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ROGER A. MADIGAN

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March 13, 2001

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

Re: Rulemaking Re Generic Competitive Safeguards  
Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2)

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REVENUE COMMISSION

Dear Mr. McNulty:

The Commission's Competitive Safeguards rulemaking must recognize and appropriately address the critical necessity of establishing a stringent code of conduct. A vigorous code of conduct is essential to assure that incumbent local exchange companies cannot unfairly use their monopoly market power to usurp competitors' efforts to compete fairly in the provision of local exchange service. While the Commission has made significant progress in attempting to open local telecommunications to competition, all of those efforts will be thwarted unless and until incumbents actually provide competitors with nondiscriminatory wholesale service.

As members of the General Assembly who have actively participated in the Global Proceeding,<sup>1</sup> the Structural Separation Implementation Proceeding,<sup>2</sup> and other market opening proceedings, we want to be on record as fully supporting the *original, more stringent* Code of Conduct that the PUC prescribed in the *Global Proceeding* to govern Verizon Pa.'s conduct. The watered-down version of the Code of Conduct set forth in the proposed rulemaking inexplicably deviates from the Global Code of Conduct and would not preclude incumbents' abuse of their market power.

<sup>1</sup> *Petition of Nextlink, et al.*, Docket Nos. P-00991648 and P-00991649 (September 30, 1999), *aff'd*, *Verizon Pennsylvania, Inc. v. Pa. PUC*, 763 A.2d 440 (Pa. Cmwlth. 2000).

<sup>2</sup> *Re: Structural Separation of Verizon Pennsylvania, Inc.'s Retail and Wholesale Operations*, Docket No. M-00001353.

Competition among local telecommunications providers is indisputably in the public interest. The Pennsylvania General Assembly made this pronouncement long ago by enacting Chapter 30 of the Public Utility Code in 1993. In passing the Telecommunications Act of 1996, the U.S. Congress also found that local competition is in the public interest and should be encouraged. Local competition, however, cannot flourish if the monopoly companies that maintain market power are permitted to act and behave in their traditional monopoly manner. Incumbents must treat competitors in a nondiscriminatory manner if there is to be any hope that full and fair local competition will develop.

The Code of Conduct that the PUC adopted in the *Global Order* should be adopted in this rulemaking proceeding. As the PUC found in the *Global Proceeding*:

We also adopt the Code of Conduct contained in the 1648 Petition, as modified by this Order relating to structural separation as to BA-PA only, as a further aid to prevent discrimination and other market power abuses by BA-PA in its local exchange markets. *We believe that this Code of Conduct, in providing a more comprehensive set of competitive safeguard rules to follow than that contained in the 1649 Petition, will better protect the nascent competition developing in BA-PA's local exchange markets.*

*Global Order* at 235 (emphasis added) (footnote deleted).

There is no evidence to suggest that Verizon Pa. has taken any concrete steps to mitigate its track record of discriminatory conduct, so as to possibly justify some dilution of the Code of Conduct. In fact, Verizon Pa. has continued its business-as-usual approach of self-regulation. Verizon Pa. has completely ignored the Global Code of Conduct and has not made any effort to implement it. During the Verizon Pa. 271 technical conferences,<sup>3</sup> Verizon Pa. admitted that it has not disseminated the Code of Conduct to its employees and has not conducted any employee training regarding the Code of Conduct.<sup>4</sup> Verizon Pa.'s continued flagrant refusal to abide by the Code of Conduct further evidences the need for more, and not less, stringent provisions in the Code of Conduct.

It is imperative that the final Code of Conduct rules reflect the Commission's prior finding that the more stringent Global Code of Conduct was a necessary companion to *and certainly not a replacement for* ordering Verizon Pa. to structurally separate its wholesale and retail operations. Verizon Pa.'s assault on structural separation, and its proposed dilution of the *Global Order's* Code of Conduct in the Structural Separation Implementation Proceeding, reveal that it wishes to avoid regulatory scrutiny and to continue, behind closed doors, to discriminate against competitors and to harm the public interest by precluding full and fair local competition.


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<sup>3</sup> *Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania*, Docket No. M-00001435


<sup>4</sup> Tr. 229-231 (February 28, 2001), Docket No. M-00001435.

We urge the Commission strengthen its resolve demonstrated in the *Global Order* and to affirm—not retreat from—the pro-competitive measures that it announced in that order. Verizon Pa. should be required to adhere to the Code of Conduct set forth in the *Global Order*.

Sincerely,



ROGER A. MADIGAN  
SENATOR



MARY JO WHITE  
SENATOR

cc: Chairman, Vice-Chairman, and Commissioners  
Independent Regulatory Review Commission