

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Carriers' Coalition

v.

Verizon Pennsylvania Inc.

DOCKETED
APR 19 2006

C-20065798

PREHEARING ORDER

**DOCUMENT
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An Initial Prehearing Conference in this case is scheduled for Thursday, May 18, 2006 at 10:00 a.m. Accordingly, the parties are hereby directed to comply with the following requirements:

1. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa. Code §1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. In accordance with the foregoing, absent a timely request for a continuance for good cause (i.e., no later than May 12, 2006), all parties must be prepared to participate in the scheduled prehearing conference. My address is:

1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: 215-560-2105
Fax: 215-560-3133

Changes are granted only in rare situations where good cause exists.

SECRETARY'S BUREAU
2006 APR 19 PM 10:19

1. Please review the regulation pertaining to prehearing conferences, 52 Pa. Code §5.222, and in particular, subsection (d) which provides, in part:

(d) Participants and counsel will be expected to attend the conference fully prepared for useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of all relevant materials, and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. (Emphasis added.)

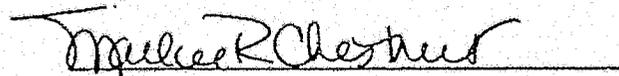
2. Please review the regulations relating to discovery, specifically 52 Pa. Code §5.331(b), which provides, inter alia, that “[p]articipants shall endeavor to initiate discovery as early in the proceedings as reasonably possible,” and 52 Pa. Code §5.322, which encourages participants to exchange information on an informal basis. I urge all parties to cooperate in discovery. Such cooperation is preferable to numerous or protracted discovery disagreements, which require the presiding officer’s participation for resolution. Please be aware that there are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§5.361, 5.371-3.572.

4. Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa. Code §1.24(b).

5. Each party must prepare and distribute, by 12:00 noon on May 17, 2006, a prehearing memorandum which sets forth the history of the proceeding, the issues you intend to present, and a listing of your proposed witnesses and the subject of their testimony.

6. The complainant bears the burden of proof and must demonstrate by a preponderance of the evidence that respondent violated its tariff, the Public Utility Code or a Commission order or regulation, and that he/she is entitled to the relief requested in the Complaint.

Date: April 11, 2006


Marlane R. Chestnut
Administrative Law Judge

213 Market Street, 9th Floor, P.O. Box 865, Harrisburg, PA 17108-0865
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Mark S. Stewart
Direct Line: (717) 237-7191
Direct Fax: (717) 237-2771
E-mail: mstewart@wolfblock.com

ORIGINAL

May 17, 2006

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
Harrisburg, PA 17105-3265

SECRETARY'S OFFICE

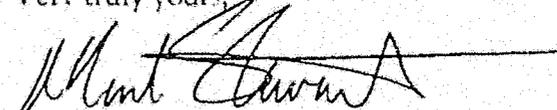
MAY 17 PM 1:17

Re: Pennsylvania Carriers' Coalition v. Verizon Pennsylvania, Inc., Docket No. C-20065798

Dear Secretary McNulty:

Enclosed are the original and 3 copies of the Pennsylvania Carriers' Coalition's Prehearing Memorandum in the above-referenced matter. A copy has been served on the parties of record as indicated by the attached Certificate of Service. If you have any questions regarding this filing, please contact me.

Very truly yours,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls
Enclosures

cc: Certificate of Service (w/enc)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Prehearing Memorandum upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST CLASS MAIL

Hon. Marlane Chestnut
Administrative Law Judge
1302 Philadelphia State Office Bldg.
1400 West Spring Garden Street
Philadelphia, PA 19130
email: machestnut@state.pa.us

Suzan D. Paiva
Assistant General Counsel
Verizon
1717 Arch St., 10W
Philadelphia, PA 19103
email: suzan.d.paiva@verizon.com

SECRETARIES' RECEIPT
MAY 17 PM 1:17



Mark S. Stewart, Esquire

Date: May 17, 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Carriers' Coalition
Complainant

v.

Verizon Pennsylvania, Inc.
Respondent

Docket No. C-20065798

**THE PENNSYLVANIA CARRIERS' COALITION'S
PREHEARING MEMORANDUM**

The Pennsylvania Carriers' Coalition ("PCC"),¹ by and through its counsel, respectfully submits this Prehearing Memorandum pursuant to the April 11, 2006 Prehearing Order issued by the presiding officer, Administrative Law Judge Marlane R. Chestnut.

A. HISTORY OF THE PROCEEDING

On January 19, 2006, the PCC initiated this action by filing a Complaint which averred that: (a) Verizon Pennsylvania Inc. ("Verizon") is imposing two charges, an Operation Support Systems ("OSS") charge and a Daily Usage File ("DUF") charge, on competitive local exchange carriers' ("CLEC") Resale lines despite the fact that the application of such charges to Resale service is not and has never been properly tariffed by Verizon; and (b) Verizon has misapplied the OSS charge as to both Unbundled Network Elements ("UNE") and Resale service by applying it on a per telephone number basis instead of a per loop basis. The Complaint also sought a declaration from the Commission that the application by Verizon of the OSS and DUF charges to Resale was precluded by Section 252(d)(3) of the Telecommunications Act of 1996,

¹ The PCC is comprised of Full Service Computing Corp. (a Full Service Network ("FSN")), ATX Licensing, Inc. ("ATX"), and Line Systems, Inc. ("LSI").

47 U.S.C. § 252(d)(3), and by the fact that any OSS-related costs incurred by Verizon were already being recovered as an offset in the formulation of its Resale rates.

On February 13, 2006, Verizon filed an Answer and a Motion to Dismiss, the latter of which asserted that the PCC's claims were barred for a variety of reasons. On February 23, 2006, the PCC filed an Answer to the Motion. On April 5, 2006, ALJ Chestnut issued an Order denying the Motion to Dismiss.

B. ISSUES

The issues to be addressed in this proceeding by the PCC are fairly straightforward, as set forth in the Complaint. First, the PCC asserts that, as a matter of law, Verizon has not properly tariffed its OSS and DUF charges as applied to Resale. Second, the PCC contends that Verizon has misapplied the OSS charge by imposing it on a per telephone number, as opposed to a per loop, basis. Finally, the PCC argues that the charges are generally inconsistent with the required method for determining wholesale rates for Resale service under the Telecommunications Act, and therefore are unlawful and should not be permitted to be properly tariffed. As a subset to this last issue, the PCC contended in its Complaint that Verizon's OSS-related costs are already being recovered in its Resale rates.

The PCC recognizes that the Order denying the Motion to Dismiss states that its claim that Verizon is assessing "untariffed charges" is a conclusion of law that may not be drawn from the face of the Complaint. The PCC's claim, however, was not that the charges do not appear in any tariff. Rather, its claim is that the charges are not properly tariffed as applied to Resale. The tariff language directly related to the charges in Tariff 216 (Section 3, 3rd Revised Sheet 14) states nothing about the charges' application to Resale lines. In fact, the very first sentence of the Tariff 216 section containing the OSS and DUF charges (Section 3, 6th Revised Sheet 1)

limits the scope of the tariff to Unbundled Services only: "This section contains a schedule of rates and regulations applicable to the Unbundled Services." Resale is not an "Unbundled Service."

Additionally, the PCC contends that, based on the Commission's Orders in the *Generic Investigation Re Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683, and as a matter of law, the general incorporation language from Verizon's retail tariff, upon which it relies, is insufficient to qualify the charges as being properly tariffed for application to Resale. Accordingly, the PCC respectfully intends to continue to prosecute this claim.

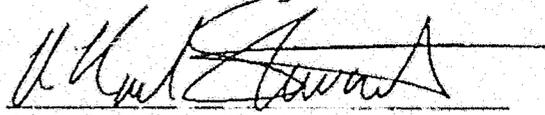
C. PROCEDURAL ISSUES & SCHEDULE

Counsel for Verizon and the PCC have discussed this matter and agree that the issues to be addressed in this proceeding are legal issues which should not require hearings and should be capable of being disposed of on summary judgment, at least as to liability. To the extent that facts are at issue or necessarily inform the legal claims present in this matter, counsel agree that those facts can be established either by Verizon's Answer or a stipulation of the parties. Accordingly, the parties have agreed to propose the following schedule to the ALJ, with Exceptions and Reply Exceptions to follow the Recommended Decision in the normal course:

July 10, 2006	Main Summary Judgment Briefs due;
July 24, 2006	Reply Briefs due.

The PCC anticipates that its summary judgment request will be as to liability only. Accordingly, if the PCC's motion is granted, minimal additional proceedings may be required to determine the specific amount of refunds due to its members.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Alan C. Kohler", written over a horizontal line.

Alan C. Kohler, Esq.

Mark S. Stewart, Esq.

Wolf Block Schorr and Solis-Cohen LLP

213 Market Street, 9th Fl.

Harrisburg, PA 17101

717-237-7160

Date: May 17, 2006

Suzan DeBusk Paiva
Assistant General Counsel
Law Department



Verizon Pennsylvania Inc.
1717 Arch Street, 10W
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

ORIGINAL

May 17, 2006

VIA UPS OVERNIGHT

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Pennsylvania Carriers' Coalition v. Verizon Pennsylvania Inc.
Docket No. C-20065798

Dear Mr. McNulty:

Enclosed please find an original and three (3) copies of the Prehearing Memorandum of Verizon Pennsylvania Inc. in the above-named matter.

Please do not hesitate to contact me if you have any questions regarding this Prehearing Memorandum.

Very truly yours,

DOCUMENT
FOLDER



Suzan D. Paiva

SDP/slb

Enclosure

Via E-Mail and First Class US Mail
cc: Honorable Marlane R. Chestnut
Certificate of Service

RECEIVED
MAY 17 2006
PENN. PUBLIC UTIL. COM. FILE

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CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served true copies of Verizon Pennsylvania Inc.'s Prehearing Memorandum, upon the party listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 17th day of May, 2006.

VIA E-MAIL AND USPS FIRST CLASS MAIL

Alan Kohler, Esquire
Mark Stewart, Esquire
Wolf Block Schorr
& Solis-Cohen, LLP
213 Market Street, 9th Floor
Harrisburg, PA 17101



Suzan D. Paiva
Assistant General Counsel
Verizon Pennsylvania Inc.
1717 Arch Street, 10W
Philadelphia, PA 19103
(215) 466-4755

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MAY 17 2006
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Carriers' Coalition, :
Complainant, :
 : No. C-20065798
v. :
 :
Verizon Pennsylvania Inc., :
Respondent. :

**PREHEARING MEMORANDUM OF
VERIZON PENNSYLVANIA INC.**

In accordance with the Prehearing Order dated April 11, 2006, Verizon Pennsylvania Inc. ("Verizon PA") submits this Prehearing Memorandum for purposes of the prehearing conference scheduled for May 18, 2006.

I. HISTORY OF PROCEEDINGS

On January 19, 2006, the Pennsylvania Carriers' Coalition ("PCC")¹ filed this Complaint contending that Verizon PA's Access to OSS and DUF charges should not be applied to resold lines and are not properly tariffed as applied to resellers.

Verizon PA's current Access to OSS and DUF charges were approved in the Commission's *Generic UNE* case and took effect on October 1, 2004.² Access to OSS was a new rate, approved to compensate Verizon PA for the past and ongoing costs of making its OSS available to CLECs and resellers.³ DUF rates were set to replace pre-existing rates for a service through which resellers and UNE carriers may choose to

¹ The PCC is comprised of Full Service Computing Corp. *via* Full Service Network ("FSN"), ATX Licensing, Inc. ("ATX") and Line Systems, Inc. ("LSI").

² *Generic Investigation Re Verizon Pennsylvania Inc.'s Unbundled Network Element Rates*, Docket No. R-00016683 ("*Generic UNE*").

³ *Generic UNE*, Tentative Order entered Nov 4, 2002, at 169.

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purchase the intraLATA local and toll call usage record details of their end users.⁴ DUF is an optional service,⁵ so if the PCC members are being charged for DUF on their resold lines it is because they affirmatively ordered this service for those lines.

On February 13, 2006, Verizon PA filed an Answer and Motion to Dismiss the PCC's Complaint. Verizon argued that the PCC's Complaint must be dismissed because the Commission has already determined that the Access to OSS and DUF rates are just and reasonable, comply with the FCC's mandatory TELRIC regulations and apply to resold lines, and that these parties may not collaterally attack the Commission's prior decision through this Complaint. Moreover, Verizon argued that the PCC's contention that the rates are not properly tariffed is contrary to the plain language of Verizon PA's tariffs and is also barred by the Commission's approval of Verizon PA's compliance tariffs when it approved these rates.

On April 5, 2006, the presiding officer entered an order denying Verizon's Motion to Dismiss. Although the motion was denied, the order held that "Verizon is correct that in the *Generic UNE* proceeding, the Access to OSS and DUF charges clearly were calculated on the basis of and intended to be charged to resold lines." (Order at 4). The order further held that "[t]hese charges were accepted by the Commission and included in Verizon's tariff," and "the fact that they are contained in Tariff 216, rather than Tariff 1, is irrelevant" in light of language in Tariff 1 making clear that other tariffs may apply to resellers and language in Tariff 216 making clear that it is not limited to purchasers of unbundled network elements ("UNEs"), but also may apply to resellers.

* *Id.* at 172.

⁵ *See, e.g., Generic UNE*, AT&T/WCom St. 8.0 (Recurring Panel Rebuttal) at 169, n 171 (noting that Verizon has assumed for purposes of the study that 75% of resellers will purchase the DUF product); *Generic UNE*, Recommended Decision, May 3, 2002 at 65.

(*Id.*) According to the Order, "the statement that Verizon has not tariffed these charges is manifestly incorrect." (*Id.* at 5).

The Order nonetheless declined to dismiss the Complaint because it found that "there is some question as to whether *res judicata* or collateral estoppel can be applied in this case" because it is not clear if there was the requisite identity of parties or issues. (*Id.* at 4-5). The Order also found that the Complaint raised an issue about whether the Access to OSS charge should be applied per telephone line or per loop, and this issue could not be disposed of based on the Motion to Dismiss. (*Id.* at 5).

II. ISSUES

1. Whether the PCC may collaterally attack the Commission's *Generic UNE* orders, which clearly held that these rates are just and reasonable and apply to resellers, or whether it is barred by 66 Pa.C.S. § 316 and principles of *res judicata* and *collateral estoppel* from doing so?
2. The Order already decided that the rates are properly tariffed, so this is no longer an open issue.
3. Whether Verizon is properly applying the Access to OSS charge on a per telephone line basis, rather than on a per loop basis as alleged in the Complaint.

III. WITNESSES, TESTIMONY AND SCHEDULE

The parties have conferred and agreed that this matter should be disposed of based on motions for summary judgment and, if necessary, a stipulation of facts. The PCC will provide a specific proposed schedule in its Prehearing Memorandum.

Accordingly, Verizon does not propose to present any witnesses or testimony at this time,

but reserves the right to do so in the event that it is determined that this case must be resolved based upon testimony.

Respectfully submitted,

Date: May 17, 2006



William B. Petersen (58063)
Suzan DeBusk Paiva (53853)
Verizon
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(215) 466-4755

Attorneys for Verizon Pennsylvania
Inc.