

Suzan DeBusk Paiva  
Associate General Counsel



900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107

Tel: (267) 768-6184  
[Suzan.D.Paiva@Verizon.com](mailto:Suzan.D.Paiva@Verizon.com)

December 10, 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 Verizon Pennsylvania LLC's Replies to the Exceptions filed by the Office of Small Business Advocate 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  
Enclosure

**Via E-Mail and First Class Mail**  
cc: Hon. Joel H. Cheskis  
Hon. Andrew M. 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 Exceptions, 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 10<sup>th</sup> day of December, 2018.

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

Steven C. Gray, Esquire  
Office of Small Business Advocate  
Commerce Building  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Joseph Gillan  
PO Box 540386  
Merritt Island, FL 32953

Barrett C. Sheridan, Esquire  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
[BSheridan@paoca.org](mailto:BSheridan@paoca.org)

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



---

Suzan D. Paiva  
Pennsylvania Bar ID No. 53853  
900 Race Street, 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
(267) 768-6184

Attorney for Verizon

**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	:	

**VERIZON'S REPLIES TO OSBA'S EXCEPTIONS**

Suzan D. Paiva (Atty No. 53853)  
Verizon  
900 Race St., 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
(267) 768-6184  
[Suzan.d.paiva@verizon.com](mailto:Suzan.d.paiva@verizon.com)

Attorney for Verizon Pennsylvania LLC

Date: December 10, 2018

**Table of Contents**

I. INTRODUCTION AND BACKGROUND ..... 1

II. REPLIES TO OSBA’S EXCEPTIONS..... 3

    Reply to OSBA Exception No. 1: The Commission Cannot “Abandon” the Statutory Residential Rate Cap in Section 3015(a)(3)..... 3

    Reply to OSBA Exception No. 2: The ID Properly Understood the Relationship Between Section 3015(a)(3) and Other Chapter 30 Provisions. .... 4

    Reply to OSBA Exception No. 3: Chapter 30 Contains No “Hard Cap” on Noncompetitive Business Rates..... 5

    Reply to OSBA Exception No. 4: The March 22, 2007 PCO Order Rejecting OSBA’s First Attempt to Create an Extra-Statutory Rate Cap is Relevant. .... 9

    Reply to OSBA Exceptions No. 5: There is No “Unreasonable Preference” in Favor of Residential Rates..... 9

    Reply to OSBA Exception No. 6: Verizon Met Its Burden of Proof..... 12

    Reply to OSBA Exception No. 7: The Rate Charged to Verizon’s Rural Customers Is Relevant. .... 17

    Reply to OSBA Exception No. 8: The ID Correctly Found that Verizon’s Rate Changes Complied with its Alternative Regulation Plan and Applicable Law..... 18

    Reply to OSBA Exception No. 9: The ID Correctly Interpreted the Relationship Between Chapter 30 and Chapter 13. .... 19

III. CONCLUSION..... 20

## **I. INTRODUCTION AND BACKGROUND**

At issue here are Verizon Pennsylvania LLC's ("Verizon PA") annual changes to its regulated rates for noncompetitive services under the inflation-based formula of its Chapter 30 alternative regulation plan. The Office of Small Business Advocate ("OSBA") contends that the rate increases for stand-alone business dial tone line service in the cities of Philadelphia and Pittsburgh and surrounding suburban areas are unjust, unreasonable and discriminatory. OSBA makes this argument even though these rates are all lower than or equal to the rate for the same business dial tone line service that has been in effect for almost three years in the rural parts of Verizon PA's territory (where Verizon PA has the most customers for this service), which is the same rate that the Commission recently approved for the entire territory of Verizon PA's sister company Verizon North LLC ("Verizon North") without objection from OSBA.

The Initial Decision ("ID") of Administrative Law Judges ("ALJs") Cheskis and Calvelli correctly concluded that Verizon PA's business dial tone line rates comply with its alternative regulation plan and applicable law and that OSBA's complaint should be dismissed. The Office of Consumer Advocate ("OCA") agreed, urging that the rates "should be approved as just, reasonable and non-discriminatory, based upon the particular facts of this proceeding." (OCA Main Br. at 14). Nor have any of Verizon PA's retail customers complained, and they have been paying these new rates for nearly a year now.<sup>1</sup> No one has complained except OSBA.

But OSBA does not present any facts to show an actual defect in Verizon PA's new urban and suburban business dial tone line rates. Instead, it raises a hypothetical challenge to the

---

<sup>1</sup> By order entered December 21, 2017, the Commission found that Verizon PA's 2018 PCO filing is "deemed in compliance with its Commission-approved Amended Chapter 30 Plan" and permitted the rate changes to go into effect on January 1, 2018, subject to refund pending adjudication of the OSBA's complaint.

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 PA’s annual increases to residential rates but did not adopt a similar cap for business rates. According to OSBA, the mere fact that business rate increases are higher than residential rate increases for dial tone service is by definition unreasonable and unlawful.

The ID correctly held that Verizon PA’s PCO rate changes should be approved and OSBA’s complaint dismissed. The table below summarizes the former and new rates for the affected services.

	<u>Old Rate</u> (monthly)	<u>New Rate</u> (monthly)	<u>Increase</u> (monthly)
<b><u>RESIDENTIAL</u></b>			
<u>Dial Tone Line</u>			
All Cells	\$9.00	\$9.20	\$0.20
<b><u>BUSINESS</u></b>			
<u>Dial Tone Line</u>			
Cell 1 (urban)	\$15.45	\$18.00	\$2.55
Cell 2 (urban)	\$17.55	\$20.00	\$2.45
Cell 3 (suburban)	\$21.45	\$22.25	\$0.80
Cell 4 (rural)	\$22.25	\$22.25	\$0.00
	<u>Old Rate</u>	<u>New Rate</u>	
<u>Late Payment Charge</u>	1.5%	Greater of 1.5% or \$5	

## II. REPLIES TO OSBA’S EXCEPTIONS

### **Reply to OSBA Exception No. 1: The Commission Cannot “Abandon” the Statutory Residential Rate Cap in Section 3015(a)(3).**

Chapter 30 provides that when a “nonrural” company like Verizon PA makes its annual price change calculations, the “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). This limitation is incorporated in Verizon PA’s alternative regulation plan. (ID at 9). This calculation results in a cap on the per-line increase to residential rates each year. This year it was 20 cents.

The 2018 PCO allowed a total noncompetitive services revenue increase of \$1,257,000, to be allocated at Verizon PA’s discretion among all eligible noncompetitive rates subject to any limitations in the plan or applicable law. Verizon PA allocated \$495,100 to residence dial tone line rates, which was the maximum allowed under 66 Pa. C.S. § 3015(a)(3). Pursuant to a previous settlement with OSBA and OCA, it allocated \$27,700 to increase the business late payment charge. It banked \$322,300 (credited against the 2003 PCO balance). The remaining \$411,900 was allocated to business dial tone line increases.<sup>2</sup>

In its first exception, OSBA faults the ID for assuming that OSBA was arguing that the Commission should abandon Section 3015(a)(3) and allow larger residential increases, resulting in smaller business rate increases. But that is exactly what OSBA argued in its Main Brief, where it stated that its “alternate analysis is that the restrictions on residential rate increases, as

---

<sup>2</sup> VZ St. 1.0 at 2. Verizon’s 2018 PCO filing is attached to its Statement 1.0 as Proprietary Exhibit 1.

set forth in Section 3015(a)(3), *must be abandoned* when the result is an unreasonable and discriminatory preference” between the residential and business rate increases. (OSBA Main Br. at 12) (emphasis added).

If OSBA is no longer making this argument, then there does not appear to be much of a point to OSBA’s first exception. The ID’s discussion on page 18 finding that the Commission cannot “abandon” Section 3015(a)(3) is correct. The ID concluded that “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,” because “the legislature has placed a clear statutory mandate in this portion of the Public Utility Code.” (ID at 18). If OSBA is no longer arguing that Section 3015(a)(3) should be “abandoned”, then the Commission need not address this argument, but in that case OSBA should not be heard to resurrect the argument on appeal.

**Reply to OSBA Exception No. 2: The ID Properly Understood the Relationship Between Section 3015(a)(3) and Other Chapter 30 Provisions.**

OSBA’s second exception disagrees with the ID’s holding that 66 Pa. C.S. § 3015(a)(3) is a “clear statutory mandate” limiting the per-line residential increase allowed in a PCO filing. According to OSBA, the ALJs erred by failing to recognize that this provision must be “further interpreted and modified” by other provisions in Chapter 30. Verizon PA is not sure what point OSBA is trying to make with this exception. It cannot be saying that these other parts of Chapter 30 would override Section 3015(a)(3) or allow it to be abandoned or rates to be increased above its limit, because OSBA just said in its first exception that it was not making that argument.

If OSBA is saying that, in addition to reviewing the PCO for compliance with Section 3015(a)(3), the Commission also has the authority to review the resulting rates to be sure they

are just, reasonable and nondiscriminatory, then Verizon PA agrees with that statement of the law, as discussed on pages 9 and 10 of its Main Brief. The Commonwealth Court has stated that in Chapter 30 “[t]he General Assembly expressly preserved the Commission’s authority to protect ratepayers of noncompetitive and protected services and retained that aspect of the Commission’s ratemaking authority that authorized it to ensure that any particular increase was just and reasonable under 66 Pa. C.S. § 1301, even if that increase was proposed as part of an annual price change filing.”<sup>3</sup> The ALJs also agreed that Sections 1301 and 1304 still applied to require rates to be just, reasonable and nondiscriminatory, above and beyond the limitations of Section 3015(a)(3). (ID at 9). In short, no one seems to dispute the applicable legal standard.

It is important to note, however, that while this Commission continues to have the authority to ensure that end user rates are just and reasonable, its decisions in that regard must be based on substantial evidence and must not undermine Chapter 30’s intent that the company, not the Commission, should design the annual rate increases. OSBA points to no evidence to indicate that Verizon PA’s business dial tone line rates proposed in this case are unreasonable, and the only record evidence shows that they are reasonable.

**Reply to OSBA Exception No. 3: Chapter 30 Contains No “Hard Cap” on Noncompetitive Business Rates.**

OSBA claims that it “is not asking for a hard cap on business rates,” and thus takes exception to the ALJs’ assumption that it was making that argument. The ID “reject[ed] OSBA’s argument to the extent that it advocates that the Commission should place a cap on the business customer rates” because the Chapter 30 statute and Commission precedent “preclude[] the imposition of a hard cap on business customers in PCO related filings and proceedings.”

---

<sup>3</sup> *Buffalo Valley Tel. Co. v. Pa. PUC*, 990 A.2d 67, 79, 84, 2009 Pa. Commw. LEXIS 1728 (Pa. Cmwlth. Ct. 2009).

(OSBA Exceptions at 5; ID at 18-19). It appears that OSBA now agrees with the ID that there is no particular cap on business rate increases and concedes that the Commission must review these rates on a case-by-case basis.

To be clear, however, OSBA did argue in the record before the ALJs that the Commission should create arbitrary business rate caps that do not exist in the statute, and thus the ID correctly acknowledged and rejected these arguments. For example, OSBA's witness Mr. Gillan proposed in his testimony that the Commission should "limit the increase in the smaller, more rural density cells by the average increase in urban markets,"<sup>4</sup> but Verizon PA pointed out that not only does Chapter 30 contain no such limitation, but also in the present case Verizon PA did not increase the business dial tone line rate in the rural density cell (Cell 4), and the largest increases were in the urban areas, so this proposal is irrelevant. (VZ Main Br. at 6). Mr. Gillan also proposed that "the commission could require that Verizon may not maintain a business-to-residential rate relationship of greater than 1.7:1,"<sup>5</sup> but again Verizon PA pointed out that neither Chapter 30 nor Verizon PA's alternative regulation plan requires rate increases for residential and business customers to have a certain relationship and there is no legal support for this proposal. By proposing to limit business rate increases to a level tied to residential rates, which are capped by statute, OSBA would thwart the intent of the Legislature and effectively create a business rate cap that does not exist in the statute. (VZ Main Br. at 6). Presumably OSBA is abandoning these arguments and conceding that the Commission must review Verizon PA's rate proposals on a case-by-case basis each year, under the facts, the alternative regulation plan and

---

<sup>4</sup> OSBA St. No. 1, Gillan Direct at 12.

<sup>5</sup> *Id.*

applicable law – as Verizon PA has argued all along. Under that standard, Verizon PA’s rates in this case must be approved and OSBA’s complaint dismissed, as the ID correctly concluded.

OSBA also contends that “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.” (OSBA Exceptions at 5). But the unrebutted record evidence shows that Verizon PA has not used business rates as a “dumping ground;” quite the opposite, Verizon PA has designed its PCO rate increases thoughtfully and made efforts, within the constraints allowed by Chapter 30 and its plan, to minimize the impact on business rates.

First, Verizon PA did not increase any business rates the previous year with its 2017 PCO filing. Instead it allocated the entire \$947,000 revenue increase that would have been permitted to take effect January 1, 2017 to its bank. The entire amount was then offset to reduce the banked value of the 2003 PCO that is used to cover Verizon PA’s contributions to the state universal service fund. Therefore, this nearly one million dollar 2017 PCO amount will never be used to increase retail rates. As a result, customers of noncompetitive business service have not experienced a rate increase in two years.<sup>6</sup>

Second, in designing its 2018 PCO rate increases Verizon PA made reasonable efforts to allocate portions of the revenue increases in ways other than increasing business dial tone line rates. Verizon PA allocated \$495,100 to residence dial tone line rates, which was the maximum allowed under Chapter 30. Pursuant to a settlement approved last year, Verizon PA allocated \$27,700 to the business late payment charge, which increased that charge to the maximum rate allowed under the settlement. Verizon PA also allocated \$322,300 to its bank, which, like last year, will be credited

---

<sup>6</sup> VZ St. 1.0 at 9; VZ Main Br. at 18.

against the 2003 PCO balance and will never be used to increase rates. As a result of these actions, only about one third of the revenue increase was allocated to business dial tone line rates.<sup>7</sup>

Third, Verizon PA did not increase the dial tone line rate in Density Cell 4, which has the highest rate for this service at \$22.25, and also covers the most rural portions of Verizon PA's territory. Density Cell 4 business customers, as a result, did not experience a rate increase for the third consecutive PCO. Verizon PA made only a modest increase of \$0.80 in suburban Density Cell 3, to bring it equal to the \$22.25 in Density Cell 4. Density Cells 3 and 4 cover suburban and rural areas and have the largest number of customers for noncompetitive business dial tone line service. While the per-line increases were larger in Density Cells 1 and 2, which cover the cities of Philadelphia and Pittsburgh, the rates for business dial tone line service in those areas are still more than \$2 to \$4 lower than the rate for the same service in Density Cells 3 and 4.<sup>8</sup> Verizon PA determined that it would be reasonable to try to achieve a common state-wide rate for this service, as it has done for residential service,<sup>9</sup> and the ID agreed that this was a reasonable goal. (ID at 20). Accordingly, there is no basis to argue that Verizon PA is unthinkingly "dumping" its revenue increase opportunities on business rates. OSBA's problem is with the structure and limitations of the Chapter 30 statute, particularly the residential rate cap, not with Verizon PA's efforts to design a reasonable rate increase.

---

<sup>7</sup> VZ St. 1.0 at 9-10; VZ Main Br. at 18.

<sup>8</sup> VZ Main Br. at 18-19.

<sup>9</sup> VZ St. 1.0 at 10.

**Reply to OSBA Exception No. 4: The March 22, 2007 PCO Order Rejecting OSBA’s First Attempt to Create an Extra-Statutory Rate Cap is Relevant.**

OSBA next objects to the ID’s reliance on a 2007 Commission order as “support” for the ID’s conclusion that there is no “hard cap” on business rate increases for Verizon PA’s PCO filing. In that 2007 case the Commission rejected OSBA’s argument attempting to create a business rate cap shortly after the enactment of the Act 183 revisions to Chapter 30,<sup>10</sup> and agreed with the presiding officer, who had concluded in his recommended decision that “the Legislature in Act 183 considered and rejected the idea of having any rate cap for business rate increases,” but rather “chose to allow companies to implement their PCOs by raising business rates without limitation.”<sup>11</sup> Accordingly, the Commission concluded that “there is no basis for the Commission to direct Verizon PA to limit” its business rate increases.<sup>12</sup> The same conclusion follows in this case and the ID correctly held that there is no cap on business rate increases in the Chapter 30 statute. This 2007 decision is certainly relevant and supports the rejection of a hard cap on business rates.

**Reply to OSBA Exceptions No. 5: There is No “Unreasonable Preference” in Favor of Residential Rates.**

OSBA’s primary substantive argument is that Verizon’s 2018 PCO filing makes an “unreasonable preference” favoring residential rates over business rates because the per-line increase for residential dial tone line service in this filing (the 20 cent maximum permitted by Section 3015(a)(3)) was smaller than the per-line business dial tone line increases for the three Density Cells where business rates were increased (Verizon PA did not increase business rates in

---

<sup>10</sup> *PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00051228, etc. (Opinion and Order entered March 22, 2007) at 36 (“3/22/07 Order”).

<sup>11</sup> *PUC v. Verizon Pennsylvania Inc.*, Docket No. R-00051228, etc., (Recommended Decision dated December 13, 2006) at 31.

<sup>12</sup> 3/22/07 Order at 29.

rural Density Cell 4, which has the largest number of customers for this service). 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.<sup>13</sup>

Merely observing that the business rate increases are larger than the residential increases is not enough to make a case of unreasonable discrimination in rates 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. The ID found that these customer classes are so different that it is not reasonable to compare them – that they are “apples to oranges” in the legal sense. (ID at 19-20). But even if these are comparable customer classes, it is not the existence of a rate difference 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.”<sup>14</sup> The Commonwealth Court has instructed that “not all differences in rates are discriminatory and,

---

<sup>13</sup> Section 1304 is one of the limited Chapter 13 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).

<sup>14</sup> *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).

therefore, unlawful. Only unreasonable differences are prohibited.”<sup>15</sup> “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*.”<sup>16</sup> 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.”<sup>17</sup>

OSBA specifically takes exception to the ID’s conclusion that OSBA’s attempted comparison of residential to business rates is “apples to oranges in the legal sense.” (ID at 19). The ID correctly concludes that there are several good reasons why the rates for business services have always been priced higher than the rates for residential service. The ID found that it is not reasonable to compare business versus residential rates because the “[t]he business dial tone line and residential dial tone line services are not similar in function, use of the network or cost.” (ID at 8, FOF 17). As the ID explained, “[t]here may exist many reasons why business rates may be higher than residential rates.” (ID at 21). As the ID correctly observed, the fact that business rates are generally higher than residential rates is not new. An examination of the historical tariffed rates shows that this relationship has existed since the days of rate-of-return regulation when the Commission set these rates.<sup>18</sup> This Commission specifically concluded in a rate case of Verizon PA’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

---

<sup>15</sup> *Philadelphia Electric Co. v. Pa. P.U.C.*, 470 A.2d 654, 657-659 (Pa. Cmwlth 1984).

<sup>16</sup> *Rosemary Mill v. Pa. P.U.C.*, 447 A.2d 1100, 1102 (Pa. Cmwlth 1982).

<sup>17</sup> *Building Owners and Managers Assoc. v. Pa. P.U.C.*, 470 A.2d 1092, 1095-1096 (Pa. Cmwlth 1984).

<sup>18</sup> VZ St. 1.0 at 19.

which exists between business and residential service, recurring and nonrecurring, does not constitute an ‘unreasonable preference or advantage’ for residential customers.”<sup>19</sup> The fact that the Commission has approved these rates over the years despite this disparity indicates that the Commission does not view a disparity between basic residential and business rates, in and of itself, to be unjust or unreasonable. The Legislature’s choice to add Section 3015(a)(3) to the Chapter 30 statute in 2004 shows that it also does not view this disparity as unreasonable.

OSBA has presented no facts to establish that the difference between residential and business dial tone line rates at issue here is unreasonable. Its sole argument seems to be that it is unreasonable per se to have a difference between residential and business rates, and the ID correctly rejected that argument.

**Reply to OSBA Exception No. 6: Verizon Met Its Burden of Proof.**

In a conclusory one-page exception with no substantive discussion, the OSBA asserts that “Verizon PA has not met its burden to prove that its proposed business non-competitive service rates” are “just, reasonable and non-discriminatory, and do not impose an improper preference.” (OSBA Exc. at 8). The ID found that “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,” which means “Verizon has to prove by a preponderance of the evidence that the proposed rates are reasonable.” (ID at 9-10). It correctly concluded that Verizon PA met this burden.

---

<sup>19</sup> *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).

To meet its burden of proof, Verizon PA must initially produce sufficient credible evidence to establish a *prima facie* case.<sup>20</sup> If it does so, the burden of going forward with evidence shifts to OSBA to produce credible evidence of at least co-equal weight.<sup>21</sup> If Verizon PA's evidence is more convincing, by even the smallest amount, than that presented by OSBA, then Verizon PA has satisfied its burden of proof.<sup>22</sup> Further, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence,<sup>23</sup> which has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>24</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>25</sup>

Verizon PA submitted evidence to show that the specific rates at issue here are reasonable, and the evidence was more than sufficient to meet its burden and support the ID's finding that the proposed rates comply with Verizon PA's Chapter 30 Plan and applicable law. OCA agreed, pointing out in its Main Brief that 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 challenges rates for business dial tone line service of \$18.00 (Density Cell 1), \$20.00 (Density Cell 2) and \$22.25 (Density Cell 3). But these rates are equal to or lower than the rate for the same service that has been approved by the Commission and effective for nearly

---

<sup>20</sup> *Morrissey v. Dep't of Highways*, 424 Pa. 87, 225 A.2d 895 (1967).

<sup>21</sup> *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

<sup>22</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>23</sup> *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993).

<sup>24</sup> *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd.*, 531 Pa. 287, 612 A.2d 434 (1992).

<sup>25</sup> *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

three years in the most rural parts of Verizon's territory, and that has stood unchallenged by OSBA in other contexts. These facts are certainly relevant to establish that these lower or equal rates for the same service are reasonable.

The rate of \$22.25 is the existing rate that has been in effect for almost three years in Verizon PA's most rural Density Cell 4 – and Verizon PA did not propose to increase Density Cell 4 rates in this filing. In the present filing Verizon PA made only a modest increase of \$0.80 in Density Cell 3, to bring it equal to the \$22.25 in Density Cell 4. Density Cells 3 and 4 cover suburban and rural areas and have the largest number of customers for noncompetitive business dial tone line service. While the per-line increases were larger in Density Cells 1 and 2, which cover the cities of Philadelphia and Pittsburgh, those rates started out as much lower than the rate for the same service in suburban and rural areas and even after the increases that OSBA challenges the resulting rates for business dial tone line service in those urban areas are still more than \$2 to \$4 lower than the rate for the same service in the suburban and rural Density Cells 3 and 4.

Undercutting its attempt to challenge Verizon PA's rate increases, OSBA took no issue with the 2018 PCO filing of Verizon PA's affiliate Verizon North LLC, which established a \$22.25 rate for the same business dial tone line service in all of its regulated exchanges.<sup>26</sup> The Commission has found that the highest rate Verizon is charging for business dial tone line service to be just and reasonable both through Verizon PA's existing Density Cell 4 rates and Verizon North's existing territory-wide rates. The business dial tone line rates at issue here are all lower than or equal to that approved rate for the same service.

---

<sup>26</sup> Verizon PA's affiliate, Verizon North LLC, established a Density Cell 3 rate of \$22.25 to match its existing Density Cell 4 rate for the same business dial tone line service and OSBA did not file a complaint against that filing. Those rates were approved by Commission Order entered December 21, 2017 at Docket No. R-2017-2632498. VZ St. 1.0 at 17.

As a percentage, the increases are also reasonable. The largest percentage changes for dial tone line service are in Density Cells 1 and 2 at 17% and 14% respectively, but Verizon PA did not modify these rates with the previous year's PCO so these customers did not experience a rate increase the prior year, and the resulting rates are still lower than or equal to the business dial tone line rates for Density Cells 3 and 4 of \$22.25. And because many of the wire centers in the urban areas have been classified as competitive and are no longer subject to the PCO, there are less than 5,600 lines subscribing to business dial tone line service in the remaining noncompetitive wire centers of Density Cells 1 and 2 taken together, and these customers have many service options.<sup>27</sup> The vast majority of the customers subscribing to stand alone business dial tone line service that is still classified as noncompetitive are in Density Cells 3 and 4, where there was minimal or no increase in the rate. There have been no customer complaints about these rate changes, which have already been in effect for almost a year. All of the above constitutes "substantial evidence" supporting the reasonability of Verizon PA's rates, which the ID explained "is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." (ID at 24).

OSBA did not come forward with "credible evidence of at least co-equal weight" because it did not present any facts to show that the specific rates proposed by Verizon PA in this case (\$18.00 in DC 1, \$20.00 in DC 2 and \$22.25 in DC 3) are not just and reasonable. When asked in discovery to state what OSBA's witness Mr. Gillan believes to be the "just, reasonable, and nondiscriminatory rate" for Verizon PA's basic business service, OSBA did not provide a substantive answer, stating instead that "[t]here is no demonstrated cost justification for Verizon to charge business customers more than its residential customers. The price differential is the

---

<sup>27</sup> VZ Main Br. at 12-13.

product of historic practice....”<sup>28</sup> The fact that business rates are generally higher than residential rates is not new, and the difference itself is not by definition unreasonable. The well-known fact that this difference exists is not evidence to support OSBA’s case. In response to discovery, OSBA suggested certain factors it believes are relevant to determining if basic business rates are just and reasonable, but none of them demonstrates any fault in the rates in this case. One factor OSBA suggested is comparison to the “rate for comparable business service in competitive exchanges.”<sup>29</sup> Verizon PA therefore provided this comparison. As a result of the competitive reclassification case, all services in many of Verizon PA’s urban and suburban exchanges are classified as “competitive,” meaning that Verizon PA has full pricing flexibility for basic business and residential service in those exchanges and their rates are not part of the PCO process. Nevertheless, to avoid customer confusion and unnecessary complexity, Verizon PA charges the same rate for basic stand-alone business service in the competitive exchanges as it charges in the non-competitive exchanges within the same Density Cell. For example, the current rate for basic business service dial tone line in Density Cell 3 is \$22.25 in all exchanges, whether they are classified competitive or not.<sup>30</sup> Therefore, applying OSBA’s suggested factor shows that the rate increases here are reasonable.

OSBA’s arguments appear to be based in part on a mistake, where OSBA initially reversed the urban and rural nature of Verizon PA’s Density Cells. OSBA initially assumed that Verizon PA made the largest increase in rural areas. In fact, Density Cells 1 and 2, which had the largest rate increases, are actually the most urban areas of Verizon PA’s territory, comprising

---

<sup>28</sup> VZ St. 1.0, Exhibit 2, OSBA Response to Int. I-1(a).

<sup>29</sup> VZ St. 1.0, Exhibit 2, OSBA Response to Int. I-1(b).

<sup>30</sup> VZ St. 1.0 at 18.

the cities of Philadelphia and Pittsburgh.<sup>31</sup> The rural exchanges are in Density Cell 4, where Verizon PA did not increase the business dial tone line rate at all.<sup>32</sup> Mr. Gillan suggests that businesses in “a large urban area” would be better able to “absorb (or pass on) these increases” and that rate increases in urban areas should be of less concern to the Commission.<sup>33</sup> But if this is what Mr. Gillan believes, then it is not clear why he is criticizing Verizon PA’s 2018 PCO filing, which made larger increases in the urban Density Cells 1 and 2 to try to bring them up to the level in the rural areas, rather than increasing rates of rural customers. Applying OSBA’s own suggested factor shows that the rate increases here are reasonable.

**Reply to OSBA Exception No. 7: The Rate Charged to Verizon’s Rural Customers Is Relevant.**

OSBA argues that it is “inappropriate and irrelevant” for the ID to rely on the fact that the rates OSBA challenges here (\$18.00 in DC 1, \$20.00 in DC 2 and \$22.25 in DC 3) are all lower than or equal to the \$22.25 rate that the Commission approved for Verizon North LLC’s Density Cell 3 in its 2018 PCO filing, which OSBA did not oppose. OSBA fails to mention that the same \$22.25 rate was also approved nearly three years ago for Density Cell 4 (the most rural areas with the largest number of basic business customers) for both Verizon PA and Verizon North with their 2016 PCO filings made at the end of 2015 and has been the effective rate in those

---

<sup>31</sup> The Density Cell classifications were originally established decades ago in order to provide a reasonable basis to set different retail rates for the same services in different locations. Density Cells 1 and 2 encompass only urban locations. Density Cell 1 includes all of the Philadelphia and Pittsburgh city exchanges that had a density greater than 9,000 working lines per square mile. Density Cell 2 includes all of Philadelphia and Pittsburgh city exchanges not included in Density Cell 1. Because they are in the more dense urban areas, it is likely that businesses in Density Cells 1 and 2 have access to the *most* variety of potential customers as well as abundant competitive alternatives for their telephone service, which is the exact opposite of Mr. Gillan’s conclusion. VZ St. 1.0 at 10-11.

<sup>32</sup> Density Cell 3 includes areas traditionally classified as suburban, surrounding Philadelphia and Pittsburgh, as well as other wire centers with a density that was greater than 500 working pairs per square mile. Density Cell 4 is basically rural, including all other exchanges that were not included in Density Cells 1, 2 and 3. VZ St. 1.0 at 11

<sup>33</sup> OSBA St. No. 1, Gillan Direct at 11.

areas since that time. The ID recognized Verizon PA's goal of raising the lower rates in the urban and suburban density cells to achieve a uniform state-wide rate for business dial tone service and found that this was reasonable. (ID at 20). OSBA does not offer any good reason why the Commission should not look to the rates for the same service charged by Verizon PA's sister company in similarly situated service territory as a factor for assessing reasonableness. OSBA's unsupported claim that looking at Verizon North's approved rates would "create a nightmare of litigation" is nonsensical.

**Reply to OSBA Exception No. 8: The ID Correctly Found that Verizon's Rate Changes Complied with its Alternative Regulation Plan and Applicable Law.**

OSBA contends that the Commission must look to the magnitude of the difference between the residential rate increases of \$0.20 per line (the maximum allowed under 66 Pa. C.S. § 3015(a)(3)) versus \$2.55, \$2.45 and \$0.80 for the business rates. While it does not offer an actual number, OSBA argues that the magnitude of the business rate increases must bear some set relationship to the magnitude of the residential increases that, if exceeded, would make the business increases by definition unreasonable. It then faults the ALJs for not providing "guidance" on exactly what ratio of business increases to residential increases would be reasonable. But this is exactly the same thing as asking for a "hard cap" that OSBA vehemently claimed in Exception 3 it was not requesting or arguing. Neither Chapter 30 nor Verizon PA's alternative regulation plan requires rate increases for residential and business customers to have a certain relationship to each other. There is no legal support for this proposal, and the ID correctly rejected it. By proposing to limit business rate increases to a level tied to residential rate increases, which are capped by statute, OSBA would thwart the intent of the Legislature and effectively create a business rate cap that does not exist in the statute.

The ID correctly found that the more relevant percentage to review would be the percentage increase over the previously effective rate for the same service in the same density cell, including the time passed since the last rate increase, where “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%,” particularly since Verizon PA “did not raise business rates in density cells 1 or 2 in its prior year filing thereby making the current increases more reasonable.” (ID at 20-21). The ID went on to conclude that “[t]here 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.” (ID at 20-21). Each year the Commission must review Verizon PA’s rate proposals on a case-by-case basis under the facts, the alternative regulation plan and applicable law. Under that standard, the ID correctly found that Verizon PA’s rates in this case must be approved and OSBA’s complaint dismissed.

**Reply to OSBA Exception No. 9: The ID Correctly Interpreted the Relationship Between Chapter 30 and Chapter 13.**

OSBA objects to the IDs conclusion that, under the rules of statutory construction, the more recent and specialized statutory provision at 66 Pa. C.S. § 3015 prevails over 66 Pa. C.S. § 1301. This seems to be a hypothetical argument because OSBA does not specify what would be different in the ID’s conclusions if it found that Section 1301 prevailed instead. There was no disagreement by Verizon PA or the ALJs that Section 1301 continues to apply to non-competitive rates and requires them to be just and reasonable, and the ID specifically found that the rates at issue here were just and reasonable and complied with Section 1301. And since OSBA stated in Exception 2 that it is not asking the Commission to invalidate or ignore the limitations of Section 3015, this exception seems to be pointless.

### III. CONCLUSION

For the foregoing reasons and based on Verizon PA's briefs and testimony, the Commission should deny OSBA's exceptions and adopt the ID as its final decision in this matter.

Respectfully submitted,



---

Suzan D. Paiva (Atty No. 53853)  
Verizon  
900 Race St., 6<sup>th</sup> Floor  
Philadelphia, PA 19107  
(267) 768-6184  
[Suzan.d.paiva@verizon.com](mailto:Suzan.d.paiva@verizon.com)

Attorney for Verizon  
Pennsylvania LLC

Dated: December 10, 2018