

RECEIVED

PAINTER LAW FIRM, PLLC
26022 GLASGOW DRIVE
CHANTILLY, VIRGINIA 20152

2015 JAN 21 AM 10:47

PA P.U.C.
SECRETARY'S BUREAU

MICHELLE PAINTER
ATTORNEY AT LAW

703-201-8378
E-mail: Michelle.Painter@painterlawfirm.net

January 16, 2015

Via First Class Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

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:

Please find enclosed an original and three (3) copies of the Reply Brief of AT&T in the above-referenced matter. Please note that this Reply Brief contains Confidential information and should be treated accordingly. A redacted Public version was filed electronically, and a hard copy is also enclosed.

Please contact me if you have any questions or concerns regarding this matter.

Very truly yours,



Michelle Painter

Enclosure

cc: Certificate of Service
The Honorable Joel H. Cheskis, ALJ (via e-mail and First Class Mail)
Office of Special Assistants (via e-mail)
Mary E. Burgess, AT&T

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Verizon Pennsylvania LLC	:	
And Verizon North LLC for Competitive	:	Docket No. P-2014-2446303
Classification of all Retail Services in Certain	:	
Geographic Areas, and for a Waiver of	:	Docket No. P-2014-2446304
Regulations for Competitive Services	:	

REPLY BRIEF OF AT&T

***** PUBLIC VERSION *****

Mary E. Burgess
General Attorney
AT&T
111 Washington Avenue
Suite 706
Albany, NY 12210
(518) 463-3148
fax: (518) 763-1477
mary.burgess@att.com

Michelle Painter
Painter Law Firm PLLC
26022 Glasgow Drive
Chantilly, VA 20152
(703) 201-8378
Michelle.Painter@painterlawfirm.net

J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 690606
(312) 782-0600
fax: (312) 706-9175
jcovey@mayerbrown.com

RECEIVED
2015 JAN 21 AM 10:48
PA P.U.C.
SECRETARY'S BUREAU

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	4
A. Verizon’s Petition for Determination of Whether Protected Services in Certain Wire Centers Are Competitive under Pa. C.S. § 3016(a)	4
B. Verizon’s Petition for Waiver of Certain Regulations.....	4
C. Related Issues Raised By Other Parties	5
1. Originating Access Rates and Section 3016(f)	5
a. Verizon’s Intrastate Originating Access Rates Subsidize the Local Service It Seeks to Classify as Competitive.....	5
b. The Subsidy Issue Falls Squarely Within the Scope of This Docket	10
c. Implementation Is Expeditious and Straightforward, and Would Not Harm Consumers.....	14
CONCLUSION	16

RECEIVED

AT&T'S REPLY BRIEF

2015 JAN 21 AM 10:48

AT&T Corp. and Teleport Communications America, LLC (collectively, "AT&T")
respectfully submit their Reply Brief.

PA P.U.C.
SECRETARY'S BUREAU

INTRODUCTION

Verizon seeks to reclassify certain local exchange services as competitive under Pa. C.S. § 3016. Part of that statute – Section 3016(f)(1) – expressly prohibits Verizon from using revenues earned or expenses incurred in conjunction with a noncompetitive service, such as intrastate switched access, to subsidize¹ a competitive service, such as the local exchange services that are the subject of Verizon's Petition. This is not discretionary or a mere goal; it is obligatory, and it is the trade-off the legislature requires Verizon to make if it wants more of its local exchange services classified as competitive. AT&T has shown that Verizon's intrastate originating access charges subsidize the local service Verizon wants to classify as competitive. Verizon's intrastate originating access charges therefore must be reduced to parity with interstate rates before the Petition can be granted, in order to prevent an immediate violation of Section 3016(f)(1).

There can be no real debate that Verizon's intrastate originating access charges, which are almost *three times* higher than the corresponding interstate rate for the same service² and bring Verizon **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** more in

¹ The plain meaning of subsidy is "money that is paid usually by a government to keep the price of a product or service low or to help a business or organization to continue to function." See <http://www.merriam-webster.com/dictionary/subsidy>. This plain meaning is *exactly* what access subsidies have been: money paid by IXCs through a compulsory government wholesale tariff to keep the price of local exchange service low, or help local exchange business continue to function. Section 3016(f)(1) exists to prohibit a carrier with both competitive and noncompetitive services, like Verizon, from using the money paid by carriers pursuant to a government-enforced tariff for a noncompetitive service to give Verizon an unfair advantage (perhaps against those same carriers now also in Verizon's competitive business).

² AT&T Panel Surrebuttal at 4 & n.3.

revenue than if the intrastate rate matched the interstate rate,³ subsidize Verizon's local exchange service. Of course, that has been a core purpose and objective of access charges since their creation during the Bell System break-up: access charges assessed on IXCs were set above cost to enable LECs to charge below-cost rates for local exchange service. This government-created money flow from one company to another was not as much of a problem when IXCs and LECs were not direct competitors, but it is a problem when they do compete. This is why Chapter 30 prohibits subsidies from noncompetitive services to competitive services.

Chapter 30, originally passed in 1993 (and renewed in 2004), was the product of negotiation aimed at developing a pathway for less regulation and more competition. Naturally, competitors should not be required to subsidize their competitors. To that end, Section 3016(f)(1) prohibits noncompetitive services from subsidizing competitive services. That is not a problem for terminating access charges, which the Commission has already reduced and which will move to bill-and-keep. Verizon's intrastate originating access charges, however, remain at an unreasonably high level set to provide just such subsidies to local service. It is not possible to grant Verizon's Petition, as filed, because the revenues from intrastate originating access service will subsidize Verizon's local service and tilt the competitive playing field – the very thing Section 3016(f)(1) exists to prevent. Verizon has no legitimate objection to complying with Section 3016(f)(1), and the impact on Verizon's consumers would be minimal and would be offset by the benefits associated with competition and future reductions in toll prices. *See* AT&T Panel Direct at 11-14.⁴

³ AT&T Panel Direct at 17 & Ex. B (citing Verizon response to AT&T discovery request Set I, No. 6).

⁴ To be clear, AT&T strongly recommends removing the subsidy now so Verizon's Petition can be approved, rather than flatly rejecting the Petition. If Verizon is required to comply with Section 3016(f)(1) – which would be revenue-neutral to Verizon pursuant to Section 3017 – then approval of Verizon's Petition would bring stronger competition to local exchange services. Likewise, CLECs would be compelled by law to lower their access rates to parity with Verizon, improving the economic functioning of the wholesale market. Importantly, all providers of

AT&T proposes a simple, sustainable solution to this problem: require Verizon to reduce its *intrastate* originating access rates to match its *interstate* originating access rates, thus clearing the way to grant the Petition. As the New York Commission recently recognized, such interstate-intrastate rate parity has many benefits for consumers and competition.⁵ Requiring such parity would bring the same benefits to Pennsylvania, but cannot be achieved unless the Commission ensures that Verizon is not violating Section 3016(f)(1). Verizon's proposal that it might be possible to approve Verizon's Petition while Verizon is violating the prohibition in Section 3016(f)(1) is untenable.

Verizon and a few other parties oppose AT&T's proposal, but their logic is puzzling. Under Pa. C.S. § 3017, implementing AT&T's proposal would be revenue-neutral for Verizon and would result in at most very minimal increases to its local exchange rates.⁶ Verizon therefore can have no economic objection to AT&T's position. And there is no serious argument that very minor local rate increases would genuinely impact either affordability or universal service, especially given Verizon's remarkably low local exchange rate.⁷ In fact, Verizon's own Cross Exhibit 3 demonstrates that penetration in Pennsylvania did not decrease following implementation of terminating access reform; likewise, penetration should not decrease with originating access reform.

long-distance – including LECs with bundles of service – would be compelled by competitive pressure to pass through the access savings to customers. AT&T expressly committed to again pass through the savings by lowering the explicit Pennsylvania in-state connection fee, as it did during the reform of terminating access. AT&T Panel Direct at 12-13. Taking the steps necessary to prevent an immediate violation of Section 3016(f)(1) so Verizon's Petition can be approved will benefit all markets and market participants.

⁵ Order Implementing Originating Access Charge Reform, *Proceeding to Examine Issues Related to a Universal Service Fund*, Case 09-M-0529, 2014 WL 5320580, at *8-10 (N.Y. Pub. Serv. Comm'n, Oct. 3, 2014) (“*New York Originating Access Order*”).

⁶ As AT&T showed, depending on how Verizon achieves revenue neutrality, its local exchange rates would increase by at most **BEGIN CONFIDENTIAL** **END CONFIDENTIAL** per line. AT&T Panel Direct at 18.

⁷ Verizon's residential local exchange rate in Pennsylvania is nearly \$5 lower than Verizon's corresponding rate in New York.

Moreover, Verizon voluntarily agreed to such rate parity for originating access charges in New York very recently (*New York Originating Access Order*, 2014 WL 5320580, at *7-*8), and has asked the FCC to reform and reduce originating access rates as soon as possible. *See* AT&T Br. 16 (citing Verizon comments filed at FCC). It is incongruous for Verizon to agree to originating access reform in neighboring New York and propose it to the FCC on a nationwide basis, yet oppose the very same thing in Pennsylvania, even when required by state law. Verizon cannot have any policy objection to rate parity for originating access charges, nor can it seriously dispute that the reason for reducing originating access rates is to remove cross-subsidization of local service. Indeed, it seems apparent that the real reason for Verizon's objection is that it seeks to keep its inflated intrastate originating access rates in place as long as possible and receive the additional millions in revenue each year for the same service it provides at much lower rates for interstate calls, despite the plain prohibition of Section 3016(f)(1). Verizon simply wants it both ways: it wants to maintain monopoly subsidies while it enjoys the benefits of expanded competitive classification. That is contrary to Pennsylvania law. Verizon's objections (and the weaker arguments of a few intervenors) do not override the Commission's duty to ensure compliance with Section 3016(f)(1) in its decision here, and thereafter continue to ensure Verizon does not violate it after the Petition is granted.

ARGUMENT

A. Verizon's Petition for Determination of Whether Protected Services in Certain Wire Centers Are Competitive under Pa. C.S. § 3016(a)

N/A

B. Verizon's Petition for Waiver of Certain Regulations

N/A

C. Related Issues Raised By Other Parties

1. Originating Access Rates and Section 3016(f)

The only parties to address the cross-subsidy issue under Section 3016(f)(1) were Verizon, the Office of Consumer Advocates (“OCA”), and the Pennsylvania Telephone Association (“PTA”). They all make similar arguments, which are addressed below.

a. Verizon’s Intrastate Originating Access Rates Subsidize the Local Service It Seeks to Classify as Competitive

Verizon, OCA, and PTA each contend that AT&T bears the burden of proving that Verizon’s access rates subsidize its local rates at issue, and then they dispute whether AT&T has proven that Verizon’s intrastate originating access charges do so. Verizon Br. 37; OCA Br. 49-50; PTA Br. 7. As a legal matter, Verizon, OCA, and PTA are incorrect. Verizon is the party seeking relief here – the “proponent of a rule or order” (66 Pa. C.S. 332(a)) – and it therefore bears the burden to prove its compliance with all of the criteria in Section 3016(a)-(f), including that it is not violating the express prohibitions in Section 3016(f)(1) (and will not immediately be in violation of them if the Petition is granted). AT&T has done more than enough to meet any burden of going forward on the subsidy issue, and the ultimate burden rests on Verizon to either disprove the subsidy (which it cannot do and has not really attempted to do) or else fix the problem so that its Petition can be granted.

As AT&T showed in its testimony and Main Brief, the Commission has recognized that inflated access rates are used to subsidize local exchange rates (and has set access rates to create and maintain that subsidy) and Verizon has conceded in multiple dockets that there is such a subsidy.⁸ AT&T Panel Direct at 7-9; AT&T Panel Rebuttal at 2-3 & Ex. A; AT&T Br. 4-11. In

⁸ Verizon aggressively advocated for reductions in access rate subsidies across the country – typically where Verizon was paying access charges – utilizing plain notions of subsidy which meant significant reductions in access

fact, it is well recognized in the industry that access charges have always been set above costs in order to enable LECs to keep local exchange service rates below cost. After the Bell System divestiture in the 1980s, “the FCC replaced its existing subsidy system, in which a single company shifted costs from local to long-distance services, to an access-charge regime, in which all long-distance companies paid above-cost prices for access to the local networks, thereby enabling the local telephone companies to pay for below-cost local service.” P. Huber, M. Kellogg & J. Thorne, FEDERAL TELECOMMUNICATIONS LAW, § 6.2.1.2 at 554-55 (2d ed. 1999); *New Jersey Access Reform Order*, 2010 N.J. PUC LEXIS 65, at *80.⁹ As the FCC recognized, “[i]nterstate access charges . . . have traditionally been set above the economic cost of access, which has permitted [ILECs] to charge lower rates for local service in high-cost areas.” *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11501, ¶ 146 (1998). The FCC also has noted “the historical relationship between access charges as implicit subsidy mechanisms and the goal of universal service” and reiterated that “[a]ccess charges were designed to include a subsidy of the local network.” *ICC Order*, 26 FCC Rcd. 17663, at n.1435¹⁰; *id.*, ¶¶ 9, 14, 648, 736, 857, 859, 870 (all noting that access charges have been set to subsidize the local network); *In the Matter of High-Cost Universal Service Support*, 24 FCC Rcd. 6475, App. A at ¶ 173 (2008) (referring to “the implicit subsidies contained in interstate access charges”).

rates. *See, e.g.*, AT&T Panel Rebuttal, Ex. A at 6-10. Now, in this case, Verizon tries to deny that originating access rates contain a subsidy. Such patently inconsistent positioning is telling.

⁹ Order, *In the Matter of the Board's Investigation and Review of Local Exchange Carrier Intrastate Access Exchange Access Rates*, Docket No. TX08090830, 2010 N.J. PUC LEXIS 65 (N.J. Bd. Pub. Utils., Feb. 1, 2010) (“*New Jersey Access Reform Order*”).

¹⁰ Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund*, 26 FCC Rcd. 17663 (2011) (“*ICC Order*”), *aff'd*, 753 F.3d 1015 (10th Cir. 2014).

States followed the same practice by authorizing LECs to charge high intrastate switched access charges to subsidize local exchange service rates. *E.g., New Jersey Access Reform Order*, 2010 N.J. PUC LEXIS 65, at *80 (“Access charges were purposely set well above the cost to provide the service, to maintain the existing subsidy [of local service].”); *ICC Order*, ¶ 859 (“states have retained high intrastate intercarrier compensation rates to subsidize artificially low local rates”). This Commission acknowledged the subsidy in Pennsylvania in its *Global Order*,¹¹ stating that “ILEC local service rates have been kept artificially low as a result of the access charge subsidies.” *Global Order* at 10, 2003 WL 21921043.

Verizon likewise has recognized in testimony, both here and in the past, that access charges are used to support below-cost local rates. *Vashington Rebuttal* at 14.¹² Thus, as Verizon told the FCC in 2012, “[o]riginating access charges remain too high in many cases and should be reduced just as the Commission required for terminating access.” Verizon’s Feb. 24, 2012

¹¹ *Access Charges Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, *et al.*, at 10, 2003 WL 21921043 (Pa. PUC July 15, 2003) (“*Global Order*”).

¹² Here are a few of the quotations from Verizon testimony collected in Exhibit A to AT&T’s Panel Rebuttal Testimony (at 6-7):

“[S]witched access rates were deliberately designed to subsidize below-cost retail services in a market where retail service rates were not constrained by competition.”

“Traditionally, the pricing of telephone service was based on a method whereby residential monthly exchange rates were priced below cost in order to promote universal service; and long distance, toll, and business rates were priced above cost in order to subsidize residential exchange rates.”

“[I]mplicit intrastate universal service support is substantial. States have maintained low residential basic service rates through, among other things, a combination of: geographic rate averaging, high rates for business customers, high intrastate access rates, high rates for intrastate toll service, and high rates for vertical features and services such as call waiting and call forwarding.”

Comments to FCC in WC Docket No. 10-90, *et al.*, at 4.¹³ Verizon is right: originating access rates should be reduced just as was required for terminating access.

The admissions and the regulatory history AT&T has discussed refute any arguments about the disingenuous definition of “subsidy” ginned up by Verizon and OCA to avoid the very same kind of access reform that Verizon has advocated or agreed to elsewhere, and which the OCA (sponsoring Dr. Loube’s testimony) echoes in their rear-guard effort to bar even the most modest increase in local rates. Indeed, the FCC and New York Commission did not need any cost studies to determine that high originating access charges need to be reformed. *ICC Order*, ¶ 817 (“originating access charges also should ultimately be subject to the bill-and-keep framework”; “the legal framework of our decision today is inconsistent with the permanent retention of originating access charges”); *New York Originating Access Order*, 2014 WL 5320580, at *10. The *New York Originating Access Order* also referred to “20 states that have reduced their intrastate access rates to the interstate level,” 2014 WL 5320580 at *9, yet Verizon and OCA do not identify any states that made reform depend on a cost study (or required a stand-alone cost test) to prove a subsidy that the industry already knows exists. Moreover, based on its expertise and experience, the Commission can take notice that reciprocal compensation and switched access involve materially the same network functionality, yet the FCC (prior to adopting bill-and-keep) found that a reasonable reciprocal compensation rate was \$0.0007 cents per minute. A simple comparison of that rate to Verizon’s intrastate originating access rate of 1.66 cents per minute (AT&T Panel Direct at 7) indicates that the access rate is being used to subsidize local service, which this Commission has said was priced below incremental cost, so there is no need for a technical cost study.

¹³ Available at <http://apps.fcc.gov/ecfs/document/view?id=7021865697>.

As AT&T explained in its Main Brief (at 7-8), OCA's and Verizon's narrow interpretation of "subsidy" essentially would mean that no telecommunications services could ever be subsidized by other services. That claim ignores regulators' long history of implementing policies such as universal service through implicit and explicit subsidies and assumes that the legislature wasted its time when drafting Section 3016(f)(1). The Commission may not assume away the effect of the statutory prohibition, but must give weight and genuine meaning to it. There is no reason to not do so.

Finally, these facts, *i.e.*, setting access rates above cost, combined with the fact that Verizon's local service rates were intentionally set by this Commission below cost, is the very definition of a subsidy. The only dispute now is the OCA's theory that access rates must exceed the stand-alone cost of access service before they can provide any subsidy. OCA Br. 50. From an economic perspective, however, a subsidy exists when the price of a product X is insufficient to cover its incremental cost, but the firm prices its other products sufficiently to cover their incremental costs and the other costs of the firm.¹⁴ Thus, the applicable and correct economic model for defining subsidy is whether price is above or below incremental cost both for the product receiving the subsidy and the product that is the source, not stand-alone cost.¹⁵ To the extent the price for a service is more than *incremental cost* – the additional cost that is caused by providing that service – the price includes a subsidy towards other services that are priced below their incremental costs. There is no doubt that Verizon's originating intrastate access rates are

¹⁴ See William J. Baumol and J. Gregory Sidak, TOWARD COMPETITION IN LOCAL TELEPHONY (The MIT Press, Cambridge MA, 1994), page 62.

¹⁵ Stand-alone cost in regulatory economics is relevant when regulators try to set a price ceiling for an incumbent firm during the emergence of competition so that the incumbent will not have an incentive to price out new entrants. And even in that circumstance, it is the entrants' stand-alone cost for the competitive product that is calculated and used as a ceiling on the price the incumbent firm can charge for the product while competing with the entrant. See Baumol and Sidak, *supra*, pp. 77-92.

priced far above incremental cost¹⁶ and that its local exchange rates are below cost. *Global Order* at 10, 2003 WL 21921043.¹⁷

b. The Subsidy Issue Falls Squarely Within the Scope of This Docket

Verizon, OCA, and PTA – each for differing motives – contend that the cross-subsidy issue should not be addressed in this proceeding. Rather, they say, it should only be addressed somewhere else, be it the FCC, another Commission proceeding, or a complaint case after Verizon’s Petition is granted, or perhaps never. Verizon Br. 36; OCA Br. 48-49; PTA Br. 7. That self-serving approach, however, is not consistent with the statute. As Verizon notes, Section 3016(a) lists certain standards for classifying a service as competitive. Verizon Br. 36. But that is not the end of Section 3016, nor exhaustive of the obligations of a carrier seeking to reclassify services under Section 3016.¹⁸ Section 3016(f)(1) affirmatively *prohibits* Verizon from using intrastate access charge revenues to support services that are declared competitive. AT&T has shown that Verizon is currently using such revenues to support the services it wants the Commission to classify as competitive. Unless something changes in this case – that is, unless the Commission addresses the subsidy issue now – that subsidy will continue when Verizon’s services are classified as competitive, and Verizon would immediately be in violation of Section 3016(f)(1). There is no reasonable interpretation of 3016(f)(1) that would be

¹⁶ The Commission has ordered Verizon’s terminating rate to move to “\$0.0007,” or “triple 0-7” by mid-2016. That price covers Verizon’s cost, *i.e.*, less than 1/1000th of a penny, yet Verizon charges about 1.66 cents per minute for intrastate originating access. AT&T Panel Direct at 7. This strongly indicates a subsidy.

¹⁷ Verizon’s claims that it has shown its local exchange rates are above cost (Verizon Br. 37) is incorrect, for it merely refers to Verizon’s own testimony in another case where the Commission never issued a final decision.

¹⁸ Like all statutes, Section 3016 must be read as a whole and every part must be given effect. Thus, a competitive classification application is subject to the entirety of Section 3016, not merely 3016(a). For example, Section 3016(d), entitled “Additional requirements,” includes several requirements that undeniably will apply to the final decisions in this case, and that neither Verizon nor the Commission can simply ignore. Section 3016(f)(1) is no different.

consistent with ignoring its plain terms and failing to address this subsidy issue in *this* case. The Commission may not selectively pick and choose which terms of Section 3016 to enforce. Section 3016(f)(1) is specifically designed to apply to services being classified as competitive, and therefore needs to be applied here to prevent the absurd outcome of approving a petition and triggering an immediate violation of Section 3016(f)(1). Instead, the legislature intended and the statute calls for compliance with Section 3016(f)(1) at the time a petition is granted; that is the plain meaning and common sense.

Similarly, it is irrelevant whether access charges could also be addressed in other dockets or whether in the RLEC docket the Commission then opted (in 2012) to wait for FCC action. First, as noted above, the Commission may have discretion in an access charge docket to decide whether or not to act, but the prohibitions in Section 3016(f)(1) are mandatory, not discretionary. It also bears noting that the New York Commission faced similar “wait and see” arguments in its recent case, but saw no need to wait further for the FCC or some other future event before reforming originating intrastate access charges. As that commission explained, bringing originating access rates to intrastate-interstate parity now “will facilitate joint reductions in intrastate and interstate rates if the FCC expands the scope of further switched access reductions,” and creating parity would “bring New York into line with over 20 states that have reduced intrastate access rates to the interstate level,” which “means that our actions [in requiring parity for originating access charges] will be entirely consistent and congruent with national reform efforts.” *New York Originating Access Order*, 2014 WL 5320580 at *9.

Second, the Commission’s decision in the RLEC case came in 2012, when many thought that FCC action was imminent, and impacts were unknown. In early 2015 the picture is entirely different and there is no longer any basis to put off the parity that ALJ Fordham recommended in

2005. *See* AT&T Main Br. 14-15.¹⁹ Verizon's Cross-Exhibit 3 proves that the implementation of the terminating access reforms has not caused any reduction in Pennsylvania's telephone penetration rate. Now that terminating reforms are substantially implemented, and given that the FCC has not acted after years, it is time for the Commission to act, and it can and should do so here.²⁰

Some parties also urge the Commission to duck the cross-subsidy issue because overpriced originating access service does not present exactly the same risks of abuse as overpriced terminating access service. Verizon Br. 38; OCA Br. 50-51; PTA Br. 7. That, however, is a policy argument, not a statutory one. Section 3016(f)(1) prohibits cross-subsidies of competitive service by noncompetitive service. That prohibition applies regardless of any claim that subsidies might not be so bad, or some might only be half as bad as others. When there is or will be a subsidy from Verizon's noncompetitive intrastate access service to its competitive local exchange service, the legislature has declared that subsidy is prohibited and must be eliminated. The legislature has already decided that eliminating all such subsidies is the trade-off Verizon must make (and keep) in order to receive pricing freedom for its competitive services. If the access charge subsidy problem is not corrected here and now, Verizon gets the benefit without the burden, which is not what the legislature intended.

Moreover, it bears noting that, despite the Commission's prior statement about originating access charges, both the FCC and the New York Commission have found that

¹⁹ OCA's claim (at 49) that AT&T should wait until after Verizon's Petition is granted and then file a separate complaint fails for at least two reasons. First, it makes no sense to wait for a separate complaint when the issue is known and can be resolved – quite simply and with no revenue impact on Verizon and minimal impact on consumers – now. Second, OCA's claim relies on its interpretation of Verizon's 2011 OCP filing. OCA Br. 49 n.11. But a Verizon OCP filing cannot change the requirements of a statute or limit when and how a statute can be enforced.

²⁰ Verizon or others may consider it more equitable, if the RLECs concurrently reform their originating access rates, and the Commission has the tools available to do so if that is the Commission's desire.

overpriced originating access charges – particularly when they are multiples higher than interstate originating access rates (as is the case with Verizon) – do present significant risks of improper arbitrage or other abuses. *New York Originating Access Order*, 2014 WL 5320580 at *9. Indeed, Verizon recognized that the harms from overpriced originating access are as improper as those from overpriced terminating access.

For example, toll-free (or “800,” “877,” or “888”) calls are assessed originating access charges but these originating access charges are imposed on the terminating party’s carrier, *not* on the originating party’s carrier. So, it is not accurate to say that all of the terminating arbitrage opportunities and abuses have disappeared as a result of the FCC’s terminating access reform. And it does not necessarily have to be Verizon that is actively engaging in the arbitrage before the Commission could take action regarding Verizon’s originating access, since such a move will remove the opportunity to rate arbitrage and send a signal to those businesses that often engage in arbitrage to not waste time and resources setting up shop in Pennsylvania.

Recognizing these potential harms, Verizon has told the FCC that “[t]here is no reason to stop intercarrier compensation reform at the terminating side of rates” and that “like switched access terminating rates, originating access rates remain too high in many cases” and “vary to an illogical extreme [at the interstate versus intrastate level] for performing the same function.” Verizon’s Feb. 24, 2012 Comments to FCC in WC Docket No. 10-90, *et al.*, at 4.²¹ Verizon and others also have argued to the FCC that “[a]ll of the reasons that the Commission articulated for *reducing and then eliminating terminating access charges in favor of a bill-and-keep regime . . .* apply equally, if not more so, to originating access charges.” Verizon’s Mar. 30, 2012 Reply

²¹ Available at <http://apps.fcc.gov/ccfs/document/view?id=7021865697>.

Comments to FCC in WC Docket No. 10-90, *et al.*, at 3-6 (internal quotation marks omitted).²²

Verizon was right: originating access rates vary to an illogical extreme and all the reasons articulated for terminating access apply equally, if not more so, to originating access. Given Verizon's advocacy to the FCC, and in light of the revenue neutrality and competitive neutrality provisions protecting Verizon under Pennsylvania law, Verizon has utterly failed to articulate a cogent rationale for why Pennsylvania should not enjoy the benefits of both the access reform required and the furtherance of competitive classification.

c. Implementation Is Expeditious and Straightforward, and Would Not Harm Consumers

AT&T's proposal is straightforward: In order to comply with the prohibition in Section 3016(f)(1), so that Verizon's application can be approved, and prevent an immediate violation of Section 3016(f)(1) if Verizon's Petition were granted, the Commission should remove the source of the subsidy by requiring Verizon to immediately reduce its intrastate rate for originating switched access service to match its interstate rate for originating access. Even if Verizon chose to recover all of the lost access charge revenue from only the basic service lines subject to its Petition (which it is not required to do),²³ the monthly increase would be only **BEGIN**

CONFIDENTIAL **END CONFIDENTIAL.** AT&T Panel Direct at 18.

Surprisingly, OCA appears to take issue with this minimal impact, asserting (incorrectly) that AT&T "almost double[d]" its initially calculated amount by filing an errata, and that AT&T probably should have considered the line counts that would be available for future PCO after Verizon's Petition has been granted. OCA Br. 51. First, this argument is an attempted diversion, since AT&T's calculation illustrated that the impact on Verizon's consumers would be minimal

²² Available at <http://apps.fcc.gov/ccfs/document/view?id=7021905468>.

²³ AT&T's position is that while Verizon is entitled under Section 3017 to fully recover ordered access reductions from the remaining protected services, it is not mandatory to do so, in whole or in part. It is at Verizon's discretion.

even if the line counts used in the rebalancing were limited to those included in Verizon's Petition. Second, the rebalancing being discussed as a result of AT&T's proposed originating access reduction for Verizon does not have anything to do with any future PCO consideration, except that the more access rates are reformed now, the less pressure they will exert to increase Verizon's noncompetitive rates. Third, assuming for the sake of argument that OCA is correct in its claim – that only the line counts available for future PCO should be used to calculate the amount to be rebalanced – it would not change the bottom-line conclusion that the impact is minimal. Specifically, using the residential and business lines labeled as “NO” in AT&T Panel Direct Testimony Exhibit B (*i.e.*, the lines not included in Verizon's Petition), the calculated monthly increase would be only **BEGIN CONFIDENTIAL** **END CONFIDENTIAL**. *See* Att. A hereto.²⁴ In the context of Verizon's New York rates, which are nearly \$5 higher than Verizon's Pennsylvania rates, a difference of pennies is immaterial.

To be clear, AT&T is not advocating OCA's approach. Rather, the only purpose here is to show that if the Commission went along with OCA to put all of the retail increases only on residential and business lines that would be available for future PCO filings after Verizon's Petition is granted, the resulting per-line impact on consumers would still be minimal. The Commission or Verizon can choose to include all lines (even including the competitive lines) if they want to reduce consumer impact even further. That approach would be justifiable since Verizon derives access revenues from its “competitive” and “noncompetitive” lines alike, and when that access revenue is reduced in a revenue-neutral reform process, the recovery can justifiably be from all lines that previously generated that amount of revenue reductions. So, regardless of what line counts are used in the impact calculation (whether limited to only lines

²⁴ Efforts to obfuscate exactly how few pennies would be involved in rate rebalancing do not obscure the fact that the entire range of impact is *de minimis* amounts.

included in Verizon's Petition, or limited to only lines that would be available for future PCO calculations, or including all competitive and non-competitive lines), the Commission can rest assured that the impact on consumers will be minimal. *See id.* Verizon demonstrated that originating access reform has no material impact on telephone penetration in Pennsylvania (or New York, or nationally).

CONCLUSION

For the reasons stated in AT&T's testimony and briefs, and as required by Pa. C.S. § 3016(f)(1), the Commission should:

1. Require Verizon to immediately reduce and maintain its intrastate rate for originating switched access service to match its interstate rate for originating switched access service prior to treating the services at issue in its Petition as competitive. Verizon's rate reduction for originating switched access services should be allowed to be achieved in a revenue-neutral manner, per Pa. C.S. §3017, at Verizon's election.
2. As soon as Verizon makes the required rate adjustment, approve the Petition as satisfying Pa. C.S. § 3016.

3. If Verizon does not make the rate adjustment required in Ordering paragraph 1 within thirty (30) days of this Order, deny Verizon's Petition.

Respectfully submitted,

By: 
Michelle Painter
Painter Law Firm PLLC
26022 Glasgow Drive
Chantilly, VA 20152
(703) 201-8378
Michelle.Painter@painterlawfirm.net

Mary E. Burgess
General Attorney
AT&T
111 Washington Avenue
Suite 706
Albany, NY 12210
(518) 463-3148
fax: (518) 763-1477
mary.burgess@att.com

J. Tyson Covey
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 690606
(312) 782-0600
fax: (312) 706-9175
jcovey@mayerbrown.com

Attorneys for AT&T

DATED: January 16, 2015

RECEIVED
2015 JAN 21 AM 10:48
PA P.U.C.
SECRETARY'S BUREAU

**ATTACHMENT A
REMOVED FOR PUBLIC
VERSION**

Michelle Painter
26022 Glasgow Drive
Chantilly, VA 20152

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120

stamps.com
C91324.23

\$5.32 0
US POSTAGE
PRIORITY
COMBASPRICE
062S0007051956
22030

