

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications  
of Pennsylvania, Inc.

RECEIVED

v.

AUG 19 2011

C-20027195

Verizon North, Inc.  
Verizon Pennsylvania Inc.

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

DOCUMENT  
FOLDER

**PREHEARING ORDER #10 ON REMAND**  
**addressing the Motions to Reopen the Record**

I. AT&T's Motion to Reopen the Record and for Admission of Late Filed Exhibit

Evidentiary hearings for cross-examination of witnesses were held on June 14 and 15, 2011. On the first day of the hearing, Verizon's witnesses, Don Price and Thomas Mazziotti, provided oral rejoinder testimony. In response to AT&T's testimony, Mr. Price provided a figure that he identified as Verizon's calculation of the revenue attributable to reducing the Verizon non-usage based intrastate rate for elements such as direct transport and entrance facilities to interstate levels. AT&T's counsel propounded an on the record data request for Verizon's back-up data associated with the revenue amount provided in Mr. Price's oral rejoinder testimony.

According to the procedural schedule the record closed on June 17, 2011. Verizon provided its response to AT&T's on the record data request on June 23, 2011. On June 27, 2011, AT&T filed a Motion to Reopen the Record and for Admission of Late-filed Exhibit.

In the Motion, AT&T stated that, pursuant to 52 Pa. Code § 5.431, after the record has closed, additional evidence may be relied upon for good cause shown. AT&T cited 52 Pa.

Code § 5.571 as authorization for filing a petition to reopen the proceeding to add evidence before a final decision is issued. In addition 52 Pa. Code § 5.401(a) states that all relevant and material evidence is admissible, subject to objection.

AT&T explained that it is critical that the record be updated to include all information associated with the total reduction in access revenues that would result from reducing Verizon's intrastate access rates to parity with its interstate rates and structure. AT&T indicated that AT&T Cross Examination Exhibit 9 provides the Commission with a more complete and precise revenue calculation for determining the access revenue reduction that should be considered as part of any rate rebalancing opportunity that would result from a final Commission order in this proceeding.

No party objected to re-opening the record for the limited purpose of introducing the data response into the record.

Accordingly, the petition is granted and AT&T Cross Examination Exhibit 9 will be entered into evidence as a late filed proprietary exhibit 52 Pa. Code § 5.401(a).

## II. Verizon Companies' Petition To Reopen The Record

On July 11, 2011, Verizon Companies' filed a Petition to Reopen the Record in the Pennsylvania Verizon access rate matter at Docket No. C-20027195.

Verizon stated that at the June 30, 2011 public meeting the Commission voted unanimously to adopt a decision in the *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105. Verizon asserted that because "this landmark order will, for the first time provide the Commission's view on many of the complex and disputed policy and legal questions relating to access pricing that are also at issue in the case 'conditions of fact or law have so changed' and 'the public interest requires' the reopening of the record for the limited purpose of

providing evidence regarding the impact of the decisions in the RLEC access investigation on this matter.” (Petition at 1).

Verizon mentioned that during the prehearing conference in the instant proceeding no one knew whether the Commission would decide the RLEC proceeding before the briefs were filed in this matter. It was noted that the undersigned decided to establish a schedule in this matter and stated that the schedule could change if the Commission ruled in the RLEC case before this proceeding concluded. (Petition at 2).

At the time that the Petition was filed, the main briefs were due on July 22, 2011, and reply briefs were due on August 12, 2011. After reaching agreement with the parties, on July 14, 2011, Verizon requested that the briefing dates be revised to allow the parties time to review the Commission’s Order in the RLEC access case. The due date for the main brief was changed to August 16, 2011, and the date for the reply brief was changed to September 9, 2011.

On July 18, 2011, the Commission entered an Opinion and Order in the RLEC proceeding at Docket Number I-00040105.

A. AT&T

In its reply to the Petition, AT&T stated that the Petition to Reopen the Record is Verizon’s latest attempt to prolong the schedule for this case. Since the Commission’s Order has been issued, AT&T said that it is clear that further delay is unnecessary because the parties can address the decision in their briefs (AT&T’s Reply at 1).

AT&T explained that the Commission first recognized the need to reduce Verizon’s access rates as part of the *Global Order* in 1999 (AT&T’s Reply at 1, 2). The instant case was started in January 2002. This is the third round of litigation (AT&T’s Reply at 2, 3).

AT&T argues that there is no reason to re-open the record for two more rounds of testimony. AT&T explains that fifteen pieces of testimony were entered into the record and Verizon presented oral rejoinder testimony (AT&T's Reply at 3).

AT&T's position is that Verizon has not pointed to any actual new facts or policy issues in the Commission's July 18, 2011 Opinion and Order that necessitate two more rounds of testimony. AT&T notes that the Order makes it clear that "Verizon's access charges have been and will continue to be considered separately" from the issues that the Commission dealt with in the RLEC access proceeding. *July 18, 2011 Opinion and Order at 17 n. 24.*

AT&T requested that Verizon's Petition be denied.

B. Sprint

In its reply Sprint Communications Company, L.P., Sprint Spectrum, L.P., Nextel Communications of the Mid-Atlantic, Inc., and NPCR, Inc. (collectively "Sprint" or "Sprint Nextel") argued that Verizon has presented no compelling reason to reopen the record and its Petition should be denied (Sprint's Reply at 1)..

Sprint stated that all of the facts relevant to the instant matter have been presented and the release of a Commission Order in another docket is not grounds to reopen the record. The Commission's Opinion and Order on RLEC Access can be addressed in the parties' briefs (Sprint's Reply at 1).

Legal issues should be addressed in briefs. Lay witnesses are not qualified to provide testimony on legal issues (Sprint's Reply at 1).

AT&T explained that Verizon's policy position has been well developed in four rounds of testimony and through cross-examination. The RLEC Access Reform Order does not require the reductions that Verizon is advocating. Therefore, Sprint contends that unless Verizon

wishes to change its position, reopening the record would merely delay the resolution of this matter (Sprint's Reply at 1, 2).

Sprint argued that there is no need for witness testimony to compare rates deemed just and reasonable in the RLEC Access Reform Order to Verizon's rates. Verizon's rates are in the record and any comparison to the rates set in the RLEC Access Reform Order can be done in the briefs (Sprint's Reply at 2).

Sprint explained that the Commission knew the posture of each case. When this proceeding was reopened, the only instruction or admonition was that hearings be held after the recommended decision in I-00040105 was issued. In the RLEC Access Reform Order the Commission did not mention placing this proceeding in abeyance or allowing additional evidence in light of the RLEC Order (Sprint's Reply at 1).

C. CenturyLink

On July 21, 2011, the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink filed an Answer to the Petition to Reopen the Record. CenturyLink's position is that Verizon has failed to demonstrate that the Commission's Opinion and Order in the RLEC case at docket number I-00040105 constitutes a change in fact or law. The two access proceedings are on separate tracks (CenturyLink's Reply at 2). CenturyLink agrees that the Commission's July 18, 2011 Opinion and Order is a landmark decision with respect to RLECS. CenturyLink denies that the Order has the same impact on Verizon. (CenturyLink's Reply at 2). CenturyLink contend' that the application of revenue neutrality remains specific to Verizon (CenturyLink's Reply at 3). CenturyLink denies that two rounds of written expert testimony, additional briefing, another hearing, and a further telephonic conference call is a "limited reopening" of the evidentiary record (CenturyLink's Reply at 3, 4). CenturyLink suggests that the Commission take judicial notice of the July 18, 2011 Opinion and Order.

D. Verizon's Reply

On July 26, 2011, Verizon filed the Reply in Support of Verizon's Petition to Reopen the Record. Verizon stated that it intends to present testimony explaining that there is no factual or policy basis to impose more onerous regulation on Verizon than what the Commission has deemed reasonable for the other ILECs in the state. Verizon's witnesses intend to supply evidence and analysis demonstrating that neither Verizon's size nor any other attribute justifies applying a different analysis to Verizon's access rates. In addition, Verizon's rates should not be held to a different set of reasonable standards (Verizon's Reply at 3). Verizon stated that the evidence in the record only shows the results of reducing Verizon's access rates to interstate levels. Since the Commission's RLEC Order used another outcome, Verizon wants to present the facts to compare (Verizon's Reply at 4). Verizon stated that AT&T raised the issue at the last minute regarding whether the scope of this proceeding is limited to usage-sensitive rate elements and the carrier charge, or whether it should also include dedicated transport and entrance facilities. Verizon's witnesses will explain that the RLEC Access Order indicates that dedicated transport and entrance facilities were not in play there or here (Verizon's Reply at 4. 5).

E. Additional Filings in the RLEC case

A Joint Petition for Limited Reconsideration and Stay (Petition for Limited Reconsideration and Stay) was filed by the Pennsylvania Telephone Association (PTA) and CenturyLink on August 2, 2011. A Petition for Reconsideration and Clarification was filed by AT&T on August 2, 2011, with regard to the Commission's Opinion and Order, entered on July 18, 2011.

On August 11, 2011 the Commission granted reconsideration pending further review of and consideration on the merits.

F. Disposition

After reviewing the Petition, the Answers, the Reply and the relevant portions of the Commission's July 18, 2011 Opinion and Order, the undersigned agrees with AT&T, Sprint and CenturyLink that the Petition should be denied. Since the Commission's Opinion and Order was issued on July 18, 2011 and the briefing schedule was modified, the parties can address the issues in their briefs. In light of the recent round of litigation, the Commission should have the requisite evidence to make a decision in this matter. AT&T correctly noted that "[r]eductions to Verizon's access charges have been and will continue to be considered separately" from the issues that the Commission dealt with in the RLEC access proceeding. *July 18, 2011 Opinion and Order at 17 n. 24.*

Furthermore, in light of the Commission's recent Order granting the Petitions for Reconsideration, the undersigned believes that reopening the record in this proceeding would result in a significant delay. Accordingly, Verizon's Petition to Reopen the Record is denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That AT&T Communication of Pennsylvania, LLC, TCG Pittsburgh and TCG New Jersey, Inc.'s Petition to Reopen the Record is granted pursuant to 52 Pa. Code § 5.571.
2. That AT&T Cross Exhibit 9 is entered into evidence as a late filed proprietary exhibit pursuant to 52 Pa. Code § 5.401 (a).
3. Ordering paragraph 2 of Prehearing Order #6 on Remand is revised to allow the parties to file main briefs on August 16, 2011, and reply briefs on September 9, 2011.

4. That Verizon Pennsylvania, Inc and Verizon North LLC's Petition to Reopen the Record is denied.

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

6. That the evidentiary record is closed.

Date: August 12, 2011

*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.

SERVICE LIST

MICHELLE PAINTER, ESQUIRE  
PAINTER LAW FIRM PLLC  
13017 DUNHILL DRIVE  
FAIRFAX, VA 22030  
**AT&T COMM OF PENNSYLVANIA**

ROBERT C. BARBER, ESQUIRE  
AT&T SERVICES INC  
3033 CHAIN BRIDGE ROAD, D-E7.303  
OAKTON, VA 22185

SUZAN D PAIVA, ESQUIRE  
VERIZON PENNSYLVANIA INC  
1717 ARCH STREET, FLOOR 3  
PHILADELPHIA, PA 19103

GREGORY M ROMANO, ESQUIRE  
VERIZON  
ONE VERIZON WAY, VC54S204  
BASKING RIDGE, NJ 07920

MICHAEL A GRUIN ESQUIRE  
STEVENS & LEE  
17 NORTH SECOND STREET, 16TH FL  
HARRISBURG, PA 17101  
**SPRINT NEXTEL**

BENJAMIN J ARON, ESQUIRE  
SPRINT NEXTEL CORP  
12502 SUNRISE VALLEY DRIVE  
RESTON, VA 20196

ZSUZSANNA E BENEDEK, ESQUIRE  
CENTURYLINK  
240 NORTH THIRD STREET, SUITE 300  
HARRISBURG, PA 17101

NORMAN J KENNARD, ESQUIRE  
REGINA L MATZ, ESQUIRE  
THOMAS LONG NIESEN & KENNARD  
212 LOCUST STREET, SUITE 500  
HARRISBURG, PA 17108  
**PA TELEPHONE ASSOCIATION**

STEVEN C GRAY, ESQUIRE  
OFF OF SMALL BUSINESS ADVOCATE  
SUITE 1102, COMMERCE BUILDING  
300 NORTH SECOND STREET  
HARRISBURG, PA 17101

JOEL H. CHESKIS, ESQUIRE  
OFFICE OF CONSUMER ADVOCATE  
555 WALNUT STREET  
5TH FLOOR, FORUM PLACE  
HARRISBURG, PA 17101-1923