

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: November 8, 2004	2. BUREAU AGENDA NO. NOV-2004-OSA-0282*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: C.W. Davis 7-1827 Mgr/Spvr: Legal Review:	November 18, 2004
7. PERSONS IN CHARGE: AA  R. Marinko 3-3930/A. Arnold 7-8032	9. EFFECTIVE DATE OF FILING: n/a
8. DOCKET NO.: C-20027195	

**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, LLC v. Verizon North Inc. and Verizon Pennsylvania Inc. (Petition For Reconsideration)

(b) On July 28, 2004, this Commission entered an Opinion and Order at Docket Nos. C-20027195, *et al.*, which, *inter alia*, remanded certain unresolved matters relating to access charges to the Office of Administrative Law Judge for further development and the issuance of a Recommended Decision. On August 9, 2004, Verizon Pennsylvania Inc. and Verizon North Inc. filed a Petition for Reconsideration requesting the Commission to reconsider its decision to remand the unresolved access charge matters, and instead mark the case closed. Answers to the Petition for Reconsideration were filed by AT&T Communications of Pennsylvania, LLC; MCI WorldCom Network Services, Inc. (MCI); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and Qwest Communications Corporation (Qwest).

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

DOCKETED
NOV 30 2004

Order Doc. No. 504234v1

Calendar Doc. No.506391v1

10. MOTION BY: Commissioner Chm. Holland

Commissioner Thomas - Yes
Commissioner Pizzingrilli - Yes
Commissioner

~~SECONDED:~~ Commissioner Bloom

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
November 23, 2004

REFER TO OUR FILE

C-20027195

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AT&T COMMUNICATIONS OF PA INC
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OAKTON VA 22185

DOCUMENT

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

DOCKETED

DEC 16 2004

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on November 18, 2004 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
LJM

See attached list for additional parties of record

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265**

Public Meeting held November 18, 2004

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas
Kim Pizzingrilli

AT&T Communications of Pennsylvania, LLC

C-20027195

v.

Verizon North Inc. and Verizon Pennsylvania Inc.

DOCUMENT

OPINION AND ORDER

DOCKETED
DEC 16 2004

BY THE COMMISSION:

Before the Commission for consideration is a Petition for Reconsideration (Petition) filed by Verizon Pennsylvania Inc. (Verizon PA) and Verizon North Inc. (Verizon North) (jointly referred to as Verizon) on August 9, 2004, relative to the Commission's Opinion and Order entered July 28, 2004, in the above-captioned proceeding. Answers to the Petition for Reconsideration were filed on August 19, 2004, by AT&T Communications of Pennsylvania, LLC (AT&T); MCI WorldCom Network Services, Inc. (MCI); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and Qwest Communications Corporation (Qwest).

History of the Proceedings¹

In January 2002, the Commission initiated a generic access charge investigation at Docket No. M-00021596 for the purpose of further reducing access charges for Verizon PA, Verizon North and all of the rural incumbent local exchange carriers operating in Pennsylvania, consistent with our *Global Order*² requirements.

On March 21, 2002, AT&T filed a Formal Complaint at Docket No. C-0027195 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*.³ On December 24, 2002, the Commission bifurcated the access charge investigation so that all Verizon matters (*i.e.*, those pertinent access charge matters pertaining to Verizon PA and Verizon North) and all matters relating to access charge parity between Verizon North and Verizon PA resulting from the *Merger Order* at Docket No. A-310200F002, as well as AT&T's Formal Complaint, would be litigated at Docket No. C-20027195.

On December 30, 2002, Verizon PA and Verizon North filed a Joint Petition (Verizon Joint Petition) regarding the further reduction of their access charges pursuant to the *Merger Order*, the *Global Order* and the *Generic Access Charge Investigation* at Docket No. M-00021596.

¹ A more complete history of this proceeding may be found on pages 2-7 of our Opinion and Order entered July 28, 2004, at the above-captioned docket numbers.

² *Joint Petition of Nextlink, et al.*, Docket Nos. P-00991648 and P-00991649, September 30, 1999 (*Global Order*).

³ See, *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIS 86 (Opinion and Order entered November 4, 1999) (hereinafter *Merger Order*). Verizon PA is the company formerly know as Bell Atlantic-Pennsylvania, Inc., and Verizon North is the company formerly known as GTE –North, Inc.

By Opinion and Order entered July 28, 2004, the Commission granted the Joint Petition for Resolution of Litigation filed by Verizon PA, Verizon North, OSBA and OCA on February 26, 2004. The Order also directed that the proceeding remain open and remanded certain matters to the Office of Administrative Law Judge for further development and the issuance of a Recommended Decision on those matters that were left unresolved in the first phase of this proceeding. Specifically, those policy issues identified by the Commission included the following: (1) a recommendation of the “next steps” for access reform (July 28, 2004 Order at 16); (2) a recommendation on whether access charges should be reduced “to cost” (*id.* at 18); and (3) a recommendation on the elimination of the carrier charge (*id.* at 20).

As noted, Verizon PA and Verizon North filed a Petition for Reconsideration. Answers were filed by AT&T, MCI, OCA, OSBA and Qwest. This Opinion and Order will address the merits of the Petition for Reconsideration and the Answers thereto.

Position of the Parties

In its Petition, Verizon argues that the Commission, in its directive to remand the case to the ALJ for further development of the record and the issuance of a recommended decision, is mistaken in three respects. First, Verizon is of the opinion that there is no need to further develop the record on those issues since they were already addressed by the Parties in the testimony and briefs filed in the underlying proceeding, as well as in Verizon’s reply to the other Parties’ Exceptions to the Recommended Decision. (Petition at 4, ¶5).

MCI and Qwest are of the opinion that the Commission should deny Verizon's Petition because Verizon's Petition does not meet the *Duick* standard for reconsideration petitions because it does not raise any new or novel arguments or considerations which the Commission overlooked. (MCI Answer at 2-3). Qwest is also of the opinion that Verizon's Petition should be denied because it fails to present any newly discovered evidence, errors of law or changes in circumstances as required under *Duick*. (Qwest Answer at 3-4). AT&T, MCI and Qwest take the position that the Commission's directive to remand the remaining unresolved access issues to the ALJ was fully justified and supported by the record in this case. (AT&T Answer at 1, 2-5; MCI Answer at 4; Qwest Answer at 5).

The second reason Verizon believes the Commission erred in its conclusion to remand the matter to the OALJ is that the Commission appears to be under the mistaken impression that the ALJ failed to address the policy arguments. Verizon submits that the ALJ addressed those issues, either explicitly or implicitly, when she recommended adoption of the Verizon /OCA Joint Proposal. Thus, Verizon contends that in adopting the Verizon/OCA Joint Proposal, the ALJ rejected the positions of the IXCs with regard to those policy matters. (Petition at 4, ¶6).

AT&T, MCI and Qwest disagree with Verizon's argument that the ALJ "implicitly" addressed and rejected their concerns. AT&T rejoins that this is just another way of saying that the Recommended Decision was silent on these matters. (AT&T Answer at 5). The OSBA, on the other hand, is of the opinion that by necessary implication, the ALJ's recommendation that the case be closed was based on the conclusion that the evidence presented by the IXCs was not sufficient to justify further reductions. (OSBA Answer at 3).

The third reason Verizon believes the Commission erred in its conclusion is that consideration of the "policy issues" go beyond the scope of this docket, which

Verizon asserts is not a generic policy docket. Verizon states that this docket was instituted for two reasons: (1) to implement the merger condition requiring that the two Verizon companies' rates be at parity ; and (2) to address AT&T's Complaint against the Verizon North's rates. Verizon states that the ALJ's recommendation accomplished both goals without the need to consider the policy issues raised by the IXCs. (Petition at 5, ¶¶ 7-8).

AT&T rejoins that Verizon's claim as to why this docket was instituted ignores the origin of this case in the *Global Order*. AT&T notes that Verizon's own witness acknowledged in this case that the *Global Order* recognized the need to remove implicit subsidies from access charges as required by the Telecommunications Act of 1996 and to move Verizon's access charges to cost-based levels in a competitive environment. (AT&T Answer at 6). AT&T and MCI also assert that the Commission appropriately concluded that the Recommended Decision failed to address some of the more significant policy issues raised by the Parties, including the *Global Order* issue pertaining to the elimination of the Carrier Charge and the removal of all implicit subsidies from access charges. (AT&T Answer at 5-6, MCI Answer at 5). Qwest argues that the Commission acknowledged that the Recommended Decision misconstrued or failed to address several access charge issues and that Commission correctly acknowledged that error by requiring the unresolved issues in the record be remanded for proper consideration. (Qwest Answer at 5).

The OCA agrees with Verizon that any further development of access charge reform issues are more appropriately investigated at a new docket. Both, the OCA and the OSBA disagree with Verizon's position that further consideration of Verizon's access charges must be considered in the same proceeding with other ILECs. The OCA notes that, as the Commission has recognized in the past, the situation of Verizon is sufficiently different from Pennsylvania's other more rural ILECs that separate proceedings may still be appropriate. (OCA Answer at 3-4). The OSBA contends that the costs and policy considerations relevant to access charge reductions are not the same

for each ILEC, and, consequently, addressing all of the ILECs in the same proceeding would unnecessarily complicate the record and the legal arguments. (OSBA Answer at 5).

With regard to Verizon's argument that the Commission's decision is inconsistent with its treatment of the settlement involving Sprint and the Rural Telephone Company Coalition, AT&T submits that the Sprint/RTCC settlement was not subject to any meaningful record development as in the instant proceeding, and that precedent shows the need for continued Commission involvement in the final resolution of this case to ensure that access charges are reduced.

Disposition:

We have held that petitions for reconsideration must make new and novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the order under consideration. *Duick v. PG & W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982) (*Duick*), citing *Pa. Railroad Co. v. Pa. PSC*, 179 A. 850 (Pa. Super. Ct. 1935). Our decisions in these types of cases are left to our sound discretion and will not be disturbed on appeal absent bad faith, fraud, capricious action, or abuse of power. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Commw. Ct. 1995).

Based on our review of Verizon's Petition, and the Answers thereto, we agree with MCI and Qwest that, contrary to the standards established in *Duick* as to whether reconsideration should be granted, Verizon has raised no new or novel arguments in its Petition. In *Duick*, we held that:

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 . . . 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 or not addressed by the Commission.

(*Duick*, 56 Pa. PUC at 559).

In light of the fact that no new or novel arguments have been raised by Verizon in its Petition, we shall deny Verizon's Petition for Reconsideration for its failure to meet the *Duick* standard. In preparing our July 28, 2004 Order, we were well aware that the Parties disagreed on whether all issues that needed to be resolved had been addressed by the ALJ. We therefore, rejected Verizon's position by remanding the proceeding to the ALJ. Since we previously determined that (1) the generic access charge investigation at Docket No. M-00021596 should be bifurcated so that all of the Verizon access charge issues would be litigated at Docket No.C-20027195 and all of the remaining incumbent local exchange companies' access charge issues would remain at Docket No. M-00021596,⁴ and (2) rejected Verizon's argument that all issues have been resolved by the ALJ;⁵ we conclude that Verizon's argument in its Petition does not meet the *Duick* standard. Thus, we shall deny Verizon's Petition for Reconsideration.

Conclusion

In light of the foregoing discussion, we conclude that the Petition does not meet the evidentiary standards articulated in *Duick*. Accordingly, we shall deny the Petition on this premise; **THEREFORE,**

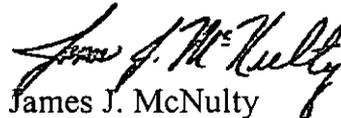
⁴ See *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.*; Docket No. C-20027195 (Order entered December 24, 2002); Ordering Paragraph 4.

⁵ See *July 28, 2004 Order* at 16-17.

IT IS ORDERED:

That the Petition for Reconsideration filed by Verizon Pennsylvania Inc. and Verizon North Inc. of the Commission's July 28, 2004 Opinion and Order is denied.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: November 18, 2004

ORDER ENTERED: **NOV 23 2004**

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

DEC 3 2004

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 November 23, 2004 at Docket No. C-20027195 on behalf of:

/ REP ANTHONY WILLIAMS
100 SOUTH OFFICE BUILDING
HARRISBURG PA 17120
MESSINGER



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
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Harrisburg, PA 17105-3265

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of DEC 1 2004, 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 November 23, 2004 at Docket No. C-20027195 on behalf of:

SENATOR HARDY WILLIAMS
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HARRISBURG PA 17120


Signature

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

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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24th day of November, 2004

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 November 23, 2004 at Docket No. C-20027195 on behalf of:

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Cathy Rayer
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