

January 8, 2015

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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;  
Docket Nos. P-2014-2446303 and P-2014-2446304

Dear Secretary Chiavetta:

Enclosed for filing on behalf of the Pennsylvania Telephone Association is its Main Brief in the above-referenced proceeding. Copies of the Main Brief are being served upon the persons and in the manner set forth in the certificate of service attached to it.

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

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By   
Charles E. Thomas, III

Encl.

cc: Certificate of Service (w/encl.)  
Steve Samara (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Joint Petition of Verizon Pennsylvania LLC :  
and Verizon North LLC for Competitive : Docket Nos. P-2014-2446303  
Classification of All Retail Services in : P-2014-2446304  
Certain Geographic Areas, and for a Waiver :  
of Regulations for Competitive Services :**

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**MAIN BRIEF  
OF  
PENNSYLVANIA TELEPHONE ASSOCIATION**

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DATED: January 8, 2015

## **I. INTRODUCTION AND ARGUMENT SUMMARY**

This proceeding concerns a Joint Petition filed with the Pennsylvania Public Utility Commission (“Commission”) by Verizon Pennsylvania LLC and Verizon North LLC (collectively, “Verizon”) pursuant to Section 3016 of the Public Utility Code (“Code”), 66 Pa. C.S. § 3016, requesting the competitive reclassification of all retail protected and any other services to residential and business customers yet to be competitively classified (excluding intrastate switched and special access) in select metropolitan areas, *viz.* Philadelphia, Pittsburgh, Erie, Harrisburg/York, and Scranton/Wilkes-Barre. Verizon’s Joint Petition also seeks a waiver of the Commission’s regulations found at 52 Pa. Code Chapters 63 and 64 as applied to competitive services in these geographic areas, including Chapter 63, Subchapters B (Services and Facilities), C (Accounts and Records), E (Telephone Quality Service Standards), F (Extended Area Service), G (Public Coin Telephone Service), and all of Chapter 64 (relating to the standards and billing practices for residential telephone service).

The Pennsylvania Telephone Association (“PTA”)<sup>1</sup> intervened in the matter and submits this Main Brief in accordance with the briefing schedule and directives established by the Briefing Order, dated December 22, 2014, and the common briefing outline agreed to by the parties and submitted to presiding Administrative Law Judge Joel Cheskis on December 22,

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<sup>1</sup> The PTA is an association consisting of the following Rural Local Exchange Carrier (“RLEC”) for purposes of this proceeding: Armstrong Telephone Company – Pennsylvania; Armstrong Telephone Company – North; Citizens Telephone Company of Kecksburg; Commonwealth Telephone Company LLC d/b/a Frontier Communications Commonwealth Telephone Company; Consolidated Communications of Pennsylvania Company; FairPoint Communications/Bentleyville Telephone Company; FairPoint Communications/Marianna and Scenery Hill Telephone Company; Hancock Telephone Company; Hickory Telephone Company; Ironton Telephone Company; Lackawaxen Telecommunications Services; Laurel Highland Telephone Company; The North-Eastern Pennsylvania Telephone Company; North Penn Telephone Company; Palmerton Telephone Company; Pennsylvania Telephone Company; Pymatuning Independent Telephone Company; South Canaan Telephone Company; TDS Telecom/Deposit Telephone Company; TDS Telecom/Mahanoy & Mahantango Telephone Company; TDS Telecom/Sugar Valley Telephone Company; The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink; Venus Telephone Corporation; West Side Telephone Company; Windstream Buffalo Valley, Inc.; Windstream Conestoga, Inc.; Windstream D&E, Inc.; Windstream Pennsylvania, LLC; and Yukon-Waltz Telephone Company.

2014. The PTA's Main Brief only addresses the issue of originating switched access rates (Section III.C.3.).

As set forth in Section III below, AT&T improperly attempts to expand the scope of Verizon's Joint Petition by wrongly injecting into this case the industry-wide issue of intrastate originating switched access reform, particularly with respect to the RLECs and other non-Verizon carriers, including competitive local exchange carriers ("CLECs"). The Commission should decline to consider or address originating switched access rates in this proceeding or in any other proceeding prior to further action by the Federal Communications Commission ("FCC"). The PTA takes no position at this time with respect to the other issues presented in Verizon's Joint Petition or related issues raised by other parties to this proceeding.<sup>2</sup>

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

On October 6, 2014, Verizon filed its Joint Petition and accompanying direct testimony with the Commission. In its Joint Petition, Verizon requested deregulation of some of its residential and business services, but did *not* seek any relief for intrastate switched access services which are the basis for originating switched access charges.<sup>3</sup>

The Commission subsequently assigned the matter to the Office of Administrative Law Judge for expedited processing in accordance with the provisions of Section 3016 of the Code. Notice of the filing of the Joint Petition was published in the *Pennsylvania Bulletin* on October 11, 2014, which set a protest, answer, and intervention deadline of October 21, 2014. *See* 44 Pa.B. 6643. Timely protests or petitions to intervene were filed by the Office of Consumer

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<sup>2</sup> The PTA's proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are contained in Appendix A hereto. Given the extremely limited focus of its Main Brief, the PTA is only proposing Findings of Fact, Conclusions of Law, and Ordering Paragraphs related to the issue of originating switched access rates.

<sup>3</sup> Verizon Joint Petition at 3 ¶6 and 5 n.8. *See also* Verizon St. 1.0 at 3, 4 n.1.

Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), AT&T Corp. and Teleport Communications America, LLC (collectively “AT&T”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Communications Workers of America and International Brotherhood of Electrical Workers (“CWA”), Full Service Network (“FSN”), and the PTA.

On October 23, 2014, an initial prehearing conference was convened before Judge Cheskis in Harrisburg, at which time a procedural schedule was established and other preliminary matters were discussed. On October 24, 2014, Judge Cheskis issued a Scheduling Order confirming the procedural schedule adopted and other matters discussed at the initial prehearing conference and granting the petitions to intervene filed by the various parties, including the PTA. Judge Cheskis also issued on October 24, 2014 a Protective Order governing the treatment of confidential and proprietary materials and information exchanged in this proceeding.

Direct testimony was submitted on November 14, 2014 by various intervening parties, including OCA, AT&T, CAUSE-PA, CWA, and FSN. A settlement conference was held on November 18, 2014 and attended by all active parties. Rebuttal testimony was filed on December 5, 2014 by Verizon, OCA, and AT&T, and surrebuttal testimony was filed on December 12, 2014 by OCA, AT&T, CAUSE-PA, CWA, and FSN. The PTA did not submit any testimony in this proceeding, but reserved its right to participate in all other aspects of the proceeding, including the submission of briefs and other pleadings and filings authorized under the Commission’s regulations.

AT&T, through some cursory statements made in *footnotes* to its direct and rebuttal testimony, argued that the Commission, on its own accord, should expand the scope of Verizon’s

Joint Petition case to direct all RLECs to reduce their respective originating switched access charges to parity with interstate originating switched access rates<sup>4</sup> and to require all CLECs to mirror Verizon's access rate structure.<sup>5</sup> Significantly, no other party, including Verizon as the petitioning party, raised the issue of originating switched access rates in its testimony.

An evidentiary hearing was held on December 17, 2014 in Harrisburg.<sup>6</sup> All parties except the OSBA participated. A transcript consisting of 144 pages was created. On December 22, 2014, Judge Cheskis issued a Briefing Order directing the parties to file and serve Main Briefs on or before January 8, 2015 and Reply Briefs on or before January 16, 2015.

On December 29, 2014, Verizon filed a Response to "Subject to Check" Items from the December 17, 2014 Hearing and a Motion for Admission of Supplemental Exhibits. An Order granting Verizon's Motion and admitting into the record Supplemental Exhibits 1 through 5 was issued January 6, 2015.

### **III. ARGUMENT**

The PTA submits this Main Brief to oppose AT&T's unjustified and rash attempt to stretch the parameters of this limited and statutorily expedited proceeding or to initiate a new unnecessary proceeding to address intrastate originating switched access rates in Pennsylvania. Intrastate originating switched access charges are not relevant to the relief requested by Verizon's Joint Petition. AT&T's claim that Section 3016(f) of the Code<sup>7</sup> demands Commission action on originating switched access rates for all Pennsylvania ILECs and non-Verizon carriers lacks complete merit. Further, AT&T has failed to demonstrate any reason or requirement for

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<sup>4</sup> AT&T St. 1.0 at 17 n.11; AT&T St. 1.1 at 2 n.2.

<sup>5</sup> AT&T St. 1.0 at 9 n.3.

<sup>6</sup> Verizon offered oral rejoinder at the start of the evidentiary hearing.

this Commission to depart from the path and policy it set forth in the *RLEC Access Order*.<sup>8</sup> Additionally, insertion of the originating switched access issue into this proceeding and adoption by the Commission of AT&T's proposal relative to the RLECs and other non-Verizon carriers would constitute a deprivation of those carriers' due process rights.

\* \* \*

C. **Related Issues Raised By Other Parties**

\* \* \*

**3. Originating Access Rates and Section 3016(f)**

AT&T argues that the Commission should use Verizon's Joint Petition as an opportunity to implement intrastate originating access charge reform in Pennsylvania. AT&T predicates its argument on a tenuous and self-induced claim that Section 3016(f) of the Code<sup>9</sup> demands the relief requested by AT&T. To arrive at such a conclusion, AT&T makes a broad and unsubstantiated assertion that revenues from originating access charges have been and continue to be used to subsidize basic local exchange service as provided by Verizon. AT&T then proposes that the Commission, as a precondition for competitive classification, reduce Verizon's intrastate originating access rates to parity with Verizon's interstate originating access rates.

Not content to focus solely on Verizon, AT&T next takes its originating access agenda even further by arguing that the Commission, on its own accord, should expand the scope of *Verizon's* Joint Petition and direct *all RLECs* (and other carriers) to reduce their respective

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<sup>8</sup> *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Order entered August 9, 2012) ("*RLEC Access Order*").

<sup>9</sup> 66 Pa. C.S. § 3016(f). Section 3016(f) prohibits a LEC from using revenues earned or expense incurred in conjunction with noncompetitive services to subsidize competitive services. AT&T argues that satisfaction of Section 3016(f) is a prerequisite to approving Verizon's Joint Petition. AT&T St. 1.0 at 5; AT&T St. 1.1 at 1.

originating access charges to parity with interstate originating access rates<sup>10</sup> and to require all CLECs to mirror Verizon's access rate structure.<sup>11</sup>

The Commission should dismiss AT&T's requests to bring the issue of originating switched access rates into this proceeding or to address the issue prior to action by the FCC. First, originating switched access rates are neither relevant nor material to the instant proceeding. Verizon's Joint Petition is not seeking to reclassify switched access services as competitive.<sup>12</sup> Given that intrastate originating switched access charges apply only to switched access services, the Commission's final disposition on the Joint Petition will not affect in any way the regulatory status of Verizon's intrastate originating switched access service.

Moreover, and as other parties have noted,<sup>13</sup> AT&T provides no legitimate basis for its claim that originating access rates are tied to Section 3016(f) and that intrastate originating access reform is a prerequisite to approval of Verizon's Joint Petition. Indeed, nothing in Section 3016 of the Code<sup>14</sup> contemplates or permits imposition of conditions in conjunction with the approval of a competitive classification petition. The issue of intrastate originating switched access reductions need not be foisted into this proceeding and upon the Commission (as well as the RLECs and other non-Verizon carriers) as AT&T seeks to do.

Second, irrespective of the Commission's disposition of Verizon's Joint Petition, the Commission should reject outright AT&T's attempt to reverse this Commission's course as set

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<sup>10</sup> AT&T St. 1.0 at 17 n.11 ("While AT&T's proposal in this case relates to Verizon, for consistency and fairness it would make sense to require all RLECs and other ILECs to reduce originating access charges to parity with interstate originating access rates as soon as possible."). *See also* AT&T St. 1.1 at 2 n.2 ("To be fair, as good regulatory policy, such as promoting symmetry, the Commission *sua sponte* could move the RLEC originating access rates towards [sic] or to parity with their respective interstate rates by addressing the suspended order in the RLEC access case, Docket Nos. I-00040105 and C-2009-209830, *et al.*").

<sup>11</sup> AT&T St. 1.0 at 9 n.3.

<sup>12</sup> *See* Verizon Joint Petition at 3 ¶6 and 5 n.8. *See also* Verizon St. 1.0 at 3, 4 n.1.

<sup>13</sup> *See, e.g.*, OCA St. 1-R at 4; Verizon St. 2.0 at 35-36.

<sup>14</sup> 66 Pa. C.S. § 3016.

forth in the *RLEC Access Order* and accommodate an AT&T-induced originating access agenda relative to the RLECs and other carriers. As this Commission is aware, intrastate switched access rates remain intermingled with far-reaching FCC reform initiatives. AT&T is the party with the burden of proof regarding the claims it has raised, but has failed to provide any credible evidence in support of its claims. Since AT&T has failed to meet its burden of proof, the Commission need not act in this proceeding or at any time prior to comprehensive FCC reform. Such an approach by the Commission would be consistent with the Commission's previously stated position on the issue in the *RLEC Access Order* that there is no need to rush into the originating access fray at this time:

[O]riginating access charges are not subject to the same abuses as terminating access charges, and do not present any urgent public policy issues that require attention.<sup>15</sup>

The Commission correctly decided to forgo embarking on the issue pending further FCC action, and AT&T has provided no evidence or argument justifying why the Commission should change its policy directive now.

The Commission should reject AT&T's efforts to bootstrap and impose originating access rate reductions upon RLECs and other non-Verizon carriers in the context or as a result of this proceeding. This case involves *a Joint Petition filed by Verizon* for competitive classification and certain waivers of the Commission's Chapter 63 and 64 regulations. The evidentiary record does not support any of AT&T's claims *regarding rates of non-Verizon entities*. Yet, AT&T calls for broad originating switched access changes that would have a widespread, significant impact on numerous non-Verizon carriers, many of whom are not even parties to this proceeding.

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<sup>15</sup> See *RLEC Access Order* at 59.

Third, AT&T's collateral attack on RLEC and other non-Verizon carrier originating access rates not only runs afoul of the *RLEC Access Order* and the limited context and scope of Verizon's Joint Petition, but also fails to honor procedural and substantive due process requirements. Specifically, Section 504 of the Commonwealth's Administrative Agency Law provides that "[n]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard."<sup>16</sup> But here, AT&T only raised its intrastate access proposal vis-à-vis the RLECs and other non-Verizon carriers as an afterthought, burying it in *footnotes* to its direct and rebuttal testimony.<sup>17</sup> AT&T's proposal is severely misplaced and fails to constitute the provision of adequate notice required under law. Consequently, any action by the Commission concerning RLEC intrastate originating switched access rates would be a violation of the Administrative Agency Law and the RLECs' and other non-Verizon carriers due process guarantees. It would create dangerous precedent and is tantamount to a collateral attack of this Commission's *RLEC Access Order* and should be rejected.

If intrastate originating switched access rates are to be addressed by this Commission in the future, any such action should happen only in conjunction with or after FCC action on the issue, so that the Commission may fashion appropriate public policy for the Commonwealth of Pennsylvania. Only then, through a properly initiated action in which all interested parties have been afforded due process, should the Commission address originating switched access rate reform. Certainly, Verizon's competitive classification petition, which is already on a statutorily expedited track, is not the vehicle for prematurely rushing to an industry-wide initiative.

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<sup>16</sup> 2 Pa. C.S. § 504.

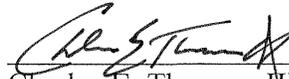
<sup>17</sup> See AT&T St. 1.0 at 17 n.11 and AT&T St. 1.1 at 2 n.2.

In sum, AT&T's attempt to insert the issue of intrastate originating access "reform" into this case is neither relevant nor proper. AT&T has not met its burden of proof or demonstrated any requirement or need for this Commission "to get ahead of the headlights" of FCC reform initiatives, potentially to the detriment of the Pennsylvania. The Commission, accordingly, should promptly reject AT&T's originating switched access proposals in their entirety.

#### **IV. CONCLUSION**

For the foregoing reasons, the Pennsylvania Telephone Association respectfully requests that the Pennsylvania Public Utility Commission issue an Order ruling on the merits of Verizon's Joint Petition and, in doing so, reject all of AT&T's originating switched access claims and proposals.

Respectfully submitted,



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DATED: January 8, 2015

## APPENDIX A

### **I. PROPOSED FINDINGS OF FACT**

#### **Background**

1. On October 6, 2014, Verizon Pennsylvania LLC and Verizon North LLC (collectively, “Verizon”) filed a Joint Petition with the Commission pursuant to Section 3016 of the Public Utility Code, 66 Pa. C.S. § 3016, requesting the competitive reclassification of all retail protected and any other services to residential and business customers yet to be competitively classified (excluding intrastate switched and special access) in select metropolitan areas, *viz.* Philadelphia, Pittsburgh, Erie, Harrisburg/York, and Scranton/Wilkes-Barre.

2. Verizon’s Joint Petition also seeks a waiver of the Commission’s regulations found at 52 Pa. Code Chapters 63 and 64 as applied to competitive services in these geographic areas, including Chapter 63, Subchapters B (Services and Facilities), C (Accounts and Records), E (Telephone Quality Service Standards), F (Extended Area Service), G (Public Coin Telephone Service), and all of Chapter 64 (relating to the standards and billing practices for residential telephone service).

3. The Office of Consumer Advocate, the Office of Small Business Advocate, AT&T Corp. and Teleport Communications America, LLC (collectively “AT&T”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Communications Workers of America and International Brotherhood of Electrical Workers, Full Service Network, and the Pennsylvania Telephone Association intervened in the matter.

## **Originating Access Rates and Section 3016(f)**

4. Verizon's Joint Petition does not seek to reclassify its switched access services as competitive. Verizon St. 1.0 at 3, 4 n.1; Verizon Joint Petition at 3 ¶6 and 5 n.8.

5. AT&T proposes that the Commission, as a prerequisite of granting Verizon's reclassification petition, should require Verizon to reduce its intrastate originating switched access rates to parity with the corresponding interstate rates to mirror its interstate state levels and rate structures. AT&T St. 1.0 at 9.

6. AT&T also proposes that the Commission *sua sponte* should require all RLECs and other non-Verizon carriers to reduce originating switched access charges to parity with interstate originating switched access rates. AT&T St. 1.0 at 17 n.11; AT&T St. 1.1 at 2 n.2.

7. AT&T only raised its intrastate access proposal vis-à-vis the RLECs and other non-Verizon carriers in *footnotes* to its direct and rebuttal testimony. AT&T St. 1.0 at 17 n.11; AT&T St. 1.1 at 2 n.2. AT&T was the only party to raise the issue of intrastate originating switched access rates.

## **II. PROPOSED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the subject matter and the parties in this proceeding.

2. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

3. The reclassification of protected services to competitive requires a Commission determination under Section 3016(a) of the Public Utility Code, which provides in pertinent part:

A local exchange telecommunications company may petition the commission for a determination of whether a protected or retail

noncompetitive service or other business activity in its service territory or a particular geographic area, exchange or group of exchanges or density cell within its service territory is competitive based on the demonstrated availability of like or substitute services or other business activities provided or offered by alternative service providers. 66 Pa. C.S. § 3016(a)(1).

4. In making its determination, the Commission shall consider all relevant information submitted to it, including the availability of like or substitute services or other business activities, and shall limit its determination to the service territory or the particular geographic area, exchange or group of exchanges or density cell in which the service or other business activity has been proved to be competitive. 66 Pa. C.S. § 3016(a)(3).

5. Verizon has the burden of proving that a protected or retail noncompetitive service or other business activity is competitive. 66 Pa. C.S. § 3016(a)(4).

6. The Commission, after notice and hearing, must enter an order granting or denying the petition within 150 days of the filing date since protests were timely filed, or the petition shall be deemed granted. 66 Pa.C.S. § 3016(a)(1).

7. A local exchange telecommunications company is prohibited from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize competitive services. 66 Pa. C.S. § 3016(f).

8. The Commission has already declared its policy on originating access rate reform, stating that: “[O]riginating access charges are not subject to the same abuses as terminating access charges, and do not present any urgent public policy issues that require attention.” *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund*, Docket No. I-00040105 (Order entered August 9, 2012) at 59. The Commission will not deviate from its stated policy at this time.

9. The issue of intrastate originating access reform is neither relevant nor material to

Verizon's Joint Petition. AT&T's proposals are outside the scope of this proceeding and shall not be considered or addressed by the Commission in connection with its disposition of the Joint Petition.

### **III. PROPOSED ORDERING PARAGRAPHS**

IT IS HEREBY ORDERED:

1. That AT&T's proposal to require Verizon to reduce its intrastate originating switched access rates to parity with the corresponding interstate rates thereby mirroring its interstate state levels and rate structures is hereby denied.

2. That AT&T's proposal for the Commission to require all RLECs and other LECs to reduce their respective intrastate originating switched access charges to parity with corresponding interstate rates is hereby denied.

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Verizon North LLC for Competitive : Docket Nos. P-2014-2446303  
Classification of All Retail Services in Certain : P-2014-2446304  
Geographic Areas, and for a Waiver of :  
Regulations for Competitive Services :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 8th day of January, 2015, served a true and correct copy of the foregoing document in the manner and upon the persons listed below:

**VIA EMAIL AND FIRST CLASS MAIL**

Honorable Joel H. Cheskis  
Administrative Law Judge  
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