

DATE: November 22, 2004

SUBJECT: C-20027195; P-00930715
P-00001854

DOCKETED
JAN 03 2005

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *ddt*

**DOCUMENT
FOLDER**

**JOINT PETITION OF AT&T COMMUNICATIONS OF
PENNSYLVANIA, LLC, MCI WORLDCOM COMMUNICATIONS,
INC., AND QWEST COMMUNICATIONS CORPORATION**

We attach hereto a copy of the Joint Petition of AT&T Communications of Pennsylvania, LLC, MCI WorldCom Communications, Inc., and Qwest Communications Corporation for Clarification of the Commission's Order entered on July 28, 2004 at the above-captioned docket regarding the Compliance Obligations of Verizon Pennsylvania, Inc., and Verizon North, Inc.

This matter is assigned to your Office for appropriate action.

Please note that the company has requested an abbreviated response period in which parties have to file a response to the petition (page 9, item number 20), to which the Secretary has granted.

Attachments

cc: Law Bureau
FUS

ddt

COMMONWEALTH OF PENNSYLVANIA



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William R. Lloyd, Jr.
Small Business Advocate

November 29, 2004

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HAND DELIVERED

James J. McNulty, Secretary
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DOCUMENT
FOLDER

SECRETARY'S BUREAU

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McNulty 120

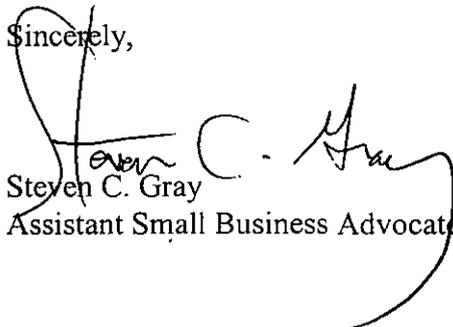
**Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon Pennsylvania, Inc.
Docket No. C-20027195**

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Notice of Appearance on behalf of the Office of Small Business Advocate in the above captioned matter.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: Parties of Record

108

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Docket No. C-20027195

NOTICE OF APPEARANCE

The Office of Small Business Advocate, pursuant to 52 Pa. Code § 1.24, hereby enters the appearance of **Steven C. Gray**, as additional counsel of record, in the above captioned proceeding.

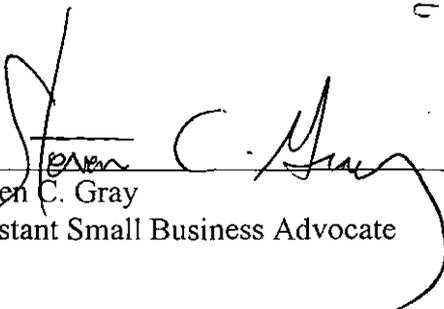
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Dated: November 29, 2004

ORIGINAL
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SECRETARY'S BUREAU

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RECORDED

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

Docket No. C-2002719

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Notice of Appearance on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

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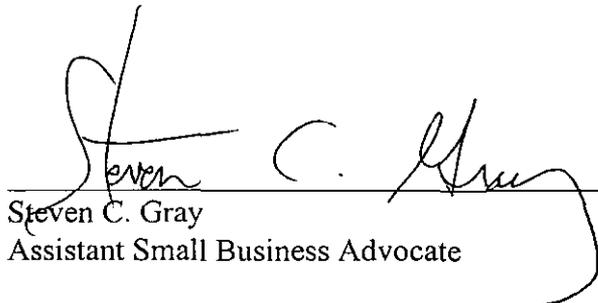
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Steven C. Gray
Assistant Small Business Advocate

Date: November 29, 2004



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November 29, 2004

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**DOCUMENT
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James J. McNulty, Secretary
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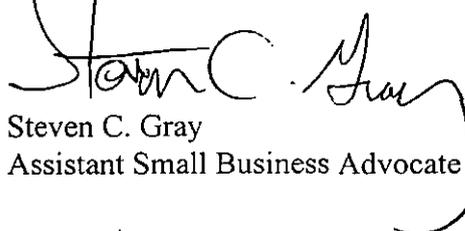
**Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon Pennsylvania, Inc.
Docket No. C-20027195**

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Answer of the Office of Small Business Advocate to the Joint Petition for Clarification of AT&T Communications of Pennsylvania LLC; MCI Worldcom Communications, Inc.; and Qwest Communications Corporation in the above captioned matter.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,


Steven C. Gray
Assistant Small Business Advocate

Enclosures
cc: Parties of Record

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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AT&T Communications of Pennsylvania, Inc.

v.

Docket No. C-20027195

Verizon North Inc.

Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate for Resolution of Litigation

Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity

Docket No. P-00930715

Verizon Pennsylvania Inc.'s 2004 Price Change Opportunity

Verizon North Inc.'s 2004 Price Change Opportunity:

Docket No. P-00001854

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO JOINT PETITION FOR CLARIFICATION**

DOCKETED
DEC 03 2004

Pursuant to 52 Pa. Code § 5.572(e), the Office of Small Business Advocate ("OSBA") answers the Joint Petition ("Petition") of AT&T Communications of Pennsylvania LLC; MCI Worldcom Communications, Inc.; and Qwest Communications Corporation (the "IXCs") for Clarification of the Commission's Order Entered on July 28, 2004 ("Order"). The Petition was filed with the Pennsylvania Public Utility Commission ("Commission") on November 17, 2004.

**DOCUMENT
FOLDER**

The General Response of the OSBA to the Petition

The OSBA is without sufficient knowledge or information upon which to form a belief as to the truth of the factual averments in the Petition regarding the actions of the IXCs and Verizon Pennsylvania Inc., and Verizon North Inc. (collectively “Verizon”) since the Order was entered, and strict proof thereof is demanded. The Petition sets forth certain characterizations of the Order, all of which are denied as the Order speaks for itself. The Petition also sets forth averments that are conclusions of law to which no response is required.

The Response of the OSBA to Specific Numbered Paragraphs

18. Denied. By way of further response, the Order provides that issues raised in the proceeding, but not specifically resolved by the Order, are remanded to the administrative law judge (“ALJ”) “for the further development of the record.” Order, Ordering Paragraph 6, at 38. In Petition Paragraph 18, the IXCs claim that “the record has already been fully developed in this proceeding” and thus the Commission should “issue a final decision on further access charge reform without remanding the case to the OALJ for additional proceedings.” Petition, at 8. However, the IXCs styled their Petition as one of “*clarification*, pursuant to Sections 5.41 and 5.572(a)” of the Commission’s regulations. Petition, at 2 (emphasis added). In actuality, what the IXCs are requesting in Paragraph 18 is for the Commission to *reconsider* its decision to remand the proceeding for further development of the record. Nonetheless, whether the Petition is one of clarification or of reconsideration, the IXCs have waived their right to file the Petition. Under 52 Pa. Code § 5.572(a), the IXCs had 15 days in which to file a petition for clarification or

reconsideration of the July 28, 2004, Order. Therefore, the Order stands, and the IXCs can not be heard to complain of any “urgent need” when they waited *112* days after the entering of the Order to file their Petition for “clarification.”

19. Denied. By way of further response, the Order provides that issues raised in the proceeding, but not specifically resolved by the Order, are remanded to the ALJ “for the further development of the record.” Order, Ordering Paragraph 6, at 38. Nothing in the Order mentioned or required that the remanded proceeding be conducted in an “expedited” manner. *Id.* In Petition Paragraph 19, the IXCs requested that the remanded proceeding “receive expedited consideration.” Petition, at 9. However, the IXCs presented their Petition as one of “*clarification*, pursuant to Sections 5.41 and 5.572(a)” of the Commission’s regulations. Petition, at 2 (emphasis added). In actuality, what the IXCs are requesting in Paragraph 19 is for the Commission to *amend* its decision to remand the proceeding *for the development of the record under the normal procedures and timetable*. Nonetheless, whether the Petition is one of clarification or of amendment, the IXCs have waived their right to file the Petition. Under 52 Pa. Code § 5.572(a), the IXCs had *15* days in which to file a petition for clarification or amendment of the July 28, 2004, Order. Therefore, the Order stands as written, and the IXCs can not be heard to request “expedited consideration” and complain of the “urgent need for immediate access charge relief” when they waited *112* days after the entering of the Order to file their Petition for “clarification.”

20. Denied. By way of further response, the IXCs’ request for “an abbreviated 10-day response period” is unnecessary and redundant. Section 5.572(e) requires that an answer to a petition filed under 52 Pa. Code § 5.572(a) is due within 10 days of the service

of that petition. By way of additional response, the Commission issued a Secretarial Letter on November 22, 2004, setting November 30, 2004, as the deadline for filing an answer to the Petition.

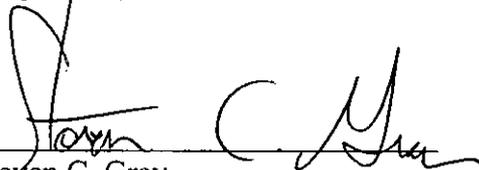
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Conclusion

Therefore, the Office of Small Business Advocate respectfully requests that the Commission:

- (1) Deny the IXCs' request to issue a final decision on further access charge reform based upon the current record in this proceeding; and
- (2) Deny the IXCs' request to conduct the remanded proceeding in an expedited manner.

Respectfully submitted,



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Assistant Small Business Advocate

For:

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Dated: November 29, 2004

ORIGINAL
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Petition of Verizon Pennsylvania Inc., Verizon North
Inc., Office of Small Business Advocate and Office of
Consumer Advocate for Resolution of Litigation

Verizon Pennsylvania Inc.'s 2003 Price Change : Docket No. P-00930715
Opportunity :

Verizon Pennsylvania Inc.'s 2004 Price Change
Opportunity

Verizon North Inc.'s 2004 Price Change Opportunity : Docket No. P-00001854

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Answer of the Office of Small Business Advocate to the Joint Petition for Clarification of AT&T Communications of Pennsylvania LLC; MCI Worldcom Communications, Inc.; and Qwest Communications Corporation, by e-mail and first class mail upon the persons addressed below:

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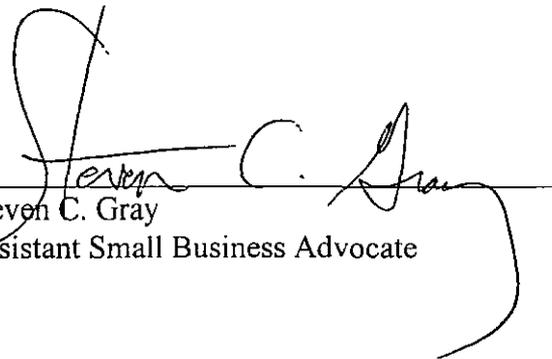
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Date: November 29, 2004



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November 30, 2004

REC'D - 11/30/04
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SECRETARY'S BUREAU

James J. McNulty, Secretary
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400 North Street
Harrisburg, PA 17120

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 to the Joint Petition for Clarification 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
Cheryl Walker Davis/OSA
Bohdan R. Pankiw/Law Bureau

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development of the record and the issuance of a further recommended decision on “policy issues and other access charge concerns” that were raised by AT&T and other interexchange carriers (“IXCs”), such as MCI WorldCom, Inc. (“MCI”) and Qwest Communications Corporation (“Qwest”) who were also active in the proceeding.² In response to the July 28th Order, Verizon filed a Petition for Reconsideration requesting, among other things, that further access issues be addressed in a new proceeding and this docket be closed. That Petition was rejected by the Commission by Order dated November 18, 2004.³

Also, on November 1, 2004, Verizon made its Price Change Opportunity (“PCO”) filing, that, *inter alia*, would reduce the required local rate increases necessary to offset access reductions by \$4.7 million or from \$.92 to \$.80 per month per line. No opposition has been filed to the PCO Petition, but the PUC has taken no action on this matter.

On November 17, 2004, AT&T, MCI and Qwest filed the instant Joint Petition for Clarification of the Commission’s Order entered July 28, 2004. In their Joint Petition, the IXCs indicated that Verizon had not yet implemented the access charge reductions ordered by the Commission and requested that the Commission establish a date-certain by which Verizon must implement the access reductions.⁴ The IXCs further requested that the Commission “complete the access reform process, either by commencing the remand contemplated in the July 28th Order, or, even better, resolve the access problem once and for all by directing Verizon to reduce

² Id. at 38.

³ AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc., Docket No. C-20027195, Opinion and Order (entered Nov. 23, 2004).

⁴ AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc., Docket No. C-20027195, Joint Petition of AT&T Communications of Pennsylvania LLC, MCI WorldCom Communications, Inc. and Qwest Communications Corporation for Clarification of the Commission’s Order Entered on July 28, 2004 (dated November 17, 2004)(“Petition for Clarification”) at 1.

its access charges based on the facts already present in this record and to implement offsetting increases in basic exchange rates.”⁵

In response to the IXC's Petition for Clarification, the OCA notes that it has agreed to the access reductions and local rate increases contained within the Joint Petition for Resolution, but believes that any further access reductions must be carefully considered by the Commission through the hearing process. Consideration of further access rate reductions (and increased basic rates) should occur only after the specific issues to be addressed are clearly defined and a further evidentiary record on those specific issues is developed. The IXC's Petition for Clarification must be rejected to the extent it requests further basic local rate increases without hearings. The OCA does not object to the IXC's request for the Commission to require the required access reductions pursuant to the July 28th Order to be effective by February 1, 2005 provided that the PUC responds to Verizon's related PCO filing by that date.

In support of its Answer, the OCA submits as follows:

II. ANSWER

A. Any Further Consideration Of Access Rate Reductions and Basic Rate Increases Should Occur Only After All Issues Are Resolved And A Full Evidentiary Record Is Developed

1. Introduction

In their Petition for Clarification, the IXC's explain that Verizon has not yet implemented the intrastate access charge reductions ordered by the Commission on July 28, 2004. The Petition for Clarification further details attempts by the IXC's to informally reach a determination with Verizon as to when those reductions would be made. The IXC's attach as Attachment A to their Petition for Clarification copies of a letter written by counsel for Qwest to counsel for Verizon regarding their perceived delay in Verizon implementing the intrastate

⁵ Id. at 1-2.

access reductions and the letter written in response by counsel for Verizon to counsel for Qwest. By filing their Petition for Clarification, the IXCs seek to establish February 1, 2005 as the date certain when Verizon will implement the intrastate access charge reductions.

As stated above, the OCA does not oppose requiring the access reductions, and related local rate increases, taking place by February 1, 2005 as the IXCs propose, provided that the Commission also rules on the use of \$4.7 million in Verizon PCO money to offset the resulting local rate increases. Verizon requested this action in the PCO filing, which the OCA supports. The November 1, 2004 Verizon PCO filing is one reason why the related access rate reductions are not yet ready for implementation. Applying this portion of the PCO money to offset local rate increases will help to reduce the resulting local rate increases.

However, the Petition for Clarification further requests that the Commission “resolve the access problem once and for all by directing Verizon to reduce its access charges based on facts already present in the record and to implement offsetting increases in basic exchange rates.”⁶ The IXCs assert that the Commission should “issue a final decision on further access charge reform without remanding the case to the OALJ for additional proceedings.”⁷

The OCA strenuously opposes these requests and submits that the Petition for Clarification on this point should be denied as further consideration of access rates should only occur after the specific issues to be addressed are identified and a full evidentiary record in response to those issues is developed.

2. Further Evidentiary Hearings Are Required If Verizon’s Intrastate Access Charges Are To Be Further Modified.

As indicated above, the Petition for Clarification seeks further reductions of Verizon’s intrastate access charges, but without any further hearings. The OCA strenuously

⁶ Id. at 1-2.

⁷ Id. at 8.

opposes any further access charge reductions (and basic rate increases) without a comprehensive examination of the relevant issues being clearly articulated and a full evidentiary hearing being provided on those issues. In no way should the Commission extrapolate the agreement in this proceeding to support further intrastate access reductions and basic rate increases. In particular, the OCA submits that, since the record closed in this proceeding, additional developments have occurred at the federal level that impact Verizon's intrastate access charges. This Commission must consider those developments before any further access charge reductions are ordered.

Specifically, the Federal Communications Commission ("FCC") has recently received a proposal by a group of telecommunications providers identified as the Intercarrier Compensation Forum ("ICF"), which would eliminate the same intrastate access issues that are the subject of this proceeding.⁸ AT&T and MCI are a part of the ICF. The ICF proposal recommends: "Replacing today's myriad of different intercarrier compensation *rates*—including interstate access, intrastate access, voice reciprocal compensation, intercarrier compensation for ISP-bound traffic, and interILEC settlements—with uniform rates for all traffic."⁹ ICF argues that this restructuring of all types of access rates should be taken on by the FCC.

The ICF proposal specifically states, "the [FCC] may lawfully raise the [Subscriber Line Charge] to cover a portion of the costs formerly covered by *intrastate access charges* as an exercise of plenary authority to ensure a sustainable and explicit universal service system."¹⁰ The ICF proposal advocates that "rather than forcing *the states* to assume a new burden, the Commission would achieve the goals of section 254 by lifting *the states'* existing

⁸ See, Letter from Gary M. Epstein, Counsel for the Intercarrier Compensation Forum to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 5, 2004 ("ICF Plan").

⁹ Id. at 5.

¹⁰ Id. at 44 (emphasis added).

obligation to arrange for recovery of certain network costs... .”¹¹ As such, it is clear that the ICF proposal currently pending before the FCC would affect Verizon’s intrastate access rates.

The ICF, in its FCC proposal, further articulates its various legal theories as to how the FCC is able to reduce intrastate access charges that have previously been within the exclusive regulatory province of the state commissions for many years.¹² While the OCA does not agree with those legal theories, it will not articulate this legal argument here. Nor does the OCA agree or endorse in any way the ICFs proposal to fund access reduction through further increases in the Federal Subscriber Line Charge (SLC). The important point is that the FCC, upon the urging of the ICF, is considering the assumption of authority over the same intrastate access charges that the present proceeding was intended to address. The ICF appears to be arguing that intrastate access reform should now more appropriately take place at the FCC.

The OCA submits that the same reform of intrastate access charges cannot take place both at the PUC and the FCC. The OCA is concerned that, while members of the ICF in Pennsylvania are apparently arguing that these issues should be decided by the Pennsylvania PUC, at the FCC some of these same companies are arguing that access reform must take place at the FCC as a “unified and inseverable” method of access reform.¹³

Significantly, the ICF proposal includes increasing the SLC to \$10 – an increase of nearly \$4 above the current Verizon PA SLC – as well as further increases in the federal universal service support charges. In the proceeding currently pending before the PUC, the Joint Petitioners claim, “the Commission can largely eliminate the Verizon access problem in two years, at a cost of two monthly local rate increases of less than 80 cents each.”¹⁴ This \$1.60

¹¹ Id. at 45 (emphasis added).

¹² ICF Plan at 7-8.

¹³ Id. at 7.

¹⁴ Petition for Clarification at 9.

potential local rate increase must be considered in light of a potential \$4 SLC increase and higher USF charges, as requested by the ICF, particularly as both sets of rate increases would essentially be recovering many of the same costs. Any further reduction of Verizon's intrastate access charges by the PUC could effectively result in Pennsylvania consumers paying twice for the elimination of the same access rates. The OCA is concerned that the PUC may increase local rates by \$1.60 in order to reduce intrastate access charges, while the same consumers will pay an additional \$4 per month to eliminate these and other access charges. The PUC must consider how it should further engage in intrastate local rate rebalancing in view of the FCC's consideration of the same issue on a national basis.

The IXCs' Petition for Clarification makes no reference to the ICF proposal submitted to the FCC. No further intrastate access charge reductions should be ordered by this Commission without a clear consideration of the ICF proposal submitted to the FCC and how this may affect any further intrastate access reductions in Pennsylvania. At a minimum, to fairly consider such issues, a full evidentiary hearing must be held with further expert testimony on these highly complex matters.¹⁵

As such, further evidentiary hearings are required if Verizon's intrastate access charges are to be further modified. If the Commission desires further analysis of Verizon's intrastate access charges, the Commission should reject the IXCs' request in its Petition for Clarification to do so without remanding the proceeding for further evidentiary hearings. Rather, the Commission should only make such revisions after the issues to be addressed have been clearly articulated and all affected parties have had a full and fair opportunity to present evidence on those issues.

¹⁵ The ICF October 4, 2004 filing alone is nearly 200 pages and includes detailed charts and diagrams coordinating various sources and conflicting interests.

4. Conclusion.

The IXCs' request in their Petition for Clarification for further reductions in Verizon's intrastate access rates and increases in basic service rates, without further hearings, should be rejected. Further evidentiary hearings are required if Verizon's intrastate access charges are to be further modified so that the Commission can be apprised of the ongoing federal activity and other related developments on these issues.

III. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully requests that this Commission consider this Answer to the Joint Petition for Clarification filed by AT&T, MCI and Qwest and reject the Petition to the extent discussed above. More specifically, the OCA submits that any consideration of further access rate reductions and basic rate increases can occur only after the relevant issues have been identified and a full evidentiary record has been established pertaining to those issues.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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 to the Joint Petition for Clarification, 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:

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