

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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 :
Petition of XO Pennsylvania, Inc. : **Docket No.**
For Resolution of Reciprocal : **A-210758F7000**
Compensation Dispute pursuant to : **3**
the Abbreviated Dispute Resolution :
Process. :
 :
Initial Prehearing Conference. :
 :
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Pages 1 through 15 **DOCUMENT FOLDER**
Hearing Room 2, Plaza Level
Commonwealth Keystone Building
Harrisburg, Pennsylvania
Friday, July 19, 2002

Met, pursuant to notice, at 10:04 a.m.

BEFORE:

MICHAEL C. SCHNIERLE, Administrative Law Judge

APPEARANCES:

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WITNESS INDEX

WITNESSES

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(None.)

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FORM 2

EXHIBIT INDEX

NUMBER

FOR IDENTIFICATION IN EVIDENCE

(None.)

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FORM 2

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE MICHAEL C. SCHNIERLE: This is the time and place set for a prehearing conference in the petition of XO Pennsylvania for resolution of reciprocal compensation dispute. The docket number's A-310758F7000.

And I should make this announcement. It's not Folder 2. I'm going to do this on the record so that it's on the record someplace, because I don't think this is written down anywhere.

It turns out that the correct docket number for these cases is the docket number of the CLEC followed by a folder number that has been assigned to the ILEC that's the other party in the case.

It turns out that the folder number in the case of Verizon is Folder 7000. So the correct docket number is XO's A number followed by Folder 7000. And other ILECs have 7001, 7002; and I don't know what they all are, who corresponds to what off the top of my head.

We found this out because we pointed out on a couple of occasions that we couldn't figure out the docketing scheme that the secretary's bureau was applying to these things. Because they used a P docket for the one this afternoon, and we said, well, there doesn't seem to be much of a pattern here.

Well, they admitted that the P was wrong and the

FORM 2

1 Folder 2 was wrong. And apparently anything that involves
2 an interconnection agreement, the way they're doing it is
3 the CLEC's A number and then this 7000 series folder number.
4 And Verizon's folder's 7000. So I guess that's all you have
5 to remember.

6 We got an internal memo from the secretary's bureau
7 basically saying, on July 8, saying, change it to Folder
8 7000. So that's where we are.

9 I know the reason for that, but I'm not going to
10 explain that on the record, because it's --

11 MS. KRIETE: Do I need to go back and --

12 JUDGE SCHNIERLE: No, don't refile it. They should
13 have put everything by now into the right folder. But the
14 folder will be at Folder 7000, not Folder 2.

15 MS. KRIETE: All right.

16 JUDGE SCHNIERLE: Again, don't ask me anything more
17 about that. I know more about it, but it's more than even I
18 want to know. So that's the docket number.

19 My name is Michael Schnierle, I'm the Administrative
20 Law Judge assigned to this.

21 I note the appearances of Debra M. Kriete for XO
22 Pennsylvania, Inc., and Anthony E. Gay and Julia A. Conover
23 for Verizon Pennsylvania.

24 I've looked at the pleadings, and I've looked a
25 little bit at the various orders and so forth, and I'd like

1 to have a couple of things, if somebody could explain a
2 couple of things to me.

3 I take it, aside from paying late, Verizon is paying
4 XO per the declining cap scheme in the UNE remand order. Is
5 that accurate?

6 MR. GAY: You mean the order on remand, Your Honor?

7 JUDGE SCHNIERLE: Yes. The FCC's UNE remand order
8 set forth a declining cap scheme that was to be used in lieu
9 of -- well, let me back up.

10 As I understand Verizon's argument, the UNE remand
11 order applies now because of the change of law provision in
12 the MCI agreement.

13 MR. GAY: That's correct. Which is also --

14 JUDGE SCHNIERLE: The UNE remand order doesn't set
15 forth flash cut to bill and key. It sets forth a declining
16 cap for the payment for reciprocal comp.

17 And what I'm asking is, is Verizon paying XO pursuant
18 to the declining cap? Or is it paying nothing?

19 MR. GAY: It's my understanding that we're paying
20 pursuant to the declining cap.

21 JUDGE SCHNIERLE: The declining cap. All right. But
22 they're paying late, which is the reason for this late
23 charge issue.

24 MR. GAY: Your Honor, I'm not a hundred percent sure
25 the late charge is related to the reciprocal compensation

1 charges.

2 However, we have made payments to resolve this issue.
3 And I was informed by reading XO's answer to motion to
4 dismiss that there is about a \$5,000 difference. But other
5 than that, I think we're pretty close to having made the
6 appropriate payments.

7 JUDGE SCHNIERLE: Ms. Kriete?

8 MS. KRIETE: Sure, Your Honor.

9 When we filed the petition on June 25 we had not
10 received any of the late payment fees. There was an ACH, or
11 electronic funds transfer, issued on or about July 5 that
12 doesn't have an explanation attached to it. But when we
13 matched up the amounts, we have presumed that they're
14 associated with the late payment charges.

15 However, there's an amount of over \$5,000 that is
16 outstanding from April, the April bill. We don't know why
17 that wasn't paid. We believe that that issue, therefore,
18 remains in dispute in this proceeding.

19 JUDGE SCHNIERLE: All right. Let me ask a couple
20 other questions just so I understand how this thing is
21 working at this point.

22 As I understand from reading the UNE remand order, it
23 establishes this declining cap. The FCC first establishes
24 this declining cap for the reciprocal comp charges
25 associated with ISP calls.

1 And there's also this rebuttable presumption that any
2 calls -- if the imbalance is in excess of three to one, the
3 extra minutes are ISP call minutes.

4 But then it also seems to predicate this whole thing
5 on the ILEC's acceptance of the same reciprocal comp rates
6 for all traffic. And if that's the case, why is the three-
7 to-one ratio important?

8 Or maybe I'm misinterpreting this.

9 MR. GAY: Well, Your Honor, I think I should answer
10 your question in two parts. I think you're referring to
11 what's called Rate Plan B.

12 In an industry letter that was sent out by
13 Jeffrey Masoner, who's our vice president of
14 interconnection, we offered to CLECs across Pennsylvania to
15 proceed under Rate Plan B. It's my understanding that we
16 got few if any responses. So we have made that offer to go
17 under Rate Plan B.

18 As far as your question, why is this an issue --

19 JUDGE SCHNIERLE: What I don't get is, if you're
20 exchanging all traffic at the lower rates, why does it
21 matter what the ratio of imbalance is?

22 MR. GAY: Well, I don't think we're operating under
23 the Rate Plan B with XO. That's one reason. So we are
24 going with the three-to-one ratio.

25 Number two, I think whether a CLEC wants to use Rate

1 Plan B or not depends on whether they see that plan as works
2 to their benefit.

3 So to answer your question, why does it make a
4 difference, I think the first way to answer that is, it
5 makes a difference to the CLEC maybe more so. And they
6 would have to notify us if they want to proceed under Rate
7 Plan B.

8 We have not, to my knowledge, received a notification
9 from XO with regard to that, so we're going on the three-to-
10 one presumption.

11 JUDGE SCHNIERLE: Is that your understanding,
12 Ms. Kriete?

13 MS. KRIETE: Yes, that is my understanding. And Your
14 Honor, under the interconnection agreement, my understanding
15 is that the rates are reduced from what you're calling the
16 remand order, what was also commonly referred to as the ISP
17 order that the FCC issued. I'm talking about the April 27,
18 2001 order.

19 JUDGE SCHNIERLE: Right.

20 MS. KRIETE: And under that order there's reduced
21 rates altogether. And XO is of the opinion that the parties
22 are required to sit down and discuss, negotiate an
23 amendment, and it is not in their financial interests to opt
24 into the Rate Plan B.

25 JUDGE SCHNIERLE: All right. Then that brings up one

1 more question. So the three-to-one ratio is still in play,
2 but that's a rebuttable presumption.

3 Have you talked about --

4 MS. KRIETE: I can address that, Your Honor. We have
5 done the factual investigation to determine whether there is
6 proof to rebut that presumption. And we are not proceeding
7 to make that claim in this proceeding.

8 JUDGE SCHNIERLE: Okay.

9 MS. KRIETE: So in other words, we are acknowledging
10 that the presumption would apply in this situation.

11 JUDGE SCHNIERLE: All right. That at least gets me
12 to where I feel comfortable about understanding the
13 situation legally and factually.

14 Looking at the situation legally, I guess as long as
15 Verizon is paying pursuant to the order, I guess I'm
16 reluctant to go forward right now.

17 I certainly don't see a need for much by way of
18 factual hearings. The whole thing comes down to the legal
19 interpretation.

20 And as I see it at this point, the Commission's
21 granted reconsideration of its order in the MCI case, which
22 puts that whole thing up in the air. And from what I can
23 see of this thing, it looks like the circuit court is going
24 to take up the question of whether or not it should vacate
25 or stay the effectiveness of the FCC's order.

1 Having just been required to issue a decision three
2 weeks before a supreme court ruling on point in a major rate
3 case, I'm really reluctant to start down this road knowing
4 that there's going to be higher authorities speaking on
5 this, hopefully in the not-too-distant future.

6 I guess I understand XO's point of view, that you'd
7 like to get the money now. But I'm afraid that even if I
8 hold a hearing and make a ruling, it may be moot before the
9 Commission even looks at it.

10 Would it be possible to make some sort of agreement,
11 at least to hold this thing in abeyance until one or both of
12 these other proceedings are further resolved? Is there
13 something we can do along those lines?

14 MS. KRIETE: Your Honor, I would be reluctant to
15 agree on behalf of XO to agree to an open-ended
16 postponement.

17 I certainly understand that we are awaiting the court
18 of appeals to consider the FCC's upcoming response to the
19 petition for rehearing. But now knowing what the time frame
20 is for the Commission to act on the petition for
21 reconsideration and/or for the court to act, I think we
22 might be able to perfect and work on a stipulation of fact,
23 if need be, to present and to put this record in a position
24 so that when and if one of those rulings are issued, we
25 could obtain a ruling from Your Honor.

1 So the concern we have is letting this case pend on
2 an open-ended basis.

3 JUDGE SCHNIERLE: I understand. It looks like it
4 took the FCC a year to rule after this thing was remanded
5 the first time to come up with another ruling. And I
6 understand your point.

7 Mr. Gay?

8 MR. GAY: Your Honor, I hear Ms. Kriete's point. I
9 think -- and we may need to discuss this off the record. I
10 think that we might be better considering a certain date
11 from a dispositive order. And I'll just refer to the
12 Commission's reconsideration of the Worldcom ABR.

13 But if we set a specific date from that time to
14 submit papers, that may strike a middle ground.

15 The only reason I say that is, if we brief these
16 matters now, and something else arises, then there's another
17 briefing schedule.

18 I think it's a more economical use of everyone's
19 resources if we have the issue framed clearly, at least with
20 regard to the Worldcom matter before this Commission. And
21 we may even discuss off the record some other things.

22 But I think you've got the same contract, you've got
23 the same terms that has been decided by the Commission. So
24 I think it would be difficult to say that, not hearing from
25 our Commission is something that we do not want to await.

1 JUDGE SCHNIERLE: All right. Well, let's go off the
2 record for a few minutes and we'll discuss what we might be
3 able to do along these lines.

4 (Discussion off the record.)

5 JUDGE SCHNIERLE: Back on the record.

6 We've had a discussion about the unsettled state of
7 the law in this area. And the parties have agreed that we
8 will convene a telephonic prehearing conference in three
9 months to essentially discuss any further developments,
10 subject to the following -- and this regards the issues that
11 would be resolved by, or potentially resolved by a
12 Commission decision in the MCI case, where they've issued an
13 order granting reconsideration, or the circuit court's
14 ruling in the FCC case before it.

15 And in the meantime, if the parties cannot reach
16 agreement on the late payment charge issue, or if there is
17 development in either the FCC case or the Commission's MCI
18 case, they can call for a hearing before then.

19 But in any event, no later than three months we'll
20 have a telephonic prehearing to just further consider the
21 status of the case.

22 Is that your understanding, Mr. Gay?

23 MR. GAY: Yes, it is, Your Honor.

24 JUDGE SCHNIERLE: Ms. Kriete?

25 MS. KRIETE: Yes, Your Honor.

1 JUDGE SCHNIERLE: All right. Do we have anything
2 further we need to discuss this morning?

3 MR. GAY: I'm not aware of any further issues, Your
4 Honor.

5 MS. KRIETE: No, Your Honor.

6 JUDGE SCHNIERLE: This prehearing conference is
7 adjourned. Thank you all very much, and have a good day.

8 MS. KRIETE: Thank you.

9 MR. GAY: Thank you.

10 (Whereupon, at 10:40 a.m., the hearing was adjourned,
11 to reconvene at a time and date to be designated by the OALJ
12 Scheduling Unit.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
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