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July 21, 2006

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street - Filing Room  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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RE: Jean Reese v. Verizon North Inc.; Docket No. C-20043520; ANSWER TO  
COMPLAINANT'S PETITION FOR RECONSIDERATION

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and three (3) copies of the Answer of Verizon North Inc. to the Petition for Reconsideration filed by Jean Reese, the Complainant in the above-captioned matter. Copies of the enclosed document have been served in accordance with the attached Certificate of Service.

If you have any questions, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

Janet L. Miller  
Counsel for Verizon North Inc.

JLM/kmg  
Enclosures

cc: Office of Special Assistants  
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JEAN REESE,

Complainant

v.

VERIZON NORTH INC.,

Respondent

Docket No. C-20043520

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SECRETARY'S BUREAU

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ANSWER OF VERIZON NORTH INC.  
TO PETITION FOR RECONSIDERATION  
OF COMMISSION ORDER  
FILED BY JEAN REESE

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Pursuant to the Regulation of the Pennsylvania Public Utility Commission ("Commission") at 52 Pa. Code §5.572(e), Verizon North Inc. ("Verizon North" or "Company"), by and through its attorneys, Hawke McKeon Sniscak & Kennard LLP, hereby submits its Answer to the Petition for Reconsideration ("Petition") filed by Jean Reese ("Complainant") in the above-captioned matter. Specifically, Complainant asks the Commission to reconsider its Opinion and Order entered on June 27, 2006 in this proceeding. For the reasons set forth below, Verizon North submits the Commission should deny Complainant's Petition on the merits and affirm the decisions set forth in the June 27, 2006 Order.<sup>1</sup>

**DOCKETED**  
AUG 28 2006

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<sup>1</sup> Verizon North notes the Commission granted Complainant's Petition, pending consideration and review of the merits, by Order entered July 20, 2006.

## I. STATED BASIS FOR RECONSIDERATION

In her Petition, Complainant actually seeks reconsideration of the Commission's June 27, 2006 Order and a rehearing on the merits of her case.<sup>2</sup> In support of her requests, Complainant states as follows:

1. The Commission should have accepted the "petition" allegedly containing signatures of other New Tripoli customers as sufficient evidence to warrant the implementation of Extended Area Service. Petition at ¶1.
2. The testimony of Complainant and Mr. George (the President of Ironton Telephone Company and not a New Tripoli customer) should have outweighed testimony given by Verizon North's witness because the witness had "NO first-hand or practical knowledge of the subject area." Petition at ¶2.
3. Complainant believes no customer polling would have been required because the increased monthly cost to New Tripoli customers for Extended Area Service was a "surcharge" not a "rate change" and, in either case, the increase would be "very minimal." Petition at ¶3.
4. Because Complainant chose to proceed in this matter *pro se*, the Administrative Law Judge and the Commission should have acted on her behalf and ordered a "Public Input Hearing in the Service Territory" without her request. Petition at ¶4.

## II. COMPLAINANT HAS NOT SATISFIED THE LEGAL REQUIREMENTS FOR RECONSIDERATION OR REHEARING AND HER PETITION MUST BE DENIED ON THE MERITS

As Complainant points out, the Commission properly reversed the Initial Decision of Administrative Law Judge Ember S. Jandebour on the basis that the record contained the testimony of only one New Tripoli customer – Complainant herself – and the evidence she presented was insufficient to sustain her burden of proving that Extended Area Service ("EAS") is warranted as a result of this proceeding. June 27, 2006 Order at 7. Nothing set forth in Complainant's Petition

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<sup>2</sup> Verizon North strongly believes that Complainant was "coached" or provided specific information for inclusion in her Petition for Reconsideration. This is evident from Complainant's citation to the *Bubner* case, as well as her use of certain language and phrases contained in the Petition. Petition at ¶¶3, 4. If it was possible for Complainant to obtain this information after entry of the Commission's Order, she could have obtained the information during the presentation of her direct case or during the briefing and/or Exceptions stages of this matter. The fact that Complainant failed to do so cannot be used as grounds for reconsideration of the Commission's June 27, 2006 Order.

justifies a re-examination of the Commission's decisions or a change in the outcome of this proceeding.

In *Phillip Duick, et al. v. Pennsylvania Gas and Water Company*,<sup>3</sup> the Commission enunciated the standards for exercising its discretion to grant a petition for rehearing, reopening of the record and/or reconsideration of a Commission Order. The Commission stated:

We view the situation, as follows:

1. A petition for rehearing . . . properly must seek the reopening of the record for the introduction of additional evidence of some sort. As grounds therefore it must allege **newly discovered evidence, not discoverable through the exercise of due diligence prior to the close of the record. . . .**
2. A petition seeking reopening of the record (more properly one for rehearing) may be entertained as a petition for reconsideration . . . if the **newly discovered evidence, was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing, . . .**
3. A petition for reconsideration . . . may properly raise any matters designed to convince the Commission that it should exercise its discretion under [66 Pa. C.S. § 703] to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that "[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . ." What we expect to see raised in such petitions are **new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.** Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on the matter or issue was either unwise or in error.

56 Pa. P.U.C. at 558-559 (internal citations omitted, emphasis supplied).

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<sup>3</sup> 56 Pa. P.U.C. 553 (1982).

Complainant's Petition fails to meet any of these well-established standards. Complainant does not provide any evidence to support her case that was not available to her or that she could not have raised during the hearing held in this matter. Nor does she raise any new or novel arguments or point out any evidence the Commission appears to have overlooked in reaching the decisions contained in its June 27, 2006 Order. Instead, the Petition is a list of rhetorical questions or statements of Complainant's opinions as to why the Commission should have found in her favor and granted the requested EAS. These statements are without merit and cannot form the basis for granting either a new hearing or a reconsideration of the June 27, 2007 Order. For these reasons, Complainant's Petition should be denied on the merits.

### **III. COMPLAINANT'S REQUEST FOR RECONSIDERATION AND/OR REHEARING FAILS ON THE MERITS AND MUST BE DENIED**

#### **A. Complainant's Customer Petition Does Not Represent Credible Evidence In Support Of The EAS Request**

Verizon North disagrees with Complainant, as did the Commission, that the petition she presented in this matter "clearly indicate[s] additional customer support for the EAS." Petition at ¶1. None of the individuals who signed the petition were present to give testimony at the hearing held in this matter. Verizon North has the right to question and respond to evidence presented by a complainant in support of his or her case and, in the absence of such an opportunity, the evidence cannot be given any credibility.

The Commission did not overlook Complainant's customer petition in reaching its decision in this matter. Rather, the Commission found that the petition, by itself, was insufficient to represent the views of New Tripoli exchange customers other than Complainant. On that basis, the Commission properly disregarded the petition and held the evidence of record was not sufficient to

demonstrate a community of interest existed between the New Tripoli and Ironton exchanges.<sup>4</sup> The fact that Complainant disagrees with the Commission's decision is not sufficient grounds for reconsideration or rehearing, nor is it a valid justification for the Commission to change its decision in this case.

Complainant next attempts to justify the admission of her customer petition (in lieu of additional customer testimony) to show support in favor of the requested EAS by citing the Commission's Opinion and Order entered in *Marjorie L. Bubner v. Verizon North Inc.*<sup>5</sup> This reliance is misplaced, because the underlying circumstances of the two cases are different. Contrary to Complainant's characterization, the Commission did not rely on the customer petition presented in the *Bubner* case as "a deciding factor in favor of the complainant" in that case. Petition at ¶1. On the contrary, the Commission considered the existence of the customer petition in addition to evidence presented by Ms. Bubner and 12 other customer witnesses, as well as the "results of past traffic studies" that were "close to the threshold standard." *Bubner* Order at 8, 15. In this case, there were no other customer witnesses who presented testimony in support of the requested EAS. In addition, the toll calling statistics on the EAS route requested by Complainant were well below the requirements of the Commission's Regulation at 63.74(1) or the calling statistics present in the *Bubner* case. Verizon PA Proprietary Statement No. 1 at 9, *Bubner* Order at 7-8. Evidence similar to that relied upon by the Commission in the *Bubner* case does not exist here (i.e., additional customer testimony and high traffic statistics) and Complainant's suggestion that the Commission's holding in the *Bubner* case requires that her customer petition be given the same credibility and be admitted as a basis for implementing EAS in this proceeding cannot be accepted by the Commission.

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<sup>4</sup> Schnecksville is not a telephone exchange but is a town located within the boundaries of the Ironton exchange.

<sup>5</sup> Docket No. C-00004308, Opinion and Order entered December 24, 2002.

For the reasons cited above, Complainant's argument that the Commission should reconsider its decision and accept her customer petition as evidence in support of the EAS request must be ignored and the Commission's June 27, 2006 Order on this issue should be affirmed.

B. Complainant's Request For Reconsideration Of The Weight Given To The Witness Testimony Presented In This Case Is Without Merit

Complainant next asks the Commission to reconsider its determination that the evidence presented by herself and Mr. George with regard to the existence of a community of interest was not sufficient to support a finding that EAS is warranted as a result of this case. As justification for this reconsideration, Complainant points out that "Verizon's witness had NO first-hand or practical knowledge" of the area in which the involved exchanges are located. Petition at ¶2. Verizon North's witness, Regina Ryan, made no claim that the testimony she gave in this proceeding concerning the existence of a community of interest between the New Tripoli and Ironton exchanges was based on her first-hand knowledge of the service area.

Ms. Ryan's testimony addressed the criteria set forth in the Commission's Regulation at 52 Pa. Code §63.77. On the issue of the "demography and proximity of the exchanges as indicating a community of interest," Ms. Ryan testified based on information she obtained from the June 2004 edition of the local telephone directory and the Yellow Pages directory for the Allentown area. Verizon PA Proprietary Statement No. 1 at 13-14. Her first-hand or practical knowledge of the service area was not required to present this testimony.

The burden in an EAS case of proving that a community of interest exists outside the current local calling area of the originating exchange does not fall upon the Company. This proof is the customer's responsibility. The Commission considered the evidence presented by Complainant on this issue and determined that she did not carry her burden of proof.

For the reasons cited above, Complainant's argument that the Commission should reconsider its decision that the evidence presented by Complainant and Mr. George did not support a finding that a community of interest exists between the New Tripoli and Ironton exchanges must be ignored and the Commission's June 27, 2006 Order on this issue should be affirmed.

C. Reconsideration Of The Need For Customer Polling In This Case Is Not Necessary Because The Commission Properly Found That EAS Is Not Warranted

The Commission's Regulation at 52 Pa. Code §63.74 requires that a customer poll be conducted any time the implementation of EAS on a particular route will result in an increase in the monthly rate for customers of the originating exchange. It is irrelevant that the increase in customer rates would be in the form of a "surcharge" rather than an increase in monthly local service rates or that the increase in customer charges would be "very minimal" as argued by Complainant. Petition at ¶3.

As noted by the Commission at page 10 of the June 27, 2006 Order, however, the issue of the need for or content of a poll of customers in the New Tripoli exchange is moot because the Commission properly found that the record in this matter does not support the implementation of EAS.

For the reasons cited above, Complainant's request for reconsideration of the requirements for polling New Tripoli exchange customers should be ignored and the Commission's June 27, 2006 Order on this issue should be affirmed.

D. Complainant Misunderstands The Role Of The Commission In This Matter

The last request in Complainant's Petition is not a request for reconsideration. It is a request for a new or additional hearing. This request must be denied.

In support of her request for rehearing, Complainant states:

Is it not the responsibility of the PUC to schedule such a [Public Input] hearing in light of the fact I am a pro se complainant and should not have been expected to know that a Public Hearing could be requested.

Petition at ¶4. Complainant clearly misunderstands her duty as the party requesting relief in this proceeding.

The evidence that would be obtained at the Public Input Hearing requested by Complainant could have and should have been included as part of Complainant's direct case in this matter. The testimony of other customers of the New Tripoli exchange concerning their need or desire for toll-free calling to the Ironton telephone exchange is not newly discovered evidence that was not in existence at the time of the hearing. Nor is it evidence that was not discoverable through Complainant's exercise of due diligence. All Complainant had to do was ask her friends and neighbors to testify on her behalf. If Complainant felt "the location of the original hearing was problematic" (Petition at ¶4), she could have consulted with the Administrative Law Judge or the Commission about what alternatives were available to address her concerns. Complainant did neither.

In addition, the resources from which Complainant obtained her information about the availability of Public Input Hearings most likely were available to her during the preparation and presentation of her case and she should have availed herself of those resources at that time. By electing to proceed *pro se* in this matter, Complainant assumed the risks associated with her lack

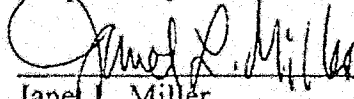
of legal knowledge<sup>6</sup> and her status as a *pro se* Complainant should not be accepted as grounds for reconsideration of the Commission's June 27 2006 Order or the granting of a rehearing to allow additional testimony in this matter.

Finally, granting the request for a Public Input Hearing at this stage of the proceeding, i.e., now that the Commission has ruled against Complainant's request for EAS, impermissibly permits her to have the "second bite at the apple"; the very thing the Commission said in the *Duick* case cannot be permitted.<sup>7</sup> For these reasons, Complainant's request for a rehearing should be denied.

#### IV. CONCLUSION

For all the reasons set forth above, Verizon North Inc. respectfully requests that Complainant's Petition for Reconsideration be denied on its merits and that the Commission's June 27, 20076 Opinion and Order entered in this matter be affirmed.

Respectfully submitted,



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DATED: July 21, 2006

Counsel for Verizon North Inc.

<sup>6</sup> *Wilmore Fraisar v. Frank D. Gillis, et al*, 892 A.2d 74, 77 ("It is well established that any lay person who chooses to represent himself in a legal proceeding must assume the risk that his lack of expertise and legal training may prove to be his undoing."); *Robert H. Rosenblum v. Bell Atlantic - Pennsylvania, Inc*; Docket No. F-00236844; Opinion and Order entered September 29, 1995, 1995 WL 945253 at 11. ("Complainant assumes the risk of not retaining counsel for prosecution of the instant Formal Complaint. As noted above, without direction of this Commission, the ALJ was under no affirmative obligation to alleviate the burdens associated with Complainant's lack of knowledge or assumption of the risk of proceeding pro se.")

<sup>7</sup> 56 Pa. P.U.C. at 559.

CERTIFICATE OF SERVICE

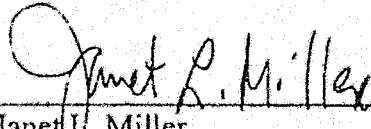
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by first class mail:

Jean Reese  
6938 Lentz Road  
New Tripoli, PA 18066

Michael Swindler, Esquire  
Thomas, Thomas, Armstrong & Niesen  
Suite 500 - 212 Locust Street  
PO Box 9500  
Harrisburg, PA 17108-9500

Dated this 21<sup>st</sup> day of July, 2006.

  
\_\_\_\_\_  
Janet L. Miller

Counsel for Verizon North Inc.

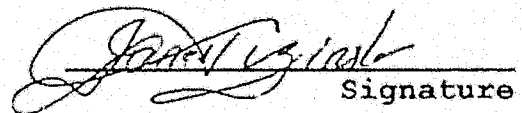
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ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 24 day of July, 2006,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of July 20, 2006 at Docket No. C-20043520 on behalf of:

PENNSYLVANIA PUBLIC UTILITY COMMISSIO  
BUREAU OF FIXED UTILITY SERVICES  
PO BOX 3265  
HARRISBURG PA 17105-3265

  
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION  
PA PUBLIC UTILITY COMMISSION  
KEYSTONE BUILDING 2<sup>ND</sup> FLOOR  
400 NORTH STREET  
Harrisburg, PA 17105-3265

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