

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Office of Small Business Advocate	:	
	:	
v.	:	R-2015-2510231
	:	C-2015-2512860
Verizon Pennsylvania LLC	:	P-00930715F1000

Office of Small Business Advocate	:	
	:	
v.	:	R-2015-2510233
	:	C-2015-2512883
Verizon North LLC	:	P-00001854F1000

RECOMMENDED DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision recommends approval of a Joint Settlement Petition in its entirety without modification because it is in the public interest and supported by substantial evidence. The Decision finds that the Joint Settlement Petition complies with Chapter 30 of the Public Utility Code regarding alternative forms of regulation for local exchange telecommunications companies, as well as other applicable statutes regarding increases in rates. The Decision therefore finds that the Joint Settlement Petition is consistent with the Commission's policy to promote settlements and should be approved and that the formal complaints filed against the initial filings should be dismissed.

HISTORY OF THE PROCEEDING

On October 22, 2015, Verizon Pennsylvania LLC (Verizon PA) filed with the Pennsylvania Public Utility Commission (Commission) its 2016 Price Change Opportunity filing and associated revenue increase. The filing was made under the provisions of Act 183 of 2004, codified at 66 Pa.C.S. §§ 3011-3019 (Chapter 30) and the Company's Alternative Regulation and Network Modernization Plan (Chapter 30 Plan) approved by the Commission at Docket Numbers P-00930715, P-00930715F1000 and R-00051228. In its filing, Verizon PA used the change in 2014 and 2015 first quarter Gross Domestic Product Price Index (GDP-PI) of 1.46%. After deducting the inflation offset of 0.5% identified in its Chapter 30 Plan, Verizon PA's Price Change Opportunity (PCO) resulted in a preliminary increase of \$1,064,000 based on noncompetitive revenues of \$110,865,000.

Also on October 22, 2015, Verizon North LLC (Verizon North) filed with the Commission its 2016 Price Change Opportunity and associated revenue increase. This filing was also made under the provisions of Chapter 30 and Verizon North's Chapter 30 Plan approved by the Commission at Docket No. P-00001854F1000. In its filing, Verizon North also used the change in 2014 and 2015 first quarter GDP-PI of 1.46% identified in its Chapter 30 Plan to establish a PCO of \$206,000 in increased revenue based on noncompetitive revenues of \$21,463,000.

On November 10, 2015, the Office of Small Business Advocate (OSBA) filed a separate formal complaint, Public Statement, and Verification in response to the filings made by both Verizon PA and Verizon North (collectively referred to as Verizon). In its complaints, OSBA argued that the 2016 PCO filings made by Verizon may be insufficient to justify the proposed rate adjustments and that the proposed rates, rules and conditions of service may be unjust, unreasonable, unduly discriminatory and otherwise contrary to law as they pertain to Verizon's small business customers. OSBA further averred that the proposed rate adjustments for Verizon's business customers may violate Sections 1301 and 3015(g) of the Public Utility Code. OSBA requested that the Commission suspend and investigate the 2016 PCO filings and, at the conclusion of the investigation, reject the new rates and tariff changes proposed in the filings to the extent required to ensure that Verizon's rates are lawful, just, reasonable and not unduly discriminatory to any class of customers.

On November 23, 2015, Verizon filed separate answers to the complaints filed by OSBA admitting or denying the various averments made by OSBA in its complaints. Verizon admitted that it filed its 2016 PCOs on October 22, 2015 seeking an increase in revenue from noncompetitive services but denied the other averments made by OSBA in its complaints because they are vague and insufficient making a response impossible. Verizon asserted that its filings comply with Chapter 30 and the respective Chapter 30 plans. Verizon requested that OSBA's complaints be dismissed, and if not dismissed, that the rate changes should be permitted to go in to effect subject to refund based on the resolution of the issues raised in the complaints. Also on November 23, 2015, Verizon filed separate preliminary objections in response to both of OSBA's complaints. In the preliminary objections, Verizon argued that OSBA's complaints are vague and not sufficient to state a cause of action upon which relief can be granted. Verizon also argued that OSBA's complaints should be dismissed because they are insufficiently specific.

On December 3, 2015, OSBA filed answers to both of Verizon's preliminary objections admitting or denying the various averments Verizon made in its preliminary objections and requesting that the preliminary objections be denied in their entirety. OSBA argued that its complaints should not be dismissed on a preliminary basis because it is clear they oppose Verizon's filings because the filings propose rates that are unjust, unreasonable and discriminatory in violation of sections 1301 and 1304 of the Public Utility Code.

Also on December 3, 2015, the Commission entered an Order regarding Verizon's filings and OSBA's complaints. The Commission determined that the filings were in compliance with the respective Commission-approved Chapter 30 Plans and assigned OSBA's formal complaints to the Office of Administrative Law Judge for adjudication. The Commission allowed the filings to go into effect as filed and remain in effect during the pendency of the OSBA's complaints subject to refund.

OSBA's formal complaints were consolidated by Order dated December 9, 2015. It was determined that the complaints should be consolidated because they contain common questions of law and fact and consolidation will avoid unnecessary delay or cost. Furthermore, no party opposed consolidation.

Also on December 9, 2015, the Commission issued an Initial Prehearing Notice establishing an Initial Prehearing Conference for this case for Monday, December 21, 2015 at 10:00 a.m. in Hearing Room 2 and assigning me as the Presiding Officer. A Prehearing Conference Order was issued on December 11, 2015 setting forth various rules that would govern the Initial Prehearing Conference.

On December 15, 2015, an Order was issued denying Verizon's preliminary objections. It was determined that, when accepting as true all well pleaded material facts in the complaints, as well as every reasonable inference from those facts, and viewing the complaints in the light most favorable to OSBA, as is required when addressing Verizon's preliminary objections, it does not appear that OSBA would not be entitled to relief under any circumstances as a matter of law. It was also determined that the averments made by OSBA in their complaints were sufficiently specific to avoid being dismissed on a preliminary basis.

On December 18, 2015, the Office of Consumer Advocate (OCA) submitted a Notice of Intervention and a Public Statement formally intervening in to the consolidated proceeding.

The Initial Prehearing Conference convened on December 21, 2015, as scheduled. The following counsel entered their appearances: Susan Paiva, Esquire, on behalf of Verizon; Steven Gray, Esquire, on behalf of OSBA; and Barrett Sheridan, Esquire, on behalf of OCA. During the Initial Prehearing Conference, various procedural matters were discussed. Most notably, a procedural schedule was agreed upon. The procedural issues agreed upon were memorialized in a scheduling order dated December 22, 2015.

Pursuant to the procedural schedule, OSBA pre-served written direct testimony of its expert witness on March 1, 2016.

On April 25, 2016, Verizon requested a two-week extension of the April 29 deadline for all parties' rebuttal testimony noting a work stoppage by Verizon employees requiring "strike assignments" for witnesses, experts and legal staff who prepare and serve the testimony. No change

was requested to the remainder of the schedule and both OCA and OSBA agreed to the modification. The modification was approved informally via email.

On May 9, 2016, however, Verizon indicated that the work stoppage continued and requested that the litigation schedule be suspended until the conclusion of the strike. Verizon noted that again both the OCA and OSBA agreed to the proposal. Verizon's request to suspend the litigation schedule was granted via order dated May 11, 2016.

On August 8, 2016, a conference call was held amongst the parties and the presiding officer. During that call, the following litigation schedule for the remainder of this proceeding was agreed upon:

All Parties' Rebuttal Testimony	September 9, 2016
All Parties' Surrebuttal Testimony	September 28, 2016
Hearings	October 6, 2016

Scheduling Order #2 was issued on August 8, 2016 memorializing the matters agreed upon during the conference call and a hearing notice was issued on August 9, 2016 formally establishing the evidentiary hearing for Thursday, October 6, 2016 in Harrisburg. All other aspects of the Scheduling Order issued in this matter on December 22, 2015 remained in effect.

Pursuant to the revised procedural schedule, Verizon and the OCA pre-served written rebuttal testimony of their respective expert witnesses on September 9, 2016 and the OSBA pre-served written surrebuttal testimony of its expert witness on September 28, 2016.

On September 30, 2016, the parties indicated that they had agreed to waive cross examination of all of the witnesses and requested that the pre-served testimony be admitted into the record with accompanying verifications via stipulation. As a result, the hearing on October 6, 2016 was held as scheduled for the purpose of admitting into the record all of the pre-served testimony via stipulation. Again, the following counsel entered their appearances: Susan Paiva, Esquire, on behalf of Verizon; Steven Gray, Esquire, on behalf of OSBA; and Barrett Sheridan, Esquire, on

behalf of OCA. The following pre-served testimony and accompanying exhibits were admitted into the record, some in both proprietary and non-proprietary versions:

OSBA Statement 1 – Direct Testimony of Joseph Gillan

OSBA Statement 1-SR – Surrebuttal Testimony of Joseph Gillan

Verizon Statement 1.0 – Rebuttal Testimony of Philip J. Wood, Jr.

Verizon Exhibit 1 – Letter to Rosemary Chiavetta from Philip J. Wood, Jr.

OCA Statement 1-R – Rebuttal Testimony of Dr. Robert Loube

In addition to admitting the pre-served testimony via stipulation, the parties agreed that Main Briefs would be submitted on November 2, 2016 and Reply Briefs would be submitted on November 30, 2016. On October 6, 2016, a Briefing Order was issued to memorialize the briefing due dates and to establish various requirements regarding briefs.

By email on October 27, 2016, however, Verizon indicated that the parties were close to reaching a unanimous settlement of the case but needed additional time to finalize the agreement. Verizon requested that the briefing dates be suspended to allow for the settlement to be finalized and that new briefing due dates would be proposed if a settlement was not reached. No party objected to a suspension of the briefing due dates. As a result, Briefing Order #2 was issued on October 31, 2016 formally suspending the briefing due dates.

On November 22, 2016, a Joint Settlement Petition (settlement) was submitted. The settlement was signed by Verizon, OSBA and OCA (collectively referred to as “joint petitioners”). Attached to the settlement were statements in support of the settlement filed by each of the joint petitioners.

The record in this proceeding closed on November 22, 2016, the date the settlement was submitted. For the reasons set forth below, the settlement will be recommended for approval without modification.

FINDINGS OF FACT

1. On October 22, 2015, Verizon made its annual Price Change Opportunity (“PCO”) filings for Verizon PA and Verizon North pursuant to each company’s Alternative Regulation Plan, as approved by the Commission under Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3011, *et seq.* Verizon St. 1.0 at Exh. A and B.

2. Verizon notified the Commission that the price cap mechanism in the Verizon PA Chapter 30 plan allowed Verizon PA to increase its revenue from noncompetitive services by \$1,422,000. Verizon St. 1.0 at Exh. A.

3. Verizon notified the Commission that the price cap mechanism in the Verizon North Chapter 30 plan allowed Verizon North to increase its revenue from noncompetitive services by \$216,000. Verizon St. 1.0 at Exh. B.

4. To implement the allowed revenue increases, both companies proposed to increase rates for residence and business dial tone line and business local usage. Verizon St. 1.0 at Exh. A and B.

5. On November 10, 2015, the OSBA filed complaints against the Verizon PA and Verizon North PCO filings, raising the same issues against each company. Verizon St. 1.0 at 5.

6. On December 18, 2015, the OCA filed a notice of intervention in response to the Verizon PA and Verizon North PCO filings.

7. On March 1, 2016, the OSBA pre-served the direct testimony and accompanying attachments of its expert witness Joseph Gillian. OSBA St. 1.

8. On September 9, 2016, Verizon pre-served the rebuttal testimony and accompanying exhibits of its expert witness Philip J. Wood, Jr. Verizon St. 1.0.

9. On September 9, 2016, the OCA pre-served the rebuttal testimony and accompanying exhibits of its expert witness Dr. Robert Loube. OCA St. 1-R.

10. On September 28, 2016, the OSBA pre-served the surrebuttal testimony and the accompanying exhibit of its expert witness Joseph Gillian. OSBA St. 1-SR.

11. On October 6, 2016, OSBA St 1, Verizon St. 1.0, OCA St. 1-R and OSBA St. 1-SR and accompanying attached exhibits were admitted into the record of this proceeding via stipulation. Tr. 33-37.

12. On November 22, 2016, a Joint Settlement Petition signed by the OSBA, Verizon and OCA, and accompanying statements in support of the settlement, was filed seeking approval of a settlement resolving all issues in the proceeding.

SUMMARY OF THE FILINGS

On October 22, 2015, Verizon made its annual price change opportunity (PCO) filing for 2016 pursuant to Verizon PA's and Verizon North's alternative regulation plan approved by the Commission pursuant to Chapter 30 of the Public Utility Code. 66 Pa.C.S. § 3011, *et seq.* Verizon PA sought an increase in its revenue from noncompetitive services by \$1,422,000 and Verizon North sought an increase in its revenue from noncompetitive services by \$216,000. Verizon St. 1.0 at Exh. A and B. To implement the revenue increases, both companies proposed to increase rates for residence and business dial tone line and business local usage. Id. More specifically, both Verizon PA and Verizon North proposed to increase their residential dial tone line rates 12 cents per month. Id. With regard to monthly business rates, Verizon PA proposed to increase its rates from between \$0.65 to \$2.00 for dial tone line rates and from between \$0.30 to \$1.35 for local area unlimited service depending on the rate group. Verizon St. 1.0 at Exh. A. Similarly, Verizon North proposed the same increase in its monthly business rates from between \$0.65 to \$2.00 for dial tone line rates and from between \$0.25 to \$0.60 for local area unlimited service depending on the rate group. Verizon St. 1.0 at Exh. B.

The OSBA filed similar complaints separately in response to each of the filings. The OSBA argued that, although some of the companies' prior rate changes were intended to simplify the rate structure, the 2016 filings disproportionately increase rates on business customers in a manner that is unlikely to be justified by any cost differential. *See*, OSBA St. 1 at 3. The OSBA also argued that, given the similarity between network facilities used to serve residential and small business customers, the rate increases proposed in the 2016 filings make the residential/business divide even larger than it is today. The OSBA argued that the Commission should reject Verizon's 2016 PCO filings and direct that the companies reduce, not increase, the price difference between Verizon's residential and small business customers.

In response to Verizon's filings and OSBA's subsequent complaints, the Commission determined that the filings were in compliance with the respective Commission-approved Chapter 30 Plans and assigned OSBA's formal complaints to the Office of Administrative Law Judge for adjudication. Verizon Pennsylvania LLC 2016 Price Change Opportunity Filing, Docket Nos. R-2015-2510231, *et al.*, Order (entered December 3, 2015) and Verizon North LLC 2016 Price Change Opportunity Filing, Docket Nos. R-2015-2510233, *et al.*, Order (entered December 3, 2015). The Commission allowed the filings to go in to effect as filed and remain in effect during the pendency of the OSBA's complaints subject to refund. Following the admission of multiple rounds of pre-served testimony into the record of this proceeding via stipulation, the instant settlement was filed.

DISCUSSION

Legal Standard

Chapter 30 of the Public Utility Code, originally enacted in 1993 and then reenacted in 2004, provides an alternative form of regulation for local exchange telecommunications companies. Through Chapter 30, the Pennsylvania General Assembly declared it to be the policy of the Commonwealth to, among other things: "maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas." 66 Pa.C.S. § 3011(2). The Pennsylvania General Assembly also

declared it to be the policy of the Commonwealth to “ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.” 66 Pa.C.S. § 3011(3).

Under Chapter 30, rates for services provided by local exchange telecommunications companies would no longer be established pursuant to traditional rate base/rate of return regulation. 66 Pa.C.S. § 3015. For Verizon PA, its Chapter 30 plan includes a price stability mechanism that caps allowed revenue increases using a formula where revenue is multiplied by the difference between inflation as measured by the change in Gross Domestic Product-Price Index (GDP-PI) and an offset of 0.5%. *See, Alternative Regulation Plan of Verizon Pennsylvania, Inc.*, Docket Nos. P-00930715, *et al.* (further revised in compliance with Commission Order entered May 27, 2008). Similarly, Verizon North’s Chapter 30 plan allows prices of noncompetitive services to increase with the increases in the GDP-PI without an offset. *See, Final Alternative Regulation and Network Modernization Plan of Verizon North, LLC*, Docket Nos. P-00981449, *et al.* (further revised in compliance with Commission Order entered and May 27, 2008). Of note, both plans incorporate the limit in Section 3015 on the average rate adjustment for protected residential local exchange telecommunications. The rate adjustment for any individual residential protected line shall not vary from the average rate adjustment by more than 20% as determined by dividing the total protected services revenues by the associated lines. 66 Pa.C.S. § 3015(a)(3); *see also*, Verizon St. 1 at 2-3 and OCA St. 1 at 5.

In addition, sections 1301 and 1304 of the Public Utility Code also apply to any determination regarding the reasonableness of rates for protected and other noncompetitive telecommunications services. Section 1301 provides, in part, that “every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission.” 66 Pa.C.S. § 1301. Section 1304 provides, in part, that “no public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage.” 66 Pa.C.S. § 1304.

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, Opinion and Order (entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.*; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order (entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

Finally, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

It is with this legal background in mind that the settlement is evaluated.

Terms of the settlement

In the settlement submitted in this case on November 22, 2016, OSBA, Verizon and the OCA have agreed to the following terms, with the original paragraph numbering maintained:

10. With respect to the litigation relating to the 2016 PCO filings of Verizon PA and Verizon North at Dockets C-2015-2512860, R-2015-2510231, C-2015-2512883 and R-2015-2510233, the Parties agree as follows:

- (a) The Joint Settlement Petition is in full satisfaction of all issues raised in the OSBA's complaints.
- (b) The OSBA will take all steps necessary to close the case, including but not limited to withdrawing its complaints, effective upon Commission approval of the settlement. Verizon will make any filings needed to accomplish closing the case.
- (c) There will be no change to the rates proposed by Verizon PA and Verizon North (which rates have already gone into effect).

11. With respect to the 2017 PCO filings of Verizon PA and Verizon North, due to be filed on or about November 1, 2016, the Parties agree as follows:

- (a) Verizon PA will not increase retail rates with its 2017 PCO. Instead it will bank the entire 2017 PCO and will use this banked amount to reduce the balance of the banked negative 2003 PCO, in the same manner as prior PCO filings. Verizon PA made its 2017 PCO filing on November 1, 2016, consistent with this agreement.
- (b) Verizon North anticipates that its 2017 PCO will be approximately \$226,000. Subject to the limits of 66 Pa. C.S. § 3015(a)(3), Verizon North reserves the right to increase residential and/or business rates or bank all or some portion of the allowed revenue increase. Verizon North made its 2017 PCO filing on November 1, 2016, consistent with this agreement.
- (c) The OCA and the OSBA will not oppose Verizon's 2017 PCO filings if those filings conform to agreement set forth in the Joint Settlement Petition.

12. With respect to the 2018 PCO filings of Verizon PA and Verizon North, due to be filed on or about November 1, 2017, the parties agree as follows:

- (a) The OSBA will support a Verizon PA and Verizon North request to restructure the Late Payment Charge ("LPC") for business services. The LPC is considered a noncompetitive service subject to the PCO. The increase would be from the current 1.5% for business (Verizon PA's PA PUC No. 1, Section 1, 8th Revised Sheet 5A and Verizon North's PA PUC No. 4, Section 2, 5th Revised Sheet 7A) to the LPC structure that applies in most of Verizon's other ILEC states and for Verizon's unregulated services. This structure is 1.5% or \$5, whichever is greater.

Providing additional flexibility for business LPC will allow Verizon the option to allocate some or all of the revenue opportunity from its PCO to the LPC based on an estimate of the increased revenue to be gained from adding the minimum \$5 to the structure.

(b) Within one week after the filing of the 2018 PCOs, the OSBA will file a letter or other document supporting the restructure of the LPC for noncompetitive business services to 1.5% or \$5, whichever is greater.

(c) It may take more than one PCO to fully implement the business LPC restructure, and if that is the case OSBA will support the business LPC increases in future years and any interim increases necessary to reach the structure of 1.5% or \$5, whichever is greater, for the LPC for noncompetitive business services.

(d) Verizon will simultaneously implement the same LPC structure and amount for its competitive business services.

(e) If the Commission permits Verizon to increase the business LPC in this manner, before increasing any other retail rates Verizon PA and Verizon North will allocate their allowed 2018 PCO revenue increases first to the business LPC until each company reaches the 1.5% or \$5 structure for noncompetitive business services.

(f) To the extent Verizon is not able to or permitted to increase the LPC to the full extent necessary to account for the available revenue increase opportunities for the 2018 PCOs, or if the revenue increase opportunity exceeds what is necessary to restructure the LPC, Verizon reserves the right to increase any noncompetitive residential or business rates consistent with its Alternative Regulation Plans and the Chapter 30 statute. The OCA and OSBA do not waive the right to challenge any such proposed retail rate increases.

13. Verizon will meet with OSBA and OCA in June of 2018 to discuss the 2019 and 2020 PCO filings.

Settlement at 3-5.

Furthermore, the settlement also contains the standard terms and conditions found in most settlements. This settlement is expressly conditioned upon the Commission's approval, without modification, of all of the specific terms and conditions contained in this settlement. Id. at 5-6. If the Commission should fail to grant such approval, or should modify any material term or condition within the settlement, any party may elect to withdraw, in whole or in part, from this agreement upon written notice to the Commission and the other parties within 20 calendar days of issuance of an adverse final Commission order. Id. at 6. In that event, each of the parties shall have all legal rights that they may have waived by agreeing to this settlement. Id. The parties agree to support this settlement and to make their best efforts to secure its approval by the Commission. Id. If the presiding officer issues a recommended decision approving this settlement without modification, then the parties agree to waive the filing of Exceptions and Reply Exceptions. Id.

Public Interest

Position of the parties

As noted above, it is the policy of the Commission to promote settlements. 52 Pa.Code § 5.231(a). The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Lancaster, Warner, supra. In the settlement, the parties indicated that the resolution of the issues as set forth in the settlement is in the public interest and should be approved in full. The parties added that the settlement achieves a just and fair compromise by all parties to the proceeding, who represent a variety of interests, of the important and contentious issues raised. The parties also noted that approving the settlement will avoid the substantial time, expense and uncertainty involved in litigation of the issues and avoid the necessity of further administrative proceedings and litigation, including possible appeal. The parties noted that the resources of the parties and the Commission will appropriately be conserved.

In addition, each party submitted a statement in support of the settlement discussing why the settlement should be approved because it is in the public interest.

In its statement in support of the settlement, Verizon noted that the settlement is in the public interest because the parties to this proceeding represent the companies, consumers and small business customers and have thoroughly examined the record and the competing legal, policy and factual arguments to reach a reasonable compromise of the disputed issues. Verizon also noted that approval of the settlement will conserve party and Commission resources by avoiding further litigation and provide for a reasonable resolution of the 2016 PCO filings thereby reducing the costs and risks of litigation and certainty as to issues relating to the 2017 and 2018 PCO filings reducing the prospects of future litigation for those filings. Verizon added that, by avoiding changes to the already implemented 2016 PCO rate increases, the settlement will avoid customer disruption and confusion and that the settlement provides no rate increases for the 2017 PCO. Verizon noted that the agreement to support a modification for the business late payment charge (LPC) provides Verizon another alternative to use its PCO revenues without increasing monthly basis service rates.

In its statement in support of the settlement, the OSBA noted that the settlement is in the public interest because it provides a degree of rate protection for small business customers in the Verizon service territory at least through 2017. The OSBA noted that the settlement does not provide any specific rate increase limitations on Verizon North's competitive business services but that Verizon North's 2017 PCO filing did not assign any rate increases to noncompetitive business customers. The OSBA also considers that the settlement is in the public interest because the parties agreed to meet regarding the 2018 PCO and 2019 PCO noting that such a meeting will enable the parties to fully address the economic and market conditions that cannot accurately be predicted at this time and, therefore, provide important rate stability in 2018 and 2019 as well.

In its statement in support of the settlement, the OCA noted that the settlement is in the public interest because it allows the 2016 PCO and 2017 PCO to go into effect without modification, noting that the 2017 PCO includes no increases to residential non-competitive service rates for Verizon PA and only increases residential non-competitive service rates by \$0.19 per month for Verizon North. The OCA also noted that, with regard to the 2018 PCO, the advance notice of Verizon's plans to allocate some or all of the revenue increase to the LPC is beneficial.

Disposition

Having reviewed the settlement, accompanying statements in support and various pieces of pre-served testimony that were admitted into the record via stipulation, substantial record evidence demonstrates that the settlement is in the public interest and will be recommended for approval in its entirety without modification.

In essence, the settlement provides as follows: 1) no change to the 2016 PCO, 2) any allowed increase from the 2017 PCO will be banked for Verizon PA and either banked or implemented for Verizon North, 3) the OSBA will not oppose an increase in the LPC in the 2018 PCO if the LPC of \$5 is greater than 1.5% of the delinquent balance, and 4) Verizon, OSBA and OCA will meet to discuss the 2019 and 2020 PCO filings. None of these issues raised in the settlement, however, appear to address the concerns raised by the OSBA in the testimony of its witness Mr. Gillan.

In his direct testimony, for example, Mr. Gillan stated that there is a pricing discrepancy between residential and business rates charged by Verizon and that the 2016 PCO filing exacerbates that discrepancy. OSBA St. 1 at 4-5. Mr. Gillan opined that the discrepancy exists because Verizon faces greater competitive pressure in the residential market than in the business market. *Id.* at 5-7. In his surrebuttal testimony, Mr. Gillan added that there is a “structural flaw in the mathematics of the Verizon plan that can only be corrected by additional Commission guidance,” noting that “this structural flaw is that only residential customers are automatically protected (by a residential rate cap) under the plan, while there is a shrinking base of business customers that are (and will be asked) to provide the additional revenues authorized by the plan.” OSBA 1-SR at 1. In its statement in support of the settlement, the OSBA reiterated that the rate increases in the 2016 PCO “illustrate the problem that is rapidly developing in the Verizon service territory” and that the situation is on a “collision course.” OSBA Statement in Support at 2-3.

It is unclear how the settlement resolves this issue raised by the OSBA. Under the settlement, the 2016 PCO increases are implemented without modification, the 2017 increases will be implemented or banked (meaning that they could be implemented in the future), the LPC may *increase* as part of the 2018 PCO filing and the parties will meet in 2018 to discuss the 2019 and

2020 PCO filings. None of these issues appear to address OSBA's underlying concern that the rate cap of 20% for residential retail rates, but not for small business rates, may create a pricing discrepancy between residential and business rates.¹ At a minimum, if the terms agreed to in the settlement do reduce the discrepancy, it is unclear whether they do so in a manner that sufficiently addresses the issue. OSBA argued that the Commission should reject the PCO filings because they increase the differential between residential and business rates. Yet, the settlement allows Verizon to increase the LPC. This provision, however, only serves to increase, not decrease, the differential between residential and business rates.

Nonetheless, the Commission is not in a position to require complainants to pursue their complaint if they no longer wish to do so, so long as doing so is in the public interest. In this case, the parties have identified several items that support approving the settlement as being in the public interest. These issues include conserving party and Commission resources, providing rate stability, avoiding customer disruption and confusion and potentially avoiding future litigation, among other things. Certainly, these items are in the public interest and warrant adopting the settlement as being in the public interest, regardless of whether the OSBA seeks to further pursue as part of this proceeding the question raised regarding the 20% cap on residential rates that does not exist for rates on services charged to small business customers. As such, as noted above, substantial record evidence demonstrates that the settlement is in the public interest and will be approved in its entirety without modification. To the extent there is an inappropriate price difference between rates for services provided to residential and small business customers, and the Commission wishes to address such a difference, the issue has been raised in this proceeding – a public interest benefit of the settlement, as noted by the OSBA.

Conclusion

In conclusion, the settlement submitted in this proceeding as a resolution of the two complaints filed by the OSBA will be recommended for approval in its entirety without modification because it is in the public interest and supported by substantial evidence. The settlement is in the public interest because it conserves party and Commission resources, provides

¹ This is likely true regardless of whether the base of business customers is shrinking, as the OSBA also argued and which was the subject of much of the testimony admitted in to the record of this proceeding.

rate stability, avoids customer disruption and confusion and may help to avoid future litigation, among other things. Although the underlying issue raised by the OSBA appears to remain outstanding, the settlement is nonetheless consistent with the Commission's policy to promote settlements and should be approved. Likewise, the OSBA's formal complaints filed against Verizon's 2016 PCO filings should be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 3011, *et seq.*

2. It is the policy of the Commonwealth to, among other things: "maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas." 66 Pa.C.S. § 3011(2).

3. It is the policy of the Commonwealth to "ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis." 66 Pa.C.S. § 3011(3).

4. Chapter 30 allows local exchange telecommunications companies to have rates regulated through an alternative form of regulation. 66 Pa.C.S. § 3015.

5. Verizon PA's Chapter 30 plan includes a price stability mechanism that caps allowed revenue increases using a formula where revenue is multiplied by the difference between inflation as measured by the change in Gross Domestic Product-Price Index and an offset of 0.5%. *See, Alternative Regulation Plan of Verizon Pennsylvania, Inc., Docket Nos. P-00930715, et al.* (further revised in compliance with Commission Order entered May 27, 2008).

6. Verizon North's Chapter 30 plan allows prices of noncompetitive services to increase with the increases in the Gross Domestic Product-Price Index without an offset. *See, Final Alternative Regulation and Network Modernization Plan of Verizon North, LLC*, Docket Nos. P-00981449, *et al.* (further revised in compliance with Commission Order entered and May 27, 2008).

7. The rate adjustment for any individual residential protected line shall not vary from the average rate adjustment by more than 20% as determined by dividing the total protected services revenues by the associated lines. 66 Pa.C.S. § 3015(a)(3).

8. Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission. 66 Pa.C.S. § 1301.

9. No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage. 66 Pa.C.S. § 1304.

10. Commission policy promotes settlements. 52 Pa.Code § 5.231.

11. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.

12. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters; rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al.*, Opinion and Order (entered July 14, 2011); Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order

(entered April 1, 1996); Pa. Pub. Util. Comm'n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

13. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

14. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).

15. The Joint Petition for Settlement filed in this case on November 22, 2016 is in the public interest and should be adopted without modification.

16. The formal complaints filed by the Office of Small Business Advocate should be dismissed.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Settlement Petition filed by Verizon North LLC, Verizon Pennsylvania LLC, the Office of Small Business Advocate and the Office of Consumer Advocate at Docket Numbers R-2015-2510233, C-2015-2512883, P-00001854F1000, R-2015-2510231, C-2015-2512860 and P-00930715F1000 dated November 22, 2016 is hereby approved in its entirety without modification.

2. That the formal complaints filed by the Office of Small Business Advocate against Verizon North LLC and Verizon Pennsylvania LLC at Docket Numbers, R-2015-2510233, C-2015-2512883, P-00001854F1000, R-2015-2510231, C-2015-2512860 and P-00930715F1000 dated November 10, 2015 are hereby deemed satisfied and dismissed.

3. That these consolidated matters be marked closed.

Date: December 5, 2016

/s/
Joel H. Cheskis
Administrative Law Judge