

1. REPORT DATE: March 21, 2007	2. BUREAU AGENDA NO.: MAR-2007-OSA-0078*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: March 22, 2007
6. APPROVED BY: Director: C.W. Davis 7-1827 Mgr/Spvr: R.A. Marinko 3-3930 Legal Review:	9. EFFECTIVE DATE OF FILING: Commission action on Material Question needed prior to March 28, 2007.
7. PERSONS IN CHARGE: R.A. Marinko 3-3930 A. Arnold 7-8032	9. EFFECTIVE DATE OF FILING: Commission action on Material Question needed prior to March 28, 2007.
8. DOCKET NO.: R-00061914; P00001854F1000; R-00061914C0001; R-00061915; P-00930715F1000; R-00061915C0001	9. EFFECTIVE DATE OF FILING: Commission action on Material Question needed prior to March 28, 2007.

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APR 05 2007

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) **Short summary of history & facts, documents & briefs**
 (c) **Recommendation**

(a) Verizon North Inc. (Verizon North), 2007 Price Change Opportunity (PCO) Filing ... ;
Verizon Pennsylvania Inc. (Verizon PA), 2007 PCO Filing ...

(b) By Order dated March 13, 2007, presiding Administrative Law Judge (ALJ) Kandace A. Melillo certified two material questions for the Commission's consideration pursuant to 52 Pa. Code § 5.305(a). The material questions pertain to the timing of a final Commission Order in the pending, 2006 Verizon North and Verizon PA PCO proceedings and the issuance of a Recommended Decision in the pending, 2007 Verizon North and Verizon PA PCO proceedings in light of certain common disputed issues in the two proceedings. None of the Parties to the proceedings filed briefs regarding the two material questions.

(c) The Office of Special Assistants (OSA) recommends that the Commission adopt the proposed Opinion and Order that determines that the certification was proper, and answers the material questions consistent with the discussion in the proposed Opinion and Order.

10. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Pizzingrilli

Commissioner Cawley - Yes
 Commissioner Fitzpatrick - Yes
 Commissioner

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 22, 2007

R-00061914
R-00061914 C0001
R-00061915
R-00061915 C0001
P-00001854 F1000
P-00930715 F1000

RONALD F WEIGEL DIRECTOR
VERIZON NORTH INC
STRAWBERRY SQUARE
FLOOR 4
HARRISBURG PA 17101

Verizon North Inc.
2007 Price Change Opportunity Filing

Office of Small Business Advocate

v.

Verizon North Inc.

Verizon Pennsylvania Inc.
2007 Price Change Opportunity Filing

Office of Small Business Advocate

v.

Verizon Pennsylvania Inc.

**DOCUMENT
FOLDER**

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on March 22, 2007 has adopted an Opinion and Order in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

encls
cert. mail
MH

See attached list for additional parties of record.

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held March 22, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Verizon North Inc.
2007 Price Change Opportunity Filing

R-00061914
P-00001854F1000

Office of Small Business Advocate

R-00061914C0001

v.

Verizon North Inc.

and

Verizon Pennsylvania, Inc.
2007 Price Change Opportunity Filing

R-00061915
P-00930715F1000

Office of Small Business Advocate

R-00061915C0001

v.

Verizon Pennsylvania, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Matter Before the Commission

Before the Commission for consideration is an Order Certifying Material Questions, issued on March 13, 2007, by presiding Administrative Law Judge (ALJ) Kandace F. Melillo in the above-captioned proceeding. 52 Pa. Code § 5.305. (Order hereafter). None of the Parties filed responses or Briefs in response to said Order.

This matter arises out of the Commission's investigation into Verizon Pennsylvania Inc.'s (Verizon PA) and Verizon North Inc.'s (Verizon North) 2007 annual Price Change Opportunity (PCO) filings that were filed on November 1, 2007, pursuant to each of the Company's Chapter 30 Plans. The Office of Small Business Advocate (OSBA) filed Formal Complaints against the 2007 PCO filings on November 9, 2007.

By Orders entered December 28, 2006, and February 8, 2007, this Commission permitted the resulting rates from Verizon PA's and Verizon North's 2007 PCO, respectively, to go into effect subject to the findings of the ALJ regarding the OSBA's Complaints and subject to refund and recoupment. The Office of Consumer Advocate (OCA) and the Commission's Office of Trial Staff (OTS) are also Parties to the proceeding. As will be discussed in more detail below, the material questions set forth in the Order are presented in light of the fact that all but two of the issues in the 2007 PCO investigation are the same issues that were previously raised in the Companies' 2006 PCO investigation. The

Parties in the 2007 PCO investigation are hoping to obtain the benefit of a Commission Order, to be entered on or before March 28, 2007, that would make a determination on the common issues in the 2006 PCO investigation before further adjudicating the substantially same issues in the instant (2007) proceeding.

Based on the foregoing, an Answer to the Material Questions is being requested in the event that the Commission does not enter a final Order in the 2006 PCO investigation on or before March 28, 2007.

Discussion

A. Material Questions

ALJ Melillo has certified the following material questions for our review and answer:

(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?¹

¹ As noted, the December 28, 2006 Order regarding the Verizon PA 2007 PCO filing directed that the ALJ's Recommended Decision be issued no later than seven months from the Order entry date, or by July 28, 2007.

(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?

(Order at 5).

The ALJ suggested the following Answer:

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.

(Order, slip op. at 6-7).

B. History of the Proceeding

The following history of this proceeding has been substantially derived from the "Background" on pages 1-4 of the Order.

On November 1, 2006, Verizon PA filed its 2007 PCO filing with the Commission, pursuant to the terms of its Chapter 30 Plan and the Chapter 30 statute, as amended by Act 183. *See* Docket Nos. R-00061915 and P-00930715F1000. In 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.

Also on November 1, 2006, Verizon North filed its 2007 PCO filing with the Commission. *See* Docket Nos. R-00061914 and P-00001854F1000. In its filing, Verizon North proposed an annual price increase of \$3,420,000.

On November 9, 2006, the OSBA filed Formal Complaints (Complaints) against the Verizon PA and Verizon North PCO filings. The OSBA Complaint raised common issues of law and fact. On November 17, 2006, the OCA filed Notices of Intervention in the Verizon PA and Verizon North PCO dockets. On November 21, 2006, the OTS filed a Notice of Appearance at each docket.

On December 28, 2006, the Commission entered an Order regarding 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 a disputed banking methodology into the OSBA Complaint proceeding. The resulting rates were to remain in effect during the

pendency of the ALJ's adjudication on 2007 filing and would be subject to the ALJ findings. We directed the ALJ to issue a Recommended Decision no later than seven months from the December 28, 2006's Order entry date, or by July 28, 2007.

On January 2, 2007, Verizon PA filed a Petition for Reconsideration. In its petition, Verizon PA contended that the Commission violated its due process rights and its 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 Order indicated that we 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.

The Verizon PA 2007 PCO filing was, thereafter, assigned to ALJ Melillo as the presiding ALJ.

On January 31, 2007, ALJ Melillo held a Prehearing Conference, with all Parties in attendance, regarding Verizon PA's 2007 PCO proceeding. During the Prehearing Conference, ALJ Melillo 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 consolidated Verizon PA/Verizon North 2006 PCO proceeding (R-0005 1227, R00051228), pending before the Commission. Verizon PA and the other Parties all agreed 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. At that time, the ALJ and the Parties were hopeful 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 scheduled to be held in Harrisburg on May 4, 2007.

In its Prehearing Memorandum, Verizon PA noted an expectation that the OSBA Formal Complaint filed against Verizon North's 2007 PCO filing, which was virtually identical to its Formal 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 months after the Order entry date, or by September 8, 2007.

ALJ Melillo was also assigned to preside over the Verizon North 2007 PCO proceeding. As such, she inquired of the Parties concerning their position with regard to consolidating the Verizon PA and Verizon North 2007 PCO proceedings. She 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 to the consolidation of the two PCO proceedings. The Parties also 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 a Public Meeting scheduled March 1, 2007.

On February 22, 2007, the ALJ provided notice to the Parties 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.

At Public Meeting on March 1, 2007, the Commission did not act on the Verizon PA/Verizon North 2006 PCO proceeding. The next Public Meeting was scheduled for March 22, 2007.

On March 5, 2007, the ALJ entered an Order Consolidating Proceedings, in which the Verizon PA and Verizon North 2007 PCO proceedings were consolidated for purposes of hearing and Recommended Decision. The ALJ concluded that, as there were common issues of law and fact, consolidation would avoid unnecessary costs and delay.

At the Prehearing Conference held on March 9, 2007, the Parties agreed that, because 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 before ALJ Melillo are now scheduled for May 17, 2007, instead of May 4, 2007.

In light of the above, as noted, on March 13, 2007, ALJ Melillo issued an Order Certifying Material Questions. No responses or Briefs in response to the Order Certifying Material Questions were filed by any of the Parties.

C. Disposition

Our regulations at 52 Pa. Code § 5.305 states, in pertinent part, the following:

§ 5.305. Interlocutory review of a material question submitted by a presiding officer

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will 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.

(3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.

* * *

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

(1) Continue, revoke or grant a stay of proceedings.

(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.

(3) Answer the certified question.

On consideration of the Order, and related proceedings involving Verizon PA's and Verizon North's PCO filings, we conclude that certification of the material questions was appropriate. We shall, therefore, answer the material questions consistent with the discussion in this Opinion and Order. We conclude that interlocutory review will expedite the course of the proceeding and prevent prejudice to the Parties because the Parties will not be required to re-litigate those common issues from the 2006 PCO filing in the 2007 proceeding.

On consideration of the material question #1, we shall answer the question in the negative, consistent with the discussion herein. We note that an affirmative response to the first material question would adopt the ALJ's bifurcation of the previously litigated issues in the 2006 PCO proceedings from

the new issues in the 2007 PCO proceedings. This action would further provide: (1) that only the new 2007 PCO issues be litigated under the original time constraints set forth by the Commission (*i.e.*, the Recommended Decision will be issued no later than July 28, 2007), and (2) that the common issues in the 2007 PCO filing that were already litigated in the 2006 PCO be bifurcated from the 2007 proceeding and reserved for further litigation until after the Commission rules in the 2006 PCO proceeding. Furthermore, no exact deadline has been established as to when a Recommended Decision regarding litigation of the common issues will be due.

We affirm ALJ Melillo's approach and commend her diligence for directing the Parties in the instant proceeding to continue with litigation of only the new issues in order to meet the Commission's original July 28, 2006 deadline. However, it is not our preference that the issues continue to be bifurcated if this Commission does not enter an Order in the 2006 PCO proceeding by March 28, 2007. In this regard, we share ALJ Melillo's opinion that bifurcation of the issues would be more confusing than litigating all of the issues at the same time.² Therefore, aside from affirming the ALJ's action, which has already bifurcated the new issues from the common issues, we shall answer the first question in the negative.

In light of our answer to the first question, we shall answer the second question in the affirmative. This answer is applicable only on the condition that we have not issued a final order in the 2006 PCO proceeding prior to March 28, 2007. Answering the second question in the affirmative would also provide for a general stay of the 2007 PCO proceeding until a final order regarding the 2006 PCO proceeding is entered. After a final order is entered, the Parties will

² Order at 6.

then be able to reflect the determinations we have reached on each of the common issues in their data in the 2007 PCO proceeding so that all issues would be litigated and reflected in the ALJ's Recommended Decision, which then will be issued within five months from the entry date of the final 2006 PCO order.³ Answering the second question in the affirmative should enable the Parties to concentrate more on the issues that have not yet been decided by the Commission, while ensuring that the Commission's determinations in the 2006 PCO investigation will be incorporated in the 2007 PCO investigation and Recommended Decision.

Conclusion

Based upon the foregoing discussion, we conclude that the questions certified by ALJ Melillo are properly before the Commission. Upon our consideration of the questions and the suggested answers of the ALJ, we shall answer the first material question in the negative and the second material question in the affirmative, consistent with the discussion in this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the following questions certified to the Commission by Administrative Law Kandace F. Melillo on March 13, 2007, are properly before the Commission:

³ We note that we are also acting on the 2006 PCO proceeding (Docket Nos. R-00051227, R-00051228, *et al.*) at today's Public Meeting and it is expected that the Order will be issued prior to March 28, 2007. However, there is no guarantee that this Order will be a final order in light of the fact that the Parties will then have fifteen days to file petitions requesting clarification or reconsideration.

(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?⁴

(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?

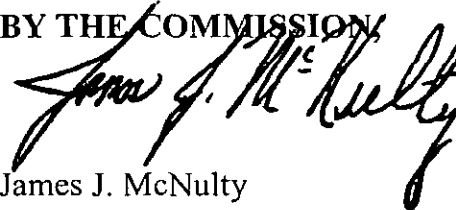
2. That the Commission hereby answers question #1 in the
NEGATIVE.

3. That the Commission hereby answers question #2 in the
AFFIRMATIVE, subject to any further directives of this Commission regarding a
stay.

⁴ As noted, the December 28, 2006 Order regarding the Verizon PA 2007 PCO filing directed that the ALJ's Recommended Decision be issued no later than seven months from the Order entry date, or by July 28, 2007.

4. That the proceedings are returned to the presiding Administrative Law Judge for such further proceedings consistent with this Order.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: March 22, 2007

ORDER ENTERED:

MAR 22 2007