

**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 #5 ON REMAND

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).

A telephonic hearing was held to admit the testimony and exhibits into the record. The Recommended Decision on Remand was issued on December 7, 2005.

By Order entered January 8, 2007, the Commission stayed Verizon Pennsylvania Inc.'s and Verizon North Inc.'s access charge investigation pending the outcome of the FCC's *Unified Intercarrier Compensation*¹ proceeding, or for one year from the date of entry of that Order, whichever is earlier.

The Commission has issued additional Orders staying the proceeding.

On August 12, 2009, Michael A. Gruin, Esquire, filed an entry of appearance and substitution of counsel on behalf of Sprint. Orlando Vidal, Esquire, was removed as counsel.

On June 10, 2010, Michelle Painter, Esquire, filed a notice of appearance on behalf of AT&T.

¹ See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, Further Notice of Proposed Rulemaking (released March 3, 2005) (Unified Intercarrier Compensation Proceeding).

On August 26, 2010, the United Telephone Company of Pennsylvania, LLC d/b/a Century Link, through its counsel, Sue Benedek, Esquire, filed a Notice of Intervention.

On November 30, 2010, Verizon, through its counsel, filed a Motion Pro Hac Vice, for Gregory M. Romano, Esquire.

Discussion

In its Order entered May 11, 2010 in this matter, the Commission denied the Motion to Extend the Stay. In addition, the Commission said the following:

We note that the stay has rendered some of ALJ Fordham's recommendations moot, while others have since been resolved in subsequent proceedings. Nevertheless, it is apparent that the record in this investigation needs to be updated. As such, in addition to our specific directives, *infra*, we will direct the ALJ and the Parties to consider those issues that still need to be resolved in the reopened investigation and whether any parts of the developed record in the investigation can be used or whether they need to be refreshed.

Order at 18

With regard to our specific directives for matters to be addressed in this investigation, we shall afford the participating parties due process opportunities to supplement the evidentiary record including any issues that were not adjudicated at the time of the Remand before the ALJ. In addition to the supplemental issues that will be raised by the parties, the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between (a) any FCC ruling that may have an impact on intrastate switched access charges; (b) the intrastate access charge reform for ILECs in view of the new Chapter 30 law and its relevant provision at 66 Pa. C.S. §§ 3015(g), pertaining to "Rate change limitations," and 3017, pertaining to "Access charges;" and (c) the potential effects on rates for Verizon's basic local exchange services. In addition, should the resulting rate changes from this investigation occur within the context of the Verizon Companies' subsequent Price Change Opportunity filing, the ALJ shall address the potential implications of the resulting rate changes in the calculations associated with the relevant PCO filing and why those resulting rate changes would be considered lawful, just and reasonable pursuant to the Chapter 30 law.

Order at 21, 22

Finally, it is worth mentioning that our primary reason for staying the instant investigation was to await an FCC ruling in its *Unified Intercarrier Compensation Proceeding*. While there has been some activity in that proceeding that has been addressed by Parties in their status reports, there has been a major, notable development, which occurred after the due date for the submission of the last round of status reports, that may have a profound effect on intrastate switched access charges. That development is the issuance of the FCC's National Broadband Plan (NBP), which was released on March 16, 2010.

The NBP, formally entitled "*Connecting America: The National Broadband Plan*," was prepared by the FCC in order to fulfill a mandate by the United States Congress to develop a "national broadband plan" to ensure that every American has "access to broadband capability." The NBP addresses, *inter alia*, the transition from a circuit-switched network to a platform over which multiple internet protocol-based services converge.² NBP at 59. The NBP also includes recommendations on universal service and intercarrier compensation that will affect the path of the transition. *Id.* The Executive Summary of the NBP, on page XIII, addresses a recommendation to "[r]eform intercarrier compensation, which provides implicit subsidies to telephone companies by eliminating per-minute charges over the next 10 years and enabling adequate cost recovery through the CAF" (Connect America Fund).³ In light of this recent development, if the FCC makes any pertinent rulings directly related to the NBP during the course of this access charge investigation, we shall direct the ALJ to consider and address how those rulings may have an impact on the outcome of this investigation.

Order at 22.

² These IP-based services include voice, data and video.

³ The CAF will be created to support the provision of affordable broadband and voice with at least 4Mbps actual download speeds. It will shift up to \$15.5 billion from the existing federal Universal Service Fund program to support broadband over the next ten years.

Ordering paragraphs 5-7 read as follows;

5. That the participating parties shall be afforded due process opportunities to supplement the evidentiary record including any issues that were not adjudicated at the time of the Remand before Administrative Law Judge Cynthia Williams Fordham at this docket.

6. That in addition to any supplemental issues raised per Ordering Paragraph No. 5, above, the participating parties shall address and provide record evidence on the legal, ratemaking and regulatory accounting linkages between: a) any Federal Communications Commission's ruling in its *Unified Intercarrier Compensation* proceeding; b) the intrastate access charge reform for ILECs in view of the new Chapter 30 law and its relevant provisions at 66 Pa. C.S. §§ 3015 and 3017; and, c) the potential effects on rates for Verizon's basic local exchange services.

7. That Commission Staff from the Office of Special Assistants and the Law Bureau is hereby directed to continue monitoring the Federal Communications Commission's *Unified Intercarrier Compensation* proceeding and any other Federal Communications Commission proceeding or activity that may directly impact intrastate switched access charges.

Prehearing Conference

A further telephonic prehearing conference will be held on Wednesday, December 8, 2010 at 2:00 p.m. The parties in Philadelphia are welcome to come to an available hearing room **on the 4th floor at 801 Market Street. (The entrance is on 8th Street.)** The parties in Harrisburg will meet in Hearing Room 5 on the Plaza Level of the Commonwealth Keystone Building.

The Commission's regulation concerning prehearing conferences in a nonrate proceeding is located at 52 Pa. Code §5.222. We will discuss the following:

- 1) A proposed plan and schedule of discovery;
- 2) Possibility of settlement;

- 3) Issues;
- 4) Amount of hearing time needed;
- 5) Witnesses;
- 6) Schedule for submission of testimony, hearings and briefs; and
- 7) any other appropriate matter.

Counsel should submit a prehearing memorandum addressing the agenda items on or before noon on Tuesday, December 7, 2010. Counsel can e-mail the memoranda to me and the other counsel.

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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion Pro Hac Vice for Gregory M. Romano, Esquire, is granted.
2. That counsel for the parties shall submit prehearing memoranda by noon on Tuesday, December 7, 2010.

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

Date: December 3, 2010


Cynthia Williams Fordham
Cynthia Williams Fordham
Administrative Law Judge

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

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