

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	R-2018-3005792
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Verizon Pennsylvania LLC	:	
	:	
Office of Consumer Advocate	:	
	:	
v.	:	C-2018-3005972
	:	
Verizon Pennsylvania LLC	:	
	:	
Office of Small Business Advocate	:	
	:	
v.	:	C-2018-3006035
	:	
Verizon Pennsylvania LLC	:	

**ORDER DISMISSING PRELIMINARY OBJECTIONS AND MOTION FOR  
JUDGMENT ON THE PLEADINGS OF VERIZON PENNSYLVANIA LLC**

This Order dismisses the Preliminary Objections and Motion for Judgment on the Pleadings filed in this matter by Verizon Pennsylvania LLC (Verizon) as moot, those issues having been decided by the Commission in its Order entered at this docket on December 20, 2018.

**HISTORY**

On November 1, 2018, Verizon made its annual PCO filing using the change in 2017 and 2018 first quarter GDP-PI of 2.08%. After deducting the inflation offset of 0.5%, this equates to a preliminary 2019 PCO of \$1,219,000 based on noncompetitive revenues of \$77,150,000.

Verizon stated that, consistent with its 2016, 2017 and 2018 PCO filings, the Residential Exchange, Business Exchange, and Billing Services revenues included in its 2019 PCO base have been adjusted to reflect this Commission's Order entered March 4, 2015, *In re Joint Petition of Verizon Pennsylvania LLC and Verizon North LLC for Competitive Classification of All Retail Services in Certain Geographic Areas and for a Waiver of Regulations for Competitive Services* at Docket Nos. P-2014-2446303 and P-2014-2446304 (*Reclassification Order*). The *Reclassification Order*, inter alia, granted competitive classification of basic local exchange service in 153 of the 194 wire centers included in the Petition. Verizon avers that it was able to isolate the revenues associated with the wire centers affected by the *Reclassification Order* and that the Exchange and Billing Services revenues included in the PCO base calculation reflect only those from noncompetitive wire centers.<sup>1</sup>

Part 1.A.9 of the Company's Amended Chapter 30 Plan states as follows:

If historical line counts (defined as the actual line counts from a point in time before the rate changes went into effect) are used to determine the magnitude of the rate changes that implement a Price Change Opportunity, then Verizon [PA] will include in its next [PCO] filing . . . an adjustment to noncompetitive revenue representing the difference between the amount of revenue projected to be collected using historical line counts and the amount of revenue projected to be collected using actual lines . . . on the mid-point of the first year of [PCO] implementation. Any changes to rates resulting from this true-up will be reflected in the next [PCO] filing.

For its 2019 PCO filing, the Company's true-up adjustment shows a revenue shortfall from its 2018 PCO of \$84,000. When added to the preliminary PCO, this true-up adjustment increases the final 2019 PCO to \$1,303,000.

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<sup>1</sup> Verizon indicated that this revenue separation was effectuated through the use of the NPA-NXX numbering codes for the competitively-classified wire centers, the development of appropriate data base queries including "an indicator designating each wire center as competitive or noncompetitive," and the performance of various data tests. Docket No. R-2015-2510231, Verizon PA 2016 PCO Filing, Executive Summary, October 22, 2015, at 1.

In its 2019 PCO filing, Verizon proposes to implement \$944,700 in actual rate increases. Consistent with the Commission-approved Protective Order entered December 15, 2011, at Docket Nos. P-2011-2275803, P-2011-2270788, P-2011-2275730 and P-2011-2270786, and pursuant to 52 Pa. Code § 5.365, the Company has marked specific information in its filings as proprietary.

Verizon proposes to implement its 2019 PCO by increasing rates for its Residential Dial Tone Line and Business Dial Tone Line. The proposed tariff revisions to Tariff Telephone Pa. P.U.C. Nos. 180A, 182, 182A, 185B and 185C were filed to become effective January 1, 2019. Verizon notified its customers of the proposed rate changes via bill message in November 2018. The table below shows a summary of the current and proposed rates.

	<u>Old Rate</u> (monthly)	<u>New Rate</u> (monthly)	<u>Increase</u> (monthly)
<b><u>RESIDENTIAL</u></b>			
<b><u>Dial Tone Line</u></b>			
All Cells	\$9.20	\$9.40	\$0.20
<b><u>BUSINESS</u></b>			
<b><u>Dial Tone Line</u></b>			
Cell 1	\$18.00	\$20.50	\$2.50
Cell 2	\$20.00	\$20.50	\$0.50
Cells 3 & 4	\$22.25	\$22.75	\$0.50

Per the Commission's Order in Docket Nos. P-00930715 and P-0001854 entered October 11, 2005,<sup>2</sup> Verizon requests permission to continue in 2019 to use the ongoing negative value of its 2003 PCO to support its payments to the PA Universal Service Fund (PaUSF). Verizon proposes to use the remaining \$358,300 of its 2019 PCO to net against the gap between the remaining ongoing negative value of its 2003 PCO and its calendar year 2018 PaUSF payments.

<sup>2</sup> 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).

Verizon also proposes to use Verizon North LLC's (Verizon North) cumulative banked PCO amount of \$321,900 to further reduce the remaining value of its negative 2003 PCO.

On November 8, 2018, the Office of Consumer Advocate (OCA) filed a Formal Complaint at Docket No. C-2018-3005972. The OCA contends, *inter alia*, that the federal Tax Cuts and Jobs Act of 2017 (TCJA)<sup>3</sup> may qualify as an exogenous event under the Company's Chapter 30 Plan requiring an adjustment to the Company's Price Stability Mechanism formula. The OCA alleges that the omission of an adjustment may result in an overstated maximum allowed noncompetitive revenue increase amount, the cross-subsidization of competitive services and the Company's rates for noncompetitive services being unjust and unreasonable.<sup>4</sup>

In addition, the OCA contends that Verizon's proposal to utilize Verizon North's banked PCO amount to reduce its 2003 negative PCO is contrary to Verizon's Chapter 30 Plan and may constitute unreasonable discrimination in rates. The OCA also alleges that Verizon's interest calculations are flawed.<sup>5</sup>

On November 14, 2018, the Office of Small Business Advocate (OSBA) filed a Formal Complaint at Docket No. C-2018-3006035. The OSBA contends that the materials Verizon provided in support of its 2019 PCO are insufficient to justify the rate adjustments and that Verizon's proposed rates, rules and conditions of service may be unjust, unreasonable, unduly discriminatory and otherwise contrary to law, particularly as they pertain to Verizon's small business customers.<sup>6</sup>

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<sup>3</sup> Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

<sup>4</sup> Docket Nos. C-2018-3005972 and R-2018-3005792, Complaint of the Office of Consumer Advocate, at 2-3.

<sup>5</sup> *Id.* at 3-6.

<sup>6</sup> Docket No. C-2018-3006035 and R-2018-3005792, Complaint of the Office of Small Business Advocate, ¶¶ 6-7, at 3.

On December 3, 2018, Verizon submitted an Answer and Preliminary Objections to the OCA's Formal Complaint. That Answer included a request by Verizon for Judgment on the Pleadings though no formal Motion was presented.

On December 4, 2018, Verizon also filed an Answer to the OSBA Formal Complaint. Verizon denied the substantive allegations contained in the respective OCA and OSBA Formal Complaints.

On December 13, 2018, OCA filed its Answer in opposition to Verizon's Preliminary Objections.

On December 20, 2018, the Commission had before it Verizon's Annual PCO filing, the Complaint of the OCA, the Complaint of the OSBA, Verizon's Answer and Preliminary Objections (including the request for Judgment on the Pleadings) to the OCA's Formal Complaint, Verizon's Answer to the OSBA Formal Complaint, and the OCA's Answer in opposition to Verizon's Preliminary Objections.

In an Order issued December 20, 2018, the Commission ordered the following:

1. That Verizon Pennsylvania LLC's 2019 PCO, filed on November 1, 2018, is accepted as being procedurally consistent with its Commission-approved Amended Chapter 30 Plan.
2. That the cases be assigned to the Office of Administrative Law Judge for adjudication of the Formal Complaints of the Office of Consumer Advocate and the Office of Small Business Advocate, the issuance of a corresponding recommended decision or decisions and for the consideration of any potential rate effects and accounting adjustments that may be or are subject to appropriate rate refunds.
3. That the tariff revisions submitted by Verizon Pennsylvania LLC implementing the \$944,700 annual revenue increase shall be permitted to go into effect as filed and remain in effect during the pendency of the Office of Consumer Advocate and Office of Small Business Advocate Formal Complaint adjudications and be subject to refund pending the findings of the Office of Administrative Law Judge and further Orders of the Commission as necessary.
4. That Verizon Pennsylvania LLC be permitted to continue using its available 2003 PCO money to fund its required contributions to the Pennsylvania

Universal Service Fund and bank the difference utilizing the banking provisions outlined in its Commission-approved Amended Chapter 30 Plan.

5. That Verizon Pennsylvania LLC's proposal to use Verizon North LLC's cumulative banked PCO revenues to reduce its negative 2003 PCO is denied.

6. That Verizon Pennsylvania LLC's proposal to use the remaining \$358,300 of its 2019 PCO to offset its Pennsylvania Universal Service Fund Gap of approximately negative \$151,150 as set forth in this Order is hereby approved.

7. That a copy of [the] Order be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation and Enforcement, and the Office of Administrative Law Judge.

On December 20, 2018, this matter was referred to the Office of Administrative Law Judge.

On December 21, 2018, the undersigned was designated as the presiding officer in this matter.

On January 3, 2019, a Prehearing Conference Notice was issued setting January 17, 2019, as the date for a prehearing conference in this matter.

On January 11, 2019, Verizon, with the concurrence of the other parties, contacted me through email advising me that the parties had come to an agreement with respect to scheduling and other preliminary matters. The parties jointly proposed that a prehearing conference be postponed while the parties conducted informal settlement discussions, and also stated that Verizon's financial reports for 2018 were not due until April, 2019. The parties proposed that a prehearing conference might be scheduled in May, 2019.

On January 14, 2019, a Cancellation Notice was issued by OALJ cancelling the Initial prehearing conference of January 17, 2019.

In the January 11, 2019 email, Verizon requested that I rule on Verizon's Preliminary Objections and that these matters be consolidated.<sup>7</sup> The parties reserved the right to request a Protective Order if an existing Protective Order at Docket Nos. P-2011-2275803 and P-2011-2275730 (Order entered December 15, 2011) proves insufficient.

For the reasons set forth below, Verizon's Preliminary Objection and Motion for Judgment on the Pleadings are dismissed as moot.

### DISCUSSION

As stated above, on December 20, 2018, the Commission had before it Verizon's Annual PCO filing, the Complaint of the OCA, the Complaint of the OSBA, Verizon's Answer and Preliminary Objections (including the request for Judgment on the Pleadings) to the OCA's Formal Complaint, Verizon's Answer to the OSBA Formal Complaint, and the OCA's Answer in opposition to Verizon's Preliminary Objections. The direct effect of the Commission's action on December 20, 2018 indicates to me that the Commission considered and resolved the Preliminary Objections and Motion by referring the matter to OALJ for adjudication and the issuance of a recommended decision. I cite again Ordering Paragraph 2 of the Order of December 20, 2018:

*That the cases be assigned to the Office of Administrative Law Judge for adjudication of the Formal Complaints of the Office of Consumer Advocate and the Office of Small Business Advocate, the issuance of a corresponding recommended decision or decisions and for the consideration of any potential rate effects and accounting adjustments that may be or are subject to appropriate rate refunds.*

Order of December 20, 2018 at Docket Nos. R-2018-3005792, C-2018-3005972, C-2018-3006035, P-00930715F1000<sup>8</sup> (Order entered December 20, 2018)(emphasis added).

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<sup>7</sup> On consideration, I was rather perplexed at the request to rule on preliminary objections because the Commission has effectively denied those preliminary objections, as I will explain in this Order.

<sup>8</sup> *Verizon Pennsylvania LLC Amended Alternative Regulation and Network Modernization Plan*

I am quite certain that had the Commission wished to further entertain Verizon's Preliminary Objections and Motion and grant them in whole or part, it would have done so, but it did not. I also believe that had the Commission wished me to consider Verizon's Preliminary Objections and Motion for Judgment on the Pleadings, the Commission would have directly stated that in its Order. But it makes no sense that the Commission would do so. I ask, rhetorically, why would the Commission direct me to rule on pleadings that might see the dismissal of the OCA Complaint when the Commission has expressly directed that the issues contained therein be litigated?

By virtue of the Commission's Order of December 20, 2018, Verizon's Preliminary Objections and Motion for Judgment on the Pleadings are now moot, *i.e.* they present an issue where a controversy no longer exists. The Commission has recognized the legal sufficiency of the OCA Complaint by directing the adjudication of that Complaint, so Verizon's contentions based on 52 Pa. Code § 5.101(a)(4) have been addressed and resolved. The Commission referred this matter to the OALJ with very specific directives to conduct the adjudication of this case and to issue a recommended decision. I believe that it would be impertinent (and of no legal effect) for me to pronounce on the Preliminary Objections and Motion of Verizon that was already placed before the Commission and effectively denied. If Verizon disagrees with the Commission's action, then Verizon's remedy is to file either a Petition for Reconsideration of the Order of December 20, 2018 or to file a Petition for Review, not renew the same Preliminary Objections and Motion.

I anticipate that the argument may be made by Verizon that by referring this case to OALJ, the Commission intended that the Preliminary Objections and Motion for Judgment on the pleading be resolved by the presiding officer in the context of that litigation. I must disagree with such an argument because the Commission has unequivocally directed adjudication of the formal Complaints of the OCA and the OSBA, the issuance of a recommended decision or decisions, and the consideration of any potential rate effects and accounting adjustments that may be or are subject to appropriate rate refunds. Clearly, the Commission has found that there are justiciable controversies in this case. Having before it Verizon's Preliminary Objections and Motion, the Commission directed that this case go

forward. Perhaps needless to say, it is not appropriate for a presiding officer to gainsay the directives in a Commission order.

If I *was* so presumptuous as to rule on this issue, I would apply the accepted legal analysis citing 52 Pa. Code § 5.101(a) and determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. Of course, any doubt would have to be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. As we know, all of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Regarding this from a hypothetical perspective, it so happens that I agree with the OCA in its Answer to Verizon's Preliminary Objections. The OCA contends that the federal TCJA may qualify as an exogenous event under the Company's Chapter 30 Plan requiring an adjustment to the Company's Price Stability Mechanism formula. It would seem that the Commission not only agreed that the TCJA qualifies as an, "exogenous event," but accepted that it does by ordering the adjudication of this case. The OCA also alleges that the omission of an adjustment may result in an overstated maximum allowed noncompetitive revenue increase amount, the cross subsidization of competitive services and the Company's rates for noncompetitive services being unjust and unreasonable. Undeniably, that is a possible, and unacceptable consequence both legally and as a matter of sound policy.

In addition, the OCA contends that Verizon's proposal to utilize Verizon North's banked PCO amount to reduce its 2003 negative PCO is contrary to Verizon's Chapter 30 Plan and may constitute unreasonable discrimination in rates. That goes to the very heart of the Commission's statutory mandate.

The OCA also alleges that Verizon's interest calculations are flawed, so obviously there is not an agreement among the parties (at this point) with respect to the relevant facts of this case that would allow preliminary objections to be granted.

The OCA is correct that if its Preliminary Objections were granted, Verizon would improperly preclude the OCA from developing a record regarding the impact of the 2017 TCJA on Verizon's intrastate operations and whether Verizon's existing and proposed rates for non-competitive residential and business local services are just, reasonable, consistent with Chapter 30 and in the public interest. OCA Answer at 1-2. The fact that the Commission, fully aware of the OCA's Answer, set this matter for adjudication and the issuance of a recommended decision tells me that the Commission agrees that a record must be developed. I not only agree with that conclusion, I also agree with the OCA that Chapter 30 preserves the Commission's authority to protect ratepayers of noncompetitive and protected services. OCA Answer at 2, citing *Buffalo Valley Tel. Co. v. Pa. P.U.C.*, 990 A.2d 67, 79-81 (Pa. Commw. Ct. 2009).

For the reasons set forth above, I find that Verizon's Preliminary Objections and Motion for Judgment on the Pleadings were considered and rejected by the Commission in its December 20, 2018 Order and are, therefore, moot. The parties should continue their discussions, but if they are not able to reach a settlement, then this matter must be set for hearing, adjudication, and the issuance of a recommended decision consistent with the Commission's directives.

ORDER

THEREFORE,

IT IS ORDERED:

1. That to the extent that any further Order is needed, the Preliminary Objections and Motion for Judgment on the Pleadings seeking dismissal of the Complaint of the OCA in this case are moot.

2. That the parties are to advise the undersigned by email update of the current status of this case by no later than the close of business on August 16, 2019, setting forth what they project as the timeline of this case.

3. That if the parties cannot resolve their issues, then they must advise the presiding officer so that this matter may be set for hearing.

Dated: July 31, 2019

  
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Dennis J. Buckley  
Administrative Law Judge

R-2018-3005792- PENNSYLVANIA PUBLIC UTILITY COMMISSION v. VERIZON  
PENNSYLVANIA LLC

C-2018-3005972- OFFICE OF CONSUMER ADVOCATE v. VERIZON  
PENNSYLVANIA LLC

C-2018-3006035- OFFICE OF SMALL BUSINESS ADVOCATE v. VERIZON  
PENNSYLVANIA LLC

BARRETT SHERIDAN ESQUIRE  
OFFICE OF CONSUMER ADVOCATE  
FORUM PLACE  
555 WALNUT STREET  
5<sup>TH</sup> FLOOR  
HARRISBURG PA 17101  
717.783.5048  
ACCEPTS E-SERVICE

STEVEN C GRAY ESQUIRE  
OFFICE OF SMALL BUSINESS ADVOCATE  
300 NORTH SECOND STREET  
SUITE 202  
HARRISBURG PA 17101  
717.783.2525

PHILIP WOOD JR ESQUIRE  
417 WALNUT STREET  
1<sup>ST</sup> FLOOR  
HARRISBURG PA 17101  
717.777.5619  
ACCEPTS E-SERVICE

SUZAN D PAIVA ESQUIRE  
900 RACE STREET  
6<sup>TH</sup> FLOOR  
PHILADELPHIA PA 19107  
267.768.6184  
ACCEPTS E-SERVICE