

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications
of Pennsylvania, Inc.

v.

Verizon North, Inc.
Verizon Pennsylvania Inc.

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C-20027195

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**PREHEARING ORDER #3 ON REMAND AND ORDER DENYING
THE OFFICE OF CONSUMER ADVOCATE'S MOTION TO COMPEL**

History

On July 28, 2004, the Commission entered an Opinion and Order (July 28th Order) that granted the Joint Petition for Resolution of Litigation. The July 28th Order, *inter alia*, permitted Verizon to reduce and restructure its access charges by allowing them to file a revenue-neutral, rate rebalancing filing in which the net revenue reductions from access charge increases and decreases will be offset with revenue increases from increases in monthly dial tone line rates for residential and business local exchange customers. With regard to the remaining unresolved matters in this proceeding, the Commission remanded those matters to the Office of Administrative Law Judge. The Commission reversed the ALJ's recommendation to close the case. The Commission stated that those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions, but which were not specifically resolved by a recommendation from the ALJ in this instant proceeding, are remanded to the ALJ for the further development of the record and the issuance of a recommended decision.

Verizon filed a Petition for Reconsideration. By Order entered November 23, 2004, the Commission denied the Petition to reconsider remanding the case to the ALJ.

On November 22, 2004, AT&T Communications of Pennsylvania, LLC, MCI WorldCom Communications, Inc., and Qwest Communications Corporation, filed a Joint Petition.

By Order entered January 18, 2005, the Commission granted the Joint Petition, in part and denied it in part. The Commission granted the Joint Petitioners' request that established February 1, 2005 as the compliance filing deadline date, notwithstanding any regulatory delays that may occur in the compliance review process. The Commission also granted the Joint Petitioners' request that the Remand proceeding be conducted in an expedited manner only to the extent that the Office of Administrative Law Judge is able to do so. However, the Commission denied the Joint Petitioners' request for (1) retroactive rates to February 1, 2005, if Verizon fails to comply by that date, and (2) termination of the Remand proceeding. Since there have been significant developments in the federal arena that may impact the remand proceeding, the Commission directed 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 Intercarrier Compensation Forum on October 5, 2004, and to address the impact that any FCC action may have on the Commission's jurisdictional responsibilities, as well as its relationship to the final recommended decision on access rates arising from this remand proceeding, to the extent that the FCC issues a decision prior to the issuance of the Recommended Decision on Remand in this proceeding.

Prehearing memoranda were filed by Verizon, AT&T, MCI, Qwest, OTS, OCA, OSBA and the Rural Telephone Company Coalition.

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

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

During the April 4, 2005 prehearing conference, a procedural schedule was established. Furthermore, we agreed that the parties could designate the portions of the testimony in the original record that are still relevant, update the prior testimony to address new developments since the original record and add testimony to address the FCC proceeding (Tr. 58-60, 81-83).

Since Sprint failed to participate in the February 17, 2005 or the April 4, 2005 prehearing conference, it is designated as an inactive party. Inactive parties will receive notices of hearings and copies of any decisions and Commission orders. The inactive parties will not participate in discovery or testify and cross-examine witnesses at the formal hearings. Therefore, inactive parties will not receive copies of the hearing exhibits or the briefs of the active parties.

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

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

Motion

On April 15, 2005, the Office of Consumer Advocate filed a Motion to Compel Answers to Interrogatories and Dismiss Qwest's Objections to OCA Interrogatories I-1, I-2, I-3, I-4, I-5 and I-6.

On April 25, 2005, the Answer of Qwest Communications Corporation to the Office of Consumer Advocate's Motion to Compel was filed.

On May 2, 2005, the Office of Consumer Advocate filed a Petition for Partial Leave to Withdraw the Office of Consumer Advocate's Motion to Compel.

The Office of Consumer Advocate's Petition for Partial Leave to Withdraw the Motion to Compel Answers to OCA Interrogatories I-1, I-2, I-3 and I-4 is granted.

The Office of Consumer Advocate did not withdraw its Motion to Compel Answers to OCA Interrogatories I-5 and I-6.

OCA interrogatory I-5 relates to Qwest's long distance service in Pennsylvania. Qwest was asked to provide rates for intrastate long distance service for the time period from January 1, 2000 through December 31, 2004. Qwest objected to the interrogatory on the basis that the information is irrelevant to the issues in this proceeding and the requested data is not readily available for the entire time period requested. Without waiving its objection, Qwest agreed to supply the rate information requested.

OCA interrogatory I-6 relates to Qwest's long distance service in Pennsylvania. In the event that the interstate long distance service differs from the rates for intrastate long distance service, Qwest was asked to provide rates for interstate long distance service for the time period from January 1, 2000 through December 31, 2004. Qwest objected to the interrogatory on the basis that the information is irrelevant to the issues in this proceeding and

the requested data is not readily available for the entire time period requested. Without waiving its objection, Qwest agreed to supply the rate information requested.

In its motion OCA argued that it is reasonable and within the scope of discovery to request Qwest's rates for intrastate and interstate long distance service in Pennsylvania. OCA noted that Qwest agreed to supply the rate information requested. Motion ¶ 17. However, OCA requested a ruling to preserve its right to compel additional answers to the interrogatories in the event that Qwest's answers are non-responsive Motion ¶ 17. Furthermore, OCA stated that it was willing to accept the responses to the interrogatories that would not cause Qwest to incur an undue burden or significant expense. OCA requested that the information be provided within five days of an Order granting the motion. Motion ¶ 19.

In its Answer, Qwest stated that OCA's belief that there should be a direct one-to-one correlation between the level of access charges and IXC long distance rates does not make long distance rates a relevant, discoverable subject. To Qwest's knowledge, OCA has not sought similar information from AT&T or MCI in this proceeding, so it is dubious that obtaining this information will establish anything relative to Verizon's access rates. Answer to Motion ¶ 16. Furthermore, Qwest contends that the level of IXC rates is not at issue in this proceeding.

Moreover, Qwest stated that its willingness to provide responses to I-5 and I-6 to the extent the information is available and not burdensome to locate should be sufficient to end this dispute, if ordered by the ALJ. Answer ¶ 18.

While it is true that 52 Pa. Code §5.321(c) governs discovery disputes, in 52 Pa. Code §5.322, the Commission encourages the parties to exchange information on an informal basis. Although Qwest objected to the relevancy of the information, it agreed to provide the information which was available and not burdensome to locate. Therefore, OCA does not need a ruling on the motion to obtain the requested information. OCA asked for a ruling to preserve its right to propound additional interrogatories in the event that Qwest's answers were unresponsive. Inasmuch as Qwest has already agreed to provide the answers, the Motion to Compel the Answers is unnecessary and is, therefore, denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Partial Leave to Withdraw the Office of Consumer Advocate's Motion to Compel is granted.
2. That the Office of Consumer Advocate's Motion to Compel Answers to OCA Interrogatories I-5 and I-6 is denied.
3. That Sprint Communications Company and the United Telephone of Pa is an inactive party in this matter.
4. That testimony and briefs shall be filed according to the following schedule:

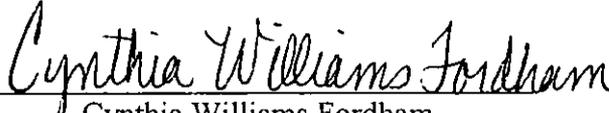
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| Direct Testimony to be filed | Wednesday, June 8, 2005 |
| Rebuttal Testimony to be filed | Wednesday, June 29, 2005 |
| Surrebuttal Testimony to be filed | Monday, July 11, 2005 |
| Hearings for cross-examination Of all witnesses | Tuesday, July 19 and Wednesday, July 20, 2005 in Harrisburg |
| Close of Record | Thursday, July 21, 2005 |
| Main Briefs Due | August 17, 2005 |
| Reply Briefs Due | Wednesday, August 31, 2005 |
5. In accordance with the schedule set forth above, testimony is to be served and available to all parties no later than 4:30 p.m. on the date listed. If testimony is served by e-

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

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

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

Date: May 10, 2005


Cynthia Williams Fordham
Administrative Law Judge

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