



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

ISSUED: MAY 17, 2002

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C-00014886
 C-20015851

LINDA LESKO
 460 LEIDY LANE
 JOHNSTOWN PA 15909

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Linda Lesko v. Verizon North, Inc.

Mary Ann Kaschalk v. Verizon North, Inc.

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge John H. Corbett, Jr.. This decision is being issued and mailed to all parties on the above specified date.

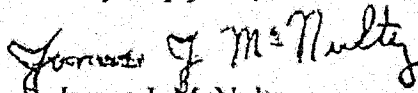
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,


 James J. McNulty
 Secretary

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Linda Lesko

v.

Verizon North Inc.

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Docket No. C-00014886

Mary Ann Kaschalk

v.

Verizon North Inc.

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Docket No. C-20015851

INITIAL DECISION

Before
John H. Corbett, Jr.
Administrative Law Judge

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MAY 22 2002

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I. History of the Proceeding

Linda Lesko ("Complainant") filed a complaint with this Commission on February 14, 2001 against Verizon North Inc. ("Respondent" or "Verizon North"). In her complaint, Lesko seeks toll-free calling from the Vinco area in Verizon North's Johnstown exchange to Ebensburg. Verizon North answered this complaint on March 7, 2001, explaining the local calling area of its Johnstown exchange includes the exchanges of Beaverdale, Davidsville, Johnstown, Nanty Glo, Seward, South Fork and Windber. It alleges the local calling area of the Johnstown exchange is sufficient to allow customers access to business, medical and other social services needed to conduct their day-to-day activities. The Respondent recounts the local calling area of a telephone exchange is determined by the areas to which a majority of customers within the exchange place calls; exchange boundaries do not necessarily coincide with municipal or school district boundaries. The last toll traffic study it conducted discloses insufficient traffic volume to warrant local calling from Johnstown to Ebensburg. *See*, 52 Pa. Code §63.74.

Mary Ann Kaschalk ("Complainant") voices the same concerns in a complaint filed on July 9, 2001. She seeks toll-free calling to Ebensburg as well. Verizon North answered this complaint on August 1, 2001. By Interim Order, I granted the motion of Verizon North to consolidate these two cases on September 10, 2001.

Telephonic prehearing conferences were held on May 18, 2001 and July 23, 2001. A local hearing was held on October 24, 2001 in Johnstown, Pennsylvania. An Order was issued on January 28, 2002 to protect certain proprietary information of Verizon North. A further hearing was held in Pittsburgh on February 14, 2002. The Complainants appeared at these hearings *pro se*. Legal counsel represented the Respondent. Altogether, the prehearing conferences and the hearings generated 224 pages of notes of testimony. Lesko sponsored one exhibit for the Complainants.

Verizon North submitted one statement of written direct testimony and one exhibit for admission into the record. No briefs were filed. The record closed on March 18, 2002.

II. Findings of Fact

A. The October 24, 2001 Hearing

1. The Complainant, Linda Lesko, is a retired school teacher, who lives at 460 Leidy Lane located in Vinco, Jackson Township, Cambria County (N.T. 78, 83, 85; Complainants' Exh. 1).

2. The population of Vinco is approximately 4,925 with 2,000 households (N.T. 81-82, 214).

3. The Central Cambria School District encompasses Jackson and Cambria Townships. Children in the Vinco area attend the Jackson Township Elementary School until fifth grade; then, they attend school in Ebensburg. From the fifth grade on, all school activities for Vinco area children, including sports, are in Ebensburg. Parents of these children must call Ebensburg to report any absences and to obtain homework assignments (N.T. 79, 82-83, 86-87, 141-45; Complainants' Exh. 1).

4. The Central Cambria School District is building a multi-million dollar youth center where children from the entire school district, including Jackson Township, will attend youth activities (N.T. 140-41).

5. The Admiral Perry Vocational-Technical School in Ebensburg offers career training courses for adults and GED classes, as well as entertainment opportunities (N.T. 82).

6. People living in the Jackson Township area seek professional medical assistance and treatment in Ebensburg (N.T. 80).

7. Ebensburg has an Alzheimer's center, as well as an adult day-care center (N.T. 142).

8. Jackson Township residents must call Ebensburg to obtain State Police assistance, non-emergency local police help and Crime Stoppers (N.T. 81).

9. A candidate for political office in Jackson Township uses an Ebensburg telephone number (N.T. 81).

10. Lesko opines more employment opportunities exist in Ebensburg than in Johnstown (N.T. 82).

11. Lesko's total telephone bill averages \$30-\$35 a month. Her toll calls average \$10 a month. She claims to be very frugal; she uses a signal and call-back scheme when she calls friends in Ebensburg. She also uses a cousin's telephone to make Ebensburg calls when she is in Ebensburg (N.T. 84-85).

12. Lesko finds her doctor, dentist, physical and occupational therapists, automobile mechanic, clothing and grocery stores, the Bureau of Consumer Protection, PennDOT, restaurants, and entertainment all in Ebensburg (N.T. 88).

13. Even though she is retired, Lesko still calls the Central Cambria School District in Ebensburg, because she is invited back from time to time to perform volunteer work (N.T. 88-89).

14. State Representative Thomas Yewcic resides at 125 Pudliner Lane, Johnstown, Pennsylvania 15909. He represents the 72nd Legislative District, which encompasses Ebensburg, Stoystown, and Central City in Somerset County. It does not include Johnstown. He lives in Jackson Township and maintains offices in Ebensburg, Windber and Lower Yoder Township (N.T. 55, 57).

15. While Jackson Township is situated halfway between Johnstown and Ebensburg, Yewcic claims his constituents identify more with Ebensburg than with Johnstown. His children and the children of his constituents attend the Central Cambria School District in Ebensburg. People use cell phones for communication or call someone in Ebensburg and have them call right back, because calls from Ebensburg to Jackson Township are local calls, whereas calls from Jackson Township to Ebensburg incur toll charges (N.T. 55-56, 58).

16. Many people with businesses in Ebensburg reside in Jackson Township (N.T. 56).

17. The county seat and courthouse for Cambria County are located in Ebensburg (N.T. 56, 101).

18. Yewcic opines it makes no sense for calls to Davidsville to be considered local, while calls to Ebensburg are not (N.T. 56).

19. Deborah Dcetscreek resides at 542 Leidy Lane, Johnstown, Pennsylvania 15909. She is employed in Special Education by Intermediate Unit Eight, which encompasses four counties. Her employer and workplace are located in Ebensburg (N.T. 59-60).

20. Deetscreek's husband operates a construction business from their residence. His primary supplier is in Ebensburg. Approximately 20% of his business calls are to the Ebensburg area (N.T. 60-61, 64).

21. Deetscreek's daughter is employed in the same Intermediate Unit and her office also is in Ebensburg (N.T. 61).

22. Deetscreek finds her emergency medical facilities, offices of special needs, medical specialists, dentist, physical therapists, accountants, veterinarian, bank, shopping facilities, hairdresser, county offices, family and friends in Ebensburg (N.T. 61).

23. Deetscreek's typical monthly telephone bill is approximately \$35 (N.T. 60).

24. Deetscreek places calls to Ebensburg during breaks and the lunch hour while she is at work to avoid unnecessary toll charges. For the same reason, her husband will combine visits to customers with picking up supplies in Ebensburg. They also use e-mail when they can (N.T. 62-64).

25. Neither Deetscreek nor her husband make enough calls each month to justify using an optional calling plan ("OCP") (N.T. 62-63).

26. Dave Somogyi resides at 470 Rose Branch Street located in the Vinco area, where he also has a shop. He operates a business in Ebensburg selling building and housing materials, as well as a coal and stone yard (N.T. 65).

27. Somogyi's son attends Central Cambria School District and they incur toll charges when calling the school to inquire about activities (N.T. 65).

28. Somogyi's customers in the Jackson Township area will call his residence or his shop, but they will not call his business because it is a long distance call. Consequently, his family takes "a lot" of phone messages from business customers (N.T. 65-68).

29. Somogyi also has a driver living in Jackson Township, who must incur toll charges to call his garage in Ebensburg each day to learn the schedule for the next day (N.T. 65).

30. Rev. Lynn Sanner resides in Jackson Township with her husband and nine-year-old child at 3312 William Penn Avenue, Johnstown, PA 15909 (N.T. 70).

31. Sanner's daughter, who attends the Central Cambria School District, will call Ebensburg occasionally (N.T. 71).

32. Sanner's husband is employed in a jewelry store in Ebensburg and he will call there relative to his employment (N.T. 70-71).

33. Sanner is Pastor of Saint Paul's Lutheran Church, which has approximately 180 members, most of whom live in the Ebensburg area. Sanner's congregation is a part of the Ebensburg Ministerium. Some members of her congregation reside in the Laurel Crest Nursing Home in the Ebensburg area. She contacts local agencies, such as the Area Agency on Aging, which is in Ebensburg. Sanner calls motels in the Ebensburg area to arrange meeting sites for the congregation and other activities. The church calls the courthouse with questions about legal documents, such as passports

and marriage certificates. The church sponsors three different scouting programs. It provides access to the local chapter of TOPS ("Take Off Pounds Sensibly") and a local little league baseball organization. Altogether, the church places five to ten calls a day to Ebensburg (N.T. 70-73, 94).

34. Sanner considers her community of interest to be in Ebensburg, which has the Long Barn, Agway, a dry cleaner, shoe repair, restaurants, a certified public accountant, a veterinarian and health care facilities (N.T. 71-72).

35. Sanner's residence telephone bills range from \$25 to \$35 a month. About \$15 of this amount is for toll calls (N.T. 72, 74-75).

36. Telephone bills for the church average \$30 to \$40 a month, of which \$10 to \$15 is for toll calls (N.T. 72, 75).

37. Sanner opines the money the church can save on toll calls can be more effectively used on outreach ministries in the community (N.T. 72).

38. Sanner will use her cell phone to call Ebensburg to avoid toll charges (N.T. 72).

39. Because access to a phone is necessary for safety and security, Sanner asks the various organizations using church facilities to "be good stewards" of the church telephone (N.T. 77-78).

40. David Cobaugh, who resides with his wife at 724 Kepple in Jackson Township, is a physics and chemistry teacher at Conemaugh Valley High School located

near Johnstown in East Conemaugh Township. He is also an adjunct faculty member at St. Francis University in Loretto, Pennsylvania near Ebensburg (N.T. 92-94, 97-98).

41. Cobaugh must call a number of his students and other faculty members, who live in the Ebensburg area. The teaching staff has established a "phone chain" to call students during foul weather (N.T. 93-94).

42. Cobaugh teaches several workshops for Intermediate Unit Eight, which is headquartered in Ebensburg. This work involves extensive planning and preparation with personnel in Ebensburg to conduct these classes (N.T. 94).

43. Cobaugh considers Ebensburg to be "the center of our lives" for shopping, doctors and employment (N.T. 94).

44. Cobaugh explains that Johnstown has declined socio-economically since the 1977 flood. Very little shopping opportunities exist there. Many of the professional people, including lawyers and doctors, have moved "up to the hills," *i.e.*, the East Hills Plaza in Richland Township, the Westmont area and north to Ebensburg to be in proximity to the courthouse and county seat. While the Johnstown area has declined, he opines the "corridor along Route 22 at Ebensburg has been growing by leaps and bounds" (N.T. 99-101).

45. Cobaugh and his wife are members of St. Paul's Lutheran Church. His wife is a member of the "prayer chain" ministry, half of whom live in the Ebensburg area (N.T. 94-95).

46. Cobaugh is also Chairman of the Church's Service Committee, which is engaged in an Adopt a Highway Project. He finds it impossible to call the

800 number for PennDOT to arrange a highway trash pickup. Instead, he must call the nearest PennDOT office in Ebensburg (N.T. 95).

47. Cobaugh's residential telephone bills range between \$35 to \$50 a month (N.T. 95-96).

48. To reduce their toll charges, Cobaugh and his wife use e-mail. When calling someone in Ebensburg, they ask the other party to return the call so they will not incur toll charges. For anyone living in Ebensburg, the call to Jackson Township is a local call (N.T. 96-97).

49. Harold Britton, who resides at 2743 William Penn Avenue, Johnstown, PA 15909, is retired from the military (N.T. 102).

50. Britton has lived for 30 years in Jackson Township and his grandchildren reside in the Ebensburg area. When he calls his family in Ebensburg, he leaves a signal for them to call back, so he does not incur toll charges. He corroborates the testimony of the witnesses, who testified previously (N.T. 103-04).

51. Lori Curley, who resides with her husband and three children at 96 Adams Avenue in Mineral Point, Jackson Township, PA 15942, is self-employed as a Creative Memories Director. She teaches people how to compile scrapbook albums (N.T. 106-08).

52. Curley's children attend the Ebensburg Middle School and High School. Since moving to this area seven years ago, their community of interest lies in Ebensburg. She corroborates the testimony of other witnesses, who testified previously (N.T. 106-07).

53. Curley and her family ask the other party to return a call, when they call someone in Ebensburg. Each call to Ebensburg costs them 16¢. Their monthly phone bill of \$35 to \$40 includes \$5 to \$8 in toll charges (N.T. 107-08).

54. Vincent Brisini, who resides in Jackson Township at 594 Leidy Lane, Johnstown, PA 15909, works for Reliant Energy as an Environmental Manager. His employer is located in Johnstown. His home is located eight miles from Ebensburg and ten miles from Johnstown (N.T. 109-10).

55. Brisini corroborates the testimony of previous witnesses that everyone where he lives affiliates themselves more with the Ebensburg community than with Johnstown. He believes this affiliation grows out of the Central Cambria School District and the geographic proximity of Ebensburg, as well as more convenient shopping and medical facilities available there (N.T. 110).

56. Brisini also has a family policy for his children to ask their friends in Ebensburg to call them back when they call, because calls from Ebensburg to Jackson Township are toll-free. He explains this policy does not work when he must call a physician, veterinarian or other businesses they patronize in Ebensburg (N.T. 110-11).

57. Karen Nagy, who resides at 246 Adams Avenue, Mineral Point, PA 15942, is a truck driver for the U.S. Postal Service (N.T. 112).

58. Nagy corroborates the testimony of witnesses, who testified previously. She notes that doctors, dentists, pharmacies and "just about everything" is in Ebensburg (N.T. 113).

59. Joe Baxter, who resides with his wife and two daughters in Jackson Township at 116 Marhefka Drive, Johnstown, PA, is a union construction laborer (N.T. 114-116).

60. Baxter's two teenage daughters attend school in Ebensburg, where many of their friends live. His wife works in Ebensburg. He estimates 75% of the businesses that he deals with are in Ebensburg (N.T. 114, 116).

61. Most of the toll charges on Baxter's phone bills are for one-minute calls, because his daughters call their friends in Ebensburg and ask the friends to return their calls (N.T. 115).

62. His daughters use the Internet to converse with their friends or to work on school projects and homework (N.T. 116).

63. Baxter organizes a softball league of 17 teams with 350 children. Some of his telephone conversations last anywhere from 10 to 20 minutes. To help reduce expenses, he uses a pre-paid telephone card, but he finds the number of digits he must dial when using a card to be inconvenient (N.T. 115).

64. Baxter's telephone bills average \$35 to \$47 a month (N.T. 117-20).

65. Baxter spends \$10 to \$15 a month on pre-paid telephone calling cards (N.T. 118).

66. Patricia Allbaugh resides in Jackson Township at 2280 Benshoff Hill Road, Johnstown, PA 15909. She is a registered nurse employed by Conemaugh Hospital in Johnstown at one of its satellite facilities in Jackson Township (N.T. 122).

67. Allbaugh is the office manager of a family medical practice. During October 2001, 210 of that practice's 638 scheduled patients were from the Ebensburg area. The practice calls each patient to confirm a scheduled office visit. The staff calls prescriptions for Ebensburg patients into Ebensburg pharmacies. Altogether, the practice placed 220 calls to Ebensburg at a cost of \$364 in October (N.T. 123-25).

68. Allbaugh also sits on the Central Cambria School Board. She calls "a lot of the children in the area," who attend schools in the Central Cambria School District (N.T. 123).

69. Karen Stickler resides at 32 Harmony Drive, Johnstown, PA 15909 (N.T. 125).

70. Stickler corroborates the testimony of witnesses, who testified previously. Her three adult children attended the Central Cambria School District and she experienced problems similar to those related by parents of children attending schools there now. Her physician, dentist, veterinarian and medical professionals are located in Ebensburg (N.T. 126).

71. Stickler for 10 years has been a volunteer and program coordinator for the Best of Friends Sportsman Program, which provides therapeutic horsemanship activities for persons with physical disabilities. She places "many, many phone calls weekly," mainly during the season from May through August, to board members, riders and volunteers to coordinate this program. Three board members, at least one rider, three to five volunteers, and one instructor reside in Ebensburg. During a typical season, her phone bills for calls to Ebensburg cost anywhere from \$12 to \$28 (N.T. 127-28).

72. Wendy Berdomas resides with her husband and two children in Jackson Township at 189 Maywood Street, Johnstown, PA 15909. She is a Senior Vice President of First Commonwealth Trust Company with an office in Indiana, Pennsylvania (N.T. 130-31).

73. Berdomas' husband works at the Admiral Perry Vocational-Technical School in Ebensburg (N.T. 131-32).

74. Berdomas explains "everything that we've done throughout our lives... has centered around Ebensburg," including sports activities for the children (N.T. 131).

75. Berdomas' husband uses a cell phone for communication (N.T. 132).

76. Eileen Deskevich, who resides in Jackson Township at 195 Mockingbird Lane, Johnstown, PA 15909, is self-employed as a babysitter and is a homemaker (N.T. 133-36).

77. Deskevich's children attend a private school in Ebensburg and she must call there for bus route information, etc. Her brother and in-laws live in Ebensburg. The mother of the child that she baby-sits teaches in Ebensburg. Of the 22 toll calls listed on her latest telephone bill, 19 were to Ebensburg (N.T. 134).

78. To reduce expenses, Deskevich asks the party whom she calls in Ebensburg to return her call (N.T. 134).

79. Deskevich's volunteer work for her church includes calling people for offertory service. As part of the church's CCD Program, she is also involved in

collecting items for the St. Vincent DePaul Society, which is located in Ebensburg (N.T. 134-35).

80. James Angelo resides in Jackson Township at 2125 William Penn Avenue, Johnstown, PA 15909. He is a retired Wall Street banker (N.T. 137-39).

81. The veterinarian for Angelo's four cats is located in Ebensburg. He also calls the courthouse there periodically (N.T. 138-39).

B. The February 14, 2002 Hearing

82. The Complainant, Mary Ann Kaschalk resides in Jackson Township at 2419 Swigle Mountain Road, Mineral Point, PA with her husband and three children. She is an accountant for a defense contractor located in Richland Township near the Cambria County Airport outside of Johnstown. Her husband is a sales representative for an industrial chemicals company situated in Vinco, PA (N.T. 162-65, 167).

83. Kaschalk's family life centers on the Ebensburg area, which includes her children's day-care center, their school in the Central Cambria School District, doctors, lawyers, pharmacy and shopping at the Super Wal-Mart (N.T. 164-70).

84. At home, Kaschalk uses her husband's cell phone for calls to the Ebensburg area. At work, her employer absorbs the cost of any calls she makes to Ebensburg from that location (N.T. 165-66, 169).

85. Kaschalk has family living in Johnstown. She makes anywhere from five to 15 calls a day there. She believes Jackson Township is more rural than other areas of the Johnstown exchange (N.T. 169-70, 208-213).

86. Regina Ryan testifies as a Senior Staff Consultant for Verizon North. Her responsibilities include exchange services planning, introduction of new services, investigation of customer requests for Extended Area Service ("EAS"), administration of exchange boundaries, and the preparation, filing and interpretation of exchange service tariffs that Verizon North submits to the Commission (Verizon North St. 1 at 1).

87. An "exchange" is the fundamental building block or rate division for providing telephone service. Verizon North designs and plans its landline facilities based upon serving the area comprising an exchange. The exchange in which a customer is located determines what services are available to the customer and the rates the customer pays for those services. The monthly rate that Verizon North charges for access to the telephone network varies throughout Pennsylvania based upon the exchange in which a customer is located. An exchange also determines where a customer can call on a toll-free basis. Verizon North has 102 exchanges in Pennsylvania (Verizon North St. 1 at 1).

88. A customer's exchange determines the rates that the customer pays for local usage packages and whether particular calls the customer places are considered local or toll calls (Verizon North St. 1 at 1).

89. Under its tariff, the rates that Verizon North establishes for each exchange are based upon the number of telephone access lines (main stations) in the local service area. Each exchange is placed in a rate group according to the number of weighted access lines that can be called without a toll charge. Verizon North currently has six rate groups. The rate for each rate group reflects the value of local calling ability based upon the number of access lines in an exchange, plus application of a weighing factor that reflects the value of distance between an exchange and any additional exchanges included in the local service area (Verizon North St. 1 at 3).

90. Each exchange has its own "local calling area," which is the area in which residential customers who subscribe to Verizon North's "Flat Rate Extended Area Service" can, with payment of the tariffed monthly rate associated with that calling package, place an unlimited number of uncounted and untimed calls within the customer's "local calling area." This service package is referred to as "flat rate" service. The "local calling area" for most exchanges includes not only the exchange itself, but other exchanges as well (Verizon North St. 1 at 3).

91. Some customers find it more economical to pay for individual calls within their local calling area. Verizon North customers, who do not want Flat Rate Service, may elect an option known as "Metered Service" or "Usage Sensitive Service," if available. "Metered Service" allows a customer to make untimed calls within his or her local calling area at a tariffed rate of 7¢ per call during peak hours and 3.5¢ per call during off-peak hours. "Usage Sensitive Service" consists of a monthly charge and charges per call based on time and distance (Verizon North St. 1 at 3).

92. By contrast, calls to locations outside of a customer's local calling area are known as "toll calls;" Verizon North charges separately for these calls under its Commission-approved Message Toll Telephone Service table of rates. Each toll call is separately itemized on a customer's bill. The amount Verizon North charges for any call depends upon its duration, the time of day and day of the week when the call is placed, and the distance between the toll rate center of the customer's exchange and the toll rate center of the exchange where the call terminates (Verizon North St. 1 at 4).

93. Typically, Verizon North has not memorialized in its records why it designed a certain exchange in a particular way. Its basic approach is to define a local calling area for each exchange that is extensive enough so a large majority of customers in the exchange can meet their day-to-day calling needs without incurring toll charges.

To determine the extent of a local calling area, Verizon North analyzes the calling patterns of customers in the exchange as a whole. When the original boundaries of the Johnstown exchange were drawn is unknown (Verizon North St. 1 at 4; N.T. 174-77, 197).

94. Verizon North claims it continues to provide local calling areas designed to meet the needs of most customers within an exchange. It notes the places customers tend to call can depend largely upon where they are located within an exchange, *i.e.*, where their relatives, friends and business relationships are located, and where they shop. These factors are not necessarily constant over time. A large number of customers may tend to call one area for shopping and business needs, but habits can change as business and shopping areas change and customer preferences change in response to a changing business environment (Verizon North St. 1 at 4).

95. Responding to testimony about shopping in Ebensburg at the Super Wal-Mart, as well as commercial expansion along Routes 22 and 422 near Ebensburg, Ryan observes this development is relatively recent and certainly more recent than the origin of the Johnstown exchange. Likewise, the consolidation of school districts over the last 30-40 years occurred without consideration of local versus toll calling areas. Many schools do not provide toll-free numbers where inhabitants living outside of the local calling area can call a school toll-free. Some exchange customers may elect to shop or visit doctors or conduct business in communities outside of their local calling area (Verizon North St. 1 at 5).

96. Ryan contends it is virtually impossible to design local calling areas, which meet all of the calling habits of every customer in a particular exchange. For this reason, the Commission developed regulations to identify when a local calling area should be deemed inadequate. *See*, 52 Pa. Code §§63.71-63.77. These regulations strike

a balance between customers' need for local calling and the telephone company's duty to provide flat rate calling in lieu of toll calling. When it receives a request for a change in a local calling area, Verizon North does not examine the request in isolation. It looks at the consequences that action taken relative to one exchange may have on other exchanges, as well as on the utility and its customers as a whole (Verizon North St. 1 at 5).

97. The Complainants reside in Verizon North's Johnstown exchange in Cambria County. That exchange encompasses about 142 square miles. The Johnstown exchange includes the following exchanges in its local calling area: Johnstown, Beaverdale, Davidsville, Nanty Glo, Seward, South Fork and Windber. Verizon North identifies the Johnstown exchange and the surrounding exchanges within its local calling area on a map. The local calling area of the Johnstown exchange covers approximately 456 square miles (Verizon North St. 1 at 6-7; Verizon North Exh. 1; N.T. 177-78).

98. A Johnstown residential customer pays \$13.80 per month for a dial tone line and an unlimited local calling area package. Residential customers also may elect to have measured service, which some customers find to be more economical (Verizon North St. 1 at 7).

99. In the proprietary version of her prepared direct testimony, Ryan identifies the number of access lines in the Johnstown exchange, which has five central offices. One central office serves the Vinco (Jackson Township) area, *i.e.*, Johnstown North. Ryan relates the number of access lines in this central office in the proprietary version of her written testimony (Verizon North St. 1 at 7. N.T. 187-88, 197).

100. If qualified, a Johnstown customer can receive a Lifeline credit of \$9.00 each month and also has the option of requesting Universal Telephone Assistance Plan ("UTAP") funding (Verizon North St. 1 at 7).

101. Two options exist to reduce or eliminate toll charges for calls placed from the Johnstown exchange to the Ebensburg exchange, *i.e.*, EAS and an optional calling plan ("OCP") (Verizon North St. 1 at 8).

102. Verizon North conducted a toll traffic study for the Johnstown exchange in March 2001. Neither the calling volumes nor the percentage of customers making calls to Ebensburg met the thresholds set forth in the Commission's EAS regulations (Verizon North St. 1 at 9; N.T. 174-76, 178, 180, 198-99).

103. Verizon North conducts a toll traffic study for an entire exchange as a whole, rather than only for a portion of an exchange. It makes no distinctions for rural versus non-rural population nor for population density. The toll traffic study demonstrated insufficient traffic volumes from the Johnstown North central office in the Johnstown exchange to Ebensburg to warrant EAS under the Commission's regulations (N.T. 182-83, 185-87, 190, 192-93).

104. Verizon North cannot consider cell phone usage either in conducting this study or in any other way, because it cannot capture cellular communications that do not pass over its network. Likewise, it cannot consider dial-around service, payphone or calling card usage (N.T. 181, 191-92).

105. Ryan contends the percentage of customers required in these regulations is a safeguard to prevent a few customers from skewing calling rates. The need must be widespread and not confined to a small segment of customers. In this case, calling from the Johnstown exchange to the Ebensburg exchange is not widespread, but correlates only to a certain location within the Johnstown exchange as exemplified by the individuals, who testified at the previous hearing (Verizon North St. 1 at 10)

106. The calling rates in a 1997 toll traffic study did not support provision of an OCP for the Johnstown exchange to any other exchange, including Ebensburg (Verizon North St. 1 at 10).

107. Other toll carriers compete for the intraLATA toll calling traffic originating in the Johnstown exchange. Each carrier considers the number of lines it serves to be proprietary information (Verizon North St. 1 at 11).

108. Verizon North considers cellular services to be a growing competitor in its toll market (Verizon North St. 1 at 11).

109. Competition currently exists in the Johnstown exchange for local telephone service (Verizon North St. 1 at 11).

110. Verizon North calculates three major components of the costs it will experience, if EAS is implemented from Johnstown to Ebensburg. These costs include: (1) lost toll and access charge revenue; (2) capital costs, *i.e.*, additional equipment and facilities; and (3) expenses of regulatory requirements. Ryan enumerates these costs in the proprietary version of her prepared written testimony (Verizon North St. 1 at 11-12).

111. The new facilities include digital trunk interfaces, fiber cable and fiber terminal equipment (Verizon North St. 1 at 11).

112. Verizon North claims it will experience annual revenue losses and recurring increased operating and maintenance expenses, if EAS is implemented. Ryan quantifies these losses in the proprietary version of her written testimony (Verizon North St. 1 at 12; N.T. 202-03).

113. Verizon North opines the quantitative standards set forth in the Commission's regulations for EAS from Johnstown to Ebensburg have not been met. The calling needs that many of the witnesses expressed at the previous hearing reflect personal calling preferences. Ryan notes the Johnstown exchange is large. The benefit of that expansiveness is a large local calling area. The downside is that calling patterns within the various exchanges have a higher likelihood of not being homogeneous. While the Vinco (Jackson Township) area is part of the Johnstown exchange, residents there see themselves as having wants and needs different from the Johnstown exchange as a whole. Ryan claims the regulatory framework cannot respond to small calling subsets within an exchange. The telephone system uses the entire exchange as its basic building block (Verizon North St. 1 at 12).

114. Verizon North submits the Complainants have not shown that: (1) a community of interest exists between the Johnstown exchange as a whole and the Ebensburg area; (2) the lack of EAS impairs the economy of the Jackson Township area; and (3) no options to EAS exist. Calling cards are available, which allow calling to Ebensburg for a few cents per minute (Verizon North St. 1 at 12).

115. Alternatively, Verizon North submits that in the event the Commission finds after a polling of Johnstown exchange customers that granting EAS in this case is appropriate, the Commission should also permit the Respondent to recover its toll and access fee losses, as well as its one-time costs and new operations and maintenance costs. It claims relief cannot be limited solely to customers in the Jackson Township area served through the Johnstown North central office. Because it must treat an exchange as a whole, Verizon North proposes a one-time surcharge of \$1.50 on each access line in the Johnstown exchange the first year after the Commission grants EAS and a \$1.00 annual surcharge thereafter (Verizon North St. 1 at 13; N.T. 188, 200-04).

III. Discussion

The case *sub judice* presents a complex set of issues relating to the reasonableness and adequacy of the local calling area of Verizon North's Johnstown exchange. The genesis and *raison d'etre* for the original boundaries of this exchange has apparently been obscured through the passage of time (Verizon North St. 1 at 4; N.T. 174-77, 197). As presently configured, the exchange encompasses about 142 square miles. Its local calling area includes the exchanges of Beaverdale, Davidsville, Nanty Glo, Seward, South Fork and Windber (Verizon North Exh. 1). This local calling area covers approximately 456 square miles (Verizon North St. 1 at 6-7; N.T. 177-78).

A Johnstown residential customer pays \$13.80 per month for a dial tone line and an unlimited local calling area package. Residential customers also may elect to have measured service, which some customers find to be more economical (Verizon North St. 1 at 7). In witness Ryan's proprietary testimony, Verizon North identifies the number of access lines in the Johnstown exchange, which has five central offices. One central office serves the Vinco (Jackson Township) area, where the Complainants reside, *i.e.*, Johnstown North. Ryan relates the number of access lines in this central office in the proprietary version of her written testimony (Verizon North St. 1 at 7. N.T. 187-88, 197).

Despite the large local calling area of the Johnstown exchange or more precisely — depending upon one's point of view — because of it, a number of Jackson Township residents complain this local calling area fails to adequately serve their community of interest, which lies in Ebensburg. In essence, they contend that Verizon North provides unreasonable and inadequate service, because they must incur the burden of toll changes to conduct the affairs of their daily lives in Ebensburg.

A. The Legal Standard

Any person, having an interest in the subject matter, may file a complaint with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation of any law, which the Commission has jurisdiction to administer. 66 Pa. C.S. §701. Section 1501 of the Public Utility Code (“Code”) imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities. 66 Pa. C.S. §1501. This provision of the Code requires a public utility to “...make all such repairs, changes...and improvements in or to such service or facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” The term “service” is “used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities...in the performance of their duties under [the Public Utility Code]....” 66 Pa. C.S. §102.

The Complainants in this case assert Verizon North is acting unreasonably by failing to provide them with Extended Area Service from its Johnstown exchange to the Ebensburg exchange so they can avoid toll charges. Lesko and Kaschalk implicitly allege the service Verizon North offers them is inadequate or unreasonable in violation of the Code. 66 Pa. C.S. §1501. As proponents seeking affirmative relief from the Commission, Lesko and Kaschalk bear the burden of proof. 66 Pa. C.S. §332(a).

B. The Burden of Proof

The Pennsylvania Supreme Court has held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The term “preponderance of the evidence” means that one party must present evidence which is more convincing, by even the

smallest amount, than the evidence presented by the other party. *Id.* The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

Accordingly, one must review the record in this proceeding to determine whether the Complainants have satisfied their burden of proof. If the review indicates this burden has been satisfied, one must then determine whether the Respondent has submitted evidence of "co-equal" value or weight to refute the Complainants' evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967), and *Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Cmwlth. 1982) *aff'd.*, 501 Pa. 443, 461 A.2d 1234 (1982).

In determining whether the Complainants have satisfied their burden of proof, care must be exercised to ensure the decision of the Commission is supported by substantial evidence. *Dutchland Tours, Inc. v. Pa. P.U.C.*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975). Pennsylvania courts have defined the term "substantial evidence" to mean such relevant evidence that a reasonable mind may 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. P.U.C.*, 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. Com., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984). With this background, we turn now to review the Complainants' claims.

C. The Commission's EAS Regulations

The Commission's Extended Area Service ("EAS") regulations, 52 Pa. Code §§63.71-63.77, as amended, provide a framework for determining when various public policy concerns justify provision of EAS or an Optional Calling Plan ("OCP") between exchanges in order for a telephone utility to meet its statutory duty to provide adequate service. By Order entered January 12, 1989 at Docket No. I-80090338, the Commission adopted these regulations, which became effective March 18, 1989. *Pennsylvania Bulletin*, Volume 19, No. 11, page 1179. When adopting these regulations, the Commission provided guidance both for construing and applying the EAS regulations and for evaluating the evidence adduced in this proceeding:

We believe that these regulations, as modified, strike a fair balance between the need for uniform EAS standards and our need to retain discretion to consider the equities in specific EAS applications.

* * *

In §63.77 of these regulations, we have attempted to establish specific criteria for adjudication of EAS complaints. The criteria are not intended to depart from the public policy considerations relied on in prior cases, but are an attempt to provide "bright lines" to guide parties and administrative law judges involved in future EAS proceedings.

In recent years, we have issued a considerable number of decisions adjudicating EAS complaints. In these decisions, we have identified public policy concerns related to the implementation of EAS. Overall, the Commission has looked to whether the boundaries of the local calling areas created artificial and inequitable economic boundaries within an otherwise cohesive community. It is community, not individual, need which has been our overriding concern. EAS should not be viewed as merely an alternative to interexchange toll rates. In adjudication of complaint

proceedings, EAS will normally not be ordered, unless the usage standards established in §63.74 are met. However, the Commission will examine all circumstances of record in each individual case.

Id. at 1181 (emphasis added). Thus, the Commission's objective in adjudicating EAS complaints is to determine whether the boundaries of the local calling area create artificial and inequitable economic barriers within a community. The primary thrust in deciding EAS cases is to determine community, not individual, needs. The Commission must consider the regulatory criteria and balance the interests of all those whom the decision will affect, e.g., the complainants, other members of the community, both business and residential customers, as well as the affected telecommunications carriers. Proper application of these standards assures that a minority of customers in an exchange do not receive preferential rate treatment subsidized by a majority of customers in that exchange, who must pay for the additional facilities necessary to provide EAS. At the same time, the regulations assure the provision of EAS, where circumstances warrant it.

1. Mandatory EAS

The Commission distinguishes between mandatory and discretionary EAS under its regulations. See, *Norton v. Verizon PA Inc.*, Docket No. C-00992980 (Order entered March 29, 2002); and *Golden v. Bell Atlantic-PA, Inc., et al.*, Docket No. C-00981878 (Order entered January 26, 2001). One may define "mandatory EAS" as the directive for EAS under the Commission's regulations, when certain traffic study thresholds under the regulations are met. *Golden, supra*, Slip Op. at 21, n. 45.

At one time, 52 Pa. Code §63.72 required each local exchange carrier, such as Verizon North, to conduct biennial interexchange toll traffic usage studies over both

intraLATA¹ and interLATA routes to measure the average calling frequency between contiguous exchanges² and between noncontiguous exchanges having toll rate centers within 16 miles.³ 52 Pa. Code §63.73 requires a telephone company to offer an alternative to EAS, such as an Optional Calling Plan, if its study reveals an average monthly calling frequency of more than 2.00 calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which the local exchange carrier provides toll service. These OCPs may include either the ability to purchase for a flat fee a block of time for calls and a continuing discount for all usage exceeding the initial block of time to the receiving exchange during each billing period or another rate option that the Commission approves. 52 Pa. Code §63.73(a) (1) & (2).

52 Pa. Code §63.74 requires an EAS subscriber poll, if a traffic study between contiguous exchanges or between qualified noncontiguous exchanges indicates an average monthly calling frequency of 5.5 or more calls per access line from one exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange for an intraLATA route.⁴

¹ Section 63.71 defines a "LATA" as a "local access and transport area as designated by Federal law." 52 Pa. Code §63.71.

² Section 63.71 defines an "exchange" as an "area served by one or more central offices, which has a unique local calling area and a defined rate center from which toll distances are measured." 52 Pa. Code §63.71.

³ The Commission suspended the biennial traffic study requirement. *In re: Formal Investigation to Examine and Establish Updated Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. I-00940035 (Order entered March 25, 1999).

⁴ Both exchanges involved in the present case are in the same area code. Accordingly, they appear to be intraLATA, but not interLATA, exchanges.

In the case at bar, Verizon North conducted a toll traffic study in March 2001. This study discloses that neither the average number of calls made by subscribers (the "call rate") nor the percentage of access lines making at least one call to the Ebensburg exchange (the "distribution rate") met the threshold requirements under the Commission's regulations for mandatory EAS or an OCP from the Johnstown exchange to the Ebensburg exchange (Verizon North St. 1 at 9; N.T. 174-76, 178, 180, 198-99). While a toll traffic study examines calling habits of an exchange as a whole, Verizon gleans from the March 2001 study the fact that insufficient traffic volumes exist from the Johnstown North central office in the Johnstown exchange to Ebensburg to warrant mandatory EAS under the Commission's regulations (N.T. 182-83, 185-87, 190, 192-93).

Accordingly, the uncontradicted evidence discloses insufficient recorded toll traffic to justify mandatory EAS or a mandatory polling of Johnstown exchange customers to determine their desire for EAS from the Johnstown exchange to the Ebensburg exchange. This conclusion, however, does not end the inquiry. One must also decide whether other circumstances present in this case warrant the Commission's exercise of its discretion to order EAS from Johnstown to Ebensburg. *Norton, supra*. Slip Op. at 17.⁵

⁵ Section 63.74 states that an intraLATA route qualifies for EAS, if it has an average monthly calling frequency of 5.5 or more calls per access line from one exchange to another. 52 Pa. Code §63.74. If polling is not required, e.g., because no increase in the local service charge will result from extending the local calling area, subsection (7) directs that EAS *shall* be implemented over the qualifying route. Where those threshold limits are not met, as in the instant case, customers still may file a discretionary EAS complaint under Section 63.76 and have the Commission evaluate that complaint under Section 63.77.

2. Discretionary EAS

Formal complaints, such as those of Lesko and Kaschalk in the present case, seeking implementation of EAS are permissible under 52 Pa. Code §63.76, but will be evaluated under 52 Pa. Code §63.77. Pursuant to this latter regulation, the Commission will consider the following criteria in evaluating EAS complaints: (1) the amount of toll charge traffic between the two exchanges; (2) the cost to the utility of implementing EAS; (3) the potential increase in the local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls; (4) demography and the proximity of the exchanges as indicating community of interest; (5) the availability of alternatives to EAS; and (6) the economic effect on the community if the local service area is not extended.

a. The Amount of Traffic Between the Exchanges

Just as the results of a toll traffic study do not end the inquiry *vis-à-vis* discretionary EAS, so too, study results are not conclusive *per se* when looking at the overall traffic patterns between the subject exchanges. To be sure, Verizon North's March 2001 toll traffic study shows insufficient recorded toll traffic to justify mandatory EAS from the Johnstown exchange to the Ebensburg exchange. Indeed, the facts are what the facts are. Nevertheless, these toll traffic study results portray an incomplete picture.

Verizon North concedes it cannot consider cell phone usage either in conducting this study or in any other way, because it cannot capture cellular communications that do not pass over its network. Likewise, it cannot consider dial-around service, payphone or pre-paid calling card usage (N.T. 181, 191-92). Nearly every witness appearing at the October 24, 2001 hearing testifies to using at least one or

more of these methods of communication to avoid toll calls to Ebensburg. For the same reason, many witnesses relate they engage in a signal-and-call-back system with their relatives and friends living in Ebensburg. These unanswered calls obviously are not captured in Verizon North's traffic study.

Just as obviously, other competing interexchange carriers handle intraLATA toll call traffic originating in the Johnstown exchange. Yet, this traffic was not captured in the March 2001 traffic study either. Thus, the traffic study may have understated the traffic between these exchanges. See, *Fenske, et al. v. GTE North, Inc.*, Docket No. C-00968442 (Order entered February 16, 1999).

The Commission recently ruled the "threshold requirements of 52 Pa. Code §63.74 are strictly applicable to mandatory EAS cases as opposed to a discretionary EAS case...." *Norton, supra* at 17. In *Norton*, the Commission granted EAS where call data that Verizon PA Inc. provided were below the 5.5 average call rate and 50% distribution rate threshold required for mandatory EAS. The Commission went on to explain, "We emphasize that although the threshold requirements are an important factor in considering whether or not EAS is warranted on a particular route, the ALJ still has the discretion to determine whether the traffic volume on a particular toll route, when taken into account with community of interest factors, would warrant EAS." *Id.* at 18.

In granting EAS in that case, the Commission followed long-standing precedent that it will not necessarily deny an EAS complaint where traffic numbers fall below the mandatory EAS threshold established in 52 Pa. Code §63.74. The Commission addressed the scope of its EAS authority in *Smith v. GTE North, Inc.*, Docket No. C-00923867 (Order entered January 10, 1994), wherein it declared:

We reject the I.D.'s [Initial Decision's] view that our EAS authority is confined to those contiguous and noncontiguous exchanges, as defined in Section 63.71, that are the subject of mandatory traffic usage studies.... This approach wrongfully attempts to establish a ceiling on our EAS authority. Our EAS regulations establish the minimum, not maximum, scope of our EAS authority. We reject the view offered by the I.D. because that view assumes our EAS regulations are static, that our EAS authority is limited to those exchanges subject to Section 63.72 and 63.72(a), and that the Commission is precluded from ever considering other EAS petitions.

Id., Slip Op. at 8 (emphasis added). In so ruling, the Commission relied upon its Final Order approving the EAS regulations, *supra*, wherein it declared:

We intend to preserve the balance between certainty in application of EAS standards and our exercise of discretion in considering the equities of various factual situations involving the interfacing of telephone exchanges... [we] preserve the discretion necessary to reach equitable results in cases which do not meet the specific EAS requirements [although]... the EAS will normally not be ordered unless the usage standards in §63.74 are met. However, the Commission will examine all circumstances of record in each individual case.

19 *Pennsylvania Bulletin* No. 11 at 1179 (emphasis in *Smith, supra*).

Accordingly, the Commission must weigh all circumstances of record when reviewing a request for discretionary EAS. While certainly an important factor, toll traffic study results nevertheless are not conclusive when looking at the overall traffic patterns between the subject exchanges. This study fails to capture significant alternatives to Verizon North's service as described *supra*, that individuals utilize to conduct the affairs of their daily lives in their communities of interest while avoiding the

burden of toll calls. Therefore, the weight one accords this toll traffic study must be considered in conjunction with the other factors set forth in 52 Pa. Code §63.77.

b. The Cost to Verizon North

In determining whether to require implementation of EAS, one must consider the cost to the utility. 52 Pa. Code §63.77(2). Verizon North calculates three major components of the costs it will experience, if EAS is implemented from Johnstown to Ebensburg. These costs include: (1) lost toll and access charge revenue; (2) capital costs, *i.e.*, additional equipment and facilities; and (3) expenses of regulatory requirements. The new facilities include digital trunk interfaces, fiber cable and fiber terminal equipment (Verizon North St. 1 at 11-12; N.T. 202-03).

While implementation costs are clearly relevant, the Commission's regulations do not list "lost toll revenue" among the criteria to be weighed to determine whether discretionary EAS polling should be ordered. The Commission has held "that consideration of lost toll revenues is irrelevant, because these revenues are distinct from the Company's cost of implementing EAS." *Norton, supra* at 38. Thus, Verizon North's alleged lost toll revenue is not a proper subject for review here. *Id.*

Furthermore, it is not uncommon for telephone companies to experience some decline in toll revenue when calls are switched from toll to local. *See, Petition of Conestoga Telephone and Telegraph Co.*, Docket No. P-00910552 (Order entered April 10, 1992) (establishment of EAS would result in net annual toll revenue loss of \$52,898); *Pa. P.U.C. v. Laurel Highland Telephone Co.*, Docket No. P-00930643 (Order entered March 15, 1993) (a net annual toll revenue loss of \$41,810); *Petition of North Pittsburgh Telephone Co.*, Docket No. P-00900439 (Order entered December 6, 1990) (a net annual toll revenue loss of \$980,000).

Moreover, implementation of EAS may actually create revenue through an increase in residential and commercial subscribers. With a decrease in toll charges, both current and new customers may use the savings to purchase additional lines or other optional services, *e.g.*, call-waiting, caller ID, three-way calling, etc., that generate additional revenue. Customers more economically minded may create increased utility revenue by choosing usage-sensitive service from Johnstown to Ebensburg. While an economic forecast is admittedly not part of this record, one cannot blindly accept the insinuation either that Verizon North will forego the opportunity to use its superior market position to pursue these potential revenue enhancements should EAS be granted. As the Commission noted in *Norton, supra* at 38, Chapter 30, 66 Pa. C.S. §§3001-3009, provides Verizon North "even more opportunity than the older rate base/rate of return method of regulation to seek its own, additional services that will increase the Company's earnings and overall annual operating revenues." At the very least, Verizon North's "lost revenues" claim is speculative and uncertain.

The capital and regulatory costs associated with implementation of EAS from Johnstown to Ebensburg are a miniscule fraction of Verizon North's overall revenue. *See, Golden, supra* at 41. Moreover, Verizon North proposes to recoup these costs through a one-time surcharge of \$1.50 on each access line in the Johnstown exchange the first year after the Commission grants EAS and a \$1.00 annual surcharge thereafter (Verizon North St. 1 at 13; N.T. 188, 200-04). Since the utility does not absorb these costs, no impediment exists for granting the requested EAS.

c. The Economic Benefit of EAS

The Commission's regulations mandate a balancing of any increase in the local service charge occasioned by implementing EAS against the current interexchange toll call cost on the route in question. 52 Pa. Code §63.77(3). The on-going economic

hardship that witnesses appearing at the October 24, 2001 hearing experience due to toll charges easily outweighs the increased annual charge that they will incur upon implementation of EAS from Johnstown to Ebensburg. Each of the 17 witnesses⁶ voice concerns about how the burden of toll calls has impacted the activities of their daily living. Several witnesses explicitly opine the proposed increase in local access charges is preferable to the current toll charges (N.T. 116, 130-31, 142-43). They believe the economic hardship they must endure outweighs an increase of the local service charge. They conclude this increase will be cost effective for them. Whether the same opinion holds true for all customers in the Johnstown exchange may only be decided after a polling to determine the degree of interest in EAS from Johnstown to Ebensburg.

d. Evidence of "Community of Interest"

The Commission also must consider "[t]he demography and the proximity of the exchanges as indicating community of interest." 52 Pa. Code §63.77(4). Under this evaluation, the community defines its own local calling area by demonstrating their calling needs. The circumstances of each case determine how one may define an appropriate community of interest.

In *Smith v. General Telephone Company of Pennsylvania*, 58 Pa. P.U.C. 708 (1984),⁷ 20 Central City witnesses testified that EAS was necessary from Central City to Johnstown, Somerset and Windber to communicate with educational institutions,

⁶ The Complainant, Mary Kaschalk, testified on February 14, 2002 (N.T. 162-213).

⁷ The Commission later issued an unpublished Order modifying its original Opinion and Order Nisi in *Smith*. That Order required EAS to Windber only — reversing the original Order requiring EAS to Johnstown and Somerset as well. *See also, Smith v. General Telephone Co. of Pa.*, 60 Pa. P.U.C. 115 (1985) (denying Petitions for Reconsideration of the modified Order).

religious organizations, doctors and specialists, hospitals, emergency services, business establishments and employers. *Id.* at 710-711. In response, General Telephone Company introduced a section of the Central City Yellow Pages directory attempting to show that necessary services were available within the local exchange. *Id.* at 711, n. 9. The Commission found the witnesses' testimony more probative and convincing of a community of interest than the documentary evidence that the telephone company presented. *Id.* at 711. In conjunction with toll traffic levels, the Commission determined that Central City's community of interest extended to Johnstown, Somerset and Windber. It ordered the utility to provide EAS for Central City customers to those areas. *Id.* at 713.

In *Norton, supra* at 27-28, Verizon PA argued EAS should not be granted where a local calling area provides access to many services needed to conduct day-to-day activities. Verizon PA asserted the existing calling area allowed residents to call toll-free for many services and their preference to call a neighboring exchange should not be grounds for granting EAS. *Id.* In rejecting that argument, the Commission stated, "the fact that an exchange's existing local calling area supports toll-free calling to the medical profession, business and educational entities, friends and families, does not mean that a community of interest cannot exist with an exchange outside the local calling area." *Id.* at 34. The Commission continued:

We are of the opinion that if personal calling preferences of an exchange rise to a level such that those personal calling preferences are used regularly to select a more suitable doctor, dentist, medical institution or more competitive shopping opportunities in the exchange outside the local calling area, then those personal calling preferences all contribute towards the existence of a community of interest. In other words, a community of interest is based on relationships — either personal or business — which are established with doctors, dentists, businesses, relatives, friends, etc., in a specific exchange area.

Id.

The Complainants and every witness, who testified at the evidentiary hearing on October 24, 2001 in this case, emphasize their community of interest extends beyond the local calling area of the Johnstown exchange to incorporate the Ebensburg area. As a consequence, they must incur high toll charges to meet their day-to-day needs. All of these people reside in Jackson Township, Cambria County. Their children attend schools in the Central Cambria School District, which encompasses Jackson and Cambria Townships (where Ebensburg is located) (Complainants' Exh. 1). The children attend Jackson Township Elementary School until fifth grade; thereafter, they attend school in Ebensburg. From then on, all school activities for these children, including sports, are in Ebensburg. Parents of these children must call Ebensburg to report absences and to obtain homework assignments (N.T. 79, 82-83, 86-87, 141-45; Complainants' Exh. 1). The Admiral Perry Vocational-Technical School, offering career-training courses for adults and GED classes, as well as entertainment opportunities, is in Ebensburg (N.T. 82, 131-32). Special education offered through Intermediate Unit Eight is also located in Ebensburg (N.T. 59-61).

The county seat and courthouse for Cambria County is in Ebensburg (N.T. 56, 101). State Representative Thomas Yewcic of the 72nd Legislative District lives in Jackson Township and maintains one of his local offices in Ebensburg (N.T. 55, 57). Many of his constituents, including his neighbors, must incur toll charges to call his Ebensburg office. Yewcic explains that while Jackson Township is situated halfway between Johnstown and Ebensburg (Complainants' Exh. 1), his constituents identify more with Ebensburg than with Johnstown. People use cell phones for communication or call someone in Ebensburg and have them call right back, because calls from Ebensburg to Jackson Township are local calls, whereas calls from Jackson Township to Ebensburg incur toll charges (N.T. 55-56, 58).

Jackson Township residents must call Ebensburg for employment (N.T. 59-61, 88-89) or business (N.T. 60-61, 64-65, 123-25) or to obtain State Police assistance, non-emergency local police help and Crime Stoppers (N.T. 81). They call Ebensburg seeking professional medical assistance and treatment (N.T. 80). In Ebensburg, they find doctors, dentists, physical and occupational therapists, pharmacies, veterinarians, attorneys, accountants, automobile mechanics, Agway, Super Wal-Mart, banks, dry cleaners, shoemakers, clothing and grocery stores, shopping opportunities, construction supplies, hairdressers, county offices, the Bureau of Consumer Protection, PennDOT, an Alzheimer's center, adult and children's day-care facilities, restaurants, and entertainment (N.T. 60-61, 64-65, 71-72, 88, 110-11, 113, 123-26, 138-39, 142, 164-70). In short, these residents consider the geographic proximity of Ebensburg to offer more attractive medical and shopping opportunities than Johnstown (N.T. 110).

One witness, Cobaugh, explains that Johnstown has declined socio-economically since the 1977 flood. Very little shopping opportunities exist there. Many of the professional people, including lawyers and doctors, have moved "up to the hills," *i.e.*, the East Hills Plaza in Richland Township, the Westmont area, and north to Ebensburg to be in proximity to the courthouse and county seat. While the Johnstown area has declined, he opines the "corridor along Route 22 at Ebensburg has been growing by leaps and bounds" (N.T. 99-101).

Jackson Township residents engage in social activities in Ebensburg as well. The Central Cambria School District is building a multi-million dollar youth center where children from the entire school district, including Jackson Township, will attend youth activities (N.T. 140-41). Rev. Sanner is Pastor of Saint Paul's Lutheran Church, which has approximately 180 members, most of whom live in the Ebensburg area. Sanner's congregation is a part of the Ebensburg Ministerium. Some members of her congregation reside in the Laurel Crest Nursing Home in the Ebensburg area. She

contacts local agencies, such as the Area Agency on Aging in Ebensburg. Sanner calls motels in the Ebensburg area to arrange meeting sites for the congregation and other activities. The church calls the courthouse with questions about legal documents, such as passports and marriage certificates. The church sponsors three different scouting programs. It provides access to the local chapter of T OPS ("Take Off Pounds Sensibly") and a local little league baseball organization. Altogether, the church places five to ten calls a day to Ebensburg (N.T. 70-73, 94).

Cobaugh and his wife are members of St. Paul's Lutheran Church. His wife is a member of the "prayer chain" ministry, half of whom live in the Ebensburg area (N.T. 94-95). She must call these individuals to fulfill her ministry. Another witness has an outreach ministry in Ebensburg (N.T. 134-35). Another witness organizes a softball league of 350 children, many of whom live in Ebensburg (N.T. 115). Yet another witness coordinates the Best of Friends Sportsman Program, which provides therapeutic horsemanship activities for persons with physical disabilities. She places "many, many phone calls weekly," mainly during the season from May through August, to board members, riders and volunteers in Ebensburg to coordinate this program (N.T. 127-28).

Nearly all of the Jackson Township witnesses testify they or their children have friends and relatives living in the Ebensburg area. Every witness with children relates the hardship they endure caused by toll charges for normal communication by their children with their peers in Ebensburg for sports, homework and other school-related activities. In fact, it is difficult to imagine any aspect of daily life for Jackson Township residents that does not involve some social or economic intercourse with Ebensburg. These witnesses represent a reasonable cross-section of the need for the proposed EAS. Consequently, as in *Norton and Smith, supra*, ample support exists for the conclusion that the community of interest of Jackson Township residents encompasses Ebensburg.

e. Alternatives to EAS

Another criterion the Commission considers in reviewing EAS complaints is the availability of alternatives to EAS. 52 Pa. Code §63.77(5). Presently, Verizon North customers may incur toll charges of as high as 16¢ a minute to call Ebensburg from the Johnstown exchange (N.T. 107-08). Verizon North does not offer an OCP from Johnstown to Ebensburg (Verizon North St. 1 at 10).

Unfortunately, the *pro se* Complainants here were unable to submit any evidence concerning a shopping rate for subscribers to competing interexchange carriers as evidence of a desire to reduce rates on frequently made calls to their community of interest in Ebensburg. Nevertheless, many members of the Jackson Township community here complain of high phone bills and the various inconveniences they experience to lower their phone bills. To reduce the impact of toll charges, the Complainants and witnesses appearing at the October 24, 2001 hearing make calls from work (N.T. 62-64, 165-66, 169), borrow the phone of a relative while visiting in Ebensburg (N.T. 84-85), use cell phones (N.T. 55-56, 58, 132, 165-66, 169), engage in e-mail and Internet communication (N.T. 62-64, 96-97, 116), use pre-paid telephone calling cards (N.T. 115, 118), place a call and request a call back (N.T. 96-97, 107-08, 110-11, 115, 134), or use a signal-and-call-back scheme (N.T. 84-85, 103-04). To avoid toll charges altogether in one instance, customers will call a businessman at his residence in Jackson Township, rather than place a toll call to his business in Ebensburg (N.T. 65-68).

Obviously, none of these schemes is an adequate or reasonable alternative serving the needs of Jackson Township residents. Rather, the only alternative that Verizon North offers of toll calls is costly and inadequate. Therefore, the existing local calling area of the Johnstown exchange is inadequate to meet the needs of these subscribers to communicate with their community of interest.

f. The Economic Effect Upon the Community

Lastly, the Commission must consider the economic effect on the community, if the local calling area is not extended. 52 Pa. Code §63.77(6). The record abundantly supports a finding that Jackson Township residents suffer substantial economic disadvantage by the limitations the existing local calling area places upon them. Several examples support this conclusion.

Rep. Yewcic explains many people with businesses in Ebensburg reside in Jackson Township (N.T. 56). As mentioned *supra*, customers will call a businessman at his residence in Jackson Township, rather than place a toll call to his business in Ebensburg (N.T. 65-68). Another witness' husband operates a construction business from their residence in Jackson Township. His primary supplier is in Ebensburg. Approximately 20% of his business calls are to the Ebensburg area (N.T. 60-61, 64).

The most striking example is a family medical practice located in Jackson Township. The staff calls each patient to confirm a scheduled office visit. The office manager relates that during October 2001, 210 of that practice's 638 scheduled patients were from the Ebensburg area. The staff also calls prescriptions into Ebensburg pharmacies. Altogether, the practice placed 220 calls to Ebensburg at a cost of \$364 in October (N.T. 122-25). Finally, both Complainants and all of the witnesses appearing at the October 24, 2001 hearing testify to the toll bills they incur and the extraordinary efforts they undertake to mitigate these bills so they can contact their community of interest in Ebensburg, *supra*.

D. Conclusion

These examples typify the economic disadvantage visited upon Jackson Township residents and small businesses by a local calling area that is inadequate to meet their "day-to-day calling needs," which Verizon North declares to be the touchstone for designing an exchange (Verizon North St. 1 at 4). Indeed, the community of interest of customers to a significant degree is voluntarily determined and accommodating individual preferences is not in the public interest. No matter how a local calling area is determined, some subscribers will be dissatisfied due to their own particular desires and needs, which may change over time. In defining an appropriate local calling area, the broader public interest must prevail; otherwise, the majority of customers will pay for the preferences of the few. Enlarging local calling areas only to meet the needs of a minority places an unfair burden on the majority, since the cost of expanding a local calling area is borne by all customers in an exchange regardless of the extent of individual usage. *Korey v. Bell Telephone Company of Pennsylvania*, 53 Pa. P.U.C. 157 (1979).

Nevertheless, balancing the equities in a given case is a dynamic exercise — not mathematical rote. *Smith, supra* at 8. To reiterate, the Commission must weigh all circumstances of record when reviewing a request for discretionary EAS. As the state's population increases and diversifies, people may have divergent communities of interest than those existing when telephone service began. As people move, they bring different communities of interest with them and these interests may eventually change over time as well. As described in this case, one community may decline, while another prospers. Hence, local calling areas may change over time as populations diversify or communities themselves change. Guaranteeing an opportunity for universal access to the telephone network at an affordable price necessarily entails revisiting from time to time the reasonableness of a local calling area for an exchange to determine whether it continues to serve an appropriate community of interest. When substantial evidence in a

case demonstrates a sizeable cross-section of a community is not receiving service that meets its needs, the public interest is not well served and an opportunity to change that service must be offered.

In this case, Verizon North has no records to verify why the original boundaries of the Johnstown exchange were drawn as they were (N.T. 174-77, 197). Whatever the reason, the Complainants present compelling evidence that the local calling area of the Johnstown exchange, despite its large size and expansive local calling area, is inadequate to meet the day-to-day needs of Jackson Township subscribers. Thus, a sizeable segment of subscribers appears to be ill-served by the existing local calling area of the Johnstown exchange. The proffered traffic study, while certainly an important consideration, does not outweigh the overwhelming evidence of a community of interest in Ebensburg. The study does not capture all of the communications traffic between Johnstown and Ebensburg nor does it factor in the adaptations these customers have assimilated into their daily routines to conduct the most basic aspects of their lives.

To remedy this deficiency, Verizon North should be directed to conduct a polling pursuant to the Commission's regulations to determine if all customers of its Johnstown exchange favor EAS from Johnstown to Ebensburg. This polling will provide Jackson Township customers with the opportunity to obtain the remedy they seek, *i.e.*, one-way EAS from Johnstown to Ebensburg, while assuring other Johnstown exchange subscribers do not pay for a service they do not want. While this result may dissatisfy some, it appears to be the only practical remedy given the circumstances of this case.

Verizon North will be directed to recalculate the surcharge that it will have the opportunity to collect from its Johnstown exchange customers for the additional expense of providing EAS from Johnstown to Ebensburg, excluding toll and access fee losses (Verizon North St. 1 at 13; N.T. 188, 200-04). Verizon North then will be directed

to report how it recalculated these expenses to the Commission's Bureau of Audits within 30 days of entry of the Commission's final Order in this case. The expense figure, expressed in a monthly per subscriber surcharge and as approved by the Bureau of Audits, shall be prominently displayed in the polling notice sent to all Johnstown exchange subscribers. Verizon North shall conduct this polling within 120 days of entry of the Commission's final Order in this case. *See, Norton, supra* at 41-43.

For all of the foregoing reasons, the complaints of Linda Lesko and Mary Ann Kaschaik will be granted to the extent they request a polling of subscribers in Verizon North's Johnstown exchange to determine whether they favor one-way EAS from the Johnstown exchange to the Ebensburg exchange. To the extent these complaints raise any other issue or request any alternative relief, they will be denied.

IV. Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. *See, 66 Pa. C.S. §§501, et seq.*

2. The Complainants bear the burden of proving that the existing local calling area of Verizon North's Johnstown exchange constitutes unreasonable and inadequate service. *See, 66 Pa. C.S. §332(a); 66 Pa. C.S. §1501.*

3. The Complainants have met their burden of proving that the local calling area of Verizon North's Johnstown exchange is unreasonable and inadequate. *See, 66 Pa. C.S. §1501; 52 Pa. Code §63.77.*

4. To remedy this inadequate service, Verizon North must conduct a polling of all subscribers in its Johnstown exchange to determine whether they favor

implementing one-way EAS from the Johnstown exchange to the Ebensburg exchange. See, 52 Pa. Code §§63.75-63.76.

V. ORDER

THEREFORE,
IT IS ORDERED:

1. That the complaint of *Linda Lesko v. Verizon North Inc.*, docketed with the Pennsylvania Public Utility Commission at No. C-00014886, is hereby granted to the extent that it requests a polling of all subscribers in the Johnstown exchange of Verizon North Inc. to determine if one-way Extended Area Service should be implemented from the Johnstown exchange to the Ebensburg exchange. In all other respects, it is hereby denied.

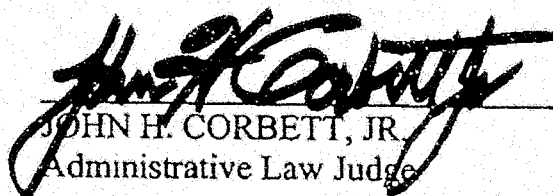
2. That the complaint of *Mary Ann Kaschalk v. Verizon North Inc.*, docketed with the Pennsylvania Public Utility Commission at No. C-20015851, is hereby granted to the extent that it requests a polling of all subscribers in the Johnstown exchange of Verizon North Inc. to determine if one-way Extended Area Service should be implemented from the Johnstown exchange to the Ebensburg exchange. In all other respects, it is hereby denied.

3. That Verizon North Inc. is hereby directed to recalculate the surcharge that it will have the opportunity to collect from its Johnstown exchange customers for the additional expense of providing one-way Extended Area Service from Johnstown to Ebensburg, excluding toll and access fee losses. Verizon North Inc. shall then report how it recalculated these expenses to the Commission's Bureau of Audits within 30 days of entry of the Commission's final Order in this case. Verizon North shall

prominently display the recalculated expense figure, expressed in a monthly per subscriber surcharge and as approved by the Bureau of Audits, in the polling notice sent to all Johnstown exchange subscribers.

4. That Verizon North Inc. shall conduct a polling of all of its Johnstown exchange subscribers to determine their interest in implementing one-way Extended Area Service from the Johnstown exchange to the Ebensburg exchange within 120 days of entry of the Commission's final Order in this case pursuant to 52 Pa. Code §§63.71-63.77.

Dated: May 1, 2002


JOHN H. CORBETT, JR.
Administrative Law Judge

Case Identification:

C-00014886; Linda Lesko v.
Verizon North, Inc.;
C-20015851; Mary Ann Kaschalk
v. Verizon North, Inc.;

Initial Decision By:

ALJ John H. Corbett, Jr.

Deadline for Return to OSA:

May 31, 2002

REP

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Commissioner

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John H. Corbett
Commissioner

May 29, 2002
Date

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Act 294

Case Identification:

C-00014886; Linda Lesko v.
Verizon North, Inc.;
C-20015851; Mary Ann Kaschalk
v. Verizon North, Inc.;

Initial Decision By:

ALJ John H. Corbett, Jr.

Deadline for Return to OSA:

May 31, 2002

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Commissioner

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Act 294

Case Identification:

C-00014886; Linda Lesko v.
Verizon North, Inc.;
C-20015851; Mary Ann Kaschalk
v. Verizon North, Inc.;

Initial Decision By:

ALJ John H. Corbett, Jr.

Deadline for Return to OSA:

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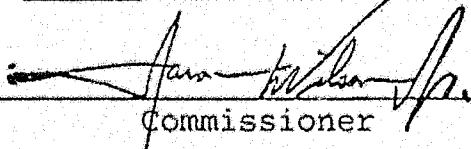
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Commissioner

6/3/02

Date

Act 294

Case Identification: C-00014886; Linda Lesko v.
Verizon North, Inc.;
C-20015851; Mary Ann Kaschalk
v. Verizon North, Inc.;

Initial Decision By: ALJ John H. Corbett, Jr.

Deadline for Return to OSA: May 31, 2002

This decision has not been reviewed by OSA.

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Terrance J. Fitzgerald

Commissioner

5/22/02

Date

Act 294

Case Identification: C-00014886; Linda Lesko v.
Verizon North, Inc.;
C-20015851; Mary Ann Kaschalk
v. Verizon North, Inc.;

Initial Decision By: ALJ John H. Corbett, Jr.

Deadline for Return to OSA: May 31, 2002

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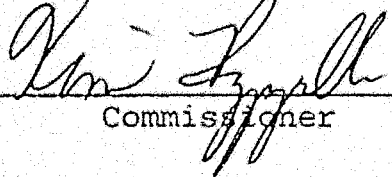
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Commissioner

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JUNE 6, 2002

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MR. JAMES J. MCNULTY, SECRETARY
PENNSYLVANIA UTILITY COMMISSION
P.O. BOX 3265
HARRISBURG, PA. 17105-3265

RE:

DOCKET # C-00014886
460 LEIDY LANE
JOHNSTOWN, PA. 15909

DOCKETED

JUN 13 2002

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JUN 06 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DEAR MR. MCNULTY:

IN RESPONSE TO JUDGE CORBETT'S INITIAL DECISION CONCERNING DOCKET # C-00014886,
I AM FILING ONE EXCEPTION:

THE \$ 1.50 ONE - TIME FEE IS ACCEPTABLE. THE \$1.00 SURCHARGE TO BE RECOVERED
INFINITELY FOR A FINITE CHARGE ON VERIZON'S PART (PLEASE REFER TO PP. 32 and
33.) SEEMS UNNECESSARY.

THANK YOU FOR YOUR TIME AND EFFORTS.

SINCERELY,

LINDA LESKO

814-322-4588

Linda Lesko

cc: ATTORNEY LOUISE KNIGHT, ATTORNEY FOR VERIZON

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Malatesta
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100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.mhm-law.com

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June 6, 2002

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room (2nd Floor)
P.O. Box 3265
Harrisburg, PA 17105-3265

ORIGINAL

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JUN 06 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Linda Lesko v. Verizon North Inc.; Docket No. C-00014886; EXCEPTIONS OF VERIZON NORTH INC. TO INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR. ISSUED ON MAY 17, 2002 (NON-PROPRIETARY VERSION)

Mary Ann Kaschalk v. Verizon North Inc.; Docket No. C-20015851; EXCEPTIONS OF VERIZON NORTH INC. TO INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR. ISSUED ON MAY 17, 2002 (NON-PROPRIETARY VERSION)

Dear Secretary McNulty:

Enclosed for filing with the Commission are an original and nine (9) copies of the Non-Proprietary version of Verizon North Inc.'s ("Verizon North") Exceptions to the Initial Decision of Administrative Law Judge John H. Corbett, Jr. Issued on May 17, 2002. A copy of this document has been served upon the Complainants in accordance with the attached Certificate of Service.

Copies of the Proprietary version of Verizon North's Exceptions were filed with the Commission yesterday, June 5, 2002.

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

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James J. McNulty, Secretary
June 6, 2002
Page 2

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

Very truly yours,



Louise A. Knight
Counsel for
Verizon North Inc.

LAK/kmg
Enclosures

cc: Honorable John H. Corbett, Jr.
Per Certificate of Service

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JUN 06 2002

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LINDA LESKO,

Complainant

v.

VERIZON NORTH INC. and VERIZON PENNSYLVANIA INC.,

Respondents

MARYANN KASCHALK,

Complainant

v.

VERIZON NORTH INC. and VERIZON PENNSYLVANIA INC.,

Respondents

Docket No. C-00014886

DOCKETED

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Docket No. C-20015851

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**DOCUMENT
FOLDER**

EXCEPTIONS OF VERIZON NORTH INC.
TO THE INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE JOHN H. CORBETT, JR.
ISSUED ON MAY 17, 2002

Louise A. Knight
Malatesta Hawke & McKeon LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
717-236-1300

Counsel for
Verizon North Inc.

DATED: June 5, 2002

NON-PROPRIETARY VERSION

Verizon North Inc. ("Verizon North") herein excepts to the Initial Decision of Administrative Law Judge ("ALJ") John H. Corbett, Jr. insofar as he (1) grants the Complainants a polling for extended area service ("EAS") from Verizon North's Johnstown exchange to the Ebensburg exchange and (2) directs the polling to be predicated on a surcharge which includes one-time costs only and excludes lost toll revenues. The individual Exceptions are set forth below.

I. VERIZON NORTH EXCEPTS TO ALJ CORBETT'S APPLYING THE DISCRETIONARY EAS CRITERIA IN §63.77 TO ONLY A SMALL PORTION OF THE TOTAL JOHNSTOWN EXCHANGE. (Initial Decision, pp. 26, 34-38).

ALJ Corbett found that Verizon North is rendering inadequate service to the Johnstown exchange because "ample support exists for the conclusion that the community of interest of Jackson Township residents encompasses Ebensburg." (I.D. at 38) Likewise, he states on page 26 of the Initial Decision that "... the Commission's [Pennsylvania Public Utility Commission] objective in adjudicating EAS complaints is to determine whether the boundaries of the local calling area create artificial and inequitable economic barriers within a community." He disregards the explicit language of the EAS regulations and relies instead on amorphous standard of "all circumstances of record." (I.D. at 31, quoting 19 Pa. Bulletin, No. 11 at 1179). However, Verizon North submits that, even under that standard, the fundamental unit remains the "telephone exchange." *Id.* The reason ALJ Corbett concludes incorrectly that Verizon North is rendering inadequate and unreasonable service is because his analysis explicitly (I.D. at 38) and implicitly (I.D. at 28) is limited to a subset of the Johnstown exchange, that is, the Jackson Township/Vinco area where Ms. Lesko and Ms. Kaschalk reside. However, carving out subsets of exchanges is both unwarranted under the EAS regulations and unfair to Verizon North insofar as its duty to provide reasonable service within an exchange.

A. The EAS Regulations Do Not Contemplate Application To A Small Subset Of An Exchange.

ALJ Corbett's discussion on discretionary EAS¹ neatly avoids the threshold issue of whether the EAS regulations may and should be applied to a small subset of an exchange only. It is instructive preliminarily to inquire as to whether the EAS even vaguely suggest that they should apply to small areas within an exchange. Clearly, they do not.

First, Section 63.71 of the EAS regulations define "exchange," "local calling area," and "qualified noncontiguous exchanges." None of the definitions refer to a smaller unit than an exchange as the operative unit in the regulations. Second, Sections 63.72 and 63.73 set forth the methodology for performing toll traffic studies. Again, the fundamental unit is the exchange — nothing less.

Third, Section 63.74 describes how EAS polls are to be performed. They are to be performed on an "exchange" basis.

Finally and most telling, subsection 63.77(4) of the "Evaluation Criteria," clearly refers to a consideration of "the demography and the proximity between *exchanges* as indicating community of interest." (Emphasis added.)

In conclusion, it is abundantly clear that the EAS regulations are premised on evaluation of the total exchange. To carve out subsets of exchange invites the very thing ALJ Corbett states is unacceptable: that the needs of a minority will place an unfair burden on the majority (I.D. p. 4) as well as on Verizon North.

¹ The ALJ concluded that the evidence did not support mandatory EAS (I.D. at 28).

B. The ALJ Misapplies The EAS Regulations By Considering The Jackson Township/Vinco Area On A Stand-Alone Basis.

This case represents an example where the adequacy of the whole exchange has been disregarded to focus on the preferences of a small subset of the exchange. That conclusion must be reversed by this Honorable Commission.

Regina Ryan, Senior Staff Consultant for Verizon North, explained in her direct testimony the significance of the "exchange" as a unit of telephone service. She stated:

An 'exchange' is the fundamental rate division of providing telephone service. The exchange in which a customer is located determines what services are available to the customer and the rates the customer pays for those services... An exchange also determines where a customer can call on a toll-rate basis...

I cannot overemphasize the importance of viewing and accepting the concept of exchanges as the fundamental unit of telephone service. With proliferation of cellular telephones and other technologies, it may be tempting to overlook the fact that exchanges are our design unit — that is, we plan landline facilities based on servicing the area comprising the exchange. There is a growing tendency to view the structure as unwieldy or just artificial, but the exchanges are an essential building block. (Emphasis added.)

(Verizon North St. No. 1, p. 2)

Ms. Ryan also explained that the basic function of an exchange and a local calling area.

She testified that:

We continue to provide local calling areas designed to meet the needs of most customers within [an] exchange. However, logic and experience demonstrate that the places that customers tend to call can depend largely upon where they are located within the exchange, where their relatives, friends, and business relationships are located, and where their shopping is done. Of course, these factors are not necessary constant over time. For instance, a large number of customers may tend to call one area for shopping and business needs, but that can change as business and shopping areas

change and customer preferences change in response to a changing business environment.

That certainly appears to be a factor in this case. Several witnesses at the public input hearing testified about the Super Wal-Mart in Ebensburg, as well as other commercial development along the routes 22 and 422 corridor near Ebensburg. Obviously, that development is relatively recent, certainly more recent than the origin of the Johnstown exchange..

It is, of course, virtually impossible to design local calling areas which will meet all of the calling habits of every customer in a particular exchange. That is why the Commission developed regulations to identify when a local calling area is deemed to be insufficient.

(Verizon North St. No. 1, pp. 4-5)

Unfortunately, ALJ Corbett chose to evaluate this case based only on a small subsection of the Johnstown exchange — that being Jackson Township/Vinco, Cambria County. The Jackson Township/Vinco area is small and rural. It has only [START PROPRIETARY] [END PROPRIETARY] access lines. Residents view themselves as rural. One witness testified that the 20 minute drive between her home and Johnstown was considered “very far” by her family. (N.T. 208) Nowhere in the Initial Decision does the ALJ recognize or accord significance to the concept of the exchange as the fundamental planning and regulatory unit. In fact, the Johnstown exchange is large both in terms of area and the availability of services. It includes approximately [START PROPRIETARY] [END PROPRIETARY] access lines, making it quite large. Likewise, its local calling area is extensive; it consists of the Johnstown, Beaversdale, Davidsville, Nanto Glo, Seward, South Fork and Wilbur exchanges. The Johnstown exchange and its local calling area can hardly be viewed as unreasonable or inadequate — unless only a small part of it is examined.

But ALJ Corbett himself set forth the very legal premise that precludes this type of analysis. After the ALJ found that the Johnstown exchange is inadequate because a small population in the exchange has different preferences from the majority of subscribers, he observed in his conclusion that “[e]nlarging local calling areas only to meet the needs of a minority places an unfair burden on the majority, Korey v. Bell Telephone Company of Pennsylvania, 53 Pa. P.U.C. 157 (1979).” (I.D. at 41)

More recently, ALJ Corbett decided a case in which he reiterated the need to balance the interests of the few against the interests of the many. In Bronder v. ALL-TEL Pennsylvania, Inc. Docket No. C-00956510 (Initial Decision issued November 1, 1950; made final on December 20, 1995),² ALJ Corbett considered an allegation that ALL-TEL's Templeton exchange was too limited, despite the fact that it included access to an array of stores, services, medical options, and the like. In denying the request for FAS, ALJ Corbett opined as follows:

As for the foregoing section of this decision demonstrates, the Templeton – Kittanning local calling area includes over 12,000 access lines encompassing a vast array of services. The community of interest of customers to a significant degree is voluntarily determined and accommodating individual preferences is not in the public interest. No matter how the local calling area is determined, some subscribers will be dissatisfied due to their own particular desires and needs, which may change over time.

The position of the Complainant is not uncommon in Pennsylvania. Unfortunately, one may not set boundaries which suit the individual calling preferences of all subscribers. Hundreds of telephone exchanges exist in the Commonwealth. As the state's population has increased and diversified, people have moved into areas with different communities of interest than those existing, when telephone services was initiated. As people move, they bring a different community of interest with them and this interest is then subject to change over time....

² Attached as Appendix "A."

The fact that some of the customers' community of interest may lie within another exchange does not render the local calling area unreasonable or contrary to the public interest. On the contrary, one may expect this to occur in nearly every exchange. In the absence of a demonstration that a majority of the customers in an exchange in fact have a significant community of interest within another exchange enlarging the local calling area to meet the needs of a minority is not justified under the Commission's regulations. Without substantial evidence that majority of customers desire expanded service, there is simply no basis to conclude that enlargement of the local calling area is necessary to provide adequate and reasonable service.

This case is no different than the Bronder case. There is no dispute that the Johnstown exchange offers all manner of shopping and services. However, as the public witness testified, some Jackson Township/Vinco residents have different shopping and service preferences. But the Jackson Township accounts for only 4% of access lines in the Johnstown exchange. Furthermore, the latest toll traffic study disclosed an average calling rate of [START PROPRIETARY] ***** [END PROPRIETARY] They may have a different community of interests than the exchange as a whole, but, as ALJ Corbett declared in Bronder, "one may expect this to occur in nearly every exchange." Id. at 6.

Finally, while ALJ Corbett states that the Commission has validated the concept of looking at "all circumstances of record,"³ the Commission recently articulated some boundaries on that approach. In Norton v. Verizon Pennsylvania Inc., Docket No. C-00592980 (Order entered March 29, 2002, the Commission discussed when it would deviate from a "bright line" test using objective calling criteria. It held:

³ Id. at 31.

In light of the fact that the usage from the Mt. Gretna exchange to the Hershey exchange was close to the threshold standards⁴ for mandatory EAS, the ALJ appropriately considered the community of interest standards of our EAS regulations.

Thus, the discretionary EAS option is to be limited to circumstances where the calling rates are near the threshold standards. In this case, as discussed directly above, the calling rates are extremely low. Therefore, Verizon North submits that ALJ Corbett erred in applying the discretionary EAS standards in this case.

In conclusion, EAS should not be granted to the Complainants based on this record. First, the EAS regulations do not contemplate application to a small subset of an exchange. They recognize the exchange as the fundamental unit. Second, there is no case law that supports an analysis of discretionary EAS from the perspective of a small subset of an exchange. Third, the calling rates are far below those that allowed application of the discretionary EAS under the reasoning in Norton. There simply is no evidence that the Complainant carried their burden of proving that the Johnstown exchange's local calling area is unreasonable or inadequate.

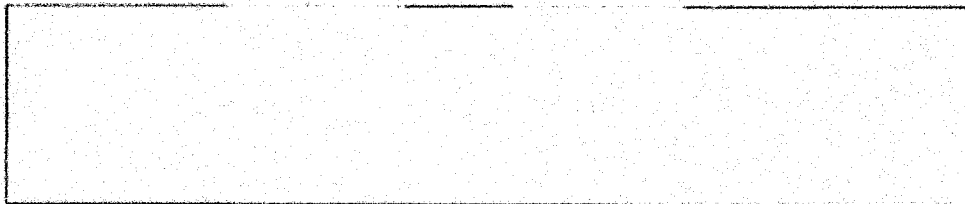
II. ALJ CORBETT ERRED IN DETERMINING THAT THE SURCHARGE WHICH IS THE BASIS OF A POLLING THE SUBSCRIBER POLL SHOULD EXCLUDE TOLL REVENUES.
(I.D. at 42-45)

The relief granted by ALJ Corbett in this case is a subscriber poll of the entire Johnstown exchange to determine whether the subscribers in the Johnstown exchange wish to pay an additional charge to have the Ebensburg exchange included in their local calling area. At this point in the decision, the ALJ recognized appropriately that "[i]n defining an appropriate local calling area, the broader public interest must prevail; otherwise, the majority of customers will

⁴ 5.5 calls/access line/month and 50% of access lines making at least one call.

pay for the preferences of the few. Enlarging local calling areas only to meet the needs of a minority places an unfair burden on the majority, since the cost of expanding a local calling area is borne by all customers in exchange regardless of the extent of individual usage. (Citation omitted.)” (I.D. at 41) He, therefore, directed Verizon North to conduct a polling of the Johnstown exchange to assess whether the majority of the Johnstown exchange subscribers want calling to Ebensburg.

As Ms. Ryan testified, there are three major components of costs that Verizon North would experience if EAS were to be implemented from the Johnstown exchange to the Ebensburg exchange: (1) lost toll and access charge revenue; (2) capital costs; and (3) expenses caused by regulatory requirements. These costs are as follows: **[START PROPRIETARY]**



[END PROPRIETARY].

Ms. Ryan’s testimony reflects that Verizon North, while not supporting EAS, believes, as does ALJ Corbett, that a surcharge is appropriate if EAS is granted. The surcharge, according to Ms. Ryan, should allow Verizon North to recover its lost toll and access fees as well as its one-time cost (i.e., facilities and administrative costs) and new annual operations and maintenance costs associated with the new facilities. In approving the surcharge, however, ALJ Corbett

excluded tolls and access fees from the surcharge. He did not, however, explain why he denied the toll and lost toll and access fees component of the surcharge. (I.D. at 42.)

One surmises that ALJ Corbett denied the lost toll revenue on the basis of his discussion of "the cost to Verizon North" if implementing EAS pursuant to Section 63.77(2). (I.D. at 32-33) In that section, he decided as follows:

While implementation costs are clearly relevant, the Commission's regulations do not list 'lost toll revenue' among the criteria to be weighed to determine whether discretionary EAS polling should be ordered. The Commission has held 'that consideration of lost toll revenue is irrelevant, because these revenues are distinct from the company's cost of implementing EAS.' Norton, *supra* at 38. Thus, Verizon North's alleged lost toll revenue is not a proper subject for review here. (*Id.*)

(I.D. at 32)

Verizon North submits that (1) the Commission should reconsider its decision as to whether "lost toll revenue" is a "cost of implementing EAS" or, in the alternative, that (2) the Commission should consider separately the issue of appropriate components of a surcharge because that relief is not controlled by Section 63.77(2).

The Commission only recently decided that, in determining the "cost to the utility of implementing extended area service," toll revenue should be excluded. In the Norton case, the Commission stated that "... lost toll revenue is irrelevant because these revenues are distinct from the Company's cost of implementing EAS. Also, toll revenue is not one of the criteria that must be reviewed in determining whether EAS should be implemented on a particular route". Norton, p. 42. However, Verizon North submits that the Commission should reconsider the Norton holding on the basis that the term "cost" used in the EAS regulations should be given its

full plain-English meaning.⁵ The dictionary definition of the word “cost” is not just “an amount paid.” It also includes a “loss” or “sacrifice.” Under this conventional meaning, lost toll revenues are “cost” of EAS.

Verizon North submits, however, that even if lost toll revenue is excluded in weighing the “evaluation criteria” set forth in Section 63.77(2), then in calculating a surcharge — especially in a case such as this one where the desires a small minority (4% at most) of the Johnstown exchange are dictating the grant of discretionary EAS — the utility should be allowed to made whole. That means including not only out-of-pocket expenditures, such as the cost of additional equipment and facilities and implementation costs which are one-time expenditures, but also lost revenues which are just as much “cost” to the utility. As Ms. Ryan testified, if EAS is granted, Verizon North will suffer an ongoing loss of toll revenue of approximately [START PROPRIETARY] [END PROPRIETARY] per year. As discussed above, the only difference between lost toll revenue and expenditures for facilities is that one is passive (i.e., toll revenues go uncollected) as compared to the other being active (i.e., equipment and postage must be purchased).

The bottom line is that should EAS be granted based on what is clearly the desires of a small component of the Johnstown exchange, the fact that evidence by [START PROPRIETARY] [END PROPRIETARY] of the exchange made even one call per month) then Verizon North submits that there must be a proper balancing of interests in determining the remedy. The EAS regulations have been interpreted more and more liberally by the Commission. For instance, in this case in determining the amount of toll traffic between exchanges, ALJ Corbett cites to the fact that in determining the amount of traffic between the

⁵ The Term “cost” is not defined in Section 63.71 of the EAS regulations.

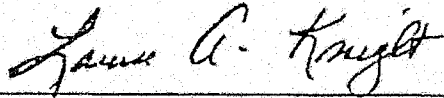
exchanges, Verizon North "cannot consider dial-around service, payphone, or pre-pay calling card usage." (I.D. at 29) These calling mechanisms are outside the control of Verizon North in every sense of the word, but are still considered in deciding the case in favor of the Complainants. Likewise, as discussed above, in weighing the costs to the utility, the Commission has previously decided that lost toll revenues should not be considered. As to alternatives, all options such as cell phones and calling cards are not considered "adequate or reasonable alternatives." (I.D. at 39) In other words, presently the balance tilts decidedly in favor of Complainants in applying that criteria for discretionary EAS.

However, in the area of relief, a proper balancing of interests should allow collection of all costs to the utility. In this case, as Ms. Ryan testified, inclusion of lost toll revenue would produce a one-time surcharge to recover one-time cost (\$1.50) as well an annual surcharge in the amount of approximately \$1.00 to offset lost toll revenue.

CONCLUSION

For all of the reasons discussed above, Verizon North Inc. prays that the Initial Decision be reversed in its entirety. If, however, EAS is granted, then any polling directed by this Commission should be premised on a surcharge that includes not just nonrecurring costs and additional operation and maintenance expenses associated with new facilities installed to provide EAS, but also lost toll revenue.

Respectfully submitted,



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Counsel for
Verizon North Inc.

DATED: June 5, 2002

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James D. Bronder
v.
AllTel Pennsylvania, Inc.
Docket No. C-00956510

Pennsylvania Public Utility Commission
November 1, 1995

***I INITIAL DECISION**

BY THE COMMISSION:

Corbett, Jr., Administrative Law Judge.

History of the Proceeding

On January 19, 1995, James D. Bronder ("Complainant") [FN1] filed a formal complaint with the Pennsylvania Public Utility Commission ("Commission") alleging AllTel Pennsylvania, Inc. ("Respondent" or "AllTel") provides inadequate residential telephone service in its Templeton exchange. Specifically, the Complainant alleges: (1) AllTel's Templeton exchange has an unreasonably limited local calling area, which does not conform to its subscribers' communities of interest; (2) AllTel employs antiquated switching equipment preventing its subscribers from participating in other long distance calling plans so they can reduce costs and enjoy such modern conveniences as call waiting, call forwarding, etc.; and (3) AllTel's subscribers are charged for touch tone service, yet the switching equipment is not capable of delivering true touch tone service.

FN1. As originally filed, the caption in this case read: "James D. Bronder, 'et al.' v. AllTel Pennsylvania, Inc.". The designation "et al." apparently referred to the fact that 96 individuals signed a petition, which was attached to the complaint, joining in the requested relief. After a telephonic prehearing conference on March 9, 1995, the caption was amended with the consent of the parties to delete the reference to "et al." (N.T. 49). All 96 individuals continued to be notified of the scheduled conferences and the hearing in this case. However, none of these individuals participated in this proceeding.

On February 6, 1995, AllTel filed an answer, together with a motion to dismiss the complaint. In its answer, the Respondent asserts extended area service ("EAS") from its Templeton exchange to other exchanges is not currently justified and does not meet the Commission's calling frequency criteria set forth in 52 Pa. Code §§63.71, et seq. The Templeton exchange switch will be replaced by digital equipment in 1998. AllTel avers it provides Tel-Touch service pursuant to its Commission-approved tariff. This service allows for the origination of telephone calls through the use of push buttons instead of a rotary dial and permits a customer to obtain all services associated with tone pulses.

In its motion to dismiss, AllTel contends the Complainant failed to identify what exchanges he wishes to call. Further, the Respondent notes its Tel-Touch service was the subject of a Commission Order entered August 12, 1993 at *Melzer v. AllTel Pennsylvania, Inc.*, Docket No. F-8964538, which found the service reasonable. No answer to the motion was filed.

Telephonic prehearing conferences were held on March 9 and May 4, 1995. At the conferences, the Complainant identified the exchanges that he desires to call. Mr. Bronder also withdrew any claims pertaining to the second and third issues. So the single remaining issue in this case concerns the adequacy of the local calling area for AllTel's Templeton exchange (N.T. 37-38). Due to these

developments, no further action was taken on the Respondent's motion to dismiss the complaint.

*2 A hearing was held on June 21, 1995. The Complainant appeared pro se. Patricia Armstrong, Esquire, represented the Respondent. The record consists of 102 pages of notes of testimony, one Complainant's exhibit, two Respondent's exhibits and one prepared statement of written direct testimony of the Respondent. No briefs were filed. The record closed on July 21, 1995.

For the reasons which follow, the complaint will be dismissed.

Findings of Fact

1. The Complainant is James D. Bronder, who resides at R.D. 2, Box 1K, Templeton, Pennsylvania 16259 (N.T. 60).
2. The Respondent is AllTel Pennsylvania, Inc., which provides residential telephone service in its Templeton exchange to the Complainant at the foregoing address (N.T. 60-61; Respondent's St. 1 at 2).
3. The Complainant has resided at the foregoing address for approximately the last three and one-half years; he has been a residential telephone customer of AllTel since September 20, 1991 (N.T. 60, 71; Respondent's St. 1 at 2).
4. The local calling area of the Templeton exchange includes the Templeton exchange with 658 access lines located in the 412 area code and the Kittanning exchange for a total of 12,269 access lines. AllTel also offers its Templeton customers an optional calling plan to Ford City and has notified the interexchange carriers that the Templeton - New Bethlehem route also qualifies for an optional calling plan (N.T. 62-63; Complainant's Exh. 1; Respondent's St. 1 at 3-4; Respondent's Exh. A).
5. Mr. Bronder asserts the local calling area of the Templeton exchange does not meet the communities of interest of its subscribers. Instead, he argues Templeton's local calling area should include, not only Kittanning, but also the East Brady, Worthington, Ford City, Elderton, Rural Valley and Dayton exchanges (N.T. 63-65; Complainant's Exh. 1).
6. Mr. Bronder asserts 52% of the Templeton area residents are at poverty level income and do not currently call these other exchanges very often due to the cost (N.T. 63-66, 83-86).
7. Mr. Bronder requests that AllTel poll its Templeton exchange customers to determine whether they would pay the additional cost to have these additional exchanges included within the local calling area of the Templeton exchange (N.T. 64, 73).
8. Most of the people living in the Templeton area work in a casting plant in Ford City, a lumber mill in Elderton or a mushroom mine in Worthington (N.T. 65, 72).
9. Children in the Templeton area are bussed to the Dayton and Rural Valley areas (N.T. 65).
10. Templeton has a local volunteer fire department; 911 emergency services are located in Kittanning (N.T. 67).
11. Ford City and Kittanning have the major shopping areas, as well as medical services and health professionals (N.T. 67).
12. After 24 years with Pacific Bell, Mr. Bronder retired as the manager of the emergency reporting center for Southern California and returned to live in Pennsylvania approximately three and one-half years ago (N.T. 68).
- *3 13. Based upon the Complainant's telephone bills from January 1995 to the date of the hearing in June 1995, Mr. Bronder made no calls to Rural Valley and one call in five months to Worthington. He made one call to Elderton. He called Dayton four times in January, but made no calls to this exchange from February to May. To East Brady, the Complainant made three calls in January, seven calls in February, four calls in March, eight calls in April, four calls in May, and no calls in June. To Ford City, he called twice in January, February and March, but twelve times in April, six times in May and ten times in June (N.T. 75-80; Respondent's St. 1 at 14).
14. On average, the Complainant's toll charges to the subject six exchanges range from two to seven

percent of his total toll bill each month (N.T. 81).

15. The local hospital, the local barracks of the State Police, the County seat, the Chamber of Commerce, the public library, Children and Youth Services, alcohol and drug facilities, the American Red Cross, day care centers, a mental health and mental retardation center, the County Housing Authority, the YMCA, legal services and Veterans Administration facilities are all located in Kittanning (N.T. 82-83).

16. A review of the local telephone directory discloses Templeton customers can access many entities within their local calling area, including: accountants, advertisers, air conditioning contractors, alcohol abuse and information, appliance dealers, attorneys, automobile sales and repair, automotive inspection and supplies, car rentals, bakers, banks, beauty salons, building contractors, bus companies, carpet sales and cleaning, child abuse centers, chiropractors, churches of various denominations, cleaners, clinics, computer dealers, contractors, dentists, electric contractors, engineers, flooring materials, florists, furnace sales and service, furniture retailers, gas companies, gift shops, Armstrong County Governmental Services, state and federal governmental services, grocers, hardware stores, hospitals, insurance companies, laboratories, lawn care, lumber companies, nursing services, fuel oil, optometrists, photographers, physical therapists, physicians, psychologists, real estate companies, restaurants, tire dealers, etc. There is toll free and 911 access to hospitals and fire departments (Respondent's St. 1 at 15).

17. The Templeton area is rural and generally made up of small communities. There is no major urban center. Based upon 1990 census figures, the population of Pine Township, in which Templeton is located, is 534 people (N.T. 71; Respondent's St. 1 at 4).

18. In April 1993, AllTel conducted biennial toll traffic studies as prescribed by the Commission to determine the calling habits of the Templeton exchange customers to the intraLATA exchanges of East Brady, Worthington, Rural Valley and Ford City and the interLATA exchanges of New Bethlehem, Rimersburg, Timblin, Dayton, Callensburg, Hawthorne and Sligo (Respondent's St. 1 at 8).

*4 19. Based upon these toll traffic studies, the average calls per line between the Templeton exchange and the interLATA exchanges of New Bethlehem, Rimersburg, Timblin, Dayton, Callensburg, Hawthorne and Sligo are 3.22, .94, .05, .76, .02, .44 and .23, respectively. AllTel notified the interLATA interexchange carriers that the Templeton - New Bethlehem exchange qualifies for an optional calling plan ("OCP"). AllTel currently offers an OCP on an intraLATA basis to Ford City, where the calling average is 2.32. More than 62% of Templeton exchange customers place no calls to Ford City. The average calls per line to East Brady, Worthington and Rural Valley are .30, .70 and .81, respectively; 91%, 82% and 81%, respectively, of the Templeton customers place no calls to the East Brady, Worthington and Rural Valley exchanges (N.T. 92; Respondent's St. 1 at 9; Respondent's Exh. B).

20. In April 1995, AllTel conducted another biennial toll traffic study of its Templeton customers. The results of that study should be reported to the Commission in October 1995 (N.T. 99).

21. All six of the exchanges the Complainant seeks to have included in the Templeton exchange are contiguous to the Kittanning exchange. Only the East Brady exchange is contiguous to the Templeton exchange. The remaining five exchanges are not contiguous to the Templeton exchange (Respondent's St. 1 at 9-10; Respondent's Exh. A).

22. AllTel performed no traffic study between Templeton and Elderton, since the exchanges are non-contiguous and more than 17 miles apart (Respondent's St. 1 at 9).

23. AllTel estimates it would expend \$17,282 in additional plant investment for EAS from Templeton to the Worthington and Ford City exchanges. The transmission equipment for EAS from Templeton to Rural Valley, Dayton, Elderton and East Brady would be an additional \$14,864. The estimated associated central office equipment would be \$40,000 for a total additional investment of \$54,864. The total additional annual revenue requirement would be \$26,669 or \$40 for each Templeton exchange access line (N.T. 90; Respondent's St. 1 at 12).

24. A typical Templeton customer with one party service has a current basic rate of \$11.05 (Respondent's St. 1 at 12).

25. The same Templeton customer would experience an immediate increase to \$11.97 with EAS to the Ford City exchange based upon AllTel's existing tariff and rate bands. The next rate band, Rate Band IV, is \$12.88 (Respondent's St. 1 at 12).

26. AllTel believes neither EAS to the six named exchanges from the Templeton exchange nor a poll is justified based upon the traffic study and the Commission's EAS regulations. It believes no significant community of interest exists between Templeton and Dayton, East Brady, Ford City, Elderton, Rural Valley and Worthington (Respondent's St. 1 at 13-14).

Discussion

Mr. Bronder complains the local calling area for AllTel's Templeton exchange fails to include the communities of interest the customers of this exchange have in the exchanges of East Brady, Worthington, Ford City, Elderton, Rural Valley and Dayton. He argues Templeton customers are predominantly poor and cannot afford the toll calls to these exchanges. Consequently, AllTel's biennial traffic studies fail to reflect the interest Templeton customers have in calling these areas. The Complainant seeks to have the Commission order AllTel to poll these customers to determine whether they would want EAS from Templeton to these exchanges. For the reasons which follow, this complaint must be dismissed.

A. The Legal Standard

*5 The Public Utility Code ("Code") imposes upon every public utility a duty to furnish and maintain adequate, efficient and reasonable service and facilities. 66 Pa. C.S. §1501. The same provision of the Code requires a public utility to "...make all such repairs, changes...and improvements in or to such service or facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." The term "service" is "used in its broadest and most inclusive sense, includ[ing] any and all acts done, rendered, or performed, and any and all things furnished or supplied . by public utilities...in the performance of their duties under [the Public Utility Code]..." 66 Pa. C.S. §102.

By asserting the Respondent is acting unreasonably by failing to provide EAS from the Templeton exchange to the East Brady, Worthington, Ford City, Elderton, Rural Valley and Dayton exchanges, the Complainant is alleging, by implication, that the service of the Respondent is inadequate or unreasonable in violation of Section 1501 of the Code, 66 Pa. C.S. §1501. As the proponent of this allegation seeking affirmative relief from this Commission, Mr. Bronder bears the burden of proof. 66 Pa. C.S. §332(a).

B. The Burden of Proof

The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility is responsible or accountable for the problem described in the complaint. *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

C. The Commission's EAS Regulations

Commission regulations establish the framework for determining when circumstances justify the provision of EAS between exchanges in order for a telephone utility to meet its statutory duty to provide adequate service. The objective criteria set forth in the EAS regulations, 52 Pa. Code §§63.71, et seq., assure that a minority of customers do not receive preferential rate treatment subsidized by a majority of customers in that exchange, who must pay for the additional facilities necessary to provide the extended area service. At the same time, the regulations assure the provision of EAS, where circumstances warrant it.

52 Pa. Code §63.72 requires each local exchange carrier to conduct biennial interexchange toll traffic usage studies over both intraLATA and interLATA routes to measure the average calling frequency between contiguous exchanges and between each exchange and noncontiguous exchanges having toll rate centers within 16 miles. 52 Pa. Code §63.73 requires a telephone company to offer an alternative to EAS, such as an optional calling plan, if its study reveals an average monthly calling frequency of more than 2.00 calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which the local exchange carrier provides toll service.

*6 52 Pa. Code §63.74 requires an EAS subscriber poll, if a traffic study between contiguous exchanges or between qualified noncontiguous exchanges indicates an average monthly calling frequency of 5.5 or more calls per access line from one exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange. Formal complaints seeking implementation of EAS are permissible under 52 Pa. Code §63.76, but will be evaluated under 52 Pa. Code § 63.77. Pursuant to this latter regulation, the Commission will consider the following criteria in evaluating EAS complaints:

1. The amount of toll charge traffic between the two exchanges.
2. The cost to the utility of implementing EAS.
3. The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.
4. The demography and the proximity of the exchanges as indicating community of interest.
5. The availability of alternatives to EAS.
6. The economic effect on the community if the local service area is not extended.

With the appropriate criteria in mind, we turn now to review the case sub judice.

D. The Circumstances Present In This Case

Templeton is a rural community with no major urban center. Based upon 1990 census figures, the population of Pine Township, in which Templeton is located, is 534 people. The local calling area of the Templeton exchange includes the Templeton exchange with 658 access lines located in the 412 area code and the Kittanning exchange for a total of 12,269 access lines. AllTel also offers its Templeton customers an optional calling plan ("OCP") to Ford City. Of the six exchanges the Complainant seeks to have included in his local calling area, only the East Brady exchange is contiguous to the Templeton exchange. Elderton, a noncontiguous exchange, lies 17 miles away and so does not qualify for EAS. 52 Pa. Code §63.71 & §63.72. AllTel's biennial studies conducted in April 1993 disclosed insufficient toll traffic from Templeton to the exchanges of East Brady, Worthington, Ford City, Rural Valley and Dayton to merit EAS. [FN2]

FN2. AllTel's biennial toll traffic studies for these exchanges conducted in April 1995 will apparently be filed with the Commission sometime in the Fall of 1995.

Based upon these toll traffic studies, the average calls per line between the Templeton exchange and the interLATA exchanges of New Bethlehem, Rimersburg, Timblin, Dayton, Callensburg, Hawthorne

and Sligo are 3.22, .94, .05, .76, .02, .44 and .23, respectively. [FN3] AllTel currently offers an OCP on an intraLATA basis to Ford City, where the calling average is 2.32. More than 62% of Templeton exchange customers place no calls to Ford City. The average calls per line to East Brady, Worthington and Rural Valley are .30, .70 and .81, respectively; 91%, 82% and 81%, respectively, of the Templeton customers place no calls to the East Brady, Worthington and Rural Valley exchanges. Therefore, none of the requested exchanges qualifies for EAS under the Commission's criteria.

FN3. AllTel notified the interLATA interexchange carriers that the Templeton - New Bethlehem exchange qualifies for an OCP.

*7 Nevertheless, Mr. Bronder asserts the biennial traffic studies do not adequately reflect the communities of interest of Templeton residents, because 52% of the Templeton population earns poverty level income and they do not call these other exchanges frequently due to the cost. These assertions represent the subjective opinion of the Complainant only and are not supported by testimony from other Templeton residents nor any other reliable source. The only objective evidence on this issue contradicts the Complainant's assertions. Reliance on the biennial toll traffic studies constitutes one objective means of determining appropriate communities of interest. These studies reflect the decisions customers actually make in the marketplace, when confronted with a decision as to whether the value of a call is commensurate with the price of that toll call.

As the foregoing section of this decision demonstrates, the Templeton - Kittanning local calling area includes over 12,000 access lines encompassing a vast array of services. The community of interest of customers to a significant degree is voluntarily determined and accommodating individual preferences is not in the public interest. No matter how the local calling area is determined, some subscribers will be dissatisfied due to their own particular desires and needs, which may change over time. In determining an appropriate local calling area, the broader public interest must prevail, otherwise, the majority of customers will pay for the preferences of the few. Enlarging local calling areas only to meet the needs of a minority places an unfair burden on the majority, since the cost of expanding the local calling area is borne by all customers in an exchange regardless of the extent of individual usage.

Korey v. Bell of Pa., 53 Pa. P.U.C. 157 (1979).

Based upon the tariff rates approved by the Commission, a typical Templeton customer with one party service has a current basic rate of \$11.05. The same Templeton customer would experience an immediate increase to \$11.97 with EAS to the Ford City exchange based upon AllTel's existing tariff and rate bands. The next rate band, Rate Band IV, is \$12.88. Moreover, new plant and equipment to provide the requested service would require a total additional investment of \$54,864. The total additional annual revenue requirement would be \$26,669 or \$40 for each Templeton exchange access line. Consequently, the only objective evidence on this issue, i.e., the biennial toll traffic studies, fails to disclose sufficient usage to justify this expense. It is fundamentally unfair and contrary to the public interest to expect a majority of AllTel's customers to subsidize service they do not want in order to bring that same service to the few customers who do.

The position of the Complainant is not uncommon in Pennsylvania. Unfortunately, one may not set boundaries, which suit the individual calling preferences of all subscribers. Hundreds of telephone exchanges exist in the Commonwealth. As the state's population has increased and diversified, people have moved into areas with different communities of interest than those existing, when telephone service was initiated. As people move, they bring a different community of interest with them and this interest is then subject to change over time. In fact, the Complainant moved into the Templeton area approximately three and one-half years ago.

*8 The fact that some of the customers' community of interest may lie within another exchange does not render the local calling area unreasonable or contrary to the public interest. On the contrary, one may expect this to occur in nearly every exchange. In the absence of a demonstration that a majority of the customers in an exchange in fact have a significant community of interest within another exchange,

enlarging the local calling area to meet the needs of a minority is not justified under the Commission's regulations. Without substantial evidence that a majority of customers desire expanded service, there is simply no basis to conclude that enlargement of the local calling area is necessary to provide adequate and reasonable service. Re: Bell of Pa., 52 Pa. P.U.C. 606 (1978). For this reason, the Complainant has failed to meet his burden of proof on this issue.

Likewise, Mr. Bronder has failed to demonstrate that AllTel should poll the Templeton subscribers to ascertain their desire to expand the local calling area to include these exchanges. Such a poll is justified, if a traffic study reveals customer usage meets the Commission's standards for EAS. 52 Pa. Code § 63.74(1) & (2). If circumstances require, the Commission may specify additional conditions under which a poll may be conducted. 52 Pa. Code §63.74(9). However, the Complainant presents only his subjective opinion that the low incomes of the Templeton customers prevents them from calling more frequently to the subject exchanges. In the absence of any testimony from other Templeton customers or evidence from any other source, the Complainant's subjective opinion does not justify the expense AllTel will incur to conduct this polling. This expense will be borne ultimately by all of the Respondent's customers.

Moreover, the fact that 96 individuals signed the petition attached to the complaint joining in the request for relief is also unpersuasive. They failed to appear at the hearing in this case despite notification. They were not subject to the rigors of cross-examination. Therefore, we know neither the circumstances under which they signed the petition nor their intent in doing so. The petition is inadmissible hearsay. *Anderson v. Commonwealth, Dept. of Public Welfare*, 79 Pa. Commonwealth Ct. 182, 468 A.2d 1167 (1983); *Burks v. Commonwealth, Dept. of Public Welfare*, 48 Pa. Commonwealth Ct. 6, 408 A.2d 912 (1979). Consequently, no inference can be drawn from the petition. Under these circumstances, the Complainant has failed to meet his burden of proving a need for a special polling as well.

For all of the foregoing reasons, this complaint must be dismissed.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. The Complainant has failed to meet his burden of proving a need to establish EAS from the Templeton exchange to the East Brady, Worthington, Ford City, Elderton, Rural Valley and Dayton exchanges.
- *9 3. The Complainant has failed to meet his burden of proving special circumstances exist to justify the Respondent's polling the Templeton exchange customers to ascertain their interest in establishing EAS from the Templeton exchange to the East Brady, Worthington, Ford City, Elderton, Rural Valley and Dayton exchanges.

ORDER

THEREFORE,
IT IS ORDERED:

That the complaint of James D. Bronder v. AllTel Pennsylvania, Inc., docketed with the Pennsylvania Public Utility Commission at No. C-00956510, is hereby dismissed.

1995 WL 945471 (Pa.P.U.C.)
END OF DOCUMENT


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

Service by first class mail:

Linda Lesko
460 Leidy Lane
Johnstown, PA 15909

Mary Ann Kaschalk
2419 Swigle Mountain Road
Mineral Point, PA 15942



Louise A. Knight

DATE: June 5, 2002

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

June 14, 2002

DOCKETED
JUN 19 2002

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

ORIGINAL

SECRETARY'S BUREAU

2002 JUN 17 AM 9:51

RECEIVED

RE:
Docket # C-00014886
460 Leidy Lane
Johnstown, PA. 15909

DOCUMENT
FOLDER

Dear Mr. McNulty:

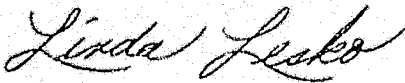
In response to Verizon Counsel Louise A. Knight Exceptions concerning Docket # C-00014886, please consider:

1. The \$1.50 one-time fee the first year is acceptable; however, \$1.00 thereafter for indefinite period of time is unacceptable.
2. Although Vinco, PA, has a Johnstown address, it is not affiliated with Johnstown.
3. Ebensburg, PA, 472 and 471 phone prefix can call 322 phone prefix (Vinco) and other Johnstown phone exchanges toll free, but 322 phone prefix cannot make toll-free to 472 and 471 phone prefix.
4. Verizon Counsel Lousie A. Knight states a community's needs and interests are not adequate reason to justify EAS. It seems that modern technology advances may facilitate EAS needs.
5. The Johnstown phone exchange includes zip codes 15901, 15902, 15904, 15905, 15906, 15907, 15909. We agree to the Johnstown phone exchange poll. Regardless of poll results. 322 phone prefix requests toll-free calling to 472, 471 phone prefix as originally requested for EAS.
6. Each EAS is unique and individual. Please grant Vinco's request for EAS for 472, 471 toll-free calling.

7. Since 1956 Ebensburg has been the designated school district for Vinco residents. For our children's best interests and safety, please grant 322 phone prefix toll-free calling to 472, 471 phone prefix.

Thank you for all time and efforts. If you need to contact me, please feel free to do so at your convenience.

Sincerely,
Linda Lesko
814-322-4588



cc: Attorney Louise Knight, Attorney for Verizon
PA State Representative Thomas Yewcic
PA State Senator John Wozniak

June 17, 2002

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

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2002 JUN 24 AM 9:40

SECRETARY'S BUREAU

ORIGINAL

RE:

Docket #C-00014886
460 Leidy Lane
Johnstown, PA 15909

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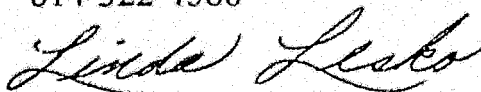
Dear Mr. McNulty:

In response to Louise A Knight, Counsel for Verizon North Inc.,
Petition to Reopen Evidentiary Record for Admission of Revised Evidence,
please consider:

- 1) The size of the Johnstown phone exchange is constant. It has not changed. Verizon was aware of the size of Johnstown phone exchange at the Initial Hearing in Pittsburgh, PA on February 14, 2002.
- 2) On September 13, 2001, the U.S. Postal Service announced plans to file for a rate increase for first class postage. The \$.03 rate increase was granted in January 2002 by the U.S. Board of Governors of the U.S. Postal Service. Verizon had opportunity to present its evidence at the Initial Hearing on February 14, 2002.

Thank you for your time and efforts. Please feel free to contact me at your convenience if I can be of assistance.

Sincerely,
Linda Lesko
814-322-4588



cc: Attorney Louise A. Knight, Counsel of Verizon North, Inc.

DATE: June 20, 2002

SUBJECT: C-00014886; C-20015851

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *JJ*

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JUN 20 2002

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Verizon North Inc.

Attached is a copy of a Petition to Reopen Evidentiary Record for Admission of Revised Evidence filed by Verizon North Inc. in connection with the above docketed proceedings.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ

was

DATE: June 28, 2002

SUBJECT: C-00014886
C-20015851

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

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INDEXED

JUN 28 2002

LINDA LESKO V. VERIZON NORTH, INC.

MARY ANN KASCHALK V. VERIZON NORTH, INC.

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

VERIZON NORTH (PROPRIETARY & NON-PROPRIETARY VERSIONS)
COMPLAINANT

Reply Exceptions have been received from:

COMPLAINANT

cc: Susan Hoffner, ALJ