



COMMONWEALTH OF PENNSYLVANIA

November 29, 2018

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission v. Verizon Pennsylvania LLC /  
Docket No. R-2017-2632523**

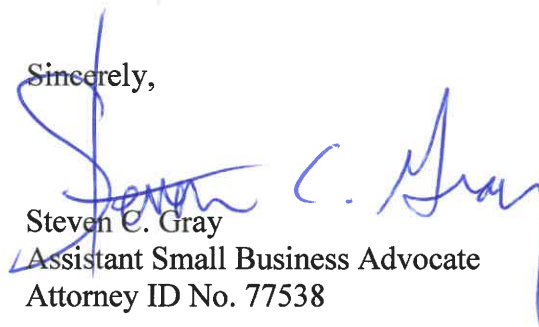
Dear Secretary Chiavetta:

Enclosed please find the Exceptions to the Initial Decision, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Steven C. Gray".

Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

*Enclosures*

cc: Joseph Gillan  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

**v.**

**VERIZON PENNSYLVANIA LLC**

**:  
:  
:  
:  
:  
:**

**DOCKET NO. R-2017-2632523**

---

**EXCEPTIONS TO THE INITIAL DECISION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

---

**Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538**

**For:**

**John R. Evans  
Small Business Advocate**

**Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101**

**Date: November 29, 2018**

## **I. Introduction**

On November 1, 2017, Verizon Pennsylvania LLC (“Verizon PA” or the “Company”) submitted its 2018 Price Change Opportunity (“PCO”) filing with the Pennsylvania Public Utility Commission (“Commission”).

On November 13, 2017, the Office of Small Business Advocate (“OSBA”) filed a Formal Complaint in response to Verizon PA’s PCO filing.

On November 27, 2017, Verizon PA submitted an Answer (“Verizon PA Answer”) to the OSBA’s Formal Complaint.

On December 21, 2017, the Commission entered an Order (“*December 21<sup>st</sup> Order*”) permitting Verizon PA’s rate changes to go into effect subject to refund pending the outcome of this adjudication.

On January 26, 2018, a prehearing conference was held before Administrative Law Judges (“ALJs”) Joel H. Cheskis and Andrew M. Calvelli.

On January 29, 2018, the ALJs issued their Scheduling Order.

On March 23, 2018, the OSBA served the Direct Testimony of Joseph Gillan.

On May 9, 2018, Verizon PA served the Rebuttal Testimony of Philip J. Wood, Jr. Also, on May 9<sup>th</sup>, the Office of Consumer Advocate (“OCA”) served the Rebuttal Testimony of Robert Loube, Ph.D.

On June 7, 2018, the OSBA served the Surrebuttal Testimony of Mr. Gillan. Also, on June 7<sup>th</sup>, Verizon PA served the Surrebuttal Testimony of Mr. Wood.

On July 9, 2018, based upon the request of Verizon PA, the OCA, and the OSBA (together, the “Parties”), the ALJs canceled the evidentiary hearing scheduled for July 20, 2018.

On July 17, 2018, the Company filed a *Joint Stipulation Regarding Admission of Testimony and Waiver of Hearing* (“Joint Stipulation”). The Joint Stipulation requested the admission into the record of: OSBA Statement No. 1; OSBA Statement No. 1-SR; Verizon PA Statement No. 1; Verizon PA Statement No. 1.1; and OCA Statement No. 1.

On August 20, 2018, the OSBA submitted its Main Brief.

On September 20, 2018, the OSBA submitted its Reply Brief.

On November 9, 2018, ALJ Cheskis and ALJ Calvelli issued their Initial Decision (“ID”).

The OSBA submits the following Exceptions in response to the ID.

## II. Exceptions

**Exception No. 1: The ALJs erred by claiming that OSBA witness Gillan testified that the residential rate cap must be abandoned to address unreasonable business rates. (ID, at 16)**

The ALJs incorrectly cited Mr. Gillan's testimony for the proposition that the residential rate cap must be abandoned to address unreasonable business rates. To be clear, the portion of Mr. Gillan's testimony cited by the ALJs concluded quite clearly that Verizon PA should be *denied* the unreasonable revenues associated with unreasonably high business rates, not that the revenue shortfall would be imposed on residential customers. Specifically, the cited testimony stated, as follows:

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.

ID, at 16.

Although the OSBA went on to discuss how a statutory conflict (if such arose) should be addressed, it did not advocate that residential rates should be increased.

**Exception No. 2: The ALJs erred by concluding that 66 Pa. C.S. § 3015(a)(3) is not limited by other sections of Chapter 30. (ID, at 18)**

The ALJs concluded, as follows:

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.

ID, at 18.

The OSBA respectfully submits that the ALJs are wrong. The residential rate cap of 3015(a)(3) is further interpreted and modified by three other sections of Chapter 30. First, in the Chapter 30 Declaration of Policy, the legislature enacted the following:

The General Assembly finds and declares that it is the policy of this Commonwealth to:

\* \* \*

(3) Ensure that customers pay only reasonable charges for protected services which shall be available on a nondiscriminatory basis.

\* \* \*

(5) Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for protected services are reasonable and do not impede the development of competition.

66 Pa. C.S. §§ 3011(3), 3011(5). Second, the legislature enacted Section 3019 (Additional powers and duties), which included the following:

**Unreasonable preferences.** — 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 noncompetitive services.

66 Pa. C.S. § 3019(e). Third, the legislature also included the following in Section 3019:

**Implementation.** — The terms of a local exchange telecommunications company's alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and shall specifically supersede all provisions of Chapter 13 (relating to rates and rate making) other than sections 1301 (relating to rates to be just and reasonable), 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of

rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds).

66 Pa. C.S. § 3019(h).

The plain language of Chapter 30 requires that the rates charged to Verizon PA's residential and commercial customers be just, reasonable, non-discriminatory, and impose no unreasonable preference. The legal analysis of Verizon PA's residential and commercial rates does not conclude merely by conducting the mathematical exercise set forth in Section 3015(a)(3).

**Exception No. 3: The ALJs erred by concluding that the OSBA is requesting that a "hard cap" be placed upon Verizon PA's commercial noncompetitive service rates. (ID, at 18-19)**

The ALJs concluded, as follows:

Section 3015 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.

ID, at 18-19.

To be clear, the OSBA is not asking for a hard cap on business rates. The OSBA is arguing that the requirements of Chapter 30 must be followed by Verizon PA. Both residential and commercial non-competitive service rates must be just, reasonable, non-discriminatory, and impose no unreasonable preference. Thus, the plain language of Chapter 30 forbids Verizon PA to use business rates as the dumping ground for annual rate increases that the Company is unable to obtain from its residential customers.

**Exception No. 4: The ALJs erred by citing to the PUC v. Verizon case. (ID, at 19)**

The ALJs cited to the Commission's Order in *Pa. PUC v. Verizon North Inc. and Verizon Pennsylvania Inc.*, Docket Nos. R-00051227 and R-00051228, etc. (Order entered March 22, 2007) ("*PUC v. Verizon*"), as follows:

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.

ID, at 18.

The OSBA argued that the *PUC v. Verizon* case has no bearing on this case. *See* OSBA Reply Brief, at 8-9. The ALJs ultimately agreed with the OSBA on this issue:

In its Reply Brief, OSBA ***correctly points out*** that the PUC v. Verizon Opinion and Order only addressed the specific case before the Commission. 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, at 19 (emphasis added) (citation omitted).

To reiterate, the OSBA is not asking for a hard cap in this proceeding. The OSBA is asking that the statutory mandates of Chapter 30 be followed.

**Exception No. 5: The ALJs erred by concluding that rate discrimination cannot be found by comparing residential and commercial rates. (ID, at 19-20)**

The ALJs concluded, as follows:

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.

ID, at 19.20.

As set forth above, Section 3015(a)(3) of the Public Utility Code is not the end of the analysis for residential rates. Chapter 30 mandates that residential and commercial rates be just, reasonable, non-discriminatory, and not impose an unreasonable preference. The OSBA's comparative analysis demonstrates that Verizon PA's rate increases are unjust, unreasonable, discriminatory, and impose an unreasonable preference.

The only way to measure rate discrimination is to compare the rates of the different customer classes involved in the dispute. As set forth above, Sections 1301, 1304, 3011(3), 3011(5), 3019(e), and 3019(h) of the Public Utility Code all address customer rates. Section 3019(e) specifically states that the Commission has the power to ensure "that local exchange telecommunications companies do not make or impose unreasonable preferences, discriminations or classifications for protected services and other noncompetitive services." The issue presented in this case is that business rates are unjust, unreasonable, discriminatory, and are the result of an unreasonable preference. In order to fully address that issue, the rate increases assigned to the residential and business customer classes must be examined to ascertain whether those proposed rate increases obey the mandates of Chapter 30. Such process, by definition, is an appropriate, rational, and legally relevant "apples to apples" comparison.

**Exception No. 6: The ALJs erred by rationalizing the rate increases through the comparison of customer bases. (ID, at 20)**

The ALJs provided the following analysis:

[W]e 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. 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.

ID, at 20.

The OSBA respectfully submits that this analysis proves absolutely nothing about whether Verizon PA's rate increases are just, reasonable, and non-discriminatory. A simple examination of the Verizon PA 2018 PCO filing will show that the Company has many times more residential non-competitive customers than it does business customers. As the overall rate increases are of roughly the same magnitude, simple arithmetic will demonstrate that each individual residential customer will receive a rate increase that is a fraction of what the individual business customer will receive.

The ALJs correctly noted that "Verizon has to prove by a preponderance of the evidence that the proposed rates are reasonable." The mere fact that there are more residential customers than business customers is a fact of life, not a fact of proof. The sole question concerns whether Verizon PA has proven that its business rate increases are just, reasonable, non-discriminatory, and do not impose an improper preference. Verizon PA has not met its burden to prove that its proposed business non-competitive service rate increases meet this standard.

**Exception No. 7: The ALJs erred by comparing Verizon PA's proposed rate increases to other local exchange telecommunication companies. (ID, at 20)**

The ALJs stated, as follows:

[T]he 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.

ID, at 20.

The comparison of Verizon PA's proposed residential and business rate increases to any other local exchange company ("LEC") is inappropriate and irrelevant. The Commission is well-aware that there are many LECs across the Commonwealth, differing widely in number of customers, size of service territory, and location of service territory. The rate increases proposed by Verizon North, a sister company to Verizon PA, are of no relevance to the rate increases proposed in this proceeding, anymore that the rate increases proposed by CenturyLink would be relevant.

Simply put, the OSBA respectfully submits that this is a line of analysis that the Commission should not entertain. Inviting the statutory advocates, all the Commonwealth LECs, and the Office of ALJ to begin to compare residential rates, business rates, and proposed rate increases among and between LECs will create a nightmare of litigation. Alternative regulation was supposed to simplify the process, not create new layers of complexity and contention.

**Exception No. 8: The ALJs erred by not finding that Verizon PA’s proposed non-competitive business rate increases were in violation of Chapter 30. (ID, at 20)**

The ALJs observed, as follows:

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.

ID, at 15, footnote 4.

The ALJ’s also documented the business dial tone rate increases in the following table:

	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, at 15. The ALJs then observed that “a 16.50% increase is high compared to [a residential] increase of 1.8%.” The OSBA agrees.

In addition, the OSBA expressed its concern that the Commission is going to be left with a “. . . I know it when I see it . . .” analysis when considering if rates are just, reasonable, and non-discriminatory.<sup>1</sup> The ALJs agreed:

[W]e agree with OSBA’s concerns that ‘you know unjust and unreasonable rates when you see one’ is not good regulatory policy.

ID, at 20. Nevertheless, the ALJ’s concluded “we do not believe that the differences in rates present in Verizon’s 2018 PCO filing is [sic] unreasonable.” ID, at 20.

---

<sup>1</sup> The famous quote by Supreme Court Justice Potter Stewart in *Jacobellis v. Ohio* (1964).

As a result, the OSBA is left without any guidance as to what the ALJs *would* believe are unreasonable rate differences. Using one metric, Verizon PA is proposing a business rate increase that is 1,175 percent higher than the corresponding residential rate increase. Using another metric, a business rate is going up by 16.50 percent, when the corresponding residential rate is going up by 1.8 percent.<sup>2</sup>

Indeed, wholly without *regard* to the residential rate increases, Verizon's only empirical evidence from its filing is that a 2.02% increase in inflation (ID, at 10) is somehow reason to increase its rates on small business customers *lacking* competitive choice by 3.7%-16.5%. There is no set of economic, cost, and/or market reasons that could translate such a modest inflationary environment to a need for massive rate increase on this protected class of customers.<sup>3</sup> Because Verizon PA has no such reasons, it offered no such justifications, and – despite the ALJs fully recognizing that Verizon PA must meet its burden of proof by a preponderance of evidence – it offered none.

The OSBA reiterates that Verizon PA failed to meet its burden of proof. The ALJs' logic provides no guidance for future proceedings. Verizon PA used this proceeding to refuse to provide discovery on costs, profitability, margins – indeed it refused to provide *any* form of economic analysis despite repeated requests by the OSBA. Such stonewalling will be rewarded by the ALJs' analysis which effectively grants Verizon PA unlimited authority to increase its business rates. Chapter 30 prohibits Verizon PA's unjust, unreasonable, discriminatory, and

---

<sup>2</sup> The ALJs observed that “There . . . is no history of prior increases to any rates in the record of this proceeding to make a determination as to whether the 2018 increase are unreasonable.” ID, at 21. Historical rate increases would be of no value in such a determination. First, Verizon PA has experienced significant drops in the number of non-competitive service customers since 2004, making rate-increase comparisons difficult (if not meaningless). Second, as the ALJs noted, Verizon PA recently reclassified a large number of services. ID, at 21. This further dropped the number of Verizon PA non-competitive service customers, making any comparison even more suspect.

<sup>3</sup> Verizon PA completed its 100% deployment of 1.5 megabits per second broadband across the Commonwealth on December 31, 2015.

preferential business non-competitive service rate increases both in this proceeding, and in future proceedings.

**Exception No. 9: The ALJs erred when they concluded that Section 3015 of the Public Utility Code prevails of Section 1301. (ID, at 21-22)**

The ALJs reasoned, as follows:

Section 1933 of the Rules of Statutory Construction, 1 Pa. C.S. § 1933 . . . 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 [sic – 1934] 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.

ID, at 21-22.

The OSBA respectfully observes that the ALJs are wrong in their conclusion. Section 3019(h) states:

The terms of a local exchange telecommunications company's alternative form of regulation and network modernization plans shall govern the regulation of the local exchange telecommunications company and, consistent with the provisions of this chapter, shall supersede any conflicting provisions of this title or other laws of this Commonwealth and *shall specifically supersede all provisions of Chapter 13* (relating to rates and rate making) *other than sections 1301 (relating to rates to be just and reasonable)*, 1302 (relating to tariffs; filing and inspection), 1303 (relating to adherence to tariffs), 1304 (relating to discrimination in rates), 1305 (relating to advance payment of rates; interest on deposits), 1309 (relating to rates fixed on complaint; investigation of costs of production) and 1312 (relating to refunds).

66 Pa. C.S. § 3019(h) (emphasis added). Furthermore, Section 3015(g) states:

**Rate change limitations.** — Nothing in this chapter shall be construed to limit the requirement of section 1301 (relating to rates to be just and reasonable) that rates shall be just and reasonable.

66 Pa. C.S. § 3015(g).

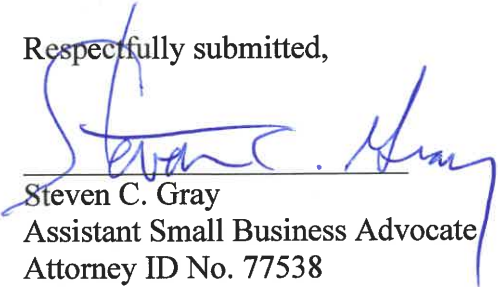
Thus, Section 1301 of the Public Utility Code prevails over all of Chapter 30, including Section 3015.

#### **IV. Conclusion**

Every November 1<sup>st</sup>, Verizon PA submits its annual PCO filing to the Commission. The filing is called a price change *opportunity* filing, not a price change *guarantee* filing. The fact that Verizon PA operates under “alternative regulation,” and the fact that the residential non-competitive service customers have a statutory rate cap, do not change the mandates of Chapter 30. The legislature enacted into law that business rates must be just, reasonable, non-discriminatory, and not be subject to an unreasonable preference.

Wherefore, the OSBA respectfully requests that the Commission adopt OSBA Exceptions Nos. 1 through 9, as set forth above, and revise the Initial Decision accordingly.

Respectfully submitted,



Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

For: John R. Evans  
Small Business Advocate

Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101

Dated: November 29, 2018

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION** :

v. :

**VERIZON PENNSYLVANIA LLC** :

**DOCKET NO. R-2017-2632523**

**C-2017-2633476**

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (unless other noted below) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Joel H. Cheskis  
The Honorable Andrew M. Calvelli  
Administrative Law Judges  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor West  
Commonwealth Keystone Building  
Harrisburg, PA 17120

[jcheskis@pa.gov](mailto:jcheskis@pa.gov)  
[acalvelli@pa.gov](mailto:acalvelli@pa.gov)

**(E-mail and Hand Delivery)**

Richard A. Kanaskie, Esquire  
Bureau of Investigations and Enforcement  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

[rkanaskie@pa.gov](mailto:rkanaskie@pa.gov)  
*(Counsel for BIE)*

**(E-mail and Hand Delivery)**

Barrett C. Sheridan, Esquire  
Office of Consumer Advocate  
555 Walnut Street - 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923

[BSheridan@paoca.org](mailto:BSheridan@paoca.org)  
*(Counsel for OCA)*

**(E-mail and Hand Delivery)**

Robert Loube, Vice President  
Rolka Loube  
10601 Cavalier Drive  
Silver Spring, MD 20901  
[bobloube@earthlink.net](mailto:bobloube@earthlink.net)  
*(Expert Witness for OCA)*

Suzan D. Paiva, Esquire  
Verizon  
900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
[Suzan.D.Paiva@verizon.com](mailto:Suzan.D.Paiva@verizon.com)  
*(Counsel for Verizon)*

Philip J. Wood, Jr.  
Regional State Government Relations  
417 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
[Philip.j.wood.jr@verizon.com](mailto:Philip.j.wood.jr@verizon.com)  
*(Expert Witness for Verizon)*

Kathleen A. Bonette  
Regional State Government Relations  
900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
*(Expert Witness for Verizon)*

Commission's Office of Special Assistants  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)  
**(Via Email Only)**

DATED: November 29, 2018

  
Steven C. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538