

**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	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge
and
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This decision dismisses a formal complaint filed by the Office of Small Business Advocate against the Verizon Pennsylvania LLC 2018 Price Change Opportunity (PCO) filing. The complaint is dismissed because the rates proposed by the company in its 2018 PCO filing are just and reasonable and are in compliance with the relevant provisions of the Pennsylvania Public Utility Code, as well as the relevant regulations and orders of the Pennsylvania Public Utility Commission.

HISTORY OF THE PROCEEDING

On November 1, 2017, Verizon Pennsylvania LLC (Verizon PA or Verizon) filed with the Pennsylvania Public Utility Commission (Commission) its 2018 PCO filing and associated revenue increase. The filing was made under the provisions of Act 183 of 2004,

codified at 66 Pa.C.S. §§ 3011-3019 (Chapter 30), and Verizon's Alternative Regulation and Network Modernization Plan (Chapter 30 Plan) approved by the Commission at Docket Numbers P-00930715, P-00930715F1000 and R-00051228. In its filing, Verizon PA used the change in 2016 and 2017 first quarter Gross Domestic Product Price Index (GDP-PI) of 2.02%. After deducting the inflation offset of 0.5% identified in its Chapter 30 Plan, Verizon PA's PCO resulted in a preliminary increase of \$1,257,000 based on noncompetitive revenues of \$82,665,000.

On November 13, 2017, the Office of Small Business Advocate (OSBA) filed a formal complaint, Public Statement, and Verification in response to the filing made by Verizon PA. In its complaint, OSBA argued that the 2018 PCO filing made by Verizon PA may be insufficient to justify the proposed rate adjustments and that the proposed rates, rules and conditions of service may be unjust, unreasonable, unduly discriminatory and otherwise contrary to law as they pertain to Verizon's small business customers. The OSBA further averred that the proposed rate adjustments for Verizon's business customers may violate Sections 1301 and 3015(g) of the Public Utility Code, 66 Pa.C.S. §§ 1301 and 3015 respectively. The OSBA requested that the Commission suspend and investigate the 2018 PCO filing and, at the conclusion of the investigation, reject the proposed new rates and tariff changes proposed in the filing to the extent required to ensure that Verizon's rates are lawful, just, reasonable and not unduly discriminatory to any class of customers.

On November 27, 2017, Verizon PA filed its answer to the complaint filed by OSBA. In its answer, Verizon admitted that it filed its 2018 PCO on November 1, 2017 seeking an increase in revenue from noncompetitive services. Verizon denied other averments made by OSBA stating that they are vague and insufficient as to substance, making a response impossible. Verizon asserted that its filings comply with Chapter 30 and the respective Chapter 30 Plans. Verizon requested that OSBA's complaint be dismissed, and if not dismissed, that the rate changes should be permitted to go in to effect subject to refund based on the resolution of the issues raised in the complaint.

On December 21, 2017, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement in this proceeding.

Also on December 21, 2017, the Commission entered an Order summarizing Verizon's filing and OSBA's complaint (December 21, 2017 Order). The Commission deemed that, based on the data provided, the filing was in compliance with the Commission-approved Chapter 30 Plans and assigned the OSBA's formal complaint to the Office of Administrative Law Judge for adjudication. The Commission allowed the filing to go in to effect as filed and remain in effect during the pendency of the OSBA's complaint subject to refund.

On January 5, 2018, the Commission issued a Hearing Notice establishing an Initial Prehearing Conference for this case for Friday, January 26, 2018 at 10:00 a.m. and assigning us as the Presiding Officers. In anticipation of the Initial Prehearing Conference and in accordance with Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and Sections 5.221-5.224 of the Commission's regulations, 52 Pa. Code §§ 5.221-5.224, a prehearing conference order was issued on January 10, 2018. In response to the prehearing conference order, prehearing memoranda were received from Verizon, the OSBA and the OCA.

The prehearing conference convened on January 26, 2018 as scheduled. The following counsel were present: Suzan D. Paiva, Esquire, on behalf of Verizon; Steven C. Gray, Esquire, on behalf of OSBA; and Barrett Sheridan, Esquire, on behalf of the OCA.

During the initial prehearing conference, various procedural matters were discussed. Most notably, the following procedural schedule was agreed upon:

OSBA and OCA Direct Testimony	March 23, 2018
All Parties' Rebuttal Testimony	May 9, 2018
All Parties' Surrebuttal Testimony	June 7, 2018
Evidentiary Hearing	July 20, 2018

Also during the initial prehearing conference, a discussion was held regarding consolidating the OSBA complaint with Verizon's filing. Additionally, the parties indicated that the protective order from the proceeding arising from Verizon's 2011 PCO filing would remain in place for this proceeding and that there would be no need for any modification of the Commission's discovery procedures for this proceeding.

By Order dated January 29, 2018, the agreed upon procedural schedule was adopted and the PCO filed by Verizon at docket number R-2017-2632523 on November 1, 2017 and the formal complaint filed by the OSBA against Verizon at docket number C-2017-2633476 on November 13, 2017 were formally consolidated.

The parties exchanged pre-served testimony, pursuant to the litigation schedule.

By email on July 9, 2018, the parties advised the Presiding Officers that they had agreed to waive all cross-examination of witnesses and that they had agreed to have all pre-served testimony entered into the record via stipulation. The parties also agreed to a schedule for the submission of briefs. The parties requested that the hearing scheduled for July 20, 2018 be cancelled. Accordingly, there was no longer any need for an evidentiary hearing and the evidentiary hearing scheduled for July 20, 2018 was cancelled via notice dated July 9, 2018.

On July 17, 2018, the parties submitted a Joint Stipulation Regarding Admission of Testimony and Waiver of Hearing seeking the admission of the following pieces of written testimony:

- OSBA Statement No. 1, the Direct Testimony of Joseph Gillan dated March 23, 2018, including Exhibit JPG 1 thereto. This testimony is not Proprietary.
- Verizon Statement No. 1.0, the Rebuttal Testimony of Philip J. Wood, Jr., dated May 9, 2018, including Exhibits 1 and 2 thereto, in Proprietary and Public versions.
- OCA Statement No. 1, the Rebuttal Testimony of Dr. Robert Loube, dated May 9, 2018, including Exhibits RL-1, RL-2 and RL-3 thereto, in Proprietary and Public versions, with Dr. Loube's signed verification.

- OSBA Statement No. 1-SR, the Surrebuttal Testimony of Joseph Gillan dated June 7, 2018, with no exhibits. This testimony is not Proprietary.
- Verizon Statement No. 1.1, the Surrebuttal Testimony of Philip J. Wood Jr., dated June 7, 2018, with no exhibits. This testimony is not Proprietary.

This stipulation will be granted as part of this decision and the parties will be directed to provide copies of their pre-served testimony to the Commission's Secretary's Bureau.

On August 20, 2018, the parties filed their Main Briefs with the Commission. On September 13, 2018, the OCA filed its Errata to its Main Brief to correct certain minor errors. On September 20, 2018, the parties filed their Reply Briefs with the Commission.

Upon receipt of the Reply Briefs, the record in this proceeding closed on September 20, 2018. For the reasons discussed further below, OSBA's complaint will be dismissed and Verizon's PCO filing will remain in effect without modification.

FINDINGS OF FACT

1. Verizon is a jurisdictional incumbent local exchange carrier subject to regulation by the Pennsylvania Public Utility Commission.

2. The OSBA is authorized and directed to represent the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act. Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

3. The OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

4. On November 1, 2017, Verizon filed with the Commission its 2018 PCO filing and associated revenue increase.

5. The filing was made under the provisions of Act 183 of 2004, codified at 66 Pa.C.S. §§ 3011-3019 (Chapter 30) and Verizon's Alternative Regulation and Network Modernization Plan (Chapter 30 Plan) approved by the Commission at Docket Numbers P-00930715, P-00930715F1000 and R-00051228.

6. In its filing, Verizon PA used the change in 2016 and 2017 first quarter Gross Domestic Product Price Index (GDP-PI) of 2.02%. Verizon St 1.0 at p. 3.

7. After deducting the inflation offset of 0.5% identified in its Chapter 30 Plan, Verizon PA's PCO resulted in a preliminary increase of \$1,257,000 based on noncompetitive revenues of \$82,665,000. Verizon St. 1.0 at p. 2.

8. Verizon notified the Commission that the price cap mechanism in the company's Chapter 30 plan allowed Verizon to increase its revenue from noncompetitive services by \$1,257,000. Verizon St. 1.0 at p. 2.

9. To implement the allowed revenue increases, Verizon allocated \$495,100 to residential dial tone line rates (the maximum allowed under Chapter 30); \$27,700 to the business late payment charge; and \$322,300 to Verizon's bank (credited against the 2003 PCO balance); the remaining \$411,900 was allocated to business dial tone line increases. Verizon Statement 1.0 at p. 2.

10. Under the 2018 Verizon PCO, the rates would change according to the below table showing a summary of the current and proposed rates:

	<u>Old Rate</u> (monthly)	<u>New Rate</u> (monthly)	<u>Increase</u> (monthly)
<u>RESIDENTIAL</u>			
<u>Dial Tone Line</u>			
All Cells	\$9.00	\$9.20	\$0.20
<u>BUSINESS</u>			
<u>Dial Tone Line</u>			
Cell 1	\$15.45	\$18.00	\$2.55
Cell 2	\$17.55	\$20.00	\$2.45
Cell 3	\$21.45	\$22.25	\$0.80
	<u>Old Rate</u>	<u>New Rate</u>	
<u>Late Payment Charge</u>	1.5%	Greater of 1.5% or \$5	

Verizon Statement 1.0 at p. 4.

11. Verizon North’s (a Verizon PA affiliate) 2018 PCO filing established a business dial tone rate of \$22.25 for the same business dial tone service in its regulated territory. Verizon St. 1.0 at p. 17.

12. Verizon’s stated goal is to achieve a common state-wide rate for business dial tone lines, as Verizon has done with the residential dial tone rate. Verizon M.B. at 4.

13. The OSBA did not object to Verizon North’s 2018 PCO filing which established a business dial tone rate of \$22.25 for the same business dial tone service in its regulated territory. Verizon M.B. at 4.

14. Verizon’s 2018 PCO filing increases business rates in Density Cell 1 by 17% and in Density Cell 2 by 14%. Verizon M.B. at 13.

15. The business customer increases will be 300% and 1,175% higher than the residential customer increases. OSBA Statement 1 at p. 8 and fn. 13.

16. The rate adjustment for the individual protected residential lines does not vary from the average rate adjustment by more than 20%, as determined by dividing total protected service revenues by the associated lines. OCA St. 1 at p. 3-4.

17. The business dial tone line and residential dial tone line services are not similar in function, use of the network or cost. OCA St. 1 at 11.

DISCUSSION

Legal Standard

Chapter 30 of the Public Utility Code, originally enacted in 1993 and then reenacted in 2004, provides an alternative form of regulation for local exchange telecommunications companies. Through Chapter 30, the Pennsylvania General Assembly declared it to be the policy of the Commonwealth to, among other things: “maintain universal telecommunications service at affordable rates while encouraging the accelerated provision of advanced services and deployment of a universally available, state-of-the-art, interactive broadband telecommunications network in rural, suburban and urban areas.” 66 Pa.C.S. § 3011(2). The Pennsylvania General Assembly also declared it to be the policy of the Commonwealth to “ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.” 66 Pa.C.S. § 3011(3).

Under Chapter 30, rates for services provided by local exchange telecommunications companies would no longer be established pursuant to traditional rate base/rate of return regulation. 66 Pa.C.S. § 3015. For Verizon PA, its Chapter 30 plan includes a price stability mechanism that caps allowed revenue increases using a formula where revenue is multiplied by the difference between inflation as measured by the change in Gross Domestic Product-Price Index (GDP-PI) and an offset of 0.5%. *See, Verizon Ch. 30 Plan, supra.*

Of note, Verizon PA's plan incorporates the limit in Section 3015 on the average rate adjustment for protected residential local exchange telecommunications. This statute provides in part:

(3) Where annual rate adjustments made under a nonrural telecommunications carrier's price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected *residential customer* local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%.

66 Pa.C.S. § 3015(a)(3)(emphasis added). Section 3019 of Chapter 30 also provides: "Nothing in this chapter shall be construed to limit the authority of the Commission to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other non-competitive services." 66 Pa.C.S. § 3019(e).

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

Furthermore, pursuant to Section 315(a) of the Public Utility Code, Verizon has the burden of proving that the PCO filing and related tariff supplements to increase rates through non-competitive tariffs comply with the Public Utility Code and Verizon's Chapter 30 plan. Section 315(a) provides: "In any proceeding upon the motion of the commission, involving any

proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.” 66 Pa.C.S. § 315(a). Therefore, Verizon has to prove by a preponderance of the evidence that the proposed rates are reasonable.

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

Description of the Filing

As discussed in the December 21, 2017 Order, on November 1, 2017, Verizon PA made its annual PCO filing using the change in 2016 and 2017 first quarter GDP-PI of 2.02%. After deducting the inflation offset of 0.5%, this equated to a 2018 PCO of \$1,257,000 based on noncompetitive revenues of \$82,665,000. In its 2018 PCO filing, Verizon PA proposed \$934,700 in actual rate increases. Verizon PA proposed to implement its 2018 PCO by increasing rates for Residential Dial Tone Line, Business Dial Tone Line and increasing the Business Late Payment Charge from 1.5% to the greater of 1.5% or \$5.00.¹ Verizon PA notified its customers of the proposed rate changes via bill message in November 2017. The table below summarizes the current and proposed rates.

¹ Verizon PA submits that the increase to the Business Late Payment Charge is consistent with the Joint Settlement Petition approved by the Commission on January 19, 2017, at Docket Nos. R-2015-2510231, *et al.*

	<u>Old Rate</u> (monthly)	<u>New Rate</u> (monthly)	<u>Increase</u> (monthly)
<u>RESIDENTIAL</u>			
<u>Dial Tone Line</u>			
All Cells	\$9.00	\$9.20	\$0.20
<u>BUSINESS</u>			
<u>Dial Tone Line</u>			
Cell 1	\$15.45	\$18.00	\$2.55
Cell 2	\$17.55	\$20.00	\$2.45
Cell 3	\$21.45	\$22.25	\$0.80
	<u>Old Rate</u>	<u>New Rate</u>	
<u>Late Payment Charge</u>	1.5%	Greater of 1.5% or \$5	

Per the Commission’s Order in Docket Nos. P-00930715 and P-0001854 entered October 11, 2005,² Verizon PA requests permission to continue in 2018 to use the ongoing negative value of its 2003 PCO to support its payments to the PA Universal Service Fund (PaUSF). Verizon PA will use the remaining \$322,300 of its 2018 PCO to net against the gap between the remaining ongoing negative value of its 2003 PCO and its calendar year 2017 PaUSF payments.

In the December 21, 2017 Order, the Commission allowed Verizon’s filing to go in to effect subject to the adjudication of OSBA’s complaint.

Issue

In response to Verizon’s filing, the complaint filed by OSBA raises only one issue, namely: whether the proposed rate increases to small business customers in Verizon’s PCO filing, when compared with the proposed increases to residential customers, are just and reasonable or violate Section 1304 and Section 3019(e) of the Public Utility Code prohibiting unreasonable preferences. As discussed further below, the OSBA contends that the answer to this question is yes – that the proposed rate increases to small business customers are unjust and

² See Verizon Pennsylvania Inc. 2005 Price Change Opportunity Filing and Verizon North Inc. 2005 Price Change Opportunity Filing, Docket Nos. P-00930715 and P-00001854 (Order entered October 11, 2005).

unreasonable and violate Sections 1304 and 3019(e) when compared to the proposed increases to residential customers. On the other hand, Verizon and the OCA contend that the increases in this 2018 PCO filing are just and reasonable and do not violate the Public Utility Code.

Verizon's Position

Verizon contends that, under the alternative form of regulation for incumbent local exchange companies, price changes for noncompetitive services are governed by a price stability mechanism which is a complete substitute for traditional ratemaking. Verizon Main Brief at p. 2. Under the newer "Price Change Opportunity" system of alternative ratemaking, Verizon contends that it has the discretion to propose rate increases to recover the permitted annual revenue increases under the law. Id. Using this discretion, Verizon states that in the 2018 PCO it has allocated the maximum allowed increase by law to its residential customers, which amounts to \$495,100. Id. at p. 3. Verizon has allocated \$322,300 to Verizon's bank as a credit against the 2003 PCO balance, and has allocated the remaining PCO funds in the amount of \$411,900 to business dial tone increases. Id.; Verizon Statement 1.0 at p. 2. Verizon argues that OSBA's concerns are not with Verizon's 2018 PCO filing but with Chapter 30 itself.

Verizon notes that the OSBA did not challenge the PCO as it relates to residential customers, but only challenges the PCO rates as proposed for Verizon's business dial tone rates. Id. at p. 4. In response, Verizon states that it did not increase the business dial tone rate in Density Cell 4, which remains at \$22.25 as it has for more than two years. Id. at p. 4. Verizon also states that it only proposes a modest increase of \$0.80 in Density Cell 3 to bring it equal to the \$22.25 in Density Cell 4. Id. Verizon further states that although the Density Cells 1 and 2 increases were larger than the other increases, Density Cells 1 and 2 would still have rates that are more than \$2 to \$4 lower than the rates in the other Density Cells. Id.

Verizon's stated goal is to achieve a common state-wide rate for business dial tone lines, as Verizon has done with the residential dial tone rate. Id. Verizon states that the OSBA did not object to Verizon North's (a Verizon PA affiliate) 2018 PCO filing which established a business dial tone rate of \$22.25 for the same business dial tone service in its

regulated territory. *Id.* Verizon contends that, since the Commission approved the Verizon North 2018 PCO filing, the business dial rate of \$22.25 is now reasonable on its face and can be adopted in other PCO cases such as the present Verizon PA case. *Id.*

Verizon rejects OSBA's attempt to have the Commission limit the proposed rate increases to business customers, arguing first that Chapter 30 contains no rate cap for business customers; the rate cap is only for residential customers. *Id.* at p. 7. Since there is no statutory rate cap for business customers, Verizon states that OSBA is attempting to thwart the intent of the legislature by having the Commission create a business rate cap that does not exist in the statute. *Id.* Verizon also contends that the Commission has already considered OSBA's position in other cases and has expressly rejected the notion of limiting Chapter 30 PCO business rate increases. *Id.* at pp. 8, 9; *citing*, Pa. Pub. Util. Comm'n v. Verizon North Inc. and Verizon Pennsylvania Inc., Docket Nos. R-00051227 and R-00051228, etc. (Opinion and Order entered March 22, 2007) (herein "PUC v. Verizon").

Verizon next argues that Chapter 30 contains general protections for business rate increases. Most importantly, according to Verizon, Chapter 30 limits the total amount of yearly revenue increase that can be approved in any PCO filing. *Id.* at p. 9. Since Chapter 30 has express statutory limits on the total PCO revenue increase, it necessarily limits the total increase that can be placed upon business customers. *Id.* at pp. 9, 10. Verizon also notes that Chapter 30 relies on competitive pressure to control rates. *Id.* at p. 10. According to Verizon, the statute allows a company to use its discretion in choosing which of its business rates to increase, based on the company's assessment of the marketplace. *Id.*

Verizon noted, among other things, that it did not raise rates in Density Cells 1 or 2 last year and that, therefore, the respective 17% and 14% increases in those rates this year is not unreasonable. *Id.* at 13. Verizon argued that the OSBA has failed to show that the business rates are not just and reasonable because the OSBA has not presented any evidence in support of its arguments. *Id.* at 14-16. Verizon argued that most of the arguments OSBA made are legal arguments and that the OSBA witness did not attempt to establish that the specific rates proposed by Verizon in this case are not just and reasonable. *Id.* at 14. Verizon also responded to OSBA's

claims about competition for small business services by arguing that OSBA's claims are irrelevant and wrong. Id. at 16-18.

In its reply brief, Verizon responded to several of the arguments OSBA made in its main brief. For example, Verizon responded to OSBA's argument that the residential rates are being given an unreasonable preference in the 2018 PCO filing by noting that merely observing that the business rate increases are larger than residential increases is not enough. Verizon R.B. at 3. Verizon argued, among other things, that a mere variation in rates among classes of customers does not violate the Public Utility Code unless it is unreasonably prejudicial and that an examination of historical tariffed rates shows that business rates have always been higher than residential rates. Id. at 3-4. Verizon reiterated its argument that the OSBA has presented no facts to establish that the difference between residential and business dial tone line rates at issue here is unreasonable. Id. at 4.

Verizon contends that the OSBA complaint should be dismissed and the rates presented in the PCO filing should be allowed to remain in effect as filed.

OSBA's Position

In its complaint, OSBA contends that the proposed rate adjustments for Verizon PA's business customers are unjust, unreasonable, discriminatory and in violation of the Public Utility Code. OSBA argued that Verizon's PCO increases are limited by the provisions of Sections 1301, 1304 and 3019(e) of the Public Utility Code. OSBA Main Brief at p. 3. OSBA contends that Verizon's proposed business customer rate increases in the 2018 PCO violate these statutory limits. Id.

OSBA notes that in Verizon's 2018 PCO, residential customers would receive a 20 cent increase while business customers would receive either an 80 cent, \$2.45 or \$2.55 increase. Id. at p. 9. OSBA points out that the increases over current business rates are as follows:

	Old Rate (monthly)	New Rate (monthly)	Increase (monthly)	Increase (percentage)
BUSINESS				
Dial Tone Line				
Cell 1	\$15.45	\$18.00	\$2.55	16.50
Cell 2	\$17.55	\$20.00	\$2.45	13.96
Cell 3	\$21.45	\$22.25	\$0.80	3.73

Id. *see also*, OSBA R.B. at 11.³

OSBA’s opposition to the business customer increases centers around the fact that those increases are much higher than the corresponding residential customer increases. Id. OSBA notes that the business customer increases will be 300% and 1,175% higher than the residential customer increases. Id.; OSBA Statement 1 at p. 8 and fn. 13.⁴ Therefore, OSBA contends that the business rate increases, as compared to the residential rate increases, are the “textbook definition of the imposition of unreasonable preferences, as prohibited by Section 1304 and Section 3019(e).” Id. at pp. 9, 10.

OSBA contends that Verizon’s PCO filing is a “price change opportunity” rather than a guarantee of ever increasing revenues. Id. at p. 11. Accordingly, given the disparity in the business customer increases versus the residential customer increases, OSBA argues that Section 3019(e) of the Public Utility Code (66 Pa. C.S. § 3019(e)) states that the Commission retains the authority to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other noncompetitive service. Id. at p. 6. OSBA also argues that Section 1301 of the Public Utility Code (66 Pa. C.S. § 1301) requires that all utility rates must be just and reasonable as determined by the Commission. Id. at p. 3. As OSBA witness Gillan testified: “What is missing from Verizon’s tautology, however, is an examination as to what Chapter 30 and Sections 1301,

³ Although OSBA lists “Cell 3” as “Cell 4”; it seems that OSBA is referencing Cell 3.

⁴ In cell 3, the 80-cent increase for business customers is 300% of the 20-cent increase for residential customers and, in cell 1, the \$2.55 increase for business customers is 1175% of the 20-cent increase for residential customers.

3015(g), and 3019(e), plainly require, which is that all rates be just, reasonable and non-discriminatory, including those rates charged business customers for noncompetitive services.” *Id.* at 8; *quoting*, OSBA St. No. 1 at 4.

Given the above, OSBA argues that Verizon does not have guaranteed revenues merely because it followed the residential rate cap calculations contained in Chapter 30. *Id.* at 11, 12. OSBA contends that the residential rate cap restrictions must be abandoned when following them would result in an unreasonable and discriminatory preference against business customers. *Id.* at 12. As OSBA witness Gillan testified:

That is, while Verizon’s overall revenues must comply with the inflation adjustment of the PCO, its noncompetitive business services are still limited by the JR&ND [just, reasonable and non-discriminatory] rate standard if its proposed rates (or rate increases) exceed JR&ND levels. If this limit prevents Verizon [from] fully realizing its inflation-adjusted revenue levels, then so be it. It has no guarantee under Chapter 30 that its noncompetitive business services will always make it whole.

OSBA M.B. at 10, *citing*, OSBA St. No. 1-SR at 4; *see also*, OSBA R.B. at 4-6.

The OSBA also argued that the just and reasonable standard can coexist with Chapter 30 but that, even if there is a conflict, the rules of statutory construction require that each be given effect. The OSBA cites to Section 1922, 1933 and 1934 of the Rules of Statutory Construction in support of its position that, for example, the special provisions shall prevail over general provisions and the later statute prevails over the earlier statute. *Id.* at 10-11, *citing*, 1 Pa.C.S. §§ 1922, 1933 and 1934.

Finally, in its reply brief, the OSBA responded to Verizon’s argument that the Commission’s decision in PUC v. Verizon, *supra*, is relevant. The OSBA argued, among other things, that “the instant proceeding addresses the issue of whether Verizon’s proposed non-competitive business rates are just, reasonable and non-discriminatory, not whether a small business rate cap was, is or should be in place.” OSBA R.B. at 7-9. The OSBA argued that the current case is not about a cap on business rates.

The OSBA concludes that the Commission should find that Verizon's proposed non-competitive business rate increases are unjust, unreasonable and discriminatory.

OCA's Position

In its briefs, the OCA argued that the Commission's process for review of Verizon's PCO filing includes consideration of Sections 1301 and related statutes as well as the Verizon Chapter 30 plan. OCA M.B. at 5-7. OCA notes that Verizon's PCO complies with the mandates of Section 3015 of the Public Utility Code because the rate adjustment for the individual protected residential lines does not vary from the average rate adjustment by more than 20%, as determined by dividing total protected service revenues by the associated lines. *Id.* at p. 7; OCA Statement 1 at pp. 3, 4. OCA agrees with Verizon that the allowed residential increase in the 2018 PCO must be capped at \$0.20 per month. *Id.* at p. 8; OCA Statement 1 at pp. 6, 11; Verizon Statement 1 at pp. 2, 7. OCA also contends that the question of whether there is a rate limitation for protected business services was previously resolved by the Commission in 2007 in PUC v. Verizon, that also involved Verizon's PCO at that time. *Id.* at p. 9. OCA argues that Section 3015 of the Public Utility Code does not provide Verizon with the discretion to increase residential rates in excess of the statutory annual rate limitation. *Id.* The OCA argued that the General Assembly's decision to single out residential protected services for an annual rate limitation is a legislative policy choice. *Id.*

The OCA also argued that the OSBA's general statements regarding the costs of retail protected services or the relative availability of competitive options for residential versus business customers in non-competitive wire centers do not provide probative, substantial grounds to modify Verizon's 2018 PCO filing. *Id.* at 11-13. OCA witness Loubé noted that the business dial tone line and residential dial tone line services are not similar in function, use of the network or cost. *Id.* at 11, *citing*, OCA St. 1 at 11. OCA witness Loubé also noted, among other things, that the Commission should not use the supposed availability of competitive services as a guide for allocating revenues and rates between noncompetitive, protected services. *Id.* at 13.

Finally, in its reply brief, the OCA argued that differences in rates between rate classes are not evidence of discrimination prohibited by law and that the record in this case does not support a determination that Verizon's increase to all residential dial tone line customers is an unreasonable preference or advantage, resulting in injury or harm to business customers. Id. at 5. The OCA also replied to the OSBA's arguments regarding statutory construction by noting that the Commission has the expertise and authority to review and evaluate Verizon's PCO filing based upon all relevant provisions of Chapters 13 and 30 and that the rules of statutory construction provide no useful guidance.

OCA concludes by requesting the Commission rule that Verizon's 2018 PCO as applied to residential customers is just and reasonable and adopt the 2018 PCO as filed.

Disposition

We have reviewed the various filings in this proceeding, along with the various arguments raised by the parties. For the reasons discussed below, we find that substantial record evidence in this proceeding dictates that Verizon's 2018 PCO filing remain in effect without modification and that the OSBA complaint be dismissed.

Initially, we reject the argument made by OSBA to the extent that it advocates that the residential rate limitations may be disregarded by the Commission in order to ensure what OSBA views as a more equitable distribution of the PCO rate increases between residential and business customers. Section 3015 of the Public Utility Code is clear in its mandate that the "rate adjustment for any individual [residential] line shall not vary from this average rate adjustment by more than 20%." 66 Pa. C.S.A. § 3015(a)(3). The statutory language and calculation to be utilized is clearly expressed in Section 3015; no further interpretation is needed to see that the legislature has placed a clear statutory mandate in this portion of the Public Utility Code.

We also reject OSBA's argument to the extent that it advocates that the Commission should place a cap on the business customer rates and thereby lower the amounts

that Verizon may increase the business rates in the 2018 PCO. As stated, Section 3015 only contains a cap for residential customers, and not for business customers. Review of the Commission's Opinion and Order in PUC v. Verizon, *supra*, supports our conclusion that Section 3015 precludes the imposition of a hard cap on business customers in PCO related filings and proceedings. In that consolidated proceeding, Verizon PA filed an amendment to its Chapter 30 Plan that was consistent with Section 3015(a)(3) of the Public Utility Code (66 Pa. C.S. § 3015 (a)(3)), and that amendment was approved by the Commission on May 20, 2005. PUC v. Verizon, at p. 36. OSBA argued that Verizon PA's old small business customer rate cap was still applicable despite Verizon PA's amended Chapter 30 Plan. Id. at pp. 30, 31. The Commission rejected OSBA's argument and ruled that its approval of the Verizon amendment eliminated the contested rate cap language in Verizon's prior filings. Id. at p. 36. The Commission further concluded that there was no basis to direct Verizon PA to limit the business rate increases as requested by OSBA in that case. Id.

In its Reply Brief, OSBA correctly points out that the PUC v. Verizon Opinion and Order only addressed the specific case before the Commission. OSBA Reply Brief at pp. 8, 9. We recognize that the argument in that case was whether there is a cap for business customers like there is for residential customers and that, in this case, the OSBA is arguing that the business rates that result from the 2018 PCO filing are unjust, unreasonable and discriminatory. OSBA also points out in its Reply Brief that, while there may be no specific numerical business rate cap contained in Chapter 30, certain provisions of Chapter 30 may serve to protect small businesses from unlimited rate caps. Id. We address those contentions next.

We reject OSBA's argument that Verizon's 2018 PCO places unreasonable preferences in favor of residential customers or otherwise discriminates against business customers. Although OSBA correctly points out that Section 3019(e) of the Public Utility Code prevents the imposition of "unreasonable preferences, discriminations, or classifications," we do not see anything in the 2018 PCO that would fall under this prohibition. Most importantly, OSBA seems to be comparing apples to oranges in the legal sense when it argues that the increase in business rates is discriminatory when compared to the increase in residential rates.

First, because residential customers have been protected by Section 3015 of the Public Utility Code and business customers do not share such a statutory protection, comparing the one class to the other is not an accurate way to attempt to measure rate discrimination. Simply put, Verizon has proposed to raise the residential rates to the maximum level permitted by law; no party to this proceeding disputes this particular legal point. Accordingly, Verizon has no additional legal recourse with regard to the residential customers in this particular proceeding.

Second, we note that the discrepancy in the residential customer rate increase compared to the business customer rate increases may also be attributable to the fact that Verizon has more residential customers than it has business customers, and thus has a much larger customer base over which to spread the increase. Verizon M.B. at 13. Accordingly, although the per customer residential increase seems small compared to the per customer business increases, the total residential rate increase is \$495,100 compared to only \$411,900 allocated to business dial tone line increases. Verizon Statement 1.0 at p. 2.

Third, the business customer increases proposed by Verizon are in line with the prior Commission Opinion in the Verizon North 2018 PCO filing, in which the Commission approved the monthly charge of \$22.25 which is the highest charge allowed by the current Verizon 2018 PCO filing. Verizon Main Brief at p. 4; Pa. Pub. Util. Comm'n v. Verizon North Inc. and Verizon Pennsylvania Inc., Docket Nos. R-00051227 and R-00051228, etc. (Opinion and Order entered March 22, 2007). Verizon argues that this rate should be presumed to be reasonable as a result. We note Verizon's stated goal of bringing the various business customer classes into a state-wide rate, whereby all business customer classes pay the same monthly rates. Verizon Main Brief at p. 4. We believe that it is reasonable that Verizon have consistent rates across both its companies' service territories.

In general, we do not find undue discrimination between the various business customer classes where the actual increases for the business classes are between 3.73% and 16.50%. Although we agree with OSBA's concerns that "you know unjust and unreasonable rates when you see one" is not good regulatory policy, see OSBA R.B. at 10, we do not believe that the differences in rates present in Verizon's 2018 PCO filing is unreasonable. There is no

set percentage of increase that is reasonable or unreasonable, especially within the confines of alternative ratemaking where, for example, there are no cost of service studies. This is also true not just with regard to the increase itself but the increase as compared to other increases, as OSBA argues. That is, while a 16.50% increase is high compared to an increase of 1.8%, Verizon stated that it did not raise business rates in density cells 1 or 2 in its prior year filing thereby making the current increases more reasonable. There, otherwise, is no history of prior increases to any rates in the record of this proceeding to make a determination as to whether the 2018 increases are unreasonable.

There may exist many reasons why business rates may be higher than residential rates. For example, Verizon has demonstrated that customers of basic services have competitive options and can choose to leave Verizon if services are priced too high. Verizon M.B. at 10. There may also be policy considerations involving Chapter 30 such as the need to maintain universal telecommunication service at affordable rates while encouraging the accelerated provision of broadband services. We also note that the Commission recently reclassified various Verizon services in multiple exchanges throughout the state which may also impact the 2018 PCO filing. Verizon's 2018 PCO filing balances these many various, and sometimes conflicting, factors. When looking at the record as a whole, it is not clear that the rates in Verizon's 2018 PCO violate the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

We also reject the other arguments raised by the OSBA in this proceeding. For example, the OSBA's reliance on the rules of statutory construction are without merit. As a preliminary matter, it is generally the case that the rules of statutory construction should be consulted when a statute is ambiguous. 1 Pa.C.S. § 1921. We do not believe that such ambiguity exists here and there is, therefore, no need to look to the rules of statutory construction.

Assuming that the statutes are ambiguous, however, and that the rules of statutory construction should be used, we still reject the OSBA's argument. Section 1933 of the Rules of Statutory Construction, 1 Pa.C.S. § 1933, that the OSBA relies on provides that special

provisions shall prevail over general provisions. As a result, we believe the more specific Section 3015 prevails over the more general Section 1301. In addition, Section 1334 provides that the more recent statute prevails over the older statute. As a result, we believe Section 3015 prevails over Section 1301 because it was enacted more recently. Therefore, to the extent that the rules of statutory construction are required, we believe they support rejecting OSBA's argument in this case.

For the reasons discussed above, we conclude that the rate proposals contained in Verizon's 2018 PCO are just and reasonable. We also conclude that the rate proposals contained in Verizon's 2018 PCO are non-discriminatory. We agree with OSBA's argument that Verizon's PCO filings are an "opportunity," not a "guarantee." Similarly, we also agree with OSBA that all of Verizon's protected, noncompetitive rates, including business rates, must be just, reasonable and nondiscriminatory. We do not agree, however, that the rates in Verizon's 2018 PCO filing are unjust, unreasonable or discriminatory. We therefore dismiss the formal complaint filed by the OSBA because the rates proposed by Verizon in the 2018 PCO comply with the relevant provisions of the Pennsylvania Public Utility Code, as well as the relevant regulations and orders of the Pennsylvania Public Utility Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 701 and 3011 *et. seq.*

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

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

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

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

6. Where annual rate adjustments made under a nonrural telecommunications carrier’s price stability mechanism are calculated using revenues from protected services, an average rate adjustment for protected residential customer local exchange telecommunications service lines shall be determined by dividing the total protected service revenues associated with such lines, as adjusted by the price stability formula, by the number of such lines, and the rate adjustment for any individual line shall not vary from this average rate adjustment by more than 20%. 66 Pa.C.S. § 3015(a)(3).

7. Nothing in Chapter 30 shall be construed to limit the authority of the Commission to ensure that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other non-competitive services. 66 Pa.C.S. § 3019(e).

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

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

10. In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. 66 Pa.C.S. § 315(a).

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

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

13. The Commission has expressly rejected the notion of limiting Chapter 30 PCO business rate increases. Pa. Pub. Util. Comm'n v. Verizon North Inc. and Verizon Pennsylvania Inc., Docket Nos. R-00051227 and R-00051228, etc. (Opinion and Order entered March 22, 2007).

14. The proposed rates contained in the Verizon Pennsylvania LLC 2018 Price Change Opportunity Filing at Docket Number R-2017-2632523 are just, reasonable and non-discriminatory.

15. The proposed rates contained in the Verizon Pennsylvania LLC 2018 Price Change Opportunity Filing at Docket Number R-2017-2632523 comport with the legal requirements of the Pennsylvania Public Utility Code, including, without limitation, the requirements of Chapter 30 (66 Pa.C.S. §§ 3011 *et. seq.*), Section 1301 of the Code, and Section 1304 of the Code.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Stipulation Regarding Admission of Testimony and Waiver of Hearing filed by Verizon Pennsylvania LLC, the Office of Small Business Advocate and the Office of Consumer Advocate on July 17, 2018 at docket numbers R-2017-2632523 and C-2017-2633476 is hereby granted and the parties are directed to provide copies of the statements contained therein to the Commission's Secretary's Bureau.

2. The Complaint filed by the Office of Small Business Advocate on November 13, 2017 at Docket Number C-2017-2633476 is hereby dismissed.

3. That the Commission's Secretary's Bureau shall mark the docket numbers R-2017-2632523 and C-2017-2633476 in this consolidated proceeding as closed.

Date: October 31, 2018

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge

/s/
Andrew M. Calvelli
Administrative Law Judge