

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications
of Pennsylvania, Inc.

v.

Verizon North, Inc.

Docket Number

C-20027195

DOCUMENT
FOLDER

ORDER #4

History

DOCKETED
SEP 08 2003

On December 30, 2002, Verizon Pennsylvania Inc. (Verizon-Pa.) and Verizon North, Inc. (Verizon-North) filed a separate Joint Petition (Verizon Joint Petition) regarding the further reduction of their access charges pursuant to the Bell Atlantic-Pa.-GTE Merger Order,¹ the Global Order of 1999², and the generic access charge investigation at M-00021596. This joint proposal was published January 18, 2003 at 33 Pa. B. 502. Comments were filed by the Office of Consumer Advocate ("OCA"), AT&T Communications of Pennsylvania, Inc. ("AT&T"), Sprint Communications Co & United Telephone Co of Pa ("Sprint/United"), the Rural Telephone Company Coalition ("RTCC"), the Office of Small Business Advocate ("OSBA") and Qwest Communications Corporation ("Qwest").

The Global Order of September 30, 1999 reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. The Commission opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by the Global Order in the form of a collaborative proceeding.

¹ *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).

² *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.Cmwith. 2000), *alloc. granted*.

On March 21, 2002, AT&T filed a formal complaint against Verizon-North seeking to have Verizon-North's access charges reduced to Verizon-PA's levels pursuant to the requirements in the Commission's Merger Order at A-310200F0002.³ The complaint was docketed at C-20027195. On April 10, 2002, the Office of Consumer Advocate ("OCA") intervened in this proceeding. The complaint, which was initially dismissed by Chief Administrative Law Judge Robert Christianson, was reinstated by Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation so that all Verizon matters, including the complaint, would be litigated at the C-20027195 docket.

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

Although Verizon-Pa. and Verizon-North agreed to one proposed access charge reduction plan, Qwest, OCA, OTS, OSBA, AT&T and MCI WorldCom have objected to the Joint Petition. Given that there were contested, material factual issues, (i.e., what the cost of traffic sensitive rates are and how low the intrastate access charges should be), by Order entered May 5, 2003, the Commission referred the Verizon Joint Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision. The Commission consolidated the Verizon Joint Petition for Access Charge Reductions with the *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc* complaint at C-20027195 regarding Verizon-North's access charges pursuant to the Commission Order of December 24, 2002. The case at C-20027195 will also address Verizon's compliance with the Merger Order directive that Verizon-North and Verizon-Pa. have access charges which are at parity with each other. *In re the Joint*

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

Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger at Docket Nos. A-310200F0002, A-311350F0002, and A-310222F0002.

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

A prehearing conference was held on Thursday, May 29, 2003. The presiding officer, counsel for Verizon, AT&T, OCA, OTS, OSBA, Qwest, RTCC, Sprint, and MCI participated.

The following procedural schedule was established:

Prehearing Conference	May 29, 2003
Initial Settlement Conference	June 5, 2003
Company Direct Testimony	June 25, 2003
Non-Company Rebuttal Testimony	July 18, 2003
All parties' Surrebuttal Testimony	August 4, 2003
Hearings for cross-examination of all witnesses, oral Rebuttal/Surrebuttal	August 25, 26, 27, 2003
Close of Record	September 3, 2003
Main Briefs Due	September 16, 2003
Reply Briefs Due	September 26, 2003

By June 3, 2003, the parties contacted the presiding officer to indicate that they did not object to the Protective Order proposed by Verizon. Accordingly, the protective order was granted by Order #3 dated June 9, 2003.

On August 8, 2003, the Office of Small Business Advocate ("OSBA") filed a Motion to Strike A Portion of Verizon Statement 1.1 or in the Alternative Judgment on the Pleadings. On August 18, 2003, Verizon Pennsylvania, Inc. and Verizon North filed a Response

to the Motion. On August 18, 2003 the Office of Consumer Advocate (“OCA”) filed an Answer to the Motion.

By e-mail on August 22, 2003, the presiding officer informed the parties that the Motion to Strike and the Motion for Judgment on the pleadings were denied.

Hearings were held in this matter in Harrisburg on August 25 and 26, 2003. Witnesses for Verizon, AT&T, MCI, Qwest, OTS, OCA and OSBA were cross-examined. Written testimony and exhibits were entered into the record. On the record data requests were made and the procedural schedule was revised.

DISCUSSION

Pursuant to 52 Pa. Code §§5.103(a), (b), and 5.412(c), OSBA moved to Strike Portions of Verizon Statement 1.1 because the testimony was overly vague and ambiguous concerning proposed increases to business customers. In addition, OSBA contended that the portions at issue relate to a proposal of Verizon and OCA that was inappropriately included in the testimony of a Verizon witness. Specifically OSBA argued that the Joint proposal was new matter outside of the scope of rebuttal testimony and presents new direct testimony which is untimely. It was argued that surrebuttal should be a response to the opposition’s rebuttal. It should not be used to introduce a partial settlement proposal as new matter (Motion p. 2). OSBA stated that the parties who have not entered the stipulation between OCA and Verizon (DMB Ex. 1) are prejudiced since they have no opportunity to respond to or conduct discovery on the new matter (Motion, pp 2-4). Consequently, OSBA moved to strike portions of the Surrebuttal Testimony supported by Mrs. Debra M. Berry which was dated August 4, 2003. In the alternative, OSBA moved for Judgment on the Pleadings pursuant to 52 Pa. Code § 5.102(a) on the basis that Verizon failed to specify the rate increase as it relates to business customers (Motion p. 6).

On August 18, 2003, Verizon Pennsylvania, Inc. and Verizon North filed a Response to the Motion. Verizon stated that the admission of the Joint Proposal before the

hearing in the proceedings was contemplated by the Commission's regulations at 52 Pa. Code §§5.243 (e) and 5.231. (Response to Motion pp. 1, 3). Verizon argued that the proposal was one of the options discussed at length in Verizon's direct testimony and not a new resolution (Response to Motion pp. 3, 4). Verizon contended that its direct testimony and original proposal both stated that Verizon, at its sole option, could choose to place part of the revenue neutral offset on business rates. In rate rebalancing proposals it is common to state the parameters of the increase instead of giving exact rate increases (Response to Motion pp. 5, 6).

On August 18, 2003 the Office of Consumer Advocate ("OCA") filed an Answer to the Motion. OCA stated that the OCA/Verizon Joint Proposal was discussed in the Berry/Wirl surrebuttal testimony and that the terms were set forth in DMB Exhibit 1. OCA argued that the inclusion of the Joint Proposal in the surrebuttal testimony is provided for in 52 Pa. Code §5.243(e). OCA contends that instead of being disadvantaged, the other parties benefit from the Joint Proposal since it modifies the prior positions articulated by OCA and Verizon (Answer to Motion pp. 3, 4). OCA mentioned that the other parties could provide oral rejoinder or conduct discovery on the Joint Proposal (Answer to Motion pp. 3, 4).

A review of the applicable Commission regulations is instructive.

5.243 Presentation by participants

(e) No participant will be permitted to introduce evidence during a rebuttal phase which is repetitive, which should have been included in the participant's case in chief or which substantially varies from the participant's case-in-chief unless the evidence is introduced in support of a proposed full or partial settlement between or among any of the participants. (Emphasis added)

41.31 General

The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. ...

The testimony regarding the OCA/Verizon Joint Proposal and the exhibit setting forth the terms of the proposal are permissible pursuant to 52 Pa. Code §§5.243 (e). It is well established that the Commission encourages settlements. Consequently, the settlement can be included in surrebuttal testimony. In addition, Verizon noted that the proposal is one of the options set forth in its original proposal and its direct testimony. Therefore, the Motion to Strike is denied. Furthermore, the Motion for Judgment on the Pleadings is denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Strike A Portion of Verizon Statement 1.1 and the Motion for Judgment on the Pleadings is denied.

2. That the parties shall respond to the on the record data requests by Friday, August 29, 2003 by electronic mail.

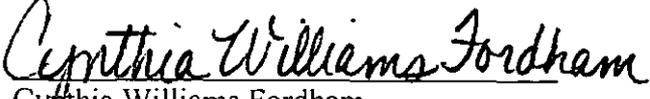
3. That in accordance with the revised procedural schedule, briefs shall be filed as follows:

Close of Record	Wednesday, September 3, 2003
Main Briefs Due	Thursday, September 18, 2003
Reply Briefs Due	Monday, September 29, 2003

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

The disks filed with the Secretary and the presiding officer should be in Word 2002 or a compatible format.

Date: August 28, 2003


Cynthia Williams Fordham
Administrative Law Judge

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