg, PA 17102-2025
Johnnie Simms, Esq. Office of Trial Staff Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120	Barbara Brohl, Esq. Qwest Services Corporation 1801 California Street, 10 th Floor Denver, CO 80202
Zsuzanna Benedek, Esquire Centurylink 240 North Third Street, Suite 201 Harrisburg, PA 17101	Suzan D. Paiva, Esquire Verizon Pennsylvania, Inc. 1717 Arch Street Philadelphia PA 19103

September 29, 2010


Michael A. Gruin

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2010 SEP 30 AM 11:08
PA P U S
SECRETARY'S BUREAU



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 27, 2010

In Re: C-20027195

(SEE ATTACHED LIST)

DOCUMENT
FOLDER

AT&T COMMUNICATIONS of PENNSYLVANIA, INC.
v.
VERIZON NORTH, INC. and VERIZON PENNSYLVANIA, INC.

Verizon North's Intrastate Carrier Access Rates are unjust and unreasonable; seeking an immediate reduction to no more than the rates charged by Verizon Pennsylvania.

NOTICE

This is to inform you that a Further Prehearing Conference on Remand in the above-captioned case will be held as follows:

Date: Wednesday, December 8, 2010

Time: 2:00 p.m.

Location: In an available 4th Floor Hearing Room - PHILADELPHIA PARTIES
(Take one of the last four elevators at the far end of the lobby)
801 Market Street (enter on 8th Street)
Philadelphia, PA 19107

Location: Hearing Room 5 - HARRISBURG PARTIES
Plaza Level
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania

Presiding: Administrative Law Judge Cynthia W. Fordham
Suite 4063
801 Market Street
Philadelphia, PA 19107
Telephone: (215) 560-2105
Fax: (215) 560-3133

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least five (5) business days prior to your hearing to submit your request.

If you require an interpreter to participate in the hearings, we will make every reasonable effort to have an interpreter present. Please call the scheduling office at the Public Utility Commission at least ten (10) business days prior to your hearing to submit your request.

- ◆ Scheduling Office: (717) 787-1399
- ◆ AT&T Relay Service number for persons who are deaf or hearing-impaired:
1(800) 654-5988

c: ALJ Fordham
Amanda Shiflett
Calendar
File Room

C-20027195 AT&T COMMUNICATIONS OF PENNSYLVANIA, INC. v. VERIZON NORTH
INC. and VERIZON PENNSYLVANIA INC.

MICHELLE PAINTER ESQUIRE
PAINTER LAW FIRM PLLC
13017 DUNHILL DRIVE
FAIRFAX VA 22030
AT&T COMM OF PENNSYLVANIA

JOHN F POVILAITIS ESQUIRE
RYAN RUSSELL OGDEN & SELTZER LLP
800 NORTH THIRD STREET SUITE 101
HARRISBURG PA 17102
QWEST

ROBERT BARBER ESQUIRE
AT&T SERVICES INC
3033 CHAIN BRIDGE ROAD B-L12.301
OAKTON VA 22185

ZSUZSANNA E BENEDEK ESQUIRE
CENTURYLINK
240 NORTH THIRD STREET SUITE 201
HARRISBURG PA 17101

SUZAN D PAIVA ESQUIRE
VERIZON PENNSYLVANIA INC
1717 ARCH STREET FLOOR 17NW
PHILADELPHIA PA 19103

NORMAN J KENNARD ESQUIRE
REGINA L MATZ ESQUIRE
THOMAS THOMAS NIESEN & KENNARD
212 LOCUST STREET SUITE 500
HARRISBURG PA 17108
PA TELEPHONE ASSOCIATION

MICHAEL A GRUIN ESQUIRE
STEVENS & LEE
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HARRISBURG PA 17101
SPRINT NEXTEL

STEVEN C GRAY ESQUIRE
OFF OF SMALL BUSINESS ADVOCATE
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BENJAMIN J ARON ESQUIRE
SPRINT NEXTEL CORP / GOVT AFFAIRS
2001 EDMUND HALLEY DRIVE RM 208
RESTON VA 20191

JOEL CHESKIS ESQUIRE
OFFICE OF CONSUMER ADVOCATE
555 WALNUT STREET
5TH FLOOR FORUM PLACE
HARRISBURG PA 17101-1923

DOUGLAS HSIAO ESQUIRE
QWEST SERVICE CORPORATION
1801 CALIFORNIA STREET 10TH FL
DENVER CO 80202

HARRY GELLER ESQUIRE
PA UTILITY PROJECT
118 LOCUST STREET
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