

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 13, 2018

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

Re: Verizon Pennsylvania LLC's 2019 PCO Filing  
Docket No. R-2018-3005792

Office of Consumer Advocate v. Verizon  
Pennsylvania LLC  
Docket No. C-2018-3005972

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to Verizon Pennsylvania's Preliminary Objections in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barrett C. Sheridan".

Barrett C. Sheridan  
Assistant Consumer Advocate  
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Enclosures:

cc: Office of Administrative Law Judge  
Certificate of Service  
\*263803

CERTIFICATE OF SERVICE

Re: Verizon Pennsylvania LLC's 2019 : Docket No. R-2018-3005792  
PCO Filing :  
 :  
Office of Consumer Advocate v. : Docket No. C-2018-3005972  
Verizon Pennsylvania LLC :

I hereby certify that I have this day served a true copy of the foregoing, the Office of Consumer Advocate's Answer to Verizon Pennsylvania's Preliminary Objections, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13<sup>th</sup> day of December 2018.

SERVICE BY E-MAIL and INTEROFFICE MAIL

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\*262825

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC 2019 Price Change Opportunity Filing	:	Docket No. R-2018-3005792
Office of Consumer Advocate v. Verizon Pennsylvania LLC	:	Docket No. C-2018-3005972

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**ANSWER OF THE  
OFFICE OF CONSUMER ADVOCATE  
IN OPPOSITION TO VERIZON PENNSYLVANIA LLC'S  
PRELIMINARY OBJECTIONS**

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Pursuant to Sections 5.61, 5.101, and 5.102 of the Pennsylvania Public Utility Commission's (Commission) regulations, 52 Pa. Code §§ 5.61, 5.101 and 5.102, the Office of Consumer Advocate (OCA) answers and opposes the Preliminary Objections of Verizon Pennsylvania LLC (Verizon PA) in the matter of Verizon PA's 2019 Price Change Opportunity (PCO) filing.

The Commission should deny Verizon PA's preliminary objection which alleges that portions of the OCA Formal Complaint are legally insufficient and deny Verizon PA's alternative request for judgment on the pleadings pursuant to Section 5.102(d)(1). 52 Pa. Code §§ 5.101(a)(4), 5.102(d)(1). Through its Preliminary Objections, Verizon PA seeks to preclude the OCA from developing a record regarding the impact of the 2017 federal Tax Cuts and Jobs Act (TCJA) on Verizon PA's intrastate operations and whether Verizon PA's existing and

proposed rates for non-competitive residential and business local services are just, reasonable, consistent with Chapter 30 law and policy, and in the public interest.

The OCA Formal Complaint challenges Verizon PA's determination of its 2019 PCO total allowed revenue increase, challenges Verizon PA's proposal to increase non-competitive service rates and revenues despite TCJA tax savings, and challenges Verizon PA's accounting for the 2003 negative PCO both as to interest and the value of the gap amount between Verizon PA's annual payment to the Pennsylvania Universal Service Fund (Pa USF) and annual PCO filing. The OCA Formal Complaint's express goal is ensure that Verizon PA's 2019 PCO filing complies with Chapter 30 law and policy and Verizon PA's non-competitive service rates are just, reasonable and in the public interest, consistent with Chapters 13 and 30 of the Public Utility Code.

Chapter 30 preserves the Commission's authority to protect ratepayers of noncompetitive and protected services and the Commission's ratemaking authority to ensure that any particular rate charged by an ILEC or any rate change proposed as part of a PSM annual filing is just and reasonable. Buffalo Valley Tel. Co. v. Pa. P.U.C., 990 A.2d 67, \*79-81 (Pa. Commw. 2009) (Buffalo Valley); 66 Pa. C.S. § 1301. The Commission's review of Verizon PA's 2019 PCO filing and proposed rate increases is not limited to consideration of Verizon PA's compliance with the terms of Verizon PA's Chapter 30 Plan. Buffalo Valley at \*79-80.

The Commission is authorized to consider the interests of ratepayers and the Commonwealth's declared policy goals. It is the Commonwealth's policy to "ensure that customers pay only reasonable charges for protected services which shall be available on a non-discriminatory basis." 66 Pa. C.S. § 3011(3). Further, the Commonwealth's support for broadband deployment is tempered by the goal of maintaining "universal telecommunications

service at affordable rates ...” and “without jeopardizing the provision of universal service.” 66 Pa. C.S. § 3011(2), (12). It is also the Commonwealth’s policy to “[e]nsure that rates for protected services do not subsidize the competitive ventures of telecommunications carriers” 66 Pa. C.S. § 3011(5). Diversity of competitive services is encouraged, but not to the point of “jeopardizing the provision of universal service at affordable rates.” 66 Pa. C.S. § 3011(6).

The Commission should deny Verizon PA’s Preliminary Objections and allow the OCA Formal Complaint in its entirety to move forward to discovery and hearing. The OCA Formal Complaint is legally sufficient and the pleadings support denial of Verizon’s motion for judgment on the pleadings in part.

#### **I. PROCEDURAL HISTORY**

On November 1, 2018, Verizon PA filed with the Commission a 2019 Price Change Opportunity (PCO) pursuant to the Price Stability Mechanisms (PSM) set forth in the Alternative Plan of Regulation of Verizon Pennsylvania LL as of December 2011 (Chapter 30 Plan). Per Verizon PA’s Chapter 30 Plan, Verizon PA’s calculated allowed annual revenue increase is \$1,303,000. Verizon PA proposes to increase all residential basic local service rates by \$0.20 per month and increase business dial tone rates between \$0.50 and \$2.50 per month.

After preliminary review of the materials filed by Verizon PA in support of its 2019 PCO filing and proposed tariff changes, the OCA filed a Formal Complaint and Public Statement on November 8, 2018. The OCA Formal Complaint raises several challenges to the content of Verizon PA’s 2019 PCO filing and proposed tariffs and rate increases.

The Office of Small Business Advocate filed a Formal Complaint and Public Statement on November 14, 2018.

Verizon PA filed an Answer to the OCA Formal Complaint on December 3, 2018.

Verizon PA separately filed Preliminary Objections to the OCA Formal Complaint on December 3, 2018, with a Notice to Plead pursuant to Section 5.101(f), 52 Pa. Code § 5.101(f).<sup>1</sup>

Verizon PA filed an Answer to the OSBA Formal Complaint on December 4, 2018.

## II. LEGAL STANDARDS

### A. Preliminary Objections

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§ 5.101 (a)(1)-(7). The grounds for preliminary objections are limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

In deciding whether to grant or deny a preliminary objection, the truth of all facts averred in the complaint must be assumed, and it must be determined whether, based on well-pleaded

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<sup>1</sup> Although Verizon PA's Preliminary Objections requests grant of judgment on the pleadings as alternative relief, Verizon PA did not provide a Notice to Plead within 20 days as required by Section 5.102(a). 52 Pa.C.S. § 5.102(a) (A motion for judgment on the pleadings "must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.")

factual averments of the complainant, recovery or relief is possible. See Feingold v. Bell of Pa., 383 A.2d 791 (Pa. 1977); See also Equitable Small Transp. Interveners v. Equitable Gas Co., 1994 Pa PUC LEXIS 69, \*3. Further, any inferences fairly deducible from the facts must be accepted for purposes of the disposition of the preliminary objections. See Commonwealth v. Bell Telephone Co., 551 A.2d 602 (Pa. Commw. Ct. 1988). The Commission shall deny a preliminary objection, in favor of the non-moving party, if there are any doubts that must be resolved. Boyd v. Ward, 802 A.2d 705, 707 (Pa. Commw. Ct. 2002); Weber v. PPL Electric Utilities Corp., Docket No. C-2008-2052894, Order at 4 (March 23, 2009). Also, preliminary objections must be denied, where factual or legal issues remain to be examined. See P. J. S. v. PA State Ethics Comm'n, 669 A.2d 1105 (Pa. Commw. Ct. 1996).

Preliminary objections alleging “legal insufficiency of pleading” serve judicial economy by avoiding a hearing where no factual dispute exists. Drake v. Pennsylvania Electric Co., Docket No. C-2014-2413771, Order at 5 (May 7, 2014). The Commission will find a complaint legally sufficient if it provides the following:

...an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.

Drake, Order at 6; 52 Pa. Code § 5.22(a)(5). In the event the Commission grants a preliminary objection, “the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.” 52 Pa. Code § 5.101(h).

#### B. Judgment on the Pleadings

The Commission’s Rules of Administrative Practice and Procedure permit the filing of a motion for judgment on the pleadings, “after the pleadings are closed, but within a time so that

the hearing is not delayed....” 52 Pa. Code §§ 5.102(a). A Notice to Plead and allowance of 20 days for the filing of an answer or responsive pleading is required.<sup>2</sup> Id.

Section 5.102(d)(2) allow the presiding officer to grant or deny a motion for judgment on the pleadings in part, “if the applicable pleadings ... show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.” 52 Pa. Code §§ 5.102(d)(1), (2). When the Commission reviews a Section 5.102(a) preliminary motion:

the moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. We must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979). Judgment will be granted only where the right to relief is clear and free from doubt. Thus, a preliminary motion should prevail if the record shows that there is no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law.

MacLuckie v. Palmco Energy PA, LLC, Docket No. C-2014-2402558, Opinion and Order at 6-7 (Dec. 4, 2014)(MacLuckie).<sup>3</sup>

Section 5.102(d)(3) instructs that any grant by the presiding officer of a motion for judgment on the pleadings, in whole or in part, be “in the form of an initial decision or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions).” 52 Pa. Code §§ 5.102(d)(3). “Denial of a motion will be in the form of a written order.” Id.

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<sup>2</sup> See, footnote 1, supra.

<sup>3</sup> MacLuckie decision available at <http://www.puc.pa.gov/pcdocs/1309007.docx>

### **III. ANSWER**

1. Admitted.

2. Admitted.

3. No response is required as the OCA Formal Complaint is of record and speaks for itself. The OCA Formal Complaint clearly states that examination of the impact of the federal Tax Cuts and Jobs Act: Tax Reform Bill (TCJA) on Verizon PA is necessary to determine whether Verizon PA's existing and proposed rates for non-competitive services rates are just and reasonable and do not provide revenues or expenses – including expense savings – which subsidize the Company's competitive services.

4. The excerpt of Verizon PA's Chapter 30 Plan PSM is accurately quoted. Verizon PA's Chapter 30 Plan PSM was first approved in 1994 and has been subject to clarification and amendment thereafter.

5. Admitted.

6.-9. These paragraphs state conclusions of law to which no response is required and are deemed denied.

10. Verizon's characterization of the OCA Formal Complaint is denied. The OCA Formal Complaint is broader in scope and focused on ensuring that the Company's calculation of its allowed annual revenue increase, changes to the Company's bank of PCO decreases, and proposal regarding rates for non-competitive services is consistent with the Company's Chapter 30 Plan PSM and in compliance with the Public Utility Code, Commission orders, regulation, and policy. OCA Formal Complaint, ¶ 4.R. Verizon PA's Answer to the OCA Formal Complaint alleges that Verizon's PSM language regarding exogenous events is binding and conclusive, yet Verizon PA may calculate interest on banked balances using an interest rate other

than as specified in Verizon PA's PSM language. Compare, Verizon Answer, ¶¶ I., J., K., and N. The Commission should not rule upon Verizon PA's 2019 PCO filing and proposed increases to rates for non-competitive services in piecemeal fashion.

11. Admitted in part, denied in part. The OCA Formal Complaint concerns the entirety of Verizon PA's Chapter 30 Plan PSM, including but not limited to the provision allowing for special revenue adjustments based upon exogenous events.

12. Denied as stated. This paragraph states conclusions of law to which no response is required. Verizon PA's existing and proposed rates for non-competitive services must be just and reasonable pursuant to Section 1301 of the Public Utility Code. 66 Pa.C.S. § 1301. Although Chapter 30 supersedes Section 1307 (sliding rates), reports of "State tax adjustment computations for years in which a tax change has occurred, if applicable" are filing requirements pursuant to Section 3015(e)(8). See, 66 Pa.C.S. § 1307, 3015(e)(8), 3019(h). Contrary to Verizon PA's suggested conclusions of law, Chapter 30 regulation of rates for non-competitive services does not categorically preclude consideration of changes in tax rates and corresponding tax expense, which are questions of fact.

13. This paragraph states conclusions of law to which no response is required.

14. Admitted in part, denied in part. Under the Verizon PA PSM, the question of what is the maximum amount of annual revenue increase allowed is a question of fact. The OCA Formal Complaint concerns the entirety of Verizon PA's Chapter 30 Plan PSM and whether Verizon PA's existing rates and proposed rates for non-competitive services are just and reasonable and that non-competitive service revenues earned or expenses do not subsidize competitive services.

15. Admitted in part, denied in part. See OCA Answer III.4 above, acknowledging the text of the Verizon PA PSM. Verizon's characterization of the Verizon PA PSM language and proposed conclusions of law are denied.

16. Admitted in part. See OCA Answer III.4 above, acknowledging the text of the Verizon PA PSM.

17. Admitted in part. The text of the Commission's 1994 Bell Order<sup>4</sup> speaks for itself. Verizon's characterizations of the 1994 Bell Order are conclusions of law and are denied.

18. Admitted in part. The text of the Commission's 1995 Bell Order<sup>5</sup> speaks for itself. Verizon's characterizations of the 1995 Bell Order are conclusions of law and are denied.

19. Denied as stated. The text of the Commission's 1995 Bell Order speaks for itself. Verizon's characterizations of the 1995 Bell Order are conclusions of law and are denied. For example, the Commission took administrative notice of a letter submitted by Bell to the Commission stating "Bell Atlantic – Pennsylvania does not believe that it is required or permitted to file a revised STAS" to reflect decreases in the Pennsylvania net income tax. Id. at 115-16. Verizon's conclusion that the Commission ruled in the 1995 Bell Order that the Chapter 30 Plan PSM language "did not require or permit Bell to reflect a decrease in state corporate income taxes" is not supported.

20. Denied as stated. Verizon PA states conclusions of law and are denied.

21. Denied. Verizon PA states conclusions of law which are denied. Verizon PA alleges facts which are not grounds for grant of a preliminary objection. The purpose of the Commission's review of Verizon PA's 2019 PCO filing and proposed rate increases to non-

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<sup>4</sup> Re Bell Atlantic-Pennsylvania, Inc., 82 Pa. PUC 194 (June 28, 1994) (1994 Bell Order)(subsequent history omitted).

<sup>5</sup> Re Bell Atlantic-Pennsylvania, Inc., 84 Pa. PUC 108, 114-16, 133, fn. 6, 7 (Jan. 23, 1995) (1995 Bell Order) (subsequent history omitted).

competitive services is to determine whether Verizon's filing is consistent with Verizon PA's Chapter 30 Plan, the statutory and policy provisions of Chapters 13 and 30 of the Public Utility Code, and the public interest. Chapter 30 does encourage development of competition and competitive alternatives, but not to the extent of jeopardizing universal service at affordable rates. 66 Pa.C.S. §§ 3011 (6), (8).

Verizon's request that the Commission dismiss, without a hearing, portions of the OCA Formal Complaint sections, in order to allow "the competitive market to work," is inconsistent with Verizon PA's 2019 PCO filing. Verizon PA again asks the Commission to approve use of a portion of the 2003 negative PCO to cover Verizon PA's annual payment to the Pa USF, an opportunity unique to Verizon PA.<sup>6</sup> Verizon PA's 2019 PCO filing also asks the Commission to approve an adjustment of the 2003 negative PCO for the benefit of Verizon PA's affiliate, Verizon North LLC. The interplay of Verizon PA's 2019 PCO filing, banking and accounting for the 2003 negative PCO balance, proposed increases for non-competitive residential and business services, and inter-affiliate interests are all woven into Verizon PA's 2019 PCO filing and rate request. The language of Verizon PA's PSM regarding exogenous revenue adjustments does not diminish the Commission's Section 1301 obligation and Section 3019(b)(3) authority to take steps for the protection of consumers. 66 Pa. C.S. §§ 1301, 3019(b)(3).

Verizon PA's request that the Commission dismiss, without a hearing, portions of the OCA Formal Complaint is also at odds with the Commission's stated interest in the October 25, 2018 Order in the Tax Cuts and Jobs Act of 2017 proceeding at Docket No. M-2018-2641242 to evaluate based upon a litigated record "whether the TCJA is a qualifying exogenous event or

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<sup>6</sup> See, 52 Pa. Code § 63.170. The Pa USF regulations prohibit telecommunications public utilities from implementing a surcharge or other end user charge to recover the Pa USF contribution costs.

other event that may require further Commission action to address potentially unjust and unreasonable rates in light of the impacts of the TCJA.”<sup>7</sup>

### III. CONCLUSION

Wherefore, the Office of Consumer Advocate respectfully requests that the Presiding Officer and Public Utility Commission deny Verizon Pennsylvania LLC’s Preliminary Objections in its entirety.

Respectfully Submitted,



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<sup>7</sup> Tax Cuts and Jobs Act of 2017, Petition to Rescind Secretarial Letter and Discontinue Temporary Stay, Docket No. M-2018-2641242, Order at 6-7, 8 (Oct. 25, 2018). Available at <http://www.puc.pa.gov/pcdocs/1591393.doc>