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September 20, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
Harrisburg, PA 17120

RE: Office of Small Business Advocate v. Verizon Pennsylvania LLC
Docket Nos. C-2017-2633476 and R-2017-2632523

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief of Verizon Pennsylvania LLC in the above-referenced matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva".

Suzan D. Paiva

SDP/sau
Enclosures

Via E-Mail and First Class Mail
cc: Hon. Joel J. Cheskis
Hon. Andrew Calvelli
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a true copy of Verizon Pennsylvania LLC's Reply Brief, upon the parties 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 20th day of September, 2018.

VIA E-MAIL AND FIRST CLASS U.S. MAIL

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC	:	R-2017-2632523
2018 Price Change Opportunity Filing	:	
	:	
Verizon Pennsylvania LLC Amended Alternative	:	P-00930715F1000
Regulation and Network Modernization Plan	:	
	:	
Office of Small Business Advocate v.	:	C-2017-2633476
Verizon Pennsylvania LLC	:	

REPLY BRIEF OF VERIZON PENNSYLVANIA LLC

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Date: September 20, 2018

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I. INTRODUCTION

The Office of Consumer Advocate (“OCA”) agrees that Verizon Pennsylvania LLC’s (“Verizon”) 2018 Price Change Opportunity (“PCO”) filing “should be approved as just, reasonable and non-discriminatory, based upon the particular facts of this proceeding.” (OCA Main Br. at 14). This Commission, too, reviewed the filing and found it to comply with the terms of Verizon’s alternative regulation plan, permitting the proposed rate increases to take effect as scheduled on January 1, 2018, subject to the outcome of this case. (12/21/17 Order at 5). Verizon’s retail customers have been paying these new rates for nearly nine-months now without complaint.

The only party opposing this routine annual filing is the Office of Small Business Advocate (“OSBA”). But OSBA does not present any facts to show an actual defect in Verizon’s new business rates implemented in this PCO filing. Instead, it raises a hypothetical challenge to the decades-old policy decisions that have allowed basic business services to be priced higher than residential services, and takes specific issue with 66 Pa. C. S. § 3015(a)(3), which allows this difference to continue because the Legislature chose to cap Verizon’s annual increases to residential rates but did not adopt a similar cap for business rates. OSBA’s hypothetical complaint does not raise any specific issue that requires the Commission to take action. The evidence in this case shows that Verizon’s rates implemented with this PCO filing should be approved and OSBA’s complaint dismissed.

II. ARGUMENT

As Verizon pointed out in its Main Brief, the business dial tone line rates OSBA challenges here are equal to or lower than the rate for the same business dial tone line service that has been approved by the Commission and effective for at least two years in the most rural parts of Verizon's territory (Density Cell 4), which is the same rate that took effect earlier this year territory-wide for sister company Verizon North without challenge by OSBA. (VZ Main Br. at 4). OSBA has not presented any facts to attempt to show that these specific rates are unreasonably high. To the contrary, OSBA has already effectively conceded that this is a reasonable rate for business dial tone line service in these other contexts. As the OCA points out in its Main Brief, these rates "are just and reasonable and consistent with the Public Utility Code, the Verizon Chapter 30 Plan, and relevant Commission orders." (OCA Main Br. at 3).

OSBA's actual complaint appears to be that the per-line increase for residential dial tone line service in this filing (the maximum permitted by Section 3015(a)(3) of Chapter 30) was smaller than the per-line business dial tone line increases for the three Density Cells where business rates were increased (Verizon did not increase business rates in rural Density Cell 4). OSBA argues that the difference in treatment between residential and business rates constitutes an "unreasonable preference" in favor of residential customers prohibited by 66 Pa. C.S. § 1304. (OSBA Main Br. at 10). That statute states that:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

66 Pa. C.S. § 1304.

As OSBA points out, Section 1304 is one of the limited ratemaking standards preserved by Chapter 30, which otherwise provides that Verizon’s alternative regulation plan supersedes traditional ratemaking requirements. 66 Pa. C.S. § 3019 (e) and (h).

Merely observing that the business rate increases are larger than the residential increases is not enough to make a case for OSBA. Section 1304 does not require residential and business services to be priced the same – and in fact business services have been priced higher than residential services for decades. It is not the existence of a rate preference alone that is prohibited by Section 1304, but only an “unreasonable” preference. “There is no statutory or legal requirement that all customers be charged the same amount for the same quantity of service where there is a reasonable basis for a difference. It has long been settled that the Public Utility Code does not require utilities to charge every customer a rate that produces (for the utility) an identical rate of return.”¹ The Commonwealth Court has instructed that “not all differences in rates are discriminatory and, therefore, unlawful. Only unreasonable differences are prohibited.”² “The clear implication from th[e] language [of Section 1304] is that a person may be given a rate preference so long as it is not *unreasonable*.”³ A “mere variation in rates among classes of customers does not violate the Public Utility Code” unless it is “unreasonably prejudicial,” and differences in rates are “not only permissible but often are desirable and even necessary to achieve reasonable efficiency and economy of operation.”⁴

The fact that business rates are generally higher than residential rates is not new, and is not by definition unreasonable. An examination of the historical tariffed rates shows that this

¹ *In re Gas Transportation Tariffs*, Docket No. L-00930084, 1996 Pa. PUC LEXIS 117, *67-68, 171 P.U.R.4th 496 (Pa. P.U.C. August 28, 1996).

² *Philadelphia Electric Co. v. Pa. P.U.C.*, 470 A.2d 654, 657-659 (Pa. Cmwlth 1984).

³ *Rosemary Mill v. Pa. P.U.C.*, 447 A.2d 1100, 1102 (Pa. Cmwlth 1982).

⁴ *Building Owners and Managers Assoc. v. Pa. P.U.C.*, 470 A.2d 1092, 1095-1096 (Pa. Cmwlth 1984).

relationship has existed since the days of rate-of-return regulation.⁵ This Commission specifically concluded in a rate case of Verizon's predecessor company that the difference in pricing between residential and business rates for the same service was not an unreasonable preference, rejecting a call to bring those residential and business rates closer together and concluding that "[t]he price differential which exists between business and residential service, recurring and nonrecurring, does not constitute an 'unreasonable preference or advantage' for residential customers."⁶

According to the courts, "the determination of whether a classification is reasonable is a question of fact for the Commission."⁷ Thus, "it falls to the PUC to determine under what circumstances and in what amounts such a preference would be reasonable."⁸ OSBA has presented no facts to establish that the difference between residential and business dial tone line rates at issue here is unreasonable.

OSBA's arguments that the Commission should create a hypothetical, extra-statutory cap on business rates (OSBA Main Br. at 14) or that it alternatively should "abandon" Section 3015(a)(3) and allow larger residential rate increases (OSBA Main Br. at 12) are not supported by the Chapter 30 statute and would require a change in governing law.⁹ The Commission must review Verizon's rate proposals on a case-by-case basis under the facts, the alternative regulation

⁵ VZ St. 1.0 at 19.

⁶ *PUC v. Bell Telephone Co. of Pa.*, Docket No. R-811819, 1982 Pa. PUC LEXIS 67, *182, 57 Pa. PUC 639, 706, 52 P.U.R.4th 85 (Pa. P.U.C. September 03, 1982), affirmed in part, reversed in part on other grounds, *Bell Tel. Co. v. Pennsylvania Public Utility Com.*, 83 Pa. Commw. 331, 343, 478 A.2d 921, 927 (1984) ("the orders of the Public Utility Commission . . . dated September 3, 1982 and March 8, 1983, are affirmed in all respects except as to the disallowance of \$ 2,363,000 in tax expense, as to which the orders are reversed.").

⁷ *Philadelphia Electric Co. v. Pa. P.U.C.*, 470 A.2d 654, 657-659 (Pa. Cmwlth 1984).

⁸ *Rosemary Mill v. Pa. P.U.C.*, 447 A.2d 1100, 1102 (Pa. Cmwlth 1982).

⁹ *See PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00051228, etc. (Opinion and Order entered March 22, 2007) at 36 (rejecting OSBA's arguments for an extra-statutory business rate cap).

plan and applicable law. Under that standard, Verizon's rates in this case must be approved and OSBA's complaint dismissed.

III. CONCLUSION

For the forgoing reasons the Commission should dismiss OSBA's complaint and allow Verizon's 2018 PCO filing to remain effective without any changes.

Respectfully submitted,



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