



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

March 13, 2007

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

ORIGINAL

Re: Verizon North Inc. 2007 Price Change Opportunity Filing; OSBA v. Verizon North Inc.;  
Docket Nos. R-00061914, P-00001854F1000, R-00061914C0001  
and  
Verizon Pennsylvania Inc. 2007 Price Change Opportunity Filing; OSBA v. Verizon  
Pennsylvania Inc.; Docket Nos. R-00061915, P-00930715F1000, R-00061915C0001

Dear Secretary McNulty:

Enclosed for filing are an original and one (1) copy of the Order Certifying Material Questions in the above-captioned matter. Copies have been provided to all parties of record, as noted in the Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

*Kandace F. Melillo*

Kandace F. Melillo  
Administrative Law Judge

DOCUMENT  
FOLDER

Enclosures.  
cc (w/encl): Cheryl Walker Davis, Director  
Office of Special Assistants

Parties of Record

RECEIVED

MAR 14 2007

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon North Inc. : R-00061914  
2007 Price Change Opportunity Filing : P-00001854F1000

Office of Small Business Advocate :  
v. : R-00061914C0001  
Verizon North Inc. :

and

Verizon Pennsylvania, Inc. : R-00061915  
2007 Price Change Opportunity Filing : P-00930715F1000

Office of Small Business Advocate :  
v. : R-00061915C0001  
Verizon Pennsylvania, Inc. :

**ORDER CERTIFYING MATERIAL QUESTIONS**

I. BACKGROUND

On November 1, 2006, Verizon Pennsylvania, Inc. (Verizon PA) made its 2007 Price Change Opportunity (PCO) filing with the Commission, at Docket Nos. R-00061915 and P-00930715F1000, pursuant to the terms of its Chapter 30 Plan and the Chapter 30 statute, as amended by Act 183. Under this filing, Verizon PA proposed an annual revenue increase of \$19,829,000 and an actual price increase totaling \$20,314,000, due to an additional \$485,000 relating to the recurring banked increase from its 2006 PCO filing.

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**DOCKETED**  
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Also on November 1, 2006, Verizon North Inc. (Verizon North), a sister company to Verizon PA, made its 2007 PCO filing with the Commission, at Docket Nos. R-00061914 and P-00001854F1000, pursuant to its Chapter 30 Plan and the Chapter 30 statute, as amended by Act 183. Under this filing, Verizon North proposed an annual price increase of \$3,420,000.

On November 9, 2006, the Office of Small Business Advocate (OSBA) filed Formal Complaints against the Verizon PA and Verizon North PCO filings which raised common issues of law and fact. On November 17, 2006, the OCA filed a Notice of Intervention in both the Verizon PA and Verizon North PCO dockets. On November 21, 2006, the Office of Trial Staff filed a Notice of Appearance at each docket.

On December 28, 2006, the Commission entered an Order on Verizon PA's 2007 PCO filing. In its Order, the Commission permitted Verizon PA's proposed rate increases to go into effect, as reduced to reflect a banking adjustment, and incorporated the disputed banking methodology into the OSBA Complaint proceeding. The resulting rates were to remain in effect during the pendency of the Administrative Law Judge (ALJ) adjudication and would be subject to the ALJ findings. The Commission directed the ALJ to issue a Recommended Decision no later than seven (7) months from the Order entry date, or by July 28, 2007.

On January 2, 2007, Verizon PA filed a Petition for Reconsideration in which it contended that the Commission had violated its due process rights and Chapter 30 Plan by the manner in which the banking issue had been addressed in the December 28, 2006 Order. By Order entered January 11, 2007, the Commission granted Verizon PA's Petition for Reconsideration. In so doing, the Commission decided to allow Verizon PA's originally proposed rate increases to go into effect subject to refund, consistent with the approach followed by the Commission in regard to Verizon PA's 2006 PCO filing. The Commission also indicated that it would withhold final judgment on the correctness of Verizon PA's banking methodology until the matter had been fully addressed by the parties and the ALJ.

On January 22, 2007, the parties were provided notice that I had been assigned to preside over the hearings and render a Recommended Decision in Verizon PA's 2007 PCO filing.

On January 31, 2007, a Prehearing Conference was held in the Verizon PA 2007 PCO proceeding, with all parties in attendance. At the Prehearing Conference, I was informed that all but two of the issues raised by the parties to date in the Verizon PA 2007 PCO proceeding had been previously litigated in the Verizon PA/Verizon North 2006 PCO proceeding (R-00051227, R-00051228), pending before the Commission. Verizon PA and other parties indicated that it would not be an efficient use of party or Commission resources to prepare new testimony or briefing on issues that are already before the Commission from the 2006 proceeding. It was thought that the Commission would likely rule on the issues in the 2006 PCO proceeding at its March 1, 2007 Public Meeting, and that this would allow sufficient time for the findings to be incorporated into the 2007 PCO litigation. A second Prehearing Conference was scheduled for March 9, 2007, to discuss further issues relating to the incorporation of the Commission action on the 2006 PCO proceeding into the 2007 proceeding.

A procedural schedule for the Verizon PA 2007 PCO was agreed to by the parties. Pursuant to this schedule, direct testimony of all parties was to be filed by April 2, 2007, rebuttal testimony of all parties was due on April 23, 2007, and surrebuttal testimony was due on May 2, 2007. Hearings were to be held in Harrisburg, PA on May 4, 2007.

In its Prehearing Memorandum, Verizon PA noted an expectation that the OSBA Complaint filed against Verizon North's 2007 PCO filing, which was virtually identical to its Complaint against the Verizon PA filing, would eventually be made a part of the Verizon PA 2007 PCO proceeding.

On February 8, 2007, the Commission entered an Order with respect to Verizon North's 2007 PCO filing. In its Order, the Commission permitted the rate increases proposed by Verizon North to go into effect as filed, subject to the findings of the ALJ regarding the OSBA and subject to refund and recoupment. In addition, the Commission directed that the presiding ALJ in the Verizon North 2007 PCO proceeding issue a Recommended Decision no later than seven (7) months after the Order entry date, or by September 8, 2007.

After receiving notice that I would be assigned to the Verizon North 2007 PCO proceeding, I inquired of the parties as to their position on consolidation of the Verizon PA and Verizon North P2007 PCO proceedings. I further inquired as to whether the parties could accept the litigation schedule previously established for the Verizon PA proceeding, given that the two PCO proceedings had separate Commission deadlines.

All parties agreed that consolidation of the two proceedings would be appropriate. Furthermore, the parties agreed to be bound by the procedural schedule previously established in the Verizon PA 2007 PCO proceeding. This agreement was based upon the understanding that the Commission would act on the Verizon PA/Verizon North 2006 PCO at its March 1, 2007 Public Meeting.

On February 22, 2007, the parties were provided notice that the Prehearing Conference in the Verizon North 2007 PCO would be held at the same time as the Verizon PA 2007 PCO second Prehearing Conference, on March 9, 2007.

On Public Meeting on March 1, 2007, the Commission did not act on the Verizon PA/Verizon North 2006 PCO proceeding, and there is no Public Meeting scheduled until March 22, 2007.

By Order entered March 5, 2007, I issued an Order Consolidating Proceedings, in which the Verizon PA and Verizon North proceedings were incorporated for purposes of hearing and a decision. I concluded that there were common issues of law or fact, and that consolidation would avoid unnecessary costs and delay.

At the Prehearing Conference on March 9, 2007, the parties agreed that, as the Commission had not yet acted on the Verizon PA/Verizon North 2006 PCOs and it was uncertain when that would occur, a certification of a material question to the Commission by the presiding officer was appropriate. The parties also agreed to a change in the procedural schedule to accommodate incorporation of the 2006 PCO rulings into the 2007 PCO litigation, if the Commission enters a Final Order in the 2006 PCOs no later than March 28, 2007. Hearings are

now scheduled for May 17, 2007, instead of May 4, 2007. I have determined that the following questions should be certified:

(1) If a Final Commission Order is not entered in the Verizon PA/Verizon North 2006 PCO proceedings by March 28, 2007, is it acceptable for the issues in the consolidated Verizon PA/Verizon North 2007 PCO proceedings which are common to the Verizon PA/Verizon North 2006 PCO proceedings, to be bifurcated from the new issues in the Verizon PA/Verizon North 2007 PCO proceedings and reserved for further litigation until after a Commission ruling in the Verizon PA/Verizon North 2006 PCO proceedings, and for only new issues related to the 2007 PCO filings to be litigated within the time limits set forth by the Commission in its December 28, 2006 Order?

(2) In the event that question #1 above is answered in the negative, should an extension of time be granted for the Administrative Law Judge to issue a Recommended Decision in the consolidated Verizon PA/Verizon North 2007 PCO proceedings, so that the Recommended Decision on all issues would be due five (5) months from the Final Order entry date of the Verizon PA/Verizon North 2006 PCO proceedings?

## II. DISCUSSION

Commission regulations at 52 Pa. Code §5.305(a) provide for the certification of a material question which has arisen to the Commission for review and answer. The question is to be accompanied by the following: (1) an explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding; (2) a statement as to whether a stay of the proceedings has been placed in effect; and (3) an extract of the record that will assist the Commission.

As indicated by the excerpts attached hereto from the Initial Prehearing Conference on January 31, 2007, interlocutory review will expedite the course of this proceeding and will

prevent prejudice by affirming that the parties will not be required to again litigate the 2006 issues in the 2007 proceeding. In my view, the parties should not be required to relitigate these issues but should be permitted to wait until the Commission has provided guidance in its Final Order on the Verizon PA/Verizon North 2006 PCOs and to incorporate these findings into the 2007 PCO litigation. Given the July 28, 2007, deadline that the Commission has established for submission of a Recommended Decision in the Verizon PA 2007 PCO proceeding, the parties are in agreement that the Commission must enter a Final Order on or before March 28, 2007, to allow the parties an opportunity to incorporate these findings into the litigation and still meet the July 28, 2007 deadline. If a Final Order is not entered by March 28, 2007, then material questions arise which need to be addressed by the Commission.

The first question, as noted above, would provide for the bifurcation of the previously-litigated issues from the proceeding, so that the parties and the agency would not be required to expend resources in litigating the same issues which were previously litigated in 2006. The new issues would be litigated under the original time constraints set forth by the Commission, so that a Recommended Decision as to these issues would be issued by July 28, 2007. The other issues, which are dependent upon the Commission ruling in the Verizon PA/Verizon North 2006 PCO proceedings, would be litigated as necessary at a later time when the Commission's Final Order regarding the 2006 proceedings is available.

If bifurcation is not acceptable to the Commission, then the second question would provide for a general stay of the 2007 Verizon PA/Verizon North PCO proceedings until the Final Order regarding the Verizon PA/Verizon North 2006 PCOs is entered. After the Final Order is available, the parties would then reflect the Commission's 2006 PCO holdings in their data and would litigate all issues so as to permit a Recommended Decision to be issued within five (5) months.

I would prefer that all issues be litigated at the same time so as to avoid the confusion resulting from bifurcation. However, because I do not know whether an extension will be forthcoming, I have directed the parties to proceed with litigation of the new issues at present, so as to meet the July 28, 2007 deadline as to those issues. I request that the Commission affirm this

approach in answering question #1 in the affirmative. However, if the Commission does not want to bifurcate issues, then I request that the Commission answer question #1 in the negative but answer question #2 in the affirmative. It is my understanding that the parties will not be able to reflect the Commission's Final Order on the 2006 PCOs and meet the current litigation deadline unless the Final Order is provided by March 28, 2007. If the Final Order is not forthcoming by that date, and the Commission does not want a bifurcation, then an extension is needed to avoid prejudice as the parties will not be able to complete the litigation without the extension. The requested litigation time is five (5) months, which would be the same amount of time provided for the litigation if the Commission's Final Order had been entered by March 1, 2007.

I have not granted a stay of the proceeding because the Commission has directed that I provide a Recommended Decision by July 28, 2007.

### III. CONCLUSION

As noted above, compelling reasons exist to grant interlocutory review and answer the certified questions, if the Commission's Final Order in the Verizon PA/Verizon North 2006 PCOs is not entered by March 28, 2007. Given the timing constraints and uncertainty as to whether an extension would be granted, I have conducted the litigation as if only the new issues should be litigated as this time. If the Commission disagrees with bifurcation, then the Commission should extend the litigation schedule as set forth herein, to avoid prejudice and to provide the ability to reasonably litigate the issues.

Date: March 13, 2007

Kandace F. Melillo  
Kandace F. Melillo  
Administrative Law Judge

1 JUDGE MELILLO: Thank you. All right. The next  
 2 issue I have is a procedural schedule. While we were off  
 3 the record, the parties discussed a procedural schedule. I  
 4 note that Verizon in its pre-hearing memorandum has  
 5 suggested that the parties not re-litigate issues that were  
 6 previously litigated in the 2006 Verizon PCO case. What is  
 7 the parties' position with respect to that? Are the parties  
 8 agreeing to wait until that order is out to have those  
 9 issues addressed, and what problems do we face in this case  
 10 with doing so? Does someone want to address that?

11 MR. GRAY: Your Honor, I'll give it a shot.

12 JUDGE MELILLO: All right.

13 MR. GRAY: I think we have two different set of  
 14 issues. The first set of issues are two issues that we  
 15 agree we can litigate in this case regardless of what  
 16 happens before the Commission in the Verizon Pennsylvania  
 17 2006 PCO case. Those issues are the banking issue and the  
 18 issue of what is the proper historic period for Verizon PA's  
 19 PCO filing. Regardless of what happens, we can go forward  
 20 on those two issues.

21 The second set of issues are all going to involve, to  
 22 some degree or another, the issues that are currently in  
 23 front of the Commission in the 2006 PCO case. And at this  
 24 moment, we are not clear how we can proceed without a  
 25 decision out of the Commission.

FORM 1

1 JUDGE MELILLO: Can you explain a little further why  
2 that Verizon 2006 PCO order is so crucial to the other  
3 issues in this case?

4 MR. GRAY: Let's take one issue as an example.  
5 Verizon in their 2006 case wanted to use a projection of  
6 line count to calculate the proper rate increases. From the  
7 OSBA's perspective, they were essentially conducting a  
8 future year, future test year analysis.

9 We disagreed with that methodology. We preferred a  
10 hard snapshot in time at the end of their historic period  
11 for revenue, for line count, etcetera. That is one of the  
12 issues up in front of the Commission right now.

13 Without further guidance from the Commission in an  
14 order, we're not sure how to proceed in this case because  
15 Verizon will probably tell you that they have done the same  
16 thing in their 2007 filing that they did in their 2006  
17 filing. Specifically, they're using a projection to come up  
18 with their rate increase per line.

19 So as one example issue, if that's not resolved, that  
20 affects how we litigate this case. And that's one of a half  
21 dozen or so issues that remain in the 2006 case which could  
22 affect the outcome of this proceeding.

23 JUDGE MELILLO: All right. And are the parties in  
24 agreement that it would not be feasible to do some type of  
25 alternative positions in this case and file alternative

1 testimony in the event that we don't have the Commission's  
2 final order in the Verizon PCO 2006 case?

3 MR. GRAY: That seems to be tremendously difficult  
4 tasking for our expert witnesses to say, using that example  
5 again, file direct testimony with two alternatives: one,  
6 Verizon is to use a hard snapshot of data versus, two,  
7 Verizon is using a test year analysis, and create two sets  
8 of parallel testimony on that single issue. That's asking a  
9 lot.

10 MS. PAIVA: I think that would be a waste of  
11 resources because we know that the Commission is going to  
12 decide this order. The only thing is, we don't know exactly  
13 when. So it would be much more efficient for the parties to  
14 be able to rely on that order rather than re-litigating the  
15 things that were already litigated.

16 JUDGE MELILLO: I understand that the issue of line  
17 count and snapshot approaches is very crucial to know in  
18 typical rate proceedings, and you're saying that it's going  
19 to be, again, a difficult situation because you don't know  
20 what appropriate time period to use for your testimony, and  
21 that impacts on almost every other issue except for I guess  
22 the two issues that you've stated?

23 MR. GRAY: Yes. And there are also a number of other  
24 discrete issues that were in the 2006 case which would  
25 affect this case as well. For example, there's an issue

1 that Commissioner Cawley brought up in one of his comments  
2 last year that the OSBA has pursued about whether or not a  
3 provision of Verizon's NMP that talked about limiting rate  
4 increases to residential and business customers with three  
5 or fewer lines, whether that language still survives today  
6 or whether it was stricken by the amendment to Verizon's NMP  
7 in early 2005.

8 And so naturally, the OSBA and Verizon disagree about  
9 that and that's in front of the Commission right now. And  
10 of course, if for example, say the Commission agrees with  
11 the OSBA, it's still in there. Well, we've got a different  
12 result in this case as well.

13 So there are other issues that are holding up the  
14 progress of the 2007 litigation, and once we have gotten  
15 something from the Commission, at least we can go forward.

16 MS. PAIVA: I would just add, in Verizon's pre-  
17 hearing memo on page seven and eight, we listed what we saw  
18 as the issues that were raised in the OSBA complaint as 2-A  
19 through H, and only 2-H is the new issue that could be  
20 litigated in this case that was not in the old case, which  
21 is what annual period to use. All the other issues are tied  
22 up in that case in some form and, without that order, would  
23 be difficult to be litigate.

24 And then Issue No. 1 is the banking issue, which also  
25 is new here and could be litigated.

1 JUDGE MELILLO: Are the parties in agreement that the  
2 listing of issues in the Verizon pre-hearing memorandum are  
3 the issues and that the statement of Verizon about what  
4 issues can be litigated in this case is correct?

5 MR. CHESKIS: Your Honor, my only concern would be to  
6 limit it to this case, to just these issues. We usually  
7 prefer to see if there's any issues that may arise as the  
8 testimony is developed, but we certainly have no problem  
9 recognizing that these are issues in this case.

10 MS. PAIVA: And that description was fairly general  
11 because I recognize that sub-issues could develop out of the  
12 Commission's order, actually.

13 MR. GRAY: Your Honor, I would say that the Verizon  
14 issues on pages seven and eight of Ms. Paiva's pre-hearing  
15 memo are probably a pretty good summary of the 2006 case,  
16 and as I'm sure we can all tell you, like in any case, you  
17 resolve an issue and many things can flow from that. But I  
18 would say that's a pretty good summary of the 2006 case.

19 JUDGE MELILLO: All right. And also, is it correct  
20 that the Verizon pre-hearing memo correctly states also, in  
21 addition to the issues, that certain issues are before the  
22 Commission? That's also stated in the pre-hearing memo,  
23 that these issues are before the Commission in the 2006 PCO  
24 order and one is not, H is a new issue and A is a new issue?

25 MS. PAIVA: Right.

1 JUDGE MELILLO: Do the parties agree that's the case,  
2 2-A -- oh, I'm sorry, one. Section 7, No. 1 is not before  
3 the Commission right now in the 2006 PCO case, and 2-H is  
4 not before the Commission?

5 MS. PAIVA: That's correct.

6 JUDGE MELILLO: Those issues could be litigated at  
7 this time without the guidance of the Commission in the 2006  
8 PCO Verizon order, correct?

9 MR. GRAY: That is correct.

10 MS. PAIVA: Correct.

11 JUDGE MELILLO: All parties? Mr. Cheskis, are you in  
12 agreement?

13 MR. CHESKIS: Yes, Your Honor.

14 JUDGE MELILLO: Very well. I take it the parties  
15 don't wish to re-litigate those issues but would want to  
16 have the Commission order come down and provide guidance  
17 with respect to those issues listed in Ms. Paiva's pre-  
18 hearing memorandum that are in the 2006 case?

19 MR. GRAY: Yes. I feel it would be highly  
20 inefficient to re-litigate that.

21 MS. PAIVA: Yes, and I agree with that.

22 JUDGE MELILLO: All right. Have the parties agreed  
23 upon a procedural schedule which would allow for the close  
24 of the evidentiary record by May 4, 2007?

25 MR. GRAY: Yes, Your Honor.