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April 17, 2009

VIA ELECTRONIC FILING

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

RE: Investigation Regarding Intrastate Access Charges and IntraLATA Toll
Rates of Rural Carriers, and the Pennsylvania Universal Service Fund
Docket No. I-00040105

Dear Mr. McNulty:

Enclosed please find Verizon's Opposition to RLECs' Joint Motion for a Further Stay, being filed by Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services in the above-captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,


Suzan D. Paiva

CLR/slb

Via E-Mail and First Class Mail
cc: ALJ Susan D. Colwell
Attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Verizon's Opposition to RLECs' Joint Motion for a Further Stay, upon the participants 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 17th day of April, 2009.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation Regarding Intrastate Access :
Charges and IntraLATA Toll Rates of : I-00040105
Rural Carriers, and the Pennsylvania :
Universal Service Fund :

**VERIZON’S OPPOSITION TO RLECS’
JOINT MOTION FOR A FURTHER STAY**

Introduction

Verizon¹ opposes the rural incumbent local exchange carriers (“RLECs”)² request for a *fourth* stay of this investigation, which would allow them to continue unchallenged to charge in some cases as much as 11 cents a minute for switched access – many times more than what Verizon and other carriers charge for the same service. These excessive and anticompetitive access rates provide the RLECs with millions of dollars in revenue each year – revenue that is generated by a regulatory mandate that all parties agree needs to be changed. Indeed, the Commission concluded more than ten years ago that RLEC access rates needed to be reduced. There can be no legitimate reason to delay further the examination of these RLEC access rates.

While it is obvious why the RLECs hope to continue to shield their access rates from Commission scrutiny, they fail to offer any meaningful justification for another stay. The only reason they do offer is the same one they have offered in the past – the pendency of the Federal Communications Commission’s (“FCC”) intercarrier compensation proceeding.

¹ This opposition is filed on behalf of Verizon Pennsylvania Inc., Verizon North Inc., and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, (collectively “Verizon”). This matter also affects Verizon’s interexchange carrier affiliates, which reserve the right to join as parties when the investigation commences substantively.

² The Joint Motion was filed by the Pennsylvania Telephone Association, comprised of the RLECs identified in footnote one, along with the Office of Consumer Advocate (“OCA”) and the United Telephone Company of Pennsylvania d/b/a Embarq Pennsylvania (“Embarq”).

But at this point in time there is no immediate prospect of a federal decision. This lack of a compelling basis for further delay, when juxtaposed against the Commission's statutory obligation to ensure that RLEC access rates are just and reasonable, compels in favor of a prompt review of RLEC rates.

Argument

A. The RLECs' Excessive Access Rates Harm Consumers And Competition

With these repeated stays the RLECs have continued to charge excessive access rates, while at the same time staving off their obligation to demonstrate why, in today's highly competitive telecommunications market, other carriers should continue to divert money from serving their own customers to instead support the RLECs' operations. The Commission should reject the RLECs' request for a fourth stay, and instead should act now to reduce the gap between the highest RLEC access rates and the much lower intrastate access rates of other Pennsylvania carriers.³

The failure to examine this untenable disparity between the rates of the RLECs versus those of Verizon and other carriers is not simply a theoretical problem. Perpetuating this irrational rate structure in today's competitive environment is fundamentally anti-consumer. As carriers must divert large amounts of revenue to support the RLECs' operations, their own customers are denied the benefits of cost-savings that otherwise might have allowed their serving carriers to improve products, services, or networks, or even to reduce rates. This not only hurts the customers, but it also weakens the competitive marketplace, as the regulated companies that must pay to subsidize the RLECs are not able

³ While most RLECs charge in the range of 4 to 7 cents per minute and some even as high as 9 to 11 cents per minute, Verizon and many competitive carriers (whose rates have been subject to more recent and intense regulatory scrutiny) charge only a fraction of that amount for the same service, at about 1.7 cents per minute or lower. *See* Verizon 3/25/09 Status Report.

to operate to their own full potential. Even consumers in the RLECs' own territory suffer as their opportunities for competitive alternatives are diminished because prospective alternative service providers have to compete with heavily subsidized RLEC operations and, as a result, either may choose not to compete in those areas or may not compete as effectively. These are real consumer harms that the Commission should at least investigate and about which it should develop a record.

While the RLECs would like the Commission to view them as one fungible group of small "mom-and-pop" telephone companies that should simply be presumed to need disproportionate financial support from other carriers, the record developed in the re-opened portion of this investigation reveals that this is simply not the case. In fact, there are a number of RLECs that are affiliated with large, sophisticated national carriers – yet these RLECs in many cases charge access rates as high, and in some cases even higher, than the small RLECs. Frontier/Commonwealth, for example, averages among the very highest of the RLECs at over 7 cents per minute for intrastate switched access; Embarq charges almost 5 cents per minute; Windstream, Consolidated/North Pittsburgh and the D&E companies all charge around 4 cents per minute. If the Commission grants another stay, these RLECs will continue to charge these excessive rates for yet another year or more before the Commission would even commence litigation to examine those rates – a process that, after it commences, will still likely take months or years before a final Commission order. The Commission should reject the stay request and begin developing a record on these issues now.

B. With No Immediate Prospect Of FCC Action, The Balance Weighs In Favor Of Examining The RLECs' Access Rates Now

The RLECs argue that "the continued pendency of this issue at the federal level," "continue[s] to hold significant potential of outcome affecting impact." (Joint Motion at 2).

While everyone involved, including Verizon, continues to hope that the FCC will eventually reach a uniform and comprehensive resolution in this area, such a resolution is not imminent and can no longer serve as a basis to permit the RLECs to avoid a thorough examination of their Pennsylvania intrastate access rates. Notably, the RLECs do not point to the prospect of immediate action by the FCC. They only speculate on possible outcomes and consequences of an eventual FCC decision at some unspecified point in the future.

This Commission must balance any procedural efficiencies that might be gained from waiting for the FCC to act against its own responsibilities under the Public Utility Code to ensure that the RLECs charge only “just and reasonable” access rates (66 Pa. C.S. § 1301) and to protect consumers and carriers from the effects of this untenable rate disparity. Perhaps if the RLECs’ access rates were lower and there were not such a wide gap between their rates and those of other carriers, then the balance might tilt in favor of waiting for the FCC. But where this case has been stayed for more than four years already, while RLECs are allowed to continue to charge rates that are so much higher than those of Verizon and other carriers, and where this rate imbalance is having real anti-competitive and anti-consumer effects in Pennsylvania, this Commission must fulfill its state law responsibility to investigate these rates, regardless of any pending action at the FCC.

The RLECs again speculate when they argue that any action by this Commission to address exorbitant RLEC intrastate access rates “could leave Pennsylvania state consumers with higher local rates and lower federal replacement funds” if and when the FCC ultimately acts, presumably based on replacement funds set forth in the so-called “Missoula Plan.” (Joint Motion at 5). But there is no prospect of the FCC adopting the Missoula plan or any other specific proposal at this point. While it certainly is desirable to coordinate state

requirements with any imminent federal action, there is no imminent FCC action here, let alone any basis to speculate as to what that action would be. There certainly is no basis to postpone this proceeding and further delay the development of the factual record in this matter. When the matter is presented to the Commission on a full record and recommendation, there will still be the opportunity to consider the most current information about what the FCC is considering and the potential impact of prospective federal action at that time.

As this Commission acknowledged when it issued the last stay, “[i]t has been, and continues to be the intention of this Commission, since the *Global Order* of 1999” – over ten years ago – “to gradually lower intrastate access charges so as to allow for greater competition in the intrastate and interexchange toll markets.”⁴ Bringing RLEC access rates into line with the access rates charged by all other carriers in the Commonwealth is fully consistent with the FCC’s approach.⁵ The Commission should no longer allow the RLECs to use the pendency of this federal proceeding to justify refraining from tackling the RLEC access rate problem. At the very least the Commission should commence immediately to develop a record by requiring the RLECs to submit to comprehensive discovery on this issue and by inviting testimony based on that discovery – an exercise that will itself certainly take some time and should not be further delayed.

C. Other States Are Addressing Excessive RLEC Access Rates Now

The RLECs fail to recognize that several other states are moving forward to reduce the disparity between RLEC access rates and the rates of the larger ILECs. For example, the Virginia Commission is currently reviewing a recommended decision to reduce Embarq’s

⁴ 4/24/08 Stay Order at 26.

⁵ See Verizon 3/25/09 Status Report at 4.

intrastate switched access rates as a result of a Sprint petition.⁶ Similarly, in January of 2009, the Iowa Utilities Board denied petitions for reconsideration of its May 2008 decision ordering RLECs to revise their tariffs to significantly reduce their switched access rates.⁷ Just last month the Kentucky Public Service Commission denied Windstream's motion to dismiss a complaint challenging Windstream's access rates as unjust and unreasonable, noting that "the mere existence" of a possibility that the FCC will finally act in its own proceeding, which "has been pending before the FCC since 2001," "does not dissuade this Commission from the need to address intercarrier compensation" with respect to Windstream.⁸ The Washington Utilities and Transportation Commission in November of 2008 denied Embarq's motion to dismiss Verizon's complaint for access reductions, finding that Verizon had stated facts on which relief might be granted, including the disparity between those rates and the access rates of the largest ILECs.⁹ Likewise, the Kansas Commission on October 10, 2008 denied Embarq's motion to dismiss a complaint against its switched access rates, stating that it would proceed with the complaint because a "level playing field" is important "to the growth of competition."¹⁰

As here in Pennsylvania, the access rates of the Regional Bell Operating Companies in those states have been reduced, but the RLECs there are resisting comparable

⁶ *Petition of Sprint Nextel for reductions in the intrastate carrier access rates of Central Telephone*, Hearing Examiner's Report, Case No. PUC-2007-00108 (Va. PUC, Jan. 28, 2009).

⁷ *In re: Iowa Telecomm. Ass'n*, Order Denying Requests for Reconsideration, Docket Nos. TF-07-125 and TF-07-139 (Iowa Util. Bd., Jan. 8, 2009).

⁸ *In the Matter of MCI Communications Services, Inc. v. Windstream Kentucky West, Inc.*, Case No. 2007-00503 (Kentucky PSC, March 11, 2009).

⁹ *Verizon v. Embarq*, Docket No. UT-081393, Second Prehearing Conference Order, at 3 (Wash. Util. and Transp. Comm'n, Nov. 20, 2008).

¹⁰ *See Petition of Sprint Communications Company et al. to conduct general investigation into the intrastate access charges of United Telephone Company of Kansas et al.*, Docket No. 08-GIMT-1023-GIT (Kansas Corporation Commission, October 10, 2008).

restructuring despite the fact that many of them are sizeable, sophisticated, and well-financed competitors. Like these other states, this Commission should reopen this investigation and move the RLECs' access rates closer to Verizon's and other carriers'.

D. The RLECs Cannot Divert Attention From The Real Problem Of Their Own Disproportionate Access Rates By Pointing To Other Commission Proceedings

In a naked attempt to deflect attention from the real problem before the Commission – which is the urgent need to reduce the unjustifiable revenue flow from other telephone companies to the RLECs – the RLECs argue that the Commission should focus instead on Verizon's access investigation because Verizon has a larger share of access lines in Pennsylvania. But Verizon's access rates are the subject of a separate docket, which will come before the Commission for review in September of 2009. The question before the Commission here is whether to take action on *the RLECs' access rates*. There are also material differences between the RLEC case and the Verizon case. Not only are Verizon's rates much lower than those of most RLECs, but also the Commission has already taken substantial action in the Verizon case, including two rounds of testimony, briefing and recommendation from the presiding officer and a significant access rate rebalancing. By contrast, there has been *no substantive progress at all* in the RLEC case since its inception and it may take months or even years to develop a record sufficient to put the RLEC case in the same procedural posture as the Verizon case. The actual problem facing the Commission is the fact that the RLEC rates are so much higher than Verizon's, and lowering the floor before addressing the RLECs' rates would only exacerbate the disparity. Therefore, the Commission should proceed with the RLEC case on its own merits now regardless of the procedural posture of the Verizon case.

RESPONSE TO INDIVIDUAL PARAGRAPHS OF MOTION

1. The Commission's July 15, 2003 Order at docket number M-00021596 is in writing and speaks for itself, and all characterizations are denied.
2. The FCC's March 3, 2005 Order at docket number 01-92 is in writing and speaks for itself, and all characterizations are denied.
3. This paragraph contains assertions of fact that the RLECs must prove by assembling an evidentiary record on these issues. Verizon generally admits that access, local and toll rates are sources of revenue for the RLECs, but the very issue to be addressed in this investigation is whether those RLECs that still maintain excessive intrastate switched access rates should be required to reduce them.
4. Verizon admits that various proposals have been submitted to the FCC. Those proposals are in writing and speak for themselves and all characterizations are denied.
5. Verizon admits that the proposal referred to as the "Missoula Plan" was submitted the FCC. That proposal is in writing and speaks for itself and all characterizations are denied.
6. This Commission has already found that matters that may be decided by the FCC could affect the issues before the Commission in this investigation. The question before the Commission is whether, notwithstanding the pending federal action, it should act now to reduce the untenable gap between the excessive access charges of many RLECs and the rates charged by other carriers for the same service. For the reasons discussed above, it should do so.
7. The cited FCC orders are in writing and speak for themselves and all characterizations are denied.

8. The two-year old proposed federal legislation cited in this paragraph is in writing and speaks for itself and all characterizations are denied. Further, the RLECs' speculation about what Congress "may" do is immaterial.

9. Verizon admits that the FCC on November 5, 2008, issued a Further Notice of Proposed Rulemaking ("NPRM") that sought comment on a proposed order that, among other things, would reduce access charges. That NPRM is in writing and speaks for itself and all characterizations are denied. Further, with the change of administration and new leadership at the FCC, it does not appear that this or any other proposal is poised for approval in the near term.

10. Verizon admits that the Commission entered an order on September 11, 2008 at docket C-20027195 staying the Verizon access investigation, which order is in writing and speaks for itself and all characterizations are denied.

11. Verizon admits that the cited appeals are pending before the Commonwealth Court.

12. Verizon admits that the Commission by order entered April 24, 2008 reopened this investigation for limited purposes, which order is in writing and speaks for itself and all characterizations are denied. By way of further response, the Commission has extended the deadline for a recommendation to July, 2009 and the briefing schedule has been extended.

13. The RLECs' discussion of what might happen if the FCC takes certain action is nothing but speculation.

14. – 18. These paragraphs contain legal arguments and requests for relief to which no response is required. Verizon disagrees with the assertions in these paragraphs for the reasons set forth above.

WHEREFORE, when the stay expires on April 24, 2009, the Commission should reopen the access rate portion of the investigation, should require each RLEC to make immediate disclosures regarding its average rate per minute, access volumes and revenues from intrastate access service, and should convene an expedited proceeding to determine how those rates will be reduced.



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