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April 13, 2015

**VIA ELECTRONIC FILING**

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

Re: Rulemaking Re: Amendment to  
52 Pa. Code Chapter 53; Paper Billing Fees  
Docket No. L-2014-2411278

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RECEIVED  
IRRC

Dear Secretary Chiavetta:

Enclosed please find the Comments of Verizon, being filed in the above captioned matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Suzan D. Paiva

SDP/slb  
Enc.

**Via E-Mail and First Class Mail**  
cc: Terrence J. Buda, Esquire, Law Bureau  
Attached Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of Verizon's Comments upon the persons 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 13<sup>th</sup> day of April, 2015.

**VIA E-MAIL and FIRST CLASS U.S. MAIL**

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Attorney for Verizon

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re: Amendment to  
52 Pa. Code Chapter 53; Paper Billing Fees

Docket No. L-2014-2411278

**COMMENTS OF VERIZON**

Today's customers increasingly expect the companies that serve them to offer paperless billing to provide benefits that include conserving environmental resources<sup>1</sup> and helping to protect against identity theft.<sup>2</sup> In the past, the Commission has appropriately recognized these benefits and generally supported paperless billing.

However, the Commission's proposed regulation on paperless billing requiring that "[a] public utility may not impose a supplemental fee, charge or other rate for furnishing a paper bill or invoice for the services provided by the public utility" reflects a step backward from that support. Neither the law nor the record in a multi-year investigation into paper billing fees charged by certain small competitive telephone companies supports the proposed, sweeping prohibition. Indeed, even with paper billing fees actively being charged by over a dozen telephone companies during the investigation, not a single customer participated to complain about the fees. Industry comments showed that communications services are highly competitive and the numerous regulated and unregulated companies offering voice service in Pennsylvania have a wide array of paperless billing choices. Some of these paperless billing choices do not

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<sup>1</sup> According to the PayItGreen Alliance, if only 20 percent of American households switched to paperless billing the annual savings would include 150 million pounds of paper and half a billion tons of wood and it would prevent the production of over 300,000 tons of greenhouse gases. Paperless billing reduces provider costs and increases efficiency, which ultimately benefits customers. And consumers enjoy their own cost savings, such as an average of \$130 a year on stamps and checks. <http://www.payitgreen.org/consumer/get-the-facts/>. See also *Petition of T.W. Phillips Gas and Oil Co. For a Limited Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 56.21 as it Relates To Physical Delivery of Utility Bills*, Docket No. P-2009-2082012 (Opinion and Order entered March 31, 2009) at 6 (recognizing that there are "many benefits to paperless billing including significant environmental benefits and savings for customers.")

<sup>2</sup> <http://www.farmers.com/inner-circle/life-events/paperless-billing-prevents-identity-theft/>

include charges for a paper bill (including Verizon's) while others include such a fee. Customers are free to choose among these competitors and to factor in the paperless billing terms in evaluating their options. The bottom line is that customers – not regulations – should drive these choices about paper billing practices.

There is nothing in the Public Utility Code that stands in the way of allowing the competitive market to drive such choices. The only statutory provision directly addressing billing is 66 Pa. C. S. § 1509, which states that “customers shall be permitted to receive bills monthly.” The statute is silent on the medium of the bill and says nothing about imposition of any charges if the customer requests copies in a specific medium, such as paper. Where the words of the statute clearly indicate the Legislature’s decision *not* to dictate the medium of the bill, there is no room under applicable laws of statutory construction to interpret in a requirement to provide a free paper bill that does not exist in the plain language.<sup>3</sup> And this provision must be interpreted together with Electronic Transactions Act, which states that “[i]f a law requires a record to be in writing, an electronic record satisfies the law.” 73 Pa. C.S. § 2260.303(c). *See also* 73 Pa. C.S. § 2260.303 (a) (“A record . . . may not be denied legal effect or enforceability solely because it is in electronic form”).

Apparently recognizing that an electronic bill can satisfy Section 1509, the Commission in its March 20, 2014 order in its investigation of telephone company paper billing fees cited the

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<sup>3</sup> “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921. “In discerning that intent, the court first resorts to the language of the statute itself. If the language of the statute clearly and unambiguously sets forth the legislative intent, it is the duty of the court to apply that intent to the case at hand and not look beyond the statutory language to ascertain its meaning.” *Mohamed v. DOT, BMV*, 615 Pa. 6, 18 (Pa. 2012). “A statute’s plain language generally provides the best indication of legislative intent,” and “we are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous.” *Bd. of Revision of Taxes v. City of Philadelphia*, 607 Pa. 104 (Pa. 2010).

“reasonable service” provision in 66 Pa. C. S. § 1501 to require the offering of a free paper bill.<sup>4</sup>

But citing such an amorphous statutory provision does not give the Commission authority to propose a sweeping requirement for a free paper bill. Indeed, Section 1501 does not even mention billing. And, even if it did, any finding of unreasonable service under Section 1501 must, at a minimum, be based on specific facts and evidence. There are no such facts or evidence to support the proposed regulation.

Moreover, even if the Commission could conclude that it is unreasonable to charge for a paper bill in some limited cases (e.g., where a customer does not have internet access), this does not justify requiring a free paper bill for all customers all the time. (3/20/14 Order at 28, 37). It is not clear that any company has actually proposed to charge a paper billing fee to customers without internet access; if that were to happen, the Commission could review that proposal consistent with applicable law. The speculative prospect that some company might, someday, try to charge a paper billing fee to a customer without internet access is not sufficient justification to rely on Section 1501 to enact the sweeping regulation requiring free paper bills for all utilities and all customers as proposed. For example, there is no basis for the Commission to conclude that it is unreasonable to charge a paper billing fee to sophisticated business customers or to customers that have internet access.<sup>5</sup> A finding of unreasonable service under Section 1501 must, at a minimum, be based on specific facts and evidence. There are no such facts or evidence to support the proposed regulation.

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<sup>4</sup> *Investigation of Practice of Paper Invoice Charges*, Docket No. I-2010-2181481 (Opinion and Order entered March 20, 2014) (“3/20/14 Order”) at 27.

<sup>5</sup> The percentage of customers without internet access continues to shrink. The FCC reports that as of December 31, 2013, 74% of Pennsylvania households had an internet connection of at least 200 kilobits in one direction. FCC Internet Access as of December 31, 2013, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329973A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329973A1.pdf)

And for most communications services, the Commission's attempt to regulate the charges associated with billing is contrary to statute.<sup>6</sup> Chapter 30 of the Public Utility Code replaced traditional "rate-of-return" regulation with an alternative form of regulation for telephone services. For services classified as "competitive" (which include interexchange service and most business services), the Commission may not regulate rates. The statute expressly removes certain authority by stating that the Commission "may not fix or prescribe the rates, tolls, charges, rate structures, rate base, rate of return or earnings," or "otherwise regulate" interexchange or competitive telecommunications services. 66 Pa. C.S. § 3018(b)(1); 66 Pa. C.S. § 3019(g). It is clear from the 3/20/14 Order that the purpose of this proposed regulation forbidding paper billing fees is to dictate how a company recovers its billing costs, as the Commission states that:

- "the costs of providing a monthly paper bill are ordinary operating costs that should be included in the service rate, not in a separate line item paper billing fee to customers," and
- carriers "have already recovered these costs using traditional cost recovery methods."

(3/20/14 Order at 34-35). While not necessarily accurate, these statements illustrate that the issue focuses on rates and charges. Moreover, the explanation shows that the Commission is basing its rationale on rate-of-return regulation not applicable to competitive communications services. For those services, providers are not required to set cost-based prices and are free to structure the charges as they wish. In short, if a company wishes to recover its billing costs associated with competitive services in a separate fee, that is a matter within the company's discretion. Those are exactly the type of improper ratemaking and rate structure decisions that

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<sup>6</sup> The PUC . . . [is a] creature[] of statutes" and "may exercise only those powers conferred by statute," and it "cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant; it is the law which is to govern rather than departmental opinions in regard to it." *Susquehanna Area Reg'l Airport Auth. v. Pa. PUC*, 911 A.2d 612, 617 (Pa. Commw. Ct. 2006). See also *Feingold v. Bell of Pennsylvania*, 477 Pa. 1 (Pa. 1977).

the Commission is forbidden to make for competitive and interexchange services. 66 Pa. C.S. § 3018(b)(1); 66 Pa. C.S. § 3019(g).<sup>7</sup>

The proposed regulation also violates Chapter 30's regulatory parity requirements. While the Commission would restrict the paper billing programs for "jurisdictional" services, the majority of voice communications today are provided by companies that are beyond this Commission's authority to regulate. According to FCC statistics, as of December 31, 2013 only about 23% of the voice lines in Pennsylvania are "switched" lines provided by ILECs and CLECs over wireline technology that would be subject to Commission jurisdiction, with the other 77% served by Voice-over-Internet Protocol (including cable telephony) and wireless technologies that are not subject to the Commission's jurisdiction.<sup>8</sup> These unregulated providers are free to design their paperless billing programs to meet customer expectations and to move flexibly and nimbly with the market, which could include charging paper billing fees if they wish to do so and if the market supports it. Given the highly competitive nature of the communications market, imposing restrictive regulatory burdens on the small industry segment still regulated by the Commission would contravene Chapter 30's policy goal of "recogniz[ing] that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers." 66 Pa. C.S. § 3011(13). Further, in considering any new regulation, Chapter 30 requires the Commission to "take into consideration the emergence of

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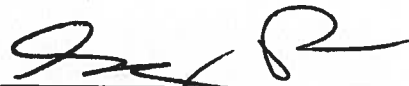
<sup>7</sup> The Commission also posits that prohibiting a paper billing fee amounts to regulating "the ordering, installation, restoration and disconnection" of those services rather than regulating the rates for those services. (3/20/14 Order at 26). Yet the medium of the bill has nothing to do with ordering, installing, restoring or disconnecting a service. Such a reading would impermissibly render meaningless Sections 3018(b)(1) and 3019(g), and allow the Commission unfettered discretion to rate regulate competitively classified services.

<sup>8</sup> FCC Local Competition Report as of December 31, 2013, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329975A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf) (showing 4,330 million "switched" lines in the state as compared to 14,556 million VoIP and wireless lines).

new industry participants, technological advancements . . . and consumer demand,” and it has not done so. 66 Pa. C.S. § 3019(b)(2).

For the above reasons, the Commission should not adopt this regulation.

Respectfully submitted,



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\* These comments are filed by Verizon Pennsylvania LLC, Verizon North LLC, Verizon Long Distance LLC, MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services Inc. (collectively “Verizon”).

Dated: April 13, 2015