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ALLTEL PENNSYLVANIA, INC'S
COMMENTS
REGARDING COMPETITIVE SAFEGUARDS
PROPOSED RULEMAKING

These comments are filed by ALLTEL Pennsylvania, Inc. ("ALLTEL PA") in response to the January 3, 2001 Secretarial Letter re-establishing a comment period for this proposed rulemaking.

I. BACKGROUND

By Order dated November 18, 1999, and published in the *Pennsylvania Bulletin* on January 29, 2000,¹ the Pennsylvania Public Utility Commission ("Commission") issued a proposed rulemaking addressing competitive safeguards under Chapter 30 of the Public Utility Code, 66 Pa.C.S. §§3001-3009. The proposed rulemaking was preceded by a March 23, 1999 Advance Notice of Proposed Rulemaking ("NOPR"), issued at Docket Nos. M-00960799 and L-00990141, in which the Commission solicited comments from jurisdictional telecommunications utilities and other interested parties. Although these comments

¹30 Pa.B. 539 (January 29, 2000).

generally fell under the ambit of competitive safeguards, they were specifically directed at the issues of cost allocation, unbundling and imputation, as those were the issues highlighted by the Commission. In that NOPR, ALLTEL PA participated in the comments provided by the Pennsylvania Telephone Association, which addressed specifically the imputation of access charges into local exchange carrier ("LEC") toll rates and generally the necessity for additional competitive safeguards beyond those provided in Chapter 30. No specific competitive safeguard regulations were proposed by the Commission nor is ALLTEL PA aware of any that were specifically proposed in commentary.

In the time between the publication of the notice of proposed rulemaking in March of 1999 and the initial promulgation of this proposed rulemaking, the Commission undertook for consideration and litigation the Joint Petition of AT&T Communications of Pennsylvania, Inc. et al. at Docket No. P-00991648 ("1648 Petition") and the Joint Petition of Bell Atlantic-Pennsylvania, Inc. et al. at Docket No. P-00991649 ("1649 Petition"), a consolidated litigated proceeding commonly referred to as the "Global Litigation." The Global Litigation concluded on September 30, 1999, with the Commission's issuance of the "Global Order" at those dockets.

In light of the Global Order, the Commission deemed it unnecessary to address further the issues of unbundling of basic service functions (the focus of much discussion and commentary in the preceding NOPR) and intraLATA toll imputation. However, the Commission did deem it appropriate at that time to

propose “a comprehensive set of competitive safeguard rules under 66 Pa.C.S. §3005(b) [that] are necessary to prevent discrimination, cross subsidies, and other market power abuses by ILECs in their local exchange markets and [which] are, therefore, in the public interest.”² The Commission also noted the similarity of parts of the proposed regulations to the Code of Conduct applied to Verizon Pennsylvania, Inc. (“Verizon-PA,” f/k/a Bell Atlantic - Pennsylvania, Inc. (“BA-PA”)), in the Global Order and to the competitive safeguard regulations proposed as a part of the Commission’s deregulation of the electric industry. With respect to this latter point, the Commission deemed it appropriate to apply the regulations to ILECs only since “incumbent local exchange providers and their affiliates [are] the entities with market power that may be abused without adequate competitive safeguards in place.”³ The Commission stayed indefinitely the comment period on the proposed regulations, pursuant to a request from ALLTEL PA (to which other parties concurred), while the matter of the Verizon-PA Code of Conduct flowing from the Global Order was on appeal.⁴ With the specific matter of the Code of Conduct applied to Verizon-PA no longer before the courts, this comment period has been re-instituted.⁵

²30 Pa.B. 542.

³*Id.*

⁴30 Pa.B. 2376 (May 13, 2000).

⁵ALLTEL PA notes that while the issue of the Code of Conduct is no longer before the courts, Verizon-PA has not dropped its opposition to structural separation, which remains an issue on appeal. ALLTEL PA submits, therefore, that Commission’s consideration of functional separation within the proposed regulation’s Code of Conduct continues to be premature until such time as the courts have
(continued...)

In addition to establishing a generic set of rules for all ILECs prescribing and proscribing certain behaviors, the regulations as proposed also impose a functional separation requirement on any ILEC with between 250,000 and 1,000,000 access lines. In essence, the proposal singles out for functional separation ALLTEL PA, The Sprint/United Telephone Company ("Sprint/United") and Commonwealth Telephone Company ("Commonwealth").

II. ALLTEL PENNSYLVANIA, INC.

ALLTEL PA is an incumbent local exchange carrier providing telecommunications service in rural portions of Allegheny, Armstrong, Beaver, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Green, Huntingdon, Indiana, Jefferson, Lawrence, Lycoming, McKean, Mercer, Northumberland, Schuylkill, Union, Venango, Warren, Washington and Westmoreland Counties. The Company provides service to slightly more than 251,000 access lines as of December 2000.

ALLTEL PA is a rural telephone company as defined in Section 3 of the Telecommunications Act of 1996 ("TCA-96") and as specifically determined by this Commission in the Order issued October 19, 1999, at Docket No. P-00971177. As such, the Company has had a suspension of its Section 251(b) and (c) interconnection requirements under TCA-96 since that Act's enactment.

⁵(...continued)
given further direction on the issue of corporate separation.

As this Commission has previously recognized in ruling on ALLTEL PA's request for a rural suspension under TCA-96, it is inappropriate to base regulatory decisions affecting ALLTEL PA purely on the Company's size as measured by its number of access lines.⁶ ALLTEL PA today is a composite company developed over many years of mergers and acquisitions of small, rural LECs. The Company today reflects the twenty-nine (29) mergers or acquisitions of rural and small LECs throughout Pennsylvania, each of which primarily served exclusively in rural areas. No acquired service territory, and current ALLTEL PA exchange, has more than 50,000 access lines. The smallest acquired territory has only 254 access lines. Thus, although on an aggregate basis the Company barely exceeds the 250,000 access line cutoff contemplated in the proposed regulations as a result of its corporate strategy of acquisitions and mergers, the Company's total service territory is in actuality a highly fractured composite of non-contiguous and primarily low access line count exchanges.

ALLTEL PA's exchanges are low population density customer areas. The Company has eighty-three exchanges which cover a total of 5,618 square miles. Each exchange averages 2,858 access lines and covers 68 square miles. The Company serves an average of 42.2 access lines per square mile (residential and business). The Company serves slightly more than 32 residential access lines per square mile as compared to other smaller local exchange carriers that average 67

⁶See Order entered October 19, 1999, at Docket No. P-00971177 ("October 19 Suspension Order," discussed further below.

residential access lines per square mile. A similar comparison of households per square mile shows ALLTEL PA with approximately 30 households per square mile as compared to 62 for other smaller local exchange carriers and 104 for Verizon PA.⁷

The Company's rural status has not resulted in second class service, however. ALLTEL PA is proud of its achievement of and commitment to a standard of excellence in customer service in its rural service territories. The Company continually meets or surpasses the Commission's service performance benchmarks as set forth in Chapter 63. Further, ALLTEL PA has expanded its service delivery process beyond the measurements mandated by the Commission in Chapter 63, for example, offering same day service for primary and non-primary service order requests. Additionally, ALLTEL PA uses a customer satisfaction index to evaluate customer perception of service as it relates to installation and repair. That index, which involves one-on-one contact between the Company and its customers, indicates that ALLTEL PA's customers are extremely satisfied with the level of service they receive. Finally, and most significantly within the context of these proposed regulations, ALLTEL PA is not aware of, nor does the Company believe the Commission has received, any complaints from potential competitors about the Company's provision of services to or interaction with such competitors.

⁷The source of this information is provided in the Petition filed by ALLTEL PA on March 1, 2000, requesting an extension of its rural suspension, at Docket No. P-00971177.

This brief summary of ALLTEL PA's historical development and current status is provided to place into perspective ALLTEL PA's market existence in Pennsylvania, since it is that market existence, and its attendant behavior with both customers and competitors, which the Commission seeks to redress through this rulemaking. Although the Company has just over 250,000 access lines, and thus on purely the basis of a count of access lines meets the Commission-determined cut-off for functional separation in the proposed regulations, ALLTEL PA possesses neither the size nor the dominant market power of Verizon-PA, the only Pennsylvania ILEC for which this Commission has previously deemed corporate separation a competitive necessity.

III. THE PROPOSED COMPETITIVE SAFEGUARDS REGULATIONS

A. Introduction

In this proposed rulemaking, the Commission has proposed a "comprehensive set" of rules in order to prevent "discrimination, cross subsidies, and other market power abuses by ILECs in their local exchange markets[.]"⁸ The proposed regulations cover a wide variety of market behaviors. Most of the activities sought to be curbed by the regulations are either already prohibited by existing laws or prescribe conduct to which ALLTEL PA already adheres. For this reason, ALLTEL PA finds the proposed regulations to be at best duplicative and at worst ambiguous and therefore susceptible to subjective and controversial interpretation. There is one very serious issue, however, to which ALLTEL PA

⁸30 Pa.B. 542.

strenuously objects and upon which these comments focus, and that is the functional separation proposed in Section 63.143(1).

The proposed functional separation represents a significant intrusion into ALLTEL PA's existing corporate structure that is wholly unsupported either by evidence presented before this Commission in any formal or informal proceeding or by anecdotal stories of anti-competitive market behavior from ALLTEL PA. Consequently, because it finds support only in the overstated and erroneous assumption that all ILECs possess and exercise dominant and abusive market power, and because it imposes significant operational burdens on the Company, ALLTEL PA strenuously opposes the proposed functional separation. The Company submits that absent any reason or justification for this Commission to conclude that ALLTEL PA has ever engaged in behavior which this Commission has deemed anti-competitive or in which issues of discrimination, cross subsidies or other market power abuses by ALLTEL PA were raised, that the severe remedy proposed in Section 63.143(1) is not only unnecessarily intrusive, but also markedly and undeservedly hostile.

The discrimination, cross subsidies and other market power abuses sought to be curbed by the proposed regulations are adequately addressed in both existing regulatory commitments as well as the remainder of the proposed competitive safeguards without imposing the additional burden of functional separation. Blind subscription to the notion that only "incumbents" have market power that would allow them to thwart competitive entry by controlling bottleneck facilities and

engaging in predatory pricing and other anti-competitive conduct and that all “incumbents” warrant identical market remediation is an unjust stereotype founded in this Commission’s experience with Verizon-PA. The net effect of the type of “broad brush” remediation sought from functional separation, however, is conviction of ALLTEL PA with neither indictment nor trial. ALLTEL PA respectfully submits that this Commission has in the past, and can again in the proposed regulations, sufficiently identify and separate dominant carriers from all others and discretely carve appropriate market remedies where needed. In this rulemaking, ALLTEL PA requests the Commission to do just that by eliminating the functional separation requirement for all ILECs with between 250,000 and 1,000,000 access lines from the proposed Code of Conduct.

B. Section 63.143(1) - Functional Separation

1. Lack of Statutory Support to Impose Functional Separation on ALLTEL PA

While the proposal to functionally separate ALLTEL PA into retail and wholesale parts carries a heavy corporate burden, it lacks strong statutory support. Section 3005(h) of Chapter 30 allows for structural separation as a regulatory tool for LECs with over 1 million access lines “if the commission finds that there is a substantial possibility that the provision of the [competitive] service on a nonseparated basis will result in unfair competition.” Structural separation, therefore, while provided for in the statute, applies first only to LECs over 1 million and second only if there is a “substantial possibility” of abuse without it. While the

proposed regulations do not call for structural separation, they do nonetheless impose a corporate restructuring on ILECs that are much smaller than those for which the statute contemplated structural separation. And the regulations propose functional separation without any finding that there is a substantial possibility of abuse without it. Thus, the proposal far exceeds the Commission's statutory restructuring authority contemplated under Chapter 30.

2. Lack of Factual Support to Impose Functional Separation On ALLTEL PA

ALLTEL PA also submits that the facts fail to support the functional separation proposal. ALLTEL PA urges this Commission to reconsider its apparently predetermined posture that functional separation is a necessary precondition to robust competition under any circumstance, and rather, place that posture into the context of the development of local competition within Pennsylvania's markets.

As stated above, the initiation of this competitive safeguard process in March of 1999 was interrupted by the commencement of the Global Litigation, an intervening event which impacted significantly the regulatory landscape on which the competitive safeguards regulations were being developed. In the Global Litigation, the Commission was presented two separate proposals, one in each of the respective Joint Petitions, that were aimed at ensuring fair and nondiscriminatory treatment of telecommunications carriers purchasing ILEC wholesale services in order to provide retail services to customers in competition

with the ILEC. The 1648 Petition (also known as the Senators/CLEC or AT&T Petition) contained a proposal calling for the structural separation of Verizon, and the application of a code of conduct (excluding separation) upon those ILECs with more than 500,000 access lines. The 1649 Petition (also known as the ILEC/CLEC or BA-PA Petition) contained a broader competitive safeguard proposal in that it proposed a Code of Conduct to be applied to all ILECs. However, it did not propose any corporate separation. Although participants in the Global Litigation included representatives from all stakeholder interests, including virtually every ILEC, a large cross-representation of CLECs, most notably AT&T Communications of Pennsylvania, Inc. ("AT&T") and MCI Worldcom, as well as legislative and consumer representatives, at no time did any party ever propose or represent that corporate restructuring of any ILEC other than Verizon was necessary or appropriate. Further, the Commission's determination regarding the establishment of a Code of Conduct for, and structural separation of, Verizon-PA in the Global Order, following the development of a record and full deliberation on these issues in the Global Litigation, sent no signal whatsoever that ALLTEL PA should expect in this regulatory rulemaking proceeding to have imposed upon it something greater than that which neither the parties sought, nor the Commission deemed appropriate, in the Global Litigation. Indeed, it sent precisely the opposite signal - that neither a Code of Conduct nor separation was warranted or necessary for any ILEC except Verizon-PA. Despite the opportunity to do so, not one CLEC in the Global Litigation ever raised an issue of anti-competitive market behavior by ALLTEL PA.

ALLTEL PA submits that the proposed functional separation is at best premature and at worst a wholly unnecessary exercise. It is only Verizon-PA which the Commission has found controls over 90% of the local business market and almost 100% of the residential market as measured by access lines in Verizon-PA's own territory, and which has, according to the Commission, discouraged competition through its own actions. Global Order at 228.

In justifying structural separation of Verizon-PA, this Commission specifically found as follows:

. . . BA-PA's continuing dominant market share, the lack of market entry in the residential market in the years since enactment of Chapter 30 and TA-96, and the substantial evidence presented in this docket of discriminatory access being provided to competitors supports our conclusion that Chapter 30's goal of promoting competition in the local telecommunications markets will not be achieved absent structural separation of BA-PA's wholesale and retail operations.

Global Order at 229. Despite ample opportunity in the Global Litigation, no party came forward with any evidence or allegation of ALLTEL-PA's engagement in discriminatory or unfair behavior.

ALLTEL PA has also already experienced significant competition in the intraLATA and interLATA toll markets, the market for telecommunications equipment and the market for PBX services. No party has ever complained with respect to any of these other markets that ALLTEL PA has engaged in anti-competitive behavior.

Further, while this Commission may have found that the local competition track record remains unimpressive, this is not at all the result of ALLTEL PA's market behavior. Indeed, several reasons wholly unrelated to ALLTEL PA's market behavior explain Pennsylvania's current market for local service competition.

Because of the limitations and protections contained in both Chapter 30 and TCA-96 that were specifically aimed at protecting the service areas of smaller, rural ILECs, including ALLTEL PA, most ILECs, including ALLTEL PA, have both a suspension and exemption of most forms of local competition. Thus, for reasons totally unrelated to ILEC market behavior vis-a-vis competitors, the robust development of local competition in rural markets has been delayed. More importantly, because of the history of local service regulation and the long-term regulatory social policy of residual pricing, the services in the local residential market historically were and today remain artificially priced below cost. Competitors are not rushing to serve a market in which the incumbent provider continues to charge artificially suppressed prices. If local competition is not "thriving" in ALLTEL PA's service territory, it is only because the rural marketplace has not yet been prepared, from a regulatory perspective, to introduce and sustain rural competition. It is not because ALLTEL PA is exercising anti-competitive behavior.

ALLTEL PA respectfully submits that the imposition of functional separation as a part of the Commission's proposed Code of Conduct is a proposal whose negative impact on the Company far outweighs any demonstrated need in the marketplace. The imposition of functional separation, while to a certain extent less

drastic than structural separation, is nonetheless economically and operationally burdensome, particularly where anti-competitive market behavior has neither been averred or found. Until evidence of market abuse by those ILECs to be affected by the proposed functional separation is presented, or even alleged, the Commission should refrain from proposing a remedy that unnecessarily and undeservedly sanctions those ILECs, including specifically ALLTEL-PA.

3. The Adequacy of Existing Safeguards

The Commission justifies the Code of Conduct, including functional separation, on the need to prevent discrimination, cross subsidies and other market power abuses. ALLTEL PA submits that this objective can be achieved by the Commission without the need to resort to unnecessary and unfounded functional separation of existing corporate structures.

First, the matter of cross subsidies is by now almost a red-herring, which has both its origination and resolution within the implementation of Chapter 30 and each ILEC's Commission-approved Chapter 30 Plan. All Pennsylvania ILECs, including ALLTEL PA, have filed Chapter 30 plans before this Commission.⁹ After almost three years, including extensive litigation, ALLTEL PA's plan is before the Commission in final form pending final approval. Several parties were active complainants in ALLTEL PA's Chapter 30 proceeding, including AT&T, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). The prevention of cross-subsidies was

⁹Only Verizon-North remains without an approved Chapter 30 plan.

thoroughly addressed in ALLTEL PA's Chapter 30 litigation, resulting, *inter alia*, in the requirement that ALLTEL PA provide cost data to support competitive as well as non-competitive rate changes. While the Commission in its March 1999 NOPR noted its awareness of Chapter 30 ILECs' existing cost study obligations in the several Chapter 30-related orders entered since 1993, ALLTEL PA believes that the significance of those obligations and their impact on market behavior is understated by the Commission. ALLTEL PA does not strenuously oppose the further subsidy proscriptions contained in the proposed regulations. The Company submits, however, that functional separation as an additional precaution aimed at preventing the same evil is unnecessary.

Further, the Competitive Services Plan ("CSP") of ALLTEL PA's Chapter 30 Plan contains additional safeguards to protect competitors from potential abuses and to insulate basic service ratepayers from the economic risk of competitive services. For example, ALLTEL PA, like every other Chapter 30 ILEC, is required to identify, at the time of the filing of an annual report with the Commission, the revenues, expenses, rate base and net income associated with all services deemed competitive under Chapter 30 and to file informational price lists or tariffs. The Company is precluded from cross-subsidizing or supporting any competitive service with revenues earned and expenses incurred for any noncompetitive service or from maintaining any resale or sharing restrictions, except those resale restrictions otherwise permitted pursuant to appropriate regulatory authority, such as class of service restrictions, on any service deemed competitive. Finally, any competitor or

other party who believes the Company has violated any of the provisions of its CSP may file a complaint with the Commission.

Aside from the specific competitive safeguards contained in individual Chapter 30 Plans, ALLTEL PA submits that other existing statutory and regulatory protections adequately ensure promotion and development of a robust competitive market in non-Verizon service territories without the imposition of functional separation. Chapter 21 of the Public Utility Code requires ALLTEL PA to submit affiliated interest agreements to the Commission. The Commission exercises extensive audit authority over ALLTEL PA, and has, in fact, recently concluded an audit of the Company in which the Commission found no abuses related to ALLTEL PA's exercise of market power or its affiliated interests. At the federal level, the Federal Communications Commission has approved ALLTEL PA's cost allocation manual separating revenues and expenses between affiliates as a further measure to prevent anti-competitive behavior. Thus, at both the state and federal levels, regulatory oversight on ALLTEL PA has been and remains extensive. Until that oversight is demonstrated to be insufficient to control abusive market behavior, functional separation should not be imposed.

4. ALLTEL PA Has Market Presence But Does Not Exercise Abusive Market Power

The Commission also defends the proposed regulations on the basis that only incumbents can exercise market power in an anti-competitive fashion, referencing the generic "ILEC's" purported ability to "engage in unlawful predatory

pricing to eliminate competition.”¹⁰ As earlier stated, neither evidence nor anecdotes suggest that ALLTEL PA has, can or will engage in abusive exercises of market power, including predatory pricing. To the contrary, it appears that evidence exists today to suggest that a CLEC, AT&T, is now situated to engage in predatory pricing. AT&T today stands ready to *give away* local and long distance telephone service.¹¹ Further, as was pointed out in AT&T’s pending cable telephony CLEC application proceeding, AT&T’s general manager of telephony in southwest Pennsylvania, Randy Bender, identified that AT&T signed on 19,238 of the potential 240,000 Verizon (formerly Bell) local service customers from January to August of 2000 (before AT&T implemented its promotional tariff offering free service), and that number was accelerating to the point that in two years AT&T expected to have service in at least 25% of the homes passed. As AT&T’s own general manager stated, “[i]t’s been an easier sell than we [AT&T] thought it would be[.]”¹² Clearly AT&T’s own market success does not provide evidence to substantiate the need to restructure ALLTEL PA’s existing corporate organization as a safeguard to ensuring AT&T’s further success.

¹⁰30 Pa.B. 543.

¹¹See Application of AT&T Communications of Pennsylvania, Inc. and TCG Pittsburgh to Amend their Certificates of Public Convenience, Docket Nos. A-310125F0002 and A-310213F0001 (“CLEC dockets”); TCG Tariff No. 6, Supplement No. 13, Third Revised Sheet 5, issued on August 28, 2000, effective on August 29, 2000, and received in the Commission on August 30, 2000, an AT&T promotional tariff offering free local and 300 minutes of long distance service to any non-AT&T customer that switched to AT&T’s cable telephony service; and Rural Telephone Companies’ Response & Motion to AT&T/TCG Answer in Opposition to Petition for Reopening the Record and Rehearing filed November 28, 2000 in the CLEC dockets (containing allegations of AT&T’s offering free service and other benefits in the rural service territory of The Bentleyville Telephone Company).

¹²August 8, 2000 edition of the Greensburg Tribune-Review, copy attached.

ALLTEL PA further submits that arbitrarily imposing functional separation upon all existing ILECs purely on the basis of their aggregate size, as measured by access lines, without any consideration at all of the market activities in ALLTEL PA's affected rural markets, is precisely the type of unfocused regulatory policy previously avoided by this Commission.

In recognition of the substantially different market characteristics of rural telephone companies, TCA-96 gave state regulatory agencies the tools and authority to moderate the interconnection requirements, to balance the marketplace, to recognize the competitive risk to the investment already committed to serve rural and small market service territories, to achieve the proper results in a competitive world, and to ensure the continued provision of universal service in areas served by smaller companies. The fact that Congress has provided for exemption and suspensions under TCA-96, and that this Commission had determined that ALLTEL PA is a rural company deserving of these statutory provisions, demonstrate that ALLTEL PA does not possess the type of market power or domination that the Commission's proposed functional separation seeks to curb.

ALLTEL PA currently has a suspension of its Section 251(b) and (c) suspension requirements under TCA-96. The Section 251(f) exemption demonstrates the recognition by Congress and this Commission that the burdensome requirements otherwise imposed on incumbent LECs must be moderated with respect to areas served by rural telephone companies, such as ALLTEL PA.

In addition to the rural exemption, Congress also recognized that any requirements appropriate in areas served by larger LECs are generally inappropriate in areas served by smaller LECs. Smaller LECs do not exhibit or possess the dimensions of market dominance of larger LECs. The relative size of smaller LECs thus makes it much less likely that market entry of new, competitive providers can be substantively affected in negative ways. Further, many of the new, competitive providers which potentially may be interested in competitive entry into smaller LECs' areas are significantly larger than the small and rural incumbent LECs with which they may compete.

In the October 19 Suspension Order granting ALLTEL PA its initial Section 251(b) and (c) suspension, the Commission observed as follows (specifically with respect to consideration of ALLTEL PA's size versus its marketplace characteristics):

ALLTEL PA is a local exchange carrier operating in Pennsylvania. The uncontroverted evidence of record states that ALLTEL PA has fewer than 2% of the subscriber lines installed in the aggregate nationwide.

We conclude that ALLTEL PA should be classified as a rural carrier under the TA-96.³

* * *

As compared to other companies which have been granted §251(f)(2) relief, ALLTEL PA is large. This factor mitigates against the view that ALLTEL PA is in the same market position as Pennsylvania's smaller "rural" carriers. **However, a close examination of ALLTEL PA's service area demonstrates that ALLTEL PA serves multiple discontinuous areas in**

rural Pennsylvania. ALLTEL PA provides service to rural areas in Greene county separate and apart from service provided to rural areas in Elk, Cameron, Jefferson, Clarion, Armstrong, and Venango counties. ALLTEL PA also provides rural service to Crawford, Mercer, and Erie county separate and apart from the areas discussed above. Finally, ALLTEL PA provides service in Northumberland, Union, and Wyoming counties significantly east of, and in predominantly rural parts of, these areas.

These considerations, inter alia, lead us to conclude that ALLTEL PA is a rural carrier serving a predominantly rural area and eligible for relief under §251(f) of the TA-96. Moreover, ALLTEL PA's service area and characteristics are of the type focused on in the legislative history behind §251(f).⁴

* * *

We conclude that ALLTEL PA, despite its size, does serve primarily low density population areas. (ALLTEL Petition, p. 28.)

Consequently, we conclude that ALLTEL PA is entitled to the limited relief of interconnection duties afforded by §251(f)(2) until July 10, 2000, to allow for a transition period toward fully competitive markets.

³ Although it is not a prerequisite for §251(f)(2) relief, our finding is consistent with ALLTEL's rural characteristics. We note that the primary question of ALLTEL's rural status was originally being considered at M-00960799F002. Having addressed the issue in this proceeding, we will mark that issue closed.

⁴ The legislative history behind §251(f)(1) (pertaining to rural exemptions) reflects a concern for protecting companies serving rural areas from the larger nationwide companies with far superior financial and technological resources. ALLTEL PA's own petition acknowledges this fact. (ALLTEL Petition, p. 11).

October 19 Suspension Order at 7-10 (emphasis added) (footnotes in original).

Proposing to functionally separate ALLTEL PA based simply on the number of access lines served by the Company, without regard to the Company's overall composition, market characteristics and market behavior, is unjustified and flawed regulatory policy. ALLTEL PA requests the Commission to afford the Company the same consideration here as it did when considering the Company's suspension petition - give weight to all relevant factors, including market conditions in ALLTEL PA's service territory, and not just the Company's aggregate size.

5. The Comparison to Electric Deregulation

ALLTEL PA acknowledges that in deregulating the vertically integrated electric utility monopolies, the Commission functionally separated electric distribution from electric generation.¹³ However, ALLTEL PA submits that significant differences exist between the deregulation of the electric and telecommunications industries that undermine any comparison of functional separation in electric deregulation as support for separation in the telecommunications market.

First, until electric generation was deregulated, the electric industry remained a fully integrated regulated monopoly in all aspects - generation, transmission and distribution. The telecommunications industry on the other hand, has been undergoing a continuous and iterative process of deregulation since the initial break-up of the AT&T monopoly in 1984. The markets for interLATA and intraLATA competition are fully competitive, and the Commission has recently "jumpstarted"

¹³52 Pa. Code §54.122(11).

competition in the local markets with the Global Order. Verizon-PA was first out of the gate with its Chapter 30 Plan in 1993, and TCA-96 further spurred local competition. Unlike the electric industry, today there is no telecommunications service that remains regulated as a truly monopoly service.

Further, the Electric Competition and Choice Act differs significantly from either Chapter 30 or TCA-96 both in terms of statutory authority granted to order corporate restructuring and guaranteed stranded cost recovery. Section 2804(5) of the Electric Competition and Choice Act (66 Pa.C.S. §2804(5)) specifically grants the Commission the authority to permit an electric utility to divest itself of facilities or to reorganize its corporate structure. As stated above, the Commission's "separation" authority under Chapter 30 is limited to ILECs with greater than 1,000,000 access lines. Also, the Electric Competition and Choice Act was fully compensatory to the electric industry in that the statute allowed electric utilities to recover stranded costs, including costs of restructuring. Telecommunications ILECs were not allowed to impose a competitive transition charge, or CTC, on all customers until all transition or stranded costs, including mandatory reorganizational costs, were recovered.

Further, from an industry perspective, electric generation, distribution and transmission employees and facilities were already by the very nature of their responsibilities, construction, functions and operations essentially separate. Unlike electricity, telecommunications is a naturally integrated product - structurally, operationally and functionally. Functional separation of the two is not comparable.

The interaction of distribution monopolies with their deregulated generation affiliates in the electric industry, as well as the already functionally separate manner of their operations, may have justified functional separation by regulation; the mandated separation of ALLTEL PA's wholesale and retail functions, neither of which retains monopoly protections or privileges, is too severe a remedy absent any allegation or demonstration that anti-competitive behavior exists.¹⁴

IV. CONCLUSION

For the reasons stated herein, ALLTEL Pennsylvania, Inc. respectfully requests that the Commission delete section 63.143(1) from the proposed Code of Conduct as wholly unnecessary, unwarranted and unsupported. The proposal to functionally separate ALLTEL PA clearly is geared towards remedying a situation that was demonstrated to exist solely within the service territory of Verizon-PA. Since ALLTEL PA has had a suspension of its Section 251(b) and (c) interconnection requirements under TCA-96, the market for non-facilities based competition is untested in ALLTEL PA's service territory and ALLTEL PA's manner of responding to local competition is unproven. In all other competitive markets in which ALLTEL PA participates, this Commission has never been presented any evidence that ALLTEL PA has engaged in anti-competitive behavior. It would be

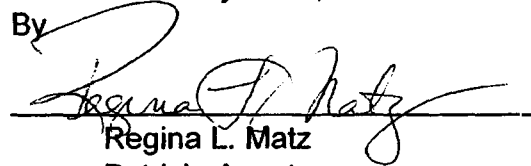
¹⁴Indeed in the part of the PECO Restructuring Order quoted by the Commission in the Global Order, it is apparent that it is the functional separation of the regulated [electric distribution company] functions and competitive generation functions [that] is essential for the development of a vibrant competitive market." Global Order at 230, quoting Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement, Docket Nos. R-00973953 and P-00971245 (Order entered December 23, 1997) (PECO Restructuring Order).

wrong for this Commission to assume, without any allegation to that effect, that ALLTEL PA requires functional separation in order for competitors to fairly compete on the local level within ALLTEL PA's service territory. Without any evidence of the deceptive or injurious behavior it is intended to redress, the corporate intrusion that will flow from mandatory functional separation far outweighs any benefits the market, and the public, may gain.

Respectfully submitted,

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BusinessExtra

Tuesday, Aug. 8, 2000

Competition calling

AT&T says local telephone service signups accelerating

By Paul Beebe
TELEPHONE REVIEW

Larry Guess wasn't searching for a different firm to furnish local telephone service to his South Park home. Bell Atlantic had been his familiar phone provider more than 20 years.

But when a salesperson called him eight months ago to pitch AT&T Broadband's new local service, Guess was intrigued. AT&T's offer included a second phone line for only \$5 a month more than what he was paying Bell Atlantic for a single line. He would keep his telephone number. AT&T would provide a few extras — caller ID, call forwarding and three-way calling. And if Guess didn't like the service, it would pay to reconnect him to Bell Atlantic.

Guess was convinced. He would get cheaper local service with a guarantee, and there was no requirement to become an AT&T long-distance customer. Still, he was apprehensive. Cutting his tie to Bell Atlantic was like leaving home for the first time.

"You are going to an unknown," Guess recalled. "There is always a little doubt in your mind when people say they can do this for you and that for you. I was definitely nervous."

The 50-year-old contract administrator was about to make history. By switching to AT&T, he became one of the first consumers to obtain local phone service from a company that wasn't Bell Atlantic. Guess didn't think of himself as a pioneer. But in helping to break Bell Atlantic's exclusive hold on the Pittsburgh market that's what he was.

The stage for local competition had been set in 1996, when Congress enacted the Telecommunications Reform Act. The law tore down barriers that barred long distance and local service companies from doing business on each other's turf. It was meant to stimulate development of new products and services while driving prices lower.

Four years later, the battle for local-service customers in Pittsburgh is finally beginning, and some might say that true choice still isn't here. Bell Atlantic claims AT&T is doing what it can to delay Bell Atlantic's progress into the long-distance business. That's critical to Bell Atlantic, because without long-distance service capability, it cannot offer the same range of services. AT&T denies the charge.



South Park resident Larry Guess was one of the first people in Pittsburgh to switch from Bell Atlantic local service to AT&T Broadband.

'It's doing better than anticipated. It's been an easier sell than we thought it would be.'

— Randy Bender
AT&T

Regardless of who is right, the stakes are enormous. Bell Atlantic serves 1.6 million lines in western Pennsylvania. AT&T says it could serve as many as 730,000 homes in the Pittsburgh region with local service, long distance and high-speed Internet access. Figuring an average expenditure of \$50 a month per home, the telecommunications giant thinks the region could be a \$400 million market. In supplying local service, the com-

panies use different technologies. Bell Atlantic has constructed its network with copper and fiber optic lines. AT&T is building its service on the cable television network it bought from Tele-Communications Inc., or TCI, in 1999.

Randy Bender, AT&T's general manager of telephony in southwest Pennsylvania, says 19,200 local-service customers have been signed since January. But while the number is small, sign-ups are accelerating. In two years, AT&T will put its local service into at least one-quarter of the 240,000 homes the company's cable system can reach today, he said.

"It's doing better than anticipated. It's been an easier sell than we thought it would be," Bender said.

The age of the cable network is restricting the speed at which AT&T

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Competition calling

COMPETITION FROM/C1

can build its business. While the network extends through the six-county metropolitan area, most neighborhoods are served with cable lines that transmit signals in one direction. Until the lines are upgraded to carry voice and data transmissions in two directions, AT&T's telephone service will be limited.

To get over that hurdle, AT&T is spending \$250 million to tear out older coaxial-fiber optic lines and install lines made only of fiber optic material. One-third of the system already is rewired. The rest of the system is expected to be finished in two years, spokesman Dan Garfinkel said.

Garfinkel would not reveal AT&T's upgrade schedule. That makes it impossible to predict when local service will be available in neighborhoods served now with one-way lines.

Consumers with AT&T service generally seem to be pleased that they've switched. Ed Fries, 49, an engineer who lives in South Park, signed up three months ago. Like Guess, Fries was drawn to AT&T by the offer of a second phone line for an extra \$5 a month.

Fries wanted the line for his home personal computer and for his children. He said the clarity of the new line has doubled the speed of his 56-kilobit modem and improved voice quality.

The biggest benefit has been the ability to call anywhere in the 412 area code without paying an extended service area charge. Each time Fries would jump on the Internet, he would have to pay a per-minute charge because Internet service providers did not have local numbers for the 653 Pleasant Hills phone exchange.

"Just that alone has made me happen," Fries said.

The acrimony between Bell Atlantic and AT&T over access to each other's traditional business domains isn't settled. Harry Mitchell, a spokesman for Verizon Communications, the parent company of Bell Atlantic, said Bell

Atlantic is at a competitive disadvantage. He said AT&T is using legal challenges to slow Bell Atlantic's entry into the long-distance business. The result is weakened consumer loyalty because the Baby Bell cannot offer service packages that include long distance calling.

"The brass ring for us is getting long-distance approval so we can package our services, so we can keep you as a local customer. It's about the ability to make an offer to you that you can't refuse," Mitchell said.

So far, that approval has been elusive. Local calls originating or ending at an AT&T customer's telephone that travel across Bell Atlantic's network are subject to an access fee. AT&T says the fee is too high and interferes with the growth of its business.

In September, the Pennsylvania Public Utility Commission issued its so-called Global Order, which was to resolve the differences between Bell Atlantic and long-distance companies eager to compete in local-service markets. Instead of ending the dispute, the order only added to the confusion. The PUC ordered Bell Atlantic to split itself into two units, a retail consumer division and a wholesale division. Bell Atlantic appealed to the Commonwealth Court in May and is awaiting a decision. Meanwhile, the PUC has agreed to revisit its ruling in September.

"We want to get into long distance, but AT&T doesn't want us in that business," Mitchell said.

"It's a relationship that is still evolving," AT&T's Garfinkel countered. "They (Bell Atlantic) have never had to give up 19,000 customers before."

The differences between Bell Atlantic and AT&T are not being played out at the consumer level. Guess said the switch to AT&T has been uneventful, and he has no reason to go back.

"Quite honestly, from my vantage point, I don't notice a difference when I pick up the phone," Guess said. "It's invisible to me."

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Competitive Safeguards Proposed : Docket Nos. L-00990141
Regulations : M-00960799

I hereby certify that I have this 23th day of February, 2001, served a true and correct copy of the foregoing document in the above referenced proceeding upon the persons and in the manner listed below:

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Dated: February 23, 2001


Regina L. Matz

Original: 2082

Ronald F. Weigel
Director
Government Relations

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REGULATORY REVIEW COMMISSION



Verizon Pennsylvania
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February 27, 2001

John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley:

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

Please find enclosed a copy of Verizon's comments that were filed with the Public Utility Commission on February 23, 2001 regarding the above Proposed Regulation.

We appreciate your consideration as it goes into final form and, as always, the assistance we receive on all regulations is most appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Ronald F. Weigel" with a small "djw" or similar initials at the end.

Attachment

Suzan DeBusk Paiva
Regulatory Counsel
Law Department



Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D. Paiva@Verizon.com

February 23, 2001

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

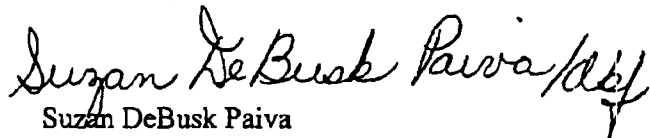
Re: Rulemaking Re Generic Competitive Safeguards Under 66
Pa. C. S. Sections 3005(b) and 3005(g)(2), Docket
No. L-00990141

Dear Mr. McNulty:

Enclosed for filing with the Commission is an original and fifteen copies of the Comments of Verizon Pennsylvania Inc. and Verizon North Inc. in reference to the above-captioned matter.

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

Very truly yours,


Suzan DeBusk Paiva

SDP/dkf
Enc.

cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served the Comments of Verizon Pennsylvania Inc. and Verizon North Inc., upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant) and 1.55 (relating to service upon attorneys).

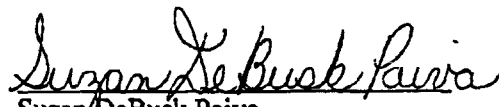
Dated at Philadelphia, Pennsylvania this 23rd day of February 2001.

Via Federal Express – Overnight Delivery

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Rulemaking Re Generic Competitive :
Safeguards Under 66 Pa. C.S. :
§§ 3005(b) and 3005(g)(2) : Docket No. L-00990141**

**COMMENTS OF VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC.**

In response to the Commission's Secretarial Letter dated January 3, 2001, Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North Inc. ("Verizon North") (collectively "Verizon") submit these comments regarding the "Code of Conduct" regulations proposed in the Commission's November 30, 1999 Rulemaking Order (published at Pa. Bulletin, Vol. 30, No. 5, Jan. 29, 2000).

INTRODUCTION

The Commission's November 30, 1999 order proposes a Code of Conduct to be applicable to all Pennsylvania incumbent local exchange carriers ("ILECs") modeled upon the Code of Conduct imposed on Verizon PA as a result of the *Global Order*.¹ Although comments were originally due a year ago, the Commission has twice extended the date for filing comments "because of the uncertainty surrounding the pending Global appeals and the relevance their resolution may bear on this rulemaking proceeding."²

¹ *Joint Petition of Nextlink Pennsylvania, Inc.*, 196 P.U.R. 4th 172 (Pa. PUC 1999), *aff'd*, No. 2790 C.D. 1999, etc. (Pa. Commw., Oct. 25, 2000) ("*Global Order*"), Appendix C.

² Jan. 3, 2001 Secretarial Letter.

Verizon does not oppose the concept of a Code of Conduct applicable to all ILECs rather than just to Verizon PA. Verizon agrees with the Pennsylvania Telephone Association (“PTA”), however, that it remains premature to impose such a code at this time. Rather, it would be preferable to wait until final resolution of the structural separation matters involving Verizon PA.³ If the Commission does determine to pursue this general Code of Conduct, now, however, then the following clarifications and modifications should be made. Attachment A to these Comments contains a mark-up of the proposed regulations with the changes suggested by Verizon.

COMMENTS

A. The Commission Should Make It Clear That This Code Of Conduct Supersedes Other Codes

As the Commission notes, the proposed regulations are “modeled after,” but are not exactly the same as, the Code of Conduct contained in Appendix C to the *Global Order*, which is applicable only to Verizon PA.⁴ The Commission intends this new Code of Conduct contained in the proposed regulations to apply to Verizon PA as well as to other Pennsylvania ILECs, and apparently intends that the regulations will supercede any other interim Code of Conduct.

³ *Verizon Pennsylvania Inc. v. Pennsylvania Public Utility Comm’n*, 55, 57, 58 and 59 E.D. Alloc. Dockets 2001 (Verizon PA’s Petition for Allowance of Appeal regarding Global Order); *Structural Separation of Verizon Pennsylvania Inc. Retail and Wholesale Operations*, Docket No. M-00001351; *Joint Petition To Adopt Settlement Agreement And To Terminate The Proceeding*, Docket No. M-00001353 (December 5, 2000).

⁴ Order entered Nov. 30, 1999 at 18.

If it implements these regulations, the Commission should make clear that this Code of Conduct supercedes and replaces any other Codes of Conduct applicable to Verizon PA (or any other carrier). Otherwise, the existence of two (or more) somewhat different codes will be highly confusing and will make compliance and monitoring difficult if not impossible. Because all of the codes are intended to achieve the same result, there should only be one applicable code.

B. The Language Requiring A Separate Organization For “Provisioning” Should Be Modified In Order To Ensure The Best Service For All Customers And Parity Service For CLECs

Section 63.143(1) of the proposed regulations requires ILECs with more than 250,000 but less than 1,000,000 access lines to “maintain a functionally separate organization (the ‘wholesale operating unit’) for the ordering and provisioning of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers.”⁵ This language should be modified to require these companies to “maintain a functionally separate organization (the ‘wholesale operating unit’) for the ordering, and for the processing and transmission of instructions to field forces for the provisioning, of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers.”

⁵ This provision would apply to Verizon North. It is not entirely clear if it would apply to Verizon PA. By its terms, it does not. However, later in the paragraph it refers to the Commission determining for ILECs serving over 1,000,000 lines “whether this subsection will continue to apply.” It would be helpful if the Commission clarified the applicability of the functional separation requirement to carriers serving over 1,000,000 lines.

It would not be beneficial to retail customers or to CLECs to require two separate organizations for actually “provisioning” service - ie., for the activities needed in the field to provide service to the CLECs. Using the same organization for the actual provisioning of service is one of the ways Verizon PA, for example, ensures that CLECs receive parity service – the standard of service this Commission measures and requires.⁶ Having two separate, duplicate organizations, one to provision service to retail customers and another to provide service to CLEC customers, will result in unnecessarily increased costs and rates, and will diminish service levels for all customers. The modified language proposed by Verizon will achieve the desired result while still preserving the highest levels of service and the greatest possibility of parity performance for CLEC service.

C. The Reference To Structural Separation As An “Example” Of A Potential Additional Safeguard Should Be Eliminated As Unnecessary Surplus Or Modified To Comport With Governing Law

The final sentence of proposed § 63.143(1) should be modified or eliminated. That sentence states “[t]hese other safeguards may include, for example, requiring the ILEC to structurally separate its retail and wholesale operations into separate corporate entities.” Preferably, the sentence should be eliminated as unnecessary surplus. If, however, the Commission feels the need to

⁶ *Joint Petition of Nextlink, et al.*, Docket No. P-00991643 (Order entered December 31, 1999).

give an “example” of another competitive safeguard, the sentence should be modified to comport with the limitations of 66 Pa. C.S. § 3005(h).

1. The Last Sentence Of § 63.143(1) Should Be Eliminated As Unnecessary Surplus

Verizon PA does not object to the statement that “after appropriate notice and hearing” the need for any further safeguards will be considered. It is not necessary, however, for the regulations to go on to give an “example” of a safeguard that might be considered, especially since this apparently is not intended to be an exhaustive list. The Commission’s authority to impose other competitive safeguards upon an individual carrier, with proper notice and hearing and upon proper evidence, is provided by statute. It is not necessary – and indeed unnecessarily confuses the matter – to list an “example.”

Moreover, given that the question of whether the Commission even has the statutory authority to require an ILEC to structurally separate is still subject to challenge before the courts, this reference to structural separation should be omitted.⁷ If the Pennsylvania Supreme Court or another court ultimately concludes that the Commission is *not* empowered to require a broad wholesale/retail split, then this reference could unnecessarily invalidate the entire regulation. By contrast, if this reference is omitted, the Commission still retains

⁷ Verizon recognizes that the Commonwealth Court has upheld the Commission’s claim of authority under 66 Pa. C.S. § 3005(h) to order structural separation of Verizon PA. Verizon PA has filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on this issue.

the authority, with proper notice and hearing and upon the proper evidence, to impose whatever safeguards the courts ultimately hold it is empowered to employ. The best course, therefore, would be to eliminate this unnecessary surplus language.

2. In The Alternative, This Sentence Should Be Modified To Reflect That The Commission May Order Competitive Services To Be Separately Provided Under Certain Circumstances

If the Commission still determines to state an “example” in its regulations, then its example should track the appropriate statutory language. This Commission has only those powers that are expressly, precisely, and unmistakably conferred upon it by the Public Utility Code, and may not act outside the strict and exact limits defined by the Code. “The power and authority to be exercised . . . must be conferred by legislative language clear and unmistakable. *A doubtful power does not exist.*”⁸ The Commission has proposed these regulations under its authority to promulgate regulations constituting “competitive safeguards” under 66 Pa. C.S. § 3005. Section 3005 does not authorize the “structural” separation of wholesale and retail operations referenced here without regard to whether the services to be separately provided are “competitive.”

Rather, under section 3005(h), the Commission may only “require that *a competitive service* be provided through a [separate subsidiary]” if it finds that “there is a substantial possibility that the provision of *the service* on a

⁸ *Process Gas Consumers Group v. Pennsylvania Pub. Util. Comm'n*, 511 Pa. 88, 96, 511 A.2d 1315, 1319 (1986) (emphasis added).

non-separated basis will result in unfair competition.”⁹ A “competitive” service is a term of art under this statute; it means that the Commission has determined that the service is entitled to a reduced level of regulation, after considering such mandatory statutory standards as “the ability of competitors to offer those services or other activities at competitive prices, terms and conditions; the availability of like or substitute services or other activities in the relevant geographic area.”¹⁰ Section 3005(h), by its clear and unmistakable language, *only* empowers this Commission to confine to a separate affiliate a “service” it has deemed statutorily “competitive.” The reference in the proposed regulation, by contrast, is to full wholesale/retail separation without regard to whether “all wholesale” or “all retail” services have been declared statutorily “competitive.” This is beyond the Commission’s authority.¹¹

If a structural separation example must be given, therefore, the language should be modified to track the statute as follows: “These other safeguards may include, for example, requiring that a competitive service be provided through a subsidiary which is fully separated from the ILEC if the Commission finds that

⁹ 66 Pa. C.S.A. § 3005(h) (emphasis added).

¹⁰ 66 Pa. C.S.A. § 3005(a)(1).

¹¹ Any order structurally separating an ILEC in this manner also would be barred and preempted by the Telecommunications Act of 1996, section 253(a) of which explicitly preempts state regulation that prevents a telecommunications company from providing any interstate or intrastate telecommunications services. 47 U.S.C. § 253(a) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”)

there is a substantial possibility that the provision of the service on a nonseparated basis will result in unfair competition.”

D. The Portion of Proposed § 63.143(2) Prohibiting Preferences For One CLEC Over Another Requires Clarification

Proposed § 63.143(2) prohibits an ILEC from giving “any CLEC any preference or advantage over any other CLEC. . .” Verizon agrees with the PTA’s comment that it would be more workable to prohibit “any unreasonable preference.” Indeed, this would comport with the ILECs’ general obligation under the Telecommunications Act to provide “reasonable and nondiscriminatory” services to CLECs.¹²

E. Proposed § 63.143(6) Requires Modification

Verizon agrees with the PTA’s comment that this section is unnecessary and confusing and should be eliminated. As presently worded, this provision could be read to prohibit ILECs from bundling noncompetitive services with any other service. Not only would such a prohibition unfairly limit ILECs’ ability to compete, but it would also harm consumers and competition.

Verizon suspects the Commission’s intent was simply to prohibit ILECs from improperly “conditioning” availability of a noncompetitive service to also require a consumer to purchase other services offered by the ILEC. The perhaps unintended consequence of the overly broad drafting of this provision, however, would be to deprive consumers of the free choice to purchase bundled services

¹² See, e.g., 47 U.S.C. § 251.

from the ILEC at all even if they wanted to, and also to prevent the kind of favorable impacts on prices and competition that the existence of such bundled offerings by the ILEC would provide. The Commission in other proceedings has clearly contemplated that ILECs will bundle competitive and noncompetitive services.¹³

The following modified language would better achieve the Commission's goal of prohibiting improper "conditioning," without the negative effects of the current overly and broad and confusingly drafted language:

An ILEC shall not condition the provision or continuation of any regulated service on the purchase of additional retail services from the ILEC. Nothing in this provision prohibits the ILEC from bundling services so long as the ILEC continues to offer any regulated service contained in the bundle on an individual basis.

Verizon therefore suggests the Commission adopt the above language instead of the language currently contained in proposed section 63.143(6).

F. All But The First Sentence of Proposed § 63.143(7) Should Be Eliminated

The first sentence of proposed § 63.143(7) simply repeats the statutory requirements of 66 Pa. C.S. § 3005(g)(2), and therefore is not objectionable. The

¹³ *Rulemaking Re Updating and Revising Existing Filing Requirement Regulations 52 Pa. Code §§ 53.52-53.53 - Telecommunication Utilities, Docket No. L-00940095 (Opinion and Order entered June 2, 2000) Annex A, § 53.60 ("When ILEC joint or bundled service packages include both competitive and noncompetitive services, these service packages shall meet any applicable state law or regulation regarding cost justification, discrimination and unfair pricing in joint or bundled service package offerings, and their component competitive and noncompetitive services.")*

remainder of the paragraph, starting with the word “[s]pecifically,” however, suffers from a number of problems and should be eliminated.

The introductory word “specifically,” suggests that the remainder of the paragraph is intended to define what is meant by the statutory prohibition on cross-subsidization repeated at the beginning of the paragraph that “an ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive service.” The prohibitions following the word “specifically,” however, do not go to cross-subsidization, and therefore do not really “specify” how an ILEC should proceed to avoid violating the cross-subsidization prohibition section 3005(g)(2). For that reason alone, the language in the remainder of the paragraph is a confusing *non-sequitur* and should be removed. Moreover, if it is intended as a definition of the prohibited conduct for cross-subsidization, then this blanket requirement that all goods or services provided to affiliates must be at or below the cost or tariffed price is so overbroad it is akin to killing a fly with a sledgehammer. Rather, no “definition” of the prohibited conduct is necessary because the language of section 3005(g) is clear and speaks for itself.

The additional language following the word “specifically” is also problematic because it attempts to address affiliated interest issues but it is inconsistent with the requirements of the Public Utility Code regarding affiliated interests. Section 66 Pa.C.S. § 2102(c) already addresses the limits on prices and

services provided among affiliated ILEC companies.¹⁴ It would be highly confusing, if not impossible, to comply with two sets of affiliated interest requirements, and there is no reason to impose different requirements here.

All but the first sentence of proposed section 63.143(7) therefore should be eliminated.¹⁵

G. Proposed § 63.143(8) Should Be Eliminated

Proposed § 63.143(8) attempts to limit what ILECs or their employees may say about their own services and those of competitors. Specifically, it provides that:

- (8) An ILEC, its affiliates, divisions or operating units, may not state or imply any of the following:
- (i) The services provided by the ILEC are inherently superior when purchased from the ILEC.
 - (ii) The service rendered by a competitor may not be reliably rendered.
 - (iii) The continuation of certain services from the ILEC are contingent upon taking the full range of services offered by the ILEC.

This provision should be eliminated for several reasons.

¹⁴ “If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive. . .”

¹⁵ Verizon PA recognizes that it proposed similar language in its proposed Code of Conduct governing the relationship between Verizon PA and its separate data affiliate. *Re: Structural Separation Of Bell Atlantic – Pennsylvania, Inc. Retail And Wholesale Operations*, Docket No. M-00001353, VZ-PA St. 1.0 (Direct Testimony of Jeff Ward) Ex. 7. However, this language does not sensibly transfer to relations among all affiliates of all ILECs.

First, this provision illegally restrains ILECs and their employees from exercising constitutionally protected First Amendment rights. For example, it prohibits them from stating that the ILEC's service is superior to that of its competitors and from informing customers why a competitor's service is inferior, even when those statements are true.¹⁶ Such prior restraint has been consistently rejected by the courts. The U.S. Supreme Court has held that restrictions on commercial speech can be upheld only where a substantial state interest is advanced by the restriction, where the regulation directly advances the substantial state interest and, is no "more extensive than is required" to serve that substantial state interest.¹⁷ This provision of the proposed regulations cannot survive scrutiny under that standard. Pennsylvania already prohibits false advertising,¹⁸ as well as misrepresentation of the quality of services, false or misleading disparagement of another's products or services, and all other fraudulent conduct which creates a likelihood of confusion or misunderstanding.¹⁹ The Attorney General is charged with enforcement of these measures, and violators are subject to injunction, civil penalties, and, upon continued violations, forfeiture of their franchise or right to

¹⁶ See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) ("the free flow of commercial information is indispensable.").

¹⁷ *Central Hudson Gas & Elec. Corp. v. New York Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

¹⁸ See 18 Pa. C.S. §4107(A)(5).

¹⁹ See 73 P.S. §§ 201-2(4)(vii), (viii), (xxi) (Purdon's Supp. 1999) (defining unfair trade practices); *id.* § 201-3 (declaring unfair trade practices unlawful).

do business.²⁰ There is, therefore, no substantial state interest in restricting ILECs' commercial speech that is not already fully protected in the Commonwealth.

Second, this provision would foster consumer confusion and consumer deception, because competitors would be free to disparage and mischaracterize the service of the ILECs, while the ILECs would be prohibited from defending themselves.

Third, this provision is overly broad and virtually impossible to follow, as it would by its language extend the prohibition on truthful, otherwise legal speech and advertisement to non-regulated entities and businesses.

Fourth and finally, this provision is unnecessary. CLECs are already protected by the prohibition on "promotion" and "disparagement" (proposed § 63.143(4)) and Verizon's proposed replacement language prohibiting improper "conditioning" (§ 63.143(6)).

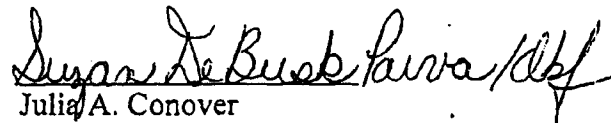
Proposed § 63.143(8) therefore should be eliminated.

²⁰ See *id.* § 201-3.1 (authorizing Attorney General to adopt regulations for enforcement of unfair trade prohibitions); *id.* § 201-4 (authorizing Attorney General to restrain unfair trade practices by seeking temporary or permanent injunction); *id.* § 201-8 (subjecting violators to civil penalties); *id.* § 201-9 (authorizing court, upon petition by Attorney General, to order dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates terms of injunction).

CONCLUSION

For the foregoing reasons, the Commission should defer the enactment of these regulations until after final resolution of the structural separation matters involving Verizon PA. If, however, the Commission determines to proceed with these proposed regulations, then it should make the changes discussed above and reflected in Attachment A hereto.

February 23, 2001



Julia A. Conover
Suzan DeBusk Paiva
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And Verizon North Inc.

Attachment A To Verizon Comments
Docket No. L-00990141

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE
Subchapter K. COMPETITIVE SAFEGUARDS

§ 63.141. Statement of purpose and policy.

This subchapter establishes competitive safeguards to assure the provision of reasonable nondiscriminatory access on comparable terms by ILECs to CLECs for all services and facilities necessary to provide competing telecommunications services to consumers, to prevent the unlawful cross subsidization or support for competitive services by ILECs, and to forbid unfair or deceptive practices. These competitive safeguards are intended to promote the Commonwealth's policy of establishing and maintaining an effective and vibrant competitive market for all telecommunications services. **This Code of Conduct supercedes and replaces any other Codes of Conduct applicable to any ILEC.**

§ 63.142. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

CLEC--Competitive local exchange carrier-- A telecommunications company that has been certificated by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub. L. No. 104-104, 110 Stat. 56), or under the relevant provisions of 66 Pa.C.S. § 3009(a) (relating to additional powers and duties).

Competitive service--A service or business activity offered by an ILEC or CLEC that has been classified as competitive by the Commission under the relevant provisions of 66 Pa.C.S. § 3005 (relating to competitive services).

ILEC--Incumbent local exchange carrier--A telecommunications company deemed to be an ILEC under section 251(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)).

LEC--Local exchange carrier--A local telephone company that provides telecommunications service within a specified service area. LECs encompass both ILECs and CLECs.

Market price--Prices set at market-determined rates or at tariffed rates, when applicable.

Noncompetitive service--A protected telephone service as defined in 66 Pa.C.S. § 3002 (relating to definitions) or a service that has been determined by the Commission as not a competitive service.

Telecommunications service--A utility service, involving the transmission of signaling, data and messages, which is subject to the Commission's jurisdiction.

§ 63.143. Code of Conduct.

ILECs, unless otherwise noted, shall comply with the following requirements:

(1) An ILEC with more than 250,000 but less than 1,000,000 access lines shall maintain a functionally separate organization (the 'wholesale operating unit') for the ordering, **and for the processing and transmission of instructions to field forces for the provisioning, and provisioning** of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers. The wholesale operating unit shall have its own direct line of management and keep separate books of accounts and records which shall be subject to review by the Commission under 66 Pa.C.S. § 506 (relating to inspection of facilities and records). For ILECs over 1,000,000 access lines, the Commission will determine for each such ILEC, after appropriate notice and hearing, whether this subsection will continue to apply or whether further safeguards will be necessary to protect CLECs from unfair competition and to ensure nondiscriminatory access to the ILEC's services and facilities. ~~These other safeguards may include, for example, requiring the ILEC to structurally separate its retail and wholesale operations into separate corporate affiliates.~~

(2) An ILEC may not give itself (or any of its affiliates, divisions or operating units) or any CLEC any **unreasonable** preference or advantage over any other CLEC in the ordering, provisioning or repair of any services that it is obligated to provide CLECs under any applicable Federal or State law.

(3) An ILEC's wholesale operating unit employees shall use CLEC proprietary information (that is not otherwise available to the ILEC) received in the ordering, provisioning or repairing of any telecommunications services provided to the CLEC solely for the purpose of providing the services to the CLEC. An ILEC may not disclose the CLEC proprietary information to employees engaged in the marketing or sales of retail telecommunications services unless the CLEC provides prior written consent to the disclosure.

(4) An ILEC employee, while engaged in the installation of equipment or the rendering of services on behalf of a competitor, may not disparage the service of the competitor or promote any service of the ILEC.

(5) An ILEC employee, while processing an order for the repair or restoration of service or engaged in the actual repair or restoration of service of any competitor, may not either directly or indirectly represent to any end-user that the repair or restoration of service would have occurred sooner if the end-user had obtained service from the ILEC.

(6) An ILEC shall not condition the provision or continuation of any regulated service on the purchase of additional retail services from the ILEC. Nothing in this provision prohibits the ILEC from bundling services so long as the ILEC continues to offer any regulated service contained in the bundle on an individual basis.~~An ILEC may not condition the sale, lease or use of any noncompetitive telecommunications service within the jurisdiction of the Commission on either of the following:~~

~~— (i) The purchase, lease or use of any other goods or services offered by the ILEC.~~

~~— (ii) A direct or indirect commitment not to deal with any CLEC.~~

(7) An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. ~~Specifically, an ILEC may not provide goods or services to any affiliate, division or operating unit at a price below the ILEC's cost or market price for the goods or services, whichever is higher. The ILEC may not purchase goods or services from any affiliate, division or operating unit at a price above the market price for the goods or services.~~

~~(8) An ILEC, its affiliates, divisions or operating units, may not state or imply any of the following:~~

- ~~(i) The services provided by the ILEC are inherently superior when purchased from the ILEC.~~
- ~~(ii) The service rendered by a competitor may not be reliably rendered.~~
- ~~(iii) The continuation of certain services from the ILEC are contingent upon taking the full range of services offered by the ILEC.~~

(8) ~~(9)~~ An ILEC shall formally adopt and implement the provisions in this section as company policy and shall take appropriate steps to train and instruct its employees in their content and application.

(9) ~~(10)~~ A party allegedly harmed by a violation of any of the provisions in this section may invoke the Commission's alternative dispute resolution procedures to resolve the dispute. That action, however, does not preclude or limit additional private remedies or civil action.

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February 23, 2001

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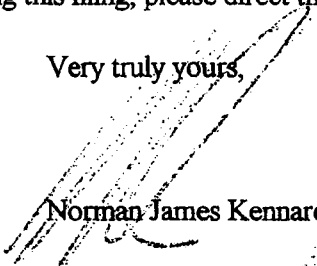
Re: Rulemaking Re Generic Competitive Safeguards Under
66 Pa. C.S. §§3005(b) and 3005(g)(2); Docket No. L-00990141

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Comments of Commonwealth Telephone Company in the above-captioned docket.

If you have any questions concerning this filing, please direct them to the undersigned.

Very truly yours,



Norman James Kennard

Counsel for Commonwealth
Telephone Company

NJK/tap
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Generic Competitive Safeguards :
Under 66 Pa. C.S. §§3005(b) and 3005(g)(2) : Docket No. L-00990141

COMMENTS OF COMMONWEALTH TELEPHONE COMPANY

I. INTRODUCTION

Commonwealth Telephone Company (“CTCo”) submits these comments in response to the Proposed Rulemaking Order¹ issued by the Pennsylvania Public Utility Commission (“Commission”). Secretarial letter of January 3, 2001 requires that comments thereto be filed on or before February 23, 2001.

II. CTCO CONCURS IN THE COMMENTS FILED BY THE PTA

Contemporaneously with CTCo’s Comments, the Pennsylvania Telephone Association (“PTA”) has also responded to the proposed Code of Conduct. CTCo supports the PTA’s Comments and urges the Commission to adopt them. However, the PTA has not responded to Item (a) of the proposed Code, inasmuch as that provision, requiring functional separation, applies only to ILECs serving more than 250,000, but less than 1 million, access lines. This description includes CTCo, which served approximately 311,000 access lines as of December 31, 2000. Therefore, CTCo files these Comments focused solely on the issue of functional separation.

III. CTCO COMMENTS ON MANDATORY FUNCTIONAL SEPARATION

A. CTCO HAS NOT BEEN REQUESTED TO AND IS NOT PROVIDING RESALE OR UNE SERVICES

No claim has been made that any type of separation is needed for non-Verizon ILECs in Pennsylvania.² The issue has never been raised before, including in the Global Proceeding. No party has ever suggested that the functional separation of CTCo is either necessary or appropriate. The first time the suggestion was even made was as it arose *sua sponte* in the Proposed Rulemaking Order. Nevertheless, the proposed Code is mandatory -- CTCo "shall maintain a functionally separate organization..."³

The ostensible purpose of requiring functional separation is regulation of the relationship between the ILEC and CLEC where the former is providing services or facilities, which are used by the latter to provide telecommunication services to customers, i.e., ILEC provisioning of resale services and/or unbundled network elements ("UNEs") to the CLECs. The premise of the separation requirement is that CTCo cannot be trusted to fairly provision resale and UNE services and that separation of the company's wholesale and retail functions, therefore, is necessary. CTCo, as a rural telephone company under the Telecommunications Act of 1996 ("TCA-96"), is exempted at this time from any obligation to offer wholesale services to CLECs.⁴ While TCA-96 clearly gave competitors

¹ Proposed Rulemaking Order Entered November 30, 1999 (Adopted November 18, 1999).

² The Code of Conduct and its application to Verizon PA is uncertain. A Joint Petition for Settlement submitted to the Commission on January 18, 2000 in the Global Proceeding proposing a substantially revised Code of Conduct for Verizon PA, is still pending. Moreover, the Structural Separation Proceeding involving Verizon PA has not yet been ruled upon by the Commission as of the date of these Comments. Docket No. M-00001353, Recommended Decision of Administrative Law Judge Weismandel dated January 26, 2001.

³ Order, Annex A at 3 (Proposed §63.142(a)).

⁴ 47 U.S.C. §251(f)(1). A misnomer, the "exemption" is actually a rebuttable presumption, under which a rural telephone company is not required to provide discounted resale or unbundled network elements unless a "*bona fide*" request is made by a competitive local exchange company, and, based upon a factual record where the CLEC has the burden of proof, the state commission finds that the request is not unduly economically burdensome, is technically feasible and is consistent with universal service.

the right to obtain discounted and unbundled local exchange services from the regional Bell operating companies and the larger national local exchange carriers under §251(c) Congress specifically recognized that such “obligations” should be applied to the smaller, rural telephone companies only after careful consideration. Accordingly, Congress granted rural companies a standing “exemption” under §251(f)(1). Congress specifically recognized that such “obligations” should be applied to the smaller, rural telephone companies only after careful consideration.

Resale and UNE provisioning has not been requested of CTCo. This is due to several factors. First, only a handful of CLECs have sought certification in rural territories. The rural customer profile of high cost and low revenues, understandably, has not created an environment conducive to the competition developing in the more urban areas. Those CLECs that have applied for authority in CTCo’s territory have existing wireless (AT&T/Vanguard) or fiber optic (Adelphia) networks and, thus, do not need resale or UNE services to offer local telephone service. Second, Congress correctly granted an exemption to rural companies from provisioning resale services and UNE elements, for numerous reasons, including adverse financial consequences upon rural communities.

For decades, Congress and the States have grappled with the difficult policy issues associated with bringing telephone service to rural Americans. The problems is this: the inherently low-density, low-volume and the highly residential nature of the rural market makes the cost of offering service in rural areas far greater than the cost of providing service in urban areas. To address this disparity, a variety of policies and regulatory mechanisms have been implemented over the years to extend telephone service to rural and under-served regions, and to maintain investment incentives for carriers that provide such service.⁵

⁵ See, for example, 47 U.S.C. §151 (Communications Act of 1934). Congress also established a financing program to “assure the availability of adequate telephone service to the widest practical number of rural users.” 7 U.S.C. §921.

Under TCA-96, Congress sought to create a level playing field, particularly when a [rural telephone] company or a carrier ... faces competition from a telecommunications carrier that is a large global or nationwide entity that has the financial or technological resources that are significantly greater than the resources of the company or carrier.⁶

Therefore, for the rural areas, Congress found that the public interest is best served by initially exempting, and then providing the opportunity for suspending or modifying, the interconnection requirements of Sections 251(b) and (c). Accordingly, Section 251(f)(1) of TCA-96 provides “rural telephone companies” with an immediate and standing exemption (“rural exemption”) from Section 251(c) interconnection requirements.⁷ The Congressional Conference Agreement explains the particular concern for rural carriers:

New section 251(f)(1) provides for the exemption of rural telephone companies from the requirements of new subsection (c) [§251(c)] until a bona fide request is received that the state commission determines is not unduly economically burdensome, is technically feasible, and is consistent with universal service provisions of new section 254, except the specific public interest determinations thereunder.⁸

Since CTCo has not been requested to provide, is exempt from providing, and is not providing wholesale services, there is **no point** to creating a separate organization within CTCo to provide wholesale services. Without some level of need being established and some better understanding of the associated costs, CTCo does not understand why the Commission is proposing functional separation at this time. Under these circumstances, it would appear that the rulemaking is not needed. Therefore, CTCo would request that the Commission discontinue the Proposed Rulemaking Order and terminate this docket.

⁶ S. Rep. No. 104-23 at 22 (1995) (“TCA-96 Senate Report”).

⁷ Section 251(c) interconnection requirements, which apply only to LECs, are a more onerous set of requirements than those imposed by Section 251(b). TCA-96 reflects the determination by Congress that these more onerous requirements were largely necessary to allow new incumbents to take advantage of the same economies of scale possessed by the larger incumbents and to constrain the incumbent LECs’ market presence.

B. THE THEORY BEHIND THE FUNCTIONAL SEPARATION PROPOSAL IS UNSUPPORTED

The imposition of a Code of Conduct upon CTCo is based on the erroneous theory that “ILECs have substantial market power...and the CLECs do not.” This proposition is devoid of supporting facts or findings, anecdotal or otherwise. The Order states a belief without any substantiation --- “We believe that these proposed regulations are necessary to prevent discrimination, cross subsidies, and other market power abuses by ILECs in their local exchange markets...”⁸ The Proposed Rulemaking Order dismisses as insufficient the fact that “some CLECs have name recognition and sizable financial resources” and concludes that the Code of Conduct is only concerned with the market power associated with an ability to “curb the entry of new providers,” a power which only the ILECs possess.

Simple common sense clashes with the assumption that CLECs lack market power and, therefore, must be given preferential treatment until a rural ILEC loses a large portion of its customer base. A CLEC has a decided “market power advantage,” particularly over smaller ILECs, such as CTCo, who are obligated to serve all customers, regardless of opportunity for profit. CLECs, for valid business purposes, most often enter the market with the intention of serving large business customers with sizable revenues who can be reached with minimum capital investment.

The Commission's “market power” concept is ambiguous, leaving the door wide open for subjectivity. The use of theoretical, but unsubstantiated, existence of “market power” is inconsistent with and directly contrary to the Commission’s commendable efforts to establish objective criteria,

⁸ Joint Explanatory Statement of the Committee of Conference.

⁹ The Commission’s citation of authority to 66 Pa.C.S §3005 is wrong inasmuch as this provision relates only to services declared competitive under Chapter 30.

standards and/or parameters that can be utilized to ensure a “level playing field” for all providers of telecommunications services within Pennsylvania.

The imposition of separation upon Verizon PA in the Global Order, at least, relied upon a scintilla of evidence. As explained by this Commission to the Commonwealth Court on appeal:

The Commission relied upon substantial record evidence to support its imposition of the more stringent Code of Conduct. As discussed above, the record contains numerous examples where Bell not only abused its market power by providing its competitors with less than comparable access to its network, but also engaged in discriminatory conduct that prevented customers from switching to a competitor [citations to record deleted].¹⁰

The Commonwealth confirmed the need for an evidentiary basis: “Record portions cited by the PUC provide factual support for the Code’s directives.”¹¹

CTCo suggest that the Commission await actual proof that a separate wholesale arm is necessary before considering such a requirement and not precipitously act upon the basis of theoretical musings.

C. THERE IS NO REASON TO PRESUPPOSE THAT CTCO WILL NOT CONTINUE TO PROVIDE SATISFACTORY SERVICE

CTCo has built a reputation for excellence in customer service on an intercompany basis, through its work with interexchange and other local carriers, as well as with its retail customers. In fact, CTCO has experienced the lowest justified consumer complaint rate among the top five local exchange carriers operating in Pennsylvania for eight of the last ten years. It seems unfair to pre-

¹⁰ Bell Atlantic-Pennsylvania, Inc., et al v. Pa. PUC, Commonwealth Court Docket No. 2790 C.D. 1999, Brief for the Respondent, Pennsylvania Public Utility Commission at 94.

¹¹ Id., Commonwealth Court Opinion filed October 25, 2000 at 39.

suppose that Commonwealth would be unable to provide adequate customer service functions to competitive local exchange carriers.

A functional separation requirement should be imposed only after an incumbent carrier has clearly demonstrated, based upon historic fact, an inability to adequately meet the legitimate needs of competitive carriers over time. The Commission should not rush to judgment against an incumbent carrier who has not yet had resale or wholesale interactions with competitive carriers. CTCo should be given the opportunity to find cost-effective and managerially sound ways of working with competitive carriers before the draconian step of separation is imposed. Separation should not be ordered without careful study of valid reasons and specific experience.

D. THE COSTS OF SEPARATING CTCO ARE SUBSTANTIAL AND WILL RAISE CUSTOMERS' RATES

The exact costs of creating a wholesale division within CTCo are difficult to exactly determine at this juncture. However, assuming for argument's sake that the PUC insists upon its current course, the creation of an entirely separate wholesale division to accommodate competitive local exchange carrier service and repair order activity will be very costly. CTCo preliminarily estimates that the creation of a wholesale customer service/repair call center staffed and supervised by a minimal compliment of [begin proprietary] 51 employees will cost approximately \$200,000 to establish and \$2,600,000 to operate on an annual basis [end proprietary]. Commonwealth cannot begin to estimate the computer programming effort necessary to support an autonomous wholesale services unit. If the Commission's requirement entails the maintenance of separate retail and wholesale installation and repair (field) personnel, costs will skyrocket beyond the amount estimated above, since

CTCo's service area encompasses over 5,000 square miles, an access line density of slightly over 60 lines per square mile.

These costs will raise rates. CTCo is regulated under a price cap regimen before this Commission, which is based upon a revenue-times-inflation-less-offset formula. However, the formula expressly recognizes exogenous events, as the "Z" factor, and the Company's right to recover expenses incurred due to:

Subsequent regulatory and legislative changes (state and federal) which affect revenues or expenses, to the extent not captured in GDP-PI...¹²

A Commission directive forcing CTCo to separate its wholesale and retail functions clearly falls within the purview of such an event. Thus, the costs associated with functional separation (start-up, capital, operating, managerial, etc.) are recoverable by CTCo from its ratepayers. Based upon the preliminary estimates provided above, the average annual rate effect per access line is [begin proprietary] \$8.36 [end proprietary] to recover the recurring annual exogenous event expense increase.

CTCo urges the Commission to closely consider whether the implementation of functional separation for CTCo is cost effective.

E. THE COMMISSION IS WITHOUT AUTHORITY TO IMPOSE FUNCTIONAL SEPARATION ON CTCO

CTCo does not believe that the Commission holds delegated authority from the General Assembly to order the separation of CTCo. Commission's power to act in any proceeding either must arise directly from the express words of the pertinent statutes, or by strong and necessary

¹² Final Alternative Regulation Plan of Commonwealth Telephone Company (dated June 27, 1997) at 22.

implication.¹³ Absent express legislative authority, the Commission may not interfere with the general management decisions of public utility companies.¹⁴ Even where express authority is conferred, the Courts have recognized the Commission cannot interfere with management decisions of a utility absent an abuse of discretion.¹⁵ Any power to be exercised by the Commission must be conferred by legislative language which is clear and unmistakable; a doubtful power does not exist.¹⁶ The Notice of Proposed Rulemaking specifically cites only §3005(h) of the Public Utility Code as providing it with the legal authority to order the structural separation of CTCo. This section, however, simply directs the Commission to establish regulations regarding services declared competitive under Chapter 30. The current subject matter is different, involving the provision of wholesale services under TCA-96, and §3005(h) does not confer a power to functionally separate, either expressly or through implication.

Moreover, other provisions of the Public Utility Code evidence a deliberate decision not to confer such power on the Commission. §501, the so-called “general powers” section, merely authorizes the Commission to enforce, execute and carry out the provisions of the Public Utility Code,¹⁷ and does not confer upon it a power that is not expressed in legislation.¹⁸ §§3001(3) and 3001(5) are general legislative policy declarations contained in Chapter 30 of the Code, hortatory

¹³ *City of Philadelphia v. Philadelphia Electric Company*, 504 Pa. 312, 473 A.2d 997 (1984); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1997).

¹⁴ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 501 Pa. 153, 460 A.2d 734 (1983).

¹⁵ *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 522 Pa. 338, 561 A.2d 1224 (1989).

¹⁶ *Process Gas Consumers Group v. Pennsylvania Public Utility Commission*, 511 Pa. 88, 511 A.2d 1315 (1986).

¹⁷ 66 Pa. C.S. §501 (granting the Commission the general administrative power to supervise and regulate all public utilities with the Commonwealth).

¹⁸ *United Telephone Co. v. Pa. Public Utility Commission*, 676 A.2d 1244 (Pa. Cmwlth. 1996) (power of Commission to intercept wire communications between a regulated utility and the utility’s customers can not be implied).

language which does not confer power upon the Commission, much less the power to order separation.¹⁹

Section 3005(h) empowers the Commission to require that a service which has been found to be competitive under Chapter 30 be provided through a subsidiary which is fully separated from the local exchange company, but only where that ILEC serves greater than 1 million access lines.²⁰ Thus, Section 3005(h) does not apply to CTCo. Nor are the recent statutory changes to electric and natural gas utilities supportive of any inferred power in the Commission.²¹

Clearly, the Legislature knows how to confer power to order involuntary separation, but it has not done so. Under the rule of *expressio unius*, the Legislature's failure to confer the power in this context must be assumed to be intentional and thus refutes the Commission's contrary interpretation of the Code.

In sum, nowhere does the Pennsylvania Public Utility Code give the Commission the power, either expressly or by necessary implication, to order the separation of CTCo.

¹⁹ While the Commission may follow policy, its findings and orders must be based upon evidence. *Aizen v. Pennsylvania Public Utility Commission*, 60 A.2d 443 (Pa. Super. 1948).


²⁰ §3005 states that "the Commission may require that a *competitive service* be provided through a subsidiary which is fully separated from the [over 1 million access line company] local exchange telecommunication company, if the Commission finds that there is a *substantial possibility* that the provision of service on a non-separated basis will result in *unfair competition*." 66 Pa. C.S.A. §3005(h) (emphasis added).

²¹ §2804(5) of the Code gives the Commission the express power to consider reorganizations to corporate structures in the electric industry: "[t]he commission may permit, but shall not require, an electric utility to divest itself of facilities or to reorganize its corporate structure." 66 Pa. C.S. §2804(5) (Emphasis added). §2209 of the Code gives the Commission the express power to order natural gas utilities to maintain "sufficient physical and operational separation, but not including legal divestiture...." 66 Pa. C.S. §2209(c)(5) (Emphasis added).

III. CONCLUSION

Commonwealth Telephone Company appreciates the opportunity to comment on the promulgation of a Code of Conduct. CTCo respectfully submits that the Commission should decline to require any Code of Conduct at this time. If the Commission is inclined to adopt a Code, then CTCo requests that the requirement of functional separation be discontinued.

Respectfully submitted,



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Counsel to
Commonwealth Telephone Company

Dated: February 23, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the persons named and in the manner indicated below.

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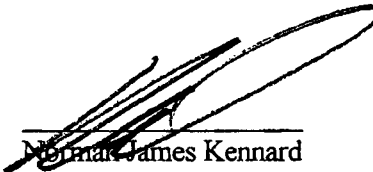
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February 23, 2001

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Via Federal Express
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PUBLIC UTILITY COMMISS
SECRETARY'S BUREAU

Re: Rulemaking Re Generic Competitive Safeguards Under 66
Pa. C. S. Sections 3005(b) and 3005(g)(2), Docket
No. L-00990141

Dear Mr. McNulty:

Enclosed for filing with the Commission is an original and fifteen copies of the Comments of Verizon Pennsylvania Inc. and Verizon North Inc. in reference to the above-captioned matter.

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

Very truly yours,

Suzan DeBusk Paiva/dfj
Suzan DeBusk Paiva

SDP/dkf
Enc.

cc: Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served the Comments of Verizon Pennsylvania Inc. and Verizon North Inc., upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant) and 1.55 (relating to service upon attorneys).

Dated at Philadelphia, Pennsylvania this 23rd day of February 2001.

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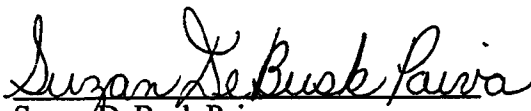
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FEB 27 2001

PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rulemaking Re Generic Competitive :
Safeguards Under 66 Pa. C.S. :
§§ 3005(b) and 3005(g)(2) : Docket No. L-00990141

COMMENTS OF VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC.

In response to the Commission's Secretarial Letter dated January 3, 2001, Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North Inc. ("Verizon North") (collectively "Verizon") submit these comments regarding the "Code of Conduct" regulations proposed in the Commission's November 30, 1999 Rulemaking Order (published at Pa. Bulletin, Vol. 30, No. 5, Jan. 29, 2000).

INTRODUCTION

The Commission's November 30, 1999 order proposes a Code of Conduct to be applicable to all Pennsylvania incumbent local exchange carriers ("ILECs") modeled upon the Code of Conduct imposed on Verizon PA as a result of the *Global Order*.¹ Although comments were originally due a year ago, the Commission has twice extended the date for filing comments "because of the uncertainty surrounding the pending Global appeals and the relevance their resolution may bear on this rulemaking proceeding."²

¹ *Joint Petition of Nextlink Pennsylvania, Inc.*, 196 P.U.R. 4th 172 (Pa. PUC 1999), *aff'd*, No. 2790 C.D. 1999, etc. (Pa. Commw., Oct. 25, 2000) ("*Global Order*"), Appendix C.

² Jan. 3, 2001 Secretarial Letter.

Verizon does not oppose the concept of a Code of Conduct applicable to all ILECs rather than just to Verizon PA. Verizon agrees with the Pennsylvania Telephone Association (“PTA”), however, that it remains premature to impose such a code at this time. Rather, it would be preferable to wait until final resolution of the structural separation matters involving Verizon PA.³ If the Commission does determine to pursue this general Code of Conduct, now, however, then the following clarifications and modifications should be made. Attachment A to these Comments contains a mark-up of the proposed regulations with the changes suggested by Verizon.

COMMENTS

A. The Commission Should Make It Clear That This Code Of Conduct Supersedes Other Codes

As the Commission notes, the proposed regulations are “modeled after,” but are not exactly the same as, the Code of Conduct contained in Appendix C to the *Global Order*, which is applicable only to Verizon PA.⁴ The Commission intends this new Code of Conduct contained in the proposed regulations to apply to Verizon PA as well as to other Pennsylvania ILECs, and apparently intends that the regulations will supercede any other interim Code of Conduct.

³ *Verizon Pennsylvania Inc. v. Pennsylvania Public Utility Comm’n*, 55, 57, 58 and 59 E.D. Alloc. Dockets 2001 (Verizon PA’s Petition for Allowance of Appeal regarding Global Order); *Structural Separation of Verizon Pennsylvania Inc. Retail and Wholesale Operations*, Docket No. M-00001351; *Joint Petition To Adopt Settlement Agreement And To Terminate The Proceeding*, Docket No. M-00001353 (December 5, 2000).

⁴ Order entered Nov. 30, 1999 at 18.

If it implements these regulations, the Commission should make clear that this Code of Conduct supercedes and replaces any other Codes of Conduct applicable to Verizon PA (or any other carrier). Otherwise, the existence of two (or more) somewhat different codes will be highly confusing and will make compliance and monitoring difficult if not impossible. Because all of the codes are intended to achieve the same result, there should only be one applicable code.

B. The Language Requiring A Separate Organization For “Provisioning” Should Be Modified In Order To Ensure The Best Service For All Customers And Parity Service For CLECs

Section 63.143(1) of the proposed regulations requires ILECs with more than 250,000 but less than 1,000,000 access lines to “maintain a functionally separate organization (the ‘wholesale operating unit’) for the ordering and provisioning of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers.”⁵ This language should be modified to require these companies to “maintain a functionally separate organization (the ‘wholesale operating unit’) for the ordering, and for the processing and transmission of instructions to field forces for the provisioning, of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers.”

⁵ This provision would apply to Verizon North. It is not entirely clear if it would apply to Verizon PA. By its terms, it does not. However, later in the paragraph it refers to the Commission determining for ILECs serving over 1,000,000 lines “whether this subsection will continue to apply.” It would be helpful if the Commission clarified the applicability of the functional separation requirement to carriers serving over 1,000,000 lines.

It would not be beneficial to retail customers or to CLECs to require two separate organizations for actually “provisioning” service - ie., for the activities needed in the field to provide service to the CLECs. Using the same organization for the actual provisioning of service is one of the ways Verizon PA, for example, ensures that CLECs receive parity service – the standard of service this Commission measures and requires.⁶ Having two separate, duplicate organizations, one to provision service to retail customers and another to provide service to CLEC customers, will result in unnecessarily increased costs and rates, and will diminish service levels for all customers. The modified language proposed by Verizon will achieve the desired result while still preserving the highest levels of service and the greatest possibility of parity performance for CLEC service.

C. The Reference To Structural Separation As An “Example” Of A Potential Additional Safeguard Should Be Eliminated As Unnecessary Surplus Or Modified To Comport With Governing Law

The final sentence of proposed § 63.143(1) should be modified or eliminated. That sentence states “[t]hese other safeguards may include, for example, requiring the ILEC to structurally separate its retail and wholesale operations into separate corporate entities.” Preferably, the sentence should be eliminated as unnecessary surplus. If, however, the Commission feels the need to

⁶ *Joint Petition of Nextlink, et al.*, Docket No. P-00991643 (Order entered December 31, 1999).

give an “example” of another competitive safeguard, the sentence should be modified to comport with the limitations of 66 Pa. C.S. § 3005(h).

1. The Last Sentence Of § 63.143(1) Should Be Eliminated As Unnecessary Surplus

Verizon PA does not object to the statement that “after appropriate notice and hearing” the need for any further safeguards will be considered. It is not necessary, however, for the regulations to go on to give an “example” of a safeguard that might be considered, especially since this apparently is not intended to be an exhaustive list. The Commission’s authority to impose other competitive safeguards upon an individual carrier, with proper notice and hearing and upon proper evidence, is provided by statute. It is not necessary – and indeed unnecessarily confuses the matter – to list an “example.”

Moreover, given that the question of whether the Commission even has the statutory authority to require an ILEC to structurally separate is still subject to challenge before the courts, this reference to structural separation should be omitted.⁷ If the Pennsylvania Supreme Court or another court ultimately concludes that the Commission is *not* empowered to require a broad wholesale/retail split, then this reference could unnecessarily invalidate the entire regulation. By contrast, if this reference is omitted, the Commission still retains the authority, with proper notice and hearing and upon the proper evidence, to

⁷ Verizon recognizes that the Commonwealth Court has upheld the Commission’s claim of authority under 66 Pa. C.S. § 3005(h) to order

impose whatever safeguards the courts ultimately hold it is empowered to employ. The best course, therefore, would be to eliminate this unnecessary surplus language.

2. In The Alternative, This Sentence Should Be Modified To Reflect That The Commission May Order Competitive Services To Be Separately Provided Under Certain Circumstances

If the Commission still determines to state an “example” in its regulations, then its example should track the appropriate statutory language. This Commission has only those powers that are expressly, precisely, and unmistakably conferred upon it by the Public Utility Code, and may not act outside the strict and exact limits defined by the Code. “The power and authority to be exercised . . . must be conferred by legislative language clear and unmistakable. *A doubtful power does not exist.*”⁸ The Commission has proposed these regulations under its authority to promulgate regulations constituting “competitive safeguards” under 66 Pa. C.S. § 3005. Section 3005 does not authorize the “structural” separation of wholesale and retail operations referenced here without regard to whether the services to be separately provided are “competitive.”

Rather, under section 3005(h), the Commission may only “require that *a competitive service* be provided through a [separate subsidiary]” if it finds that “there is a substantial possibility that the provision of *the service* on a

structural separation of Verizon PA. Verizon PA has filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on this issue.

⁸ *Process Gas Consumers Group v. Pennsylvania Pub. Util. Comm'n*, 511 Pa. 88, 96, 511 A.2d 1315, 1319 (1986) (emphasis added).

non-separated basis will result in unfair competition.”⁹ A “competitive” service is a term of art under this statute; it means that the Commission has determined that the service is entitled to a reduced level of regulation, after considering such mandatory statutory standards as “the ability of competitors to offer those services or other activities at competitive prices, terms and conditions; the availability of like or substitute services or other activities in the relevant geographic area.”¹⁰ Section 3005(h), by its clear and unmistakable language, *only* empowers this Commission to confine to a separate affiliate a “service” it has deemed statutorily “competitive.” The reference in the proposed regulation, by contrast, is to full wholesale/retail separation without regard to whether “all wholesale” or “all retail” services have been declared statutorily “competitive.” This is beyond the Commission’s authority.¹¹

If a structural separation example must be given, therefore, the language should be modified to track the statute as follows: “These other safeguards may include, for example, requiring that a competitive service be provided through a subsidiary which is fully separated from the ILEC if the Commission finds that

⁹ 66 Pa. C.S.A. § 3005(h) (emphasis added).

¹⁰ 66 Pa. C.S.A. § 3005(a)(1).

¹¹ Any order structurally separating an ILEC in this manner also would be barred and preempted by the Telecommunications Act of 1996, section 253(a) of which explicitly preempts state regulation that prevents a telecommunications company from providing any interstate or intrastate telecommunications services. 47 U.S.C. § 253(a)(“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”)

there is a substantial possibility that the provision of the service on a nonseparated basis will result in unfair competition.”

D. The Portion of Proposed § 63.143(2) Prohibiting Preferences For One CLEC Over Another Requires Clarification

Proposed § 63.143(2) prohibits an ILEC from giving “any CLEC any preference or advantage over any other CLEC. . .” Verizon agrees with the PTA’s comment that it would be more workable to prohibit “any unreasonable preference.” Indeed, this would comport with the ILECs’ general obligation under the Telecommunications Act to provide “reasonable and nondiscriminatory” services to CLECs.¹²

E. Proposed § 63.143(6) Requires Modification

Verizon agrees with the PTA’s comment that this section is unnecessary and confusing and should be eliminated. As presently worded, this provision could be read to prohibit ILECs from bundling noncompetitive services with any other service. Not only would such a prohibition unfairly limit ILECs’ ability to compete, but it would also harm consumers and competition.

Verizon suspects the Commission’s intent was simply to prohibit ILECs from improperly “conditioning” availability of a noncompetitive service to also require a consumer to purchase other services offered by the ILEC. The perhaps unintended consequence of the overly broad drafting of this provision, however, would be to deprive consumers of the free choice to purchase bundled services

¹² See, e.g., 47 U.S.C. § 251.

from the ILEC at all even if they wanted to, and also to prevent the kind of favorable impacts on prices and competition that the existence of such bundled offerings by the ILEC would provide. The Commission in other proceedings has clearly contemplated that ILECs will bundle competitive and noncompetitive services.¹³

The following modified language would better achieve the Commission's goal of prohibiting improper "conditioning," without the negative effects of the current overly and broad and confusingly drafted language:

An ILEC shall not condition the provision or continuation of any regulated service on the purchase of additional retail services from the ILEC. Nothing in this provision prohibits the ILEC from bundling services so long as the ILEC continues to offer any regulated service contained in the bundle on an individual basis.

Verizon therefore suggests the Commission adopt the above language instead of the language currently contained in proposed section 63.143(6).

F. All But The First Sentence of Proposed § 63.143(7) Should Be Eliminated

The first sentence of proposed § 63.143(7) simply repeats the statutory requirements of 66 Pa. C.S. § 3005(g)(2), and therefore is not objectionable. The

¹³ *Rulemaking Re Updating and Revising Existing Filing Requirement Regulations 52 Pa. Code §§ 53.52-53.53 - Telecommunication Utilities*, Docket No. L-00940095 (Opinion and Order entered June 2, 2000) Annex A, § 53.60 ("When ILEC joint or bundled service packages include both competitive and noncompetitive services, these service packages shall meet any applicable state law or regulation regarding cost justification, discrimination and unfair pricing in joint or bundled service package offerings, and their component competitive and noncompetitive services.")

remainder of the paragraph, starting with the word “[s]pecifically,” however, suffers from a number of problems and should be eliminated.

The introductory word “specifically,” suggests that the remainder of the paragraph is intended to define what is meant by the statutory prohibition on cross-subsidization repeated at the beginning of the paragraph that “an ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive service.” The prohibitions following the word “specifically,” however, do not go to cross-subsidization, and therefore do not really “specify” how an ILEC should proceed to avoid violating the cross-subsidization prohibition section 3005(g)(2). For that reason alone, the language in the remainder of the paragraph is a confusing *non-sequitur* and should be removed. Moreover, if it is intended as a definition of the prohibited conduct for cross-subsidization, then this blanket requirement that all goods or services provided to affiliates must be at or below the cost or tariffed price is so overbroad it is akin to killing a fly with a sledgehammer. Rather, no “definition” of the prohibited conduct is necessary because the language of section 3005(g) is clear and speaks for itself.

The additional language following the word “specifically” is also problematic because it attempts to address affiliated interest issues but it is inconsistent with the requirements of the Public Utility Code regarding affiliated interests. Section 66 Pa.C.S. § 2102(c) already addresses the limits on prices and

services provided among affiliated ILEC companies.¹⁴ It would be highly confusing, if not impossible, to comply with two sets of affiliated interest requirements, and there is no reason to impose different requirements here.

All but the first sentence of proposed section 63.143(7) therefore should be eliminated.¹⁵

G. Proposed § 63.143(8) Should Be Eliminated

Proposed § 63.143(8) attempts to limit what ILECs or their employees may say about their own services and those of competitors. Specifically, it provides that:

- (8) An ILEC, its affiliates, divisions or operating units, may not state or imply any of the following:
 - (i) The services provided by the ILEC are inherently superior when purchased from the ILEC.
 - (ii) The service rendered by a competitor may not be reliably rendered.
 - (iii) The continuation of certain services from the ILEC are contingent upon taking the full range of services offered by the ILEC.

This provision should be eliminated for several reasons.

¹⁴ “If the commission shall determine that the amounts paid or payable under a contract or arrangement filed in accordance with this section are in excess of the reasonable price for furnishing the services provided for in the contract, or that such services are not reasonably necessary and proper, it shall disallow such amounts, insofar as found excessive. . .”

¹⁵ Verizon PA recognizes that it proposed similar language in its proposed Code of Conduct governing the relationship between Verizon PA and its separate data affiliate. *Re: Structural Separation Of Bell Atlantic – Pennsylvania, Inc. Retail And Wholesale Operations*, Docket No. M-00001353, VZ-PA St. 1.0 (Direct Testimony of Jeff Ward) Ex. 7. However, this language does not sensibly transfer to relations among all affiliates of all ILECs.

First, this provision illegally restrains ILECs and their employees from exercising constitutionally protected First Amendment rights. For example, it prohibits them from stating that the ILEC's service is superior to that of its competitors and from informing customers why a competitor's service is inferior, even when those statements are true.¹⁶ Such prior restraint has been consistently rejected by the courts. The U.S. Supreme Court has held that restrictions on commercial speech can be upheld only where a substantial state interest is advanced by the restriction, where the regulation directly advances the substantial state interest and, is no "more extensive than is required" to serve that substantial state interest.¹⁷ This provision of the proposed regulations cannot survive scrutiny under that standard. Pennsylvania already prohibits false advertising,¹⁸ as well as misrepresentation of the quality of services, false or misleading disparagement of another's products or services, and all other fraudulent conduct which creates a likelihood of confusion or misunderstanding.¹⁹ The Attorney General is charged with enforcement of these measures, and violators are subject to injunction, civil penalties, and, upon continued violations, forfeiture of their franchise or right to

¹⁶ See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976) ("the free flow of commercial information is indispensable.").

¹⁷ *Central Hudson Gas & Elec. Corp. v. New York Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

¹⁸ See 18 Pa. C.S. §4107(A)(5).

¹⁹ See 73 P.S. §§ 201-2(4)(vii), (viii), (xxi) (Purdon's Supp. 1999) (defining unfair trade practices); *id.* § 201-3 (declaring unfair trade practices unlawful).

do business.²⁰ There is, therefore, no substantial state interest in restricting ILECs' commercial speech that is not already fully protected in the Commonwealth.

Second, this provision would foster consumer confusion and consumer deception, because competitors would be free to disparage and mischaracterize the service of the ILECs, while the ILECs would be prohibited from defending themselves.

Third, this provision is overly broad and virtually impossible to follow, as it would by its language extend the prohibition on truthful, otherwise legal speech and advertisement to non-regulated entities and businesses.

Fourth and finally, this provision is unnecessary. CLECs are already protected by the prohibition on "promotion" and "disparagement" (proposed § 63.143(4)) and Verizon's proposed replacement language prohibiting improper "conditioning" (§ 63.143(6)).

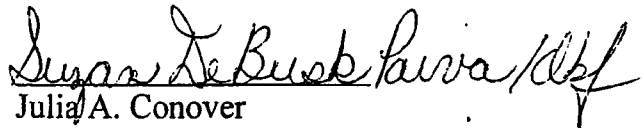
Proposed § 63.143(8) therefore should be eliminated.

²⁰ See *id.* § 201-3.1 (authorizing Attorney General to adopt regulations for enforcement of unfair trade prohibitions); *id.* § 201-4 (authorizing Attorney General to restrain unfair trade practices by seeking temporary or permanent injunction); *id.* § 201-8 (subjecting violators to civil penalties); *id.* § 201-9 (authorizing court, upon petition by Attorney General, to order dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates terms of injunction).

CONCLUSION

For the foregoing reasons, the Commission should defer the enactment of these regulations until after final resolution of the structural separation matters involving Verizon PA. If, however, the Commission determines to proceed with these proposed regulations, then it should make the changes discussed above and reflected in Attachment A hereto.

February 23, 2001



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**Attachment A To Verizon Comments
Docket No. L-00990141**

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 63. TELEPHONE SERVICE
Subchapter K. COMPETITIVE SAFEGUARDS

§ 63.141. Statement of purpose and policy.

This subchapter establishes competitive safeguards to assure the provision of reasonable nondiscriminatory access on comparable terms by ILECs to CLECs for all services and facilities necessary to provide competing telecommunications services to consumers, to prevent the unlawful cross subsidization or support for competitive services by ILECs, and to forbid unfair or deceptive practices. These competitive safeguards are intended to promote the Commonwealth's policy of establishing and maintaining an effective and vibrant competitive market for all telecommunications services. **This Code of Conduct supercedes and replaces any other Codes of Conduct applicable to any ILEC.**

§ 63.142. Definitions.

The following words and terms, when used in this subchapter, have the following meanings:

CLEC--Competitive local exchange carrier-- A telecommunications company that has been certificated by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996, the act of February 8, 1996 (Pub. L. No. 104-104, 110 Stat. 56), or under the relevant provisions of 66 Pa.C.S. § 3009(a) (relating to additional powers and duties).

Competitive service--A service or business activity offered by an ILEC or CLEC that has been classified as competitive by the Commission under the relevant provisions of 66 Pa.C.S. § 3005 (relating to competitive services).

ILEC--Incumbent local exchange carrier--A telecommunications company deemed to be an ILEC under section 251(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)).

LEC--Local exchange carrier--A local telephone company that provides telecommunications service within a specified service area. LECS encompass both ILECs and CLECs.

Market price--Prices set at market-determined rates or at tariffed rates, when applicable.

Noncompetitive service--A protected telephone service as defined in 66 Pa.C.S. § 3002 (relating to definitions) or a service that has been determined by the Commission as not a competitive service.

Telecommunications service--A utility service, involving the transmission of signaling, data and messages, which is subject to the Commission's jurisdiction.

§ 63.143. Code of Conduct.

ILECs, unless otherwise noted, shall comply with the following requirements:

(1) An ILEC with more than 250,000 but less than 1,000,000 access lines shall maintain a functionally separate organization (the 'wholesale operating unit') for the ordering, **and for the processing and transmission of instructions to field forces for the provisioning, and provisioning** of any services or facilities to CLECs necessary to provide competing telecommunications services to consumers. The wholesale operating unit shall have its own direct line of management and keep separate books of accounts and records which shall be subject to review by the Commission under 66 Pa.C.S. § 506 (relating to inspection of facilities and records). For ILECs over 1,000,000 access lines, the Commission will determine for each such ILEC, after appropriate notice and hearing, whether this subsection will continue to apply or whether further safeguards will be necessary to protect CLECs from unfair competition and to ensure nondiscriminatory access to the ILEC's services and facilities. ~~These other safeguards may include, for example, requiring the ILEC to structurally separate its retail and wholesale operations into separate corporate affiliates.~~

(2) An ILEC may not give itself (or any of its affiliates, divisions or operating units) or any CLEC any **unreasonable** preference or advantage over any other CLEC in the ordering, provisioning or repair of any services that it is obligated to provide CLECs under any applicable Federal or State law.

(3) An ILEC's wholesale operating unit employees shall use CLEC proprietary information (that is not otherwise available to the ILEC) received in the ordering, provisioning or repairing of any telecommunications services provided to the CLEC solely for the purpose of providing the services to the CLEC. An ILEC may not disclose the CLEC proprietary information to employees engaged in the marketing or sales of retail telecommunications services unless the CLEC provides prior written consent to the disclosure.

(4) An ILEC employee, while engaged in the installation of equipment or the rendering of services on behalf of a competitor, may not disparage the service of the competitor or promote any service of the ILEC.

(5) An ILEC employee, while processing an order for the repair or restoration of service or engaged in the actual repair or restoration of service of any competitor, may not either directly or indirectly represent to any end-user that the repair or restoration of service would have occurred sooner if the end-user had obtained service from the ILEC.

(6) An ILEC shall not condition the provision or continuation of any regulated service on the purchase of additional retail services from the ILEC. Nothing in this provision prohibits the ILEC from bundling services so long as the ILEC continues to offer any regulated service contained in the bundle on an individual basis.~~An ILEC may not condition the sale, lease or use of any noncompetitive telecommunications service within the jurisdiction of the Commission on either of the following:~~

~~(i) The purchase, lease or use of any other goods or services offered by the ILEC.~~

~~(ii) A direct or indirect commitment not to deal with any CLEC.~~

(7) An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. ~~Specifically, an ILEC may not provide goods or services to any affiliate, division or operating unit at a price below the ILEC's cost or market price for the goods or services, whichever is higher. The ILEC may not purchase goods or services from any affiliate, division or operating unit at a price above the market price for the goods or services.~~

~~(8) An ILEC, its affiliates, divisions or operating units, may not state or imply any of the following:~~

- ~~(i) The services provided by the ILEC are inherently superior when purchased from the ILEC.~~
- ~~(ii) The service rendered by a competitor may not be reliably rendered.~~
- ~~(iii) The continuation of certain services from the ILEC are contingent upon taking the full range of services offered by the ILEC.~~

(8) ~~(9)~~ An ILEC shall formally adopt and implement the provisions in this section as company policy and shall take appropriate steps to train and instruct its employees in their content and application.

(9) ~~(10)~~ A party allegedly harmed by a violation of any of the provisions in this section may invoke the Commission's alternative dispute resolution procedures to resolve the dispute. That action, however, does not preclude or limit additional private remedies or civil action.

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FEB 23 2001

PUBLIC UTILITY COMMISSION

VIA UPS OVERNIGHT MAIL
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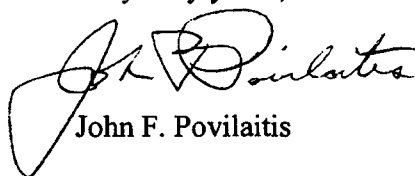
Re: *Rulemaking Re Generic Competitive Safeguards*, Docket No. L-00990141.

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies of the Comments filed on behalf of The Association for Local Telecommunications Services, Covad Communications Company, ACSI Local Switched Services Inc., d/b/a e.spire and Rhythms Links Inc. ("ACER") in the above-captioned proceeding.

Thank you for your attention to this matter.

Very truly yours,



John F. Povilaitis

*Counsel for The Association for Local
Telecommunications Services, Covad
Communications Company, ACSI Local
Switched Services, Inc., d/b/a e.spire and
Rhythms Links Inc.*

JFP/cc
Enclosures

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

FEB 23 2001

Rulemaking Re Generic Competitive
Safeguards

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:
:

Docket No. L-00990141

PUBLIC UTILITY COMMISSION
STATE OF PENNSYLVANIA

COMMENTS OF
THE ASSOCIATION OF LOCAL TELECOMMUNICATIONS SERVICES, ACSI
LOCAL SWITCHED SERVICES, INC. D/B/A E.SPIRE,
COVAD COMMUNICATIONS COMPANY AND RHYTHMS LINKS INC.

1. Adoption of an Effective Code of Conduct is Critical.

It is clear that the use of an effective and enforceable Code of Conduct applicable to incumbent telecommunication carriers (ILECs) and their affiliates is necessary to preclude discrimination by ILECs against their competitors. ACER notes that a Commission-proposed Code of Conduct was issued at the onset of the present rulemaking. However, ACER asserts that the Commission's *Global Order* Code of Conduct should be the starting point for the present proceeding. (Attached as Exhibit A.) There is no evidence that indicates a less-stringent Code of Conduct will benefit local telecommunications competition in the Commonwealth; quite the contrary is true. With the passage of time, the Commission and other parties have sharpened their analysis of competitive issues and have taken into account the progress of corporate events such as the creation of Verizon Advanced Data and the recently proposed and withdrawn transaction of Verizon Inc. with NorthPoint. It is eminently reasonable and appropriate that such additional analysis would produce necessary refinements to augment the *Global Order* Code of Conduct.

In the Structural Separation case, Docket No. M-00001353, ACER proposed a comprehensive set of requirements similar to a Code of Conduct, to apply to all

transactions between Verizon PA Wholesale and any retail affiliate. The requirements were addressed in testimony by Terry L. Murray on behalf of ACER. Ms. Murray's testimony is incorporated by reference. These rules are attached as Exhibit B. ACER recommends that the Commission adopt a Code of Conduct that incorporates these rules for all incumbent carriers and their affiliates.

In summary, a revised Code of Conduct that effectively takes into account the creation of retail affiliates is necessary and appropriate.

2. ACER's proposed rules will facilitate the development of a competitive local telecommunications market in Pennsylvania.

ACER proposes a comprehensive set of requirements that address the following categories of rules that critically impact the development of the Pennsylvania telecommunications market.

- Nondiscrimination
- Nondiscriminatory Operations Support Systems ("OSS")
- Information Sharing and Disclosure
- Separations and Sharing Employees
- Transfer Pricing
- Corporate Advertising and Marketing
- Record-Keeping, Annual Audits and Enforcement
- Dispute Resolution

These are essential concerns for the development of a competitive local telecommunications market.

a. Nondiscrimination Rules

ACER's proposed Nondiscrimination Rules (See Exhibit B, Rules 1 through 7,) are intended to compel incumbents to provide all goods, services, facilities and information on a non-discriminatory basis to all retail market participants with only a few exceptions during a limited transition period.¹ This nondiscrimination Rule prevents an incumbent from bundling services exclusively with an affiliate. The incumbent must make available all wholesale network elements and services on an unbundled basis to all retail competitors at the same rates, terms and conditions.

The theoretical potential of CLECs opting into arrangements established between incumbents and their affiliates in no way eliminates the need for nondiscrimination rules applicable to the incumbent. For example, under an opt-in requirement, Verizon Pennsylvania, Inc. will have an incentive to negotiate arrangements that are so unique and tailored to its affiliates' needs that the commercial arrangements will be unattractive to competitors. As a result, all non-tariffed commercial arrangements between incumbents and their affiliates require careful regulatory scrutiny to ensure that they are reasonable and nondiscriminatory.

b. Nondiscriminatory Operations Support Systems ("OSS") Rules.

Incumbent carriers, their affiliates and non-affiliated CLECs should all use the same OSS functions, interfaces and business processes. These Rules (See Exhibit B Rules 8 & 9) requires incumbents to use the same systems and processes as CLECs for activities such as obtaining collocation, qualifying a loop, ordering a loop, "conditioning"

¹ Rules 1-7.

a loop and equipment repairs.² Separate OSS functions and personnel would provide incumbent affiliates superior "time to market" and service quality. If the Commission's goal is to ensure against inequitable and uncompetitive conduct by the elimination of preferential access to OSS will be a major step toward that goal.

CLECs have encountered numerous problems with ordering and provisioning line shared loops, including: delays in provisioning, unreliable and unstable EDI ordering systems, failure to make central offices ready for line sharing in a timely way, inadequate and unequal access to loop make-up data and lack of access to subloops.

Without comprehensive rules against discriminatory OSS and vigorous enforcement of those rules, incumbents will continue to favor their own affiliates over non-affiliated entities in ordering and provisioning wholesale network elements and services. For example, in California, Pacific Bell's separate advanced services affiliate, Advanced Solutions, Inc. had 20,000 line shared loops provisioned for its customers while over the same period Pacific Bell had not provisioned a single line shared loop for its unaffiliated competitors. This example from another jurisdiction highlights the fact that structural remedies alone are insufficient to remedy and prevent discriminatory wholesale service by incumbent carriers and an effective and enforceable Code of Conduct is necessary.

² ACER's proposed OSS rules require the incumbent: use a single OSS system (See Exhibit B Rule 8), complete pre-ordering, provisioning, repair and maintenance requests in the same time for its affiliates and competitors (See Exhibit B Rule 9) and provide affiliates and unaffiliated competitors with equal access to loop make-up databases.

c. Information Sharing and Disclosure.

Rules should be adopted that require incumbent LECs and their affiliates simultaneously to make available to all competitors any information not in the public domain that either entity provides to the other.

CLECs are reasonably concerned over information sharing among ILECs and their affiliates. This is not a speculative concern. ILECs have an incentive to delay competitors' access to options that are or can be built into the network until the incumbent is ready to make use of them. However, the Commission was clear in the *Global Order* that incumbents should not attempt to limit its competitors' retail service offerings to those that it can or is willing to offer.³ Secret communications between incumbents and affiliates could result, for example, in line cards being deployed in remote terminal NGDLC equipment that limit the "flavors" of DSL service technically available, so that an affiliate retail company is advantaged and competitors are disadvantaged.

The Commission recognized the wisdom of imposing restrictions on information sharing between the monopoly and competitive portions of the electric industry when it adopted restrictions on information sharing for Pennsylvania energy companies. The Commission should adopt ACER's proposed Rules 13, 14 and 15 on Information Sharing and Disclosure.

d. Separations and Sharing

Incumbents and their affiliates should not share office space, office equipment, services or computer and information systems except to the extent

³ *Global Order* at 112-114.

necessary for appropriately shared corporate services.⁴ Corporate services that should not be shared include regulatory affairs, lobbying, employee recruiting, engineering, network operations and marketing. In addition to proscribing the sharing of certain resources, ACER's proposed rules 16 through 25 also address the issue of incumbents and affiliates sharing employees. ACER's rules require each company to have its own direct line of management and separate corporate officers. The prohibition on joint employees would extend to Corporate Directors so that, for example, a board member or officer could serve on the incumbent or the affiliate but not both.

ACER recommends the adoption of its separations and employee sharing rules to avoid the inappropriate sharing of information and the potential for preferential treatment of affiliates over non-affiliates.⁵

e. Transfer Pricing

ACER proposes a series of Transfer Pricing Rules intended to ensure that cross-subsidization does not occur between the incumbent and retail affiliates.⁶ These rules guard against cross-subsidization by requiring that network elements, services and goods be provided on a non-discriminatory basis.⁷ Non-tariffed network elements, services and goods transferred from the wholesale company to the retail

⁴ Examples of corporate services that could be shared include payroll, taxes, shareholder services, insurance, financial reporting, financial planning, corporate accounting, corporate security, human resources, employee records, corporate legal and pension management.

⁵ Exhibit B, Rules 16-25.

⁶ Exhibit B, Rules 26 through 29 address cross-subsidization issues.

⁷ Exhibit B, Rule 26.

company would be priced at the higher of cost or fair market value.⁸ Transfers of network elements, services and goods from the one company to the affiliate company would be priced no higher than fair market value.⁹ Tariffed network elements would be provided at tariffed rates.¹⁰ These transfer pricing rules are similar to the transfer pricing rules adopted in the *Global Order* and the rules the Commission has adopted for Pennsylvania Energy utilities.

Most importantly, Transfer Pricing Rule 30 would prevent the incumbent from discriminating against competitors, and in favor of its retail affiliate, by offering discounts or waivers that have such unique criteria (such as volume) that only the affiliate could meet.¹¹

The Commission should adopt ACER's transfer pricing (See Exhibit B, Rules 26 through 29 that provide for fair, nondiscriminatory pricing for network elements, services and goods exchanged between incumbents and their affiliates. Rule 30 should be adopted to ensure that wholesale discounts are nondiscriminatory and devoid of targeted discounting practices such as volume discounts that would only apply to an affiliate.

⁸ Exhibit B, Rule 27.

⁹ Exhibit B, Rule 28.

¹⁰ Exhibit B, Rule 29.

¹¹ Exhibit B, Rule 30

f. Corporate Advertising and Marketing.

ACER proposes three Rules in the area of Marketing and Corporate Advertising.¹² Restrictions on joint marketing of services are important factors in ensuring the nondiscriminatory provision of wholesale telecommunications services in Pennsylvania.¹³ Simply put, to keep incumbent wholesale suppliers as neutral as possible, without requiring divestiture, the Commission must prevent incumbents from jointly marketing services with their affiliates. If incumbents are not restricted in this manner, retail affiliates will gain anti-competitive leverage from the monopoly power and marketing strength of the incumbent and undermine the Commission's proper objective to keep incumbents neutral as to the identity of the retail service provider. In particular, there should be no joint marketing between regulated and competitive retail services such as local telephone service and advanced services.

With respect to advertising, ACER recommends that all incumbents' retail affiliates make the following disclosures in their advertising when they use the incumbents names:

- The affiliate is not the same company as the incumbent.
- A customer is not required to buy products or services from the affiliate to receive the same quality of service.

These disclosures would assist customers in understanding that incumbents and their affiliates are separate entities. Perhaps more importantly, these disclosures promote understanding by customers that they have a choice of different retail suppliers. That specific understanding alone would greatly facilitate the development

¹² Rules 31-33.

¹³ Rules 31-33.

of local telecommunication competition in Pennsylvania. Also, these joint marketing and advertising restrictions are similar to prohibitions and disclosures mandated by the Commission in the Pennsylvania electric industry.¹⁴

The Commission should adopt ACER's proposed marketing and advertising Structural Separation Rules 31-33.

g. Record-Keeping, Annual Audits and Enforcement.

The Commission is in the position of having to "manage" the operations of incumbents and affiliates by prescribing and enforcing rules governing affiliate transactions. Given that "management" role, a management maxim comes to mind – what gets checked, gets done. To enable the Commission to perform this role, ACER recommends the following rules that provide for appropriate "checking":

- The Commission should require Comprehensive record-keeping and reporting of all incumbent – affiliate transactions.¹⁵
- Incumbents' affiliate transaction records should be open to public inspection upon reasonable notice.¹⁶
- An independent audit, managed by Commission staff of compliance with the Code of Conduct requirements should be conducted by an independent auditor. In the event noncompliance is documented, the auditor and interested parties may recommend appropriate sanctions and remedies to the Commission.¹⁷

¹⁴ See PECO Energy Company's Interim Code of Conduct Rules 7(b) and 7(c).

¹⁵ Exhibit B, Rule 34.

¹⁶ Id.

¹⁷ Exhibit B, Rules 36-37.

Disclosure requirements assist the Commission in monitoring compliance by creating an incentive for carriers to avoid having their non-compliance revealed.

In summary, the Commission should adopt ACER's rules (See Exhibit B, Rules 34-37) governing record keeping, disclosure, audits and structural separation metrics.

h. Dispute Resolution.

In the *Global Order*, the Commission provided that disputes arising under the Code of Conduct it adopted in that proceeding would be subject to the Abbreviated Dispute Resolution Process ("ADRP") simultaneously adopted in that case. ACER, supports the use of the ADRP, as amended by the Commission, as the means of providing prompt resolution of disputes among the parties regarding compliance with Code of Conduct rules.

The Commission should expand the scope of issues subject to resolution of the ADRP to include disputes arising under the Code of Conduct resulting from this rulemaking.¹⁸

3. Sound reasons exist for the adoption of ACER's proposed requirements.

ACER's proposed rules rise to meet the challenge presented by the complexities of the evolution toward a competitive local telecommunications market – they fashion regulatory requirements that will effectively guard against discriminatory actions by an incumbent supplier of services that aid retail affiliates, in an environment where divestiture is not an option. ACER's proposed rules are

¹⁸ Specifically, ACER recommends the addition of a sixth item to the five items currently subject to the ADRP by expanding the statement of ADRP scope to include "(6) allegedly violates the Code of Conduct.

thorough, comprehensive and capable of being enforced by audit. Enforcement of the rules via audit is critical since it appears that, for example, Verizon PA has ignored the Code of Conduct adopted by the Commission in the *Global Order* in September, 1999. In conclusion, ACER Code of Conduct Rules 1 through 38 should be adopted and enforced.

Respectfully submitted,



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Date: February 23, 2001

EXHIBIT A

APPENDIX C

This Code of Conduct will become effective immediately upon approval of the Commission's Order at Dkt Nos. P-00991648 and P-00991649

Unless otherwise directed by this Commission, the following Code of Conduct will apply to BA-PA's operations in Pennsylvania:

1. No incumbent local exchange company shall give its competitive local exchange affiliate or division preferential treatment in the provision of goods and services.
2. No incumbent local exchange company shall provide any goods or services to its competitive local exchange affiliate or division below cost or market price, nor shall the company purchase goods or services from the competitive affiliate or division at a price above market, and no transaction between the two entities shall involve an anti-competitive cross-subsidy.
3. The incumbent local exchange company shall simultaneously make available to any competitor any market information not in the public domain that is supplied to any competitive local exchange affiliate or division.
4. Employees or agents of an incumbent local exchange company, who are responsible for the processing of an order or service of the operating system, shall not be shared with the competitive local exchange affiliate or division, and shall have offices physically separated. The competitive affiliate or division shall have its own direct line of management, and any shared facilities shall be fully and transparently allocated between the incumbent local exchange company and its competitive local exchange company affiliate or division.
5. No employee or agent of an incumbent local exchange company shall promote any service of its competitive local exchange affiliate or division.
6. No employee or agent of an incumbent local exchange company shall represent that any repair or restoration of service would have occurred earlier if the customer had obtained service from its competitive local exchange affiliate or division.
7. No incumbent local exchange company shall condition the provision of any regulated service on the purchase of service from its competitive local exchange affiliate or division.

8. No incumbent local exchange company may represent that the services provided by its competitive local exchange affiliate or division are superior, the services of other competitors are not reliable, or, that the continuation of certain services from the incumbent local exchange company are contingent upon purchase of the full range of services from its competitive local exchange affiliate or division.
9. Any incumbent local exchange company that bundles its services must provide the same opportunity at the same terms to competitors.
10. Any party allegedly harmed by a violation of any of these Code of Conduct provisions may invoke the Commission's alternative dispute resolution procedures to resolve the dispute.

EXHIBIT B

STRUCTURAL SEPARATION TRANSACTION REQUIREMENTS

Unless otherwise directed by the Commission, the following Structural Separation Transaction Requirements ("Separation Requirements") will apply to all transactions between Verizon-PA Wholesale and any retail affiliate of Verizon doing business in Pennsylvania (each of which shall be referred to herein as Verizon-PA Retail):

Nondiscrimination

1. Verizon-PA Wholesale shall not give Verizon-PA Retail preferential treatment over a non-affiliate in the provision of goods, services, facilities and information, except as otherwise permitted on an interim basis under Rules 11, 12, 21 and 22.
2. Verizon-PA Wholesale shall supply services and apply the rules and other provisions of its Tariffs to non-affiliates in the same manner it applies them to Verizon-PA Retail.
3. Transactions between Verizon-PA Wholesale and Verizon-PA Retail shall be limited to tariffed products and services, the sale or purchase of goods, property, products or services made generally available by Verizon-PA Wholesale or Verizon-PA Retail to all market participants through an open, competitive process, or as specifically provided for by the Commission. Verizon-PA Wholesale shall not have any exclusive arrangements with Verizon-PA Retail to provide goods, services, facilities or information unless specifically authorized by the Commission.
4. Verizon-PA Wholesale shall not tie in any manner the provision of any Commission-regulated services to the purchase of service from Verizon-PA Retail.
5. Verizon-PA Wholesale and Verizon-PA Retail shall not bundle regulated services with unregulated services unless the same opportunity to bundle services is provided on the same terms to all competitors. Verizon-PA Wholesale and Verizon-PA Retail shall offer all regulated services on the same terms to all requesting carriers.
6. No employee or agent of Verizon-PA Wholesale shall represent that any repair or restoration of service would have occurred earlier if the customer had obtained service from Verizon-PA Retail.
7. Verizon-PA Wholesale may not represent that the services provided by Verizon-PA Retail are superior, the services of other competitors are inferior or not reliable, or, that the continuation of certain services from Verizon-PA Wholesale are contingent upon purchase of services from Verizon-PA Retail.

Nondiscriminatory OSS

8. Verizon-PA Wholesale's Operations Support Systems ("OSS") shall process all service requests on a nondiscriminatory basis.

9. Verizon-PA Wholesale's OSS will complete pre-ordering, ordering, provisioning, repair and maintenance requests in the same manner and within the same time period for Verizon-PA Retail as completed for unaffiliated competitors. Verizon-PA Wholesale shall not give preference to Verizon-PA Retail over an unaffiliated competitor in the pre-ordering, ordering, provisioning, repair and maintenance of any service provided by Verizon-PA Wholesale.
10. Verizon-PA Wholesale will provide Verizon-PA Retail and unaffiliated competitors with equal access to loop make-up databases. This access will be provided through the same system and interface for both affiliated and non-affiliated carriers.
11. Consistent with BA-GTE Merger Condition I.3.h, Verizon-PA Wholesale will be allowed to process trouble reports and perform trouble isolation on an exclusive basis for Verizon-PA Retail for a maximum of 12 months from the Merger Closing Date.
12. Consistent with BA-GTE Merger Condition I.4.n, Verizon-PA Wholesale will be allowed to provide Verizon-PA Retail with access to loop information through a different interface than that used by unaffiliated companies for a maximum of 6 months from the Merger Closing Date.

Information Sharing and Disclosure

13. Verizon-PA Wholesale shall simultaneously make available to all competitors any information to be provided to Verizon-PA Retail that is not in the public domain and that relates to competing in the local telecommunications market (including but not limited to information about network elements and services that Verizon-PA Wholesale intends to offer to Verizon-PA Retail).
14. Verizon-PA Wholesale shall not disclose CLEC proprietary information (*e.g.*, information received in the ordering, provisioning or repairing of telecommunications services provided to the CLEC) to Verizon-PA Retail unless the CLEC provides prior written consent.
15. Customer information shall be provided to affiliated and unaffiliated entities on a nondiscriminatory basis, and only if permitted under applicable Commission regulations.

Separations and Sharing Employees

16. Verizon-PA Wholesale shall operate separately from Verizon-PA Retail and shall maintain separate books, records and accounts in accordance with Generally Accepted Accounting Procedures ("GAAP").
17. All transactions between Verizon-PA Wholesale and Verizon-PA Retail shall be conducted on an arm's length basis.
18. Verizon-PA Retail may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of Verizon-PA Wholesale.
19. Verizon-PA Wholesale shall not share office space, office equipment, services, computer and information systems with Verizon-PA Retail, except to the extent of

- providing shared corporate services. Physical separation shall be accomplished preferably by having office space in a separate building, or, in the alternative through the use of security-controlled access.
20. Verizon-PA Retail shall have its own direct line of management and shall have separate officers, directors and employees from Verizon-PA Wholesale. This prohibition against joint employees shall not apply to shared corporate services. This Rule prohibiting joint employees will, however, apply to Boards of Directors except that any board member or corporate officer may serve on the parent company and with either Verizon-PA Wholesale or Verizon-PA Retail, but not both.
 21. Consistent with BA-GTE Merger Condition I.3.c (3), Verizon-PA Wholesale will be allowed to provide network planning, engineering, design and assignment services to Verizon-PA Retail on an exclusive basis for a maximum of 6 months from the Merger Closing Date. Verizon-PA Wholesale shall not provide Verizon-PA Retail with kind of non-public information, described in Rule 13 above, as a result of providing these services.
 22. Consistent with BA-GTE Merger Condition I.3.d (2), Verizon-PA Retail will have exclusive access to any Advanced Services Equipment retained by Verizon-PA Wholesale for a maximum of 6 months from the Merger Closing Date.
 23. Nothing in these rules shall prevent the parent company from providing corporate support services to its affiliates. Examples of such services that may be provided include payroll, taxes, shareholder services, insurance, financial reporting, financial planning, corporate accounting, corporate security, human resources, employee records, corporate legal and pension management. Examples of services that may not be shared include regulatory affairs, lobbying, employee recruiting, engineering, network operations and marketing. In no event shall shared corporate support services be used as a conduit for sharing information or conducting other transactions that are prohibited by these Rules.
 24. Once an employee of Verizon-PA Wholesale becomes an employee of Verizon-PA Retail, the employee may not return to Verizon-PA Wholesale for a period of one year.
 25. Any employee of Verizon-PA Wholesale hired by Verizon-PA Retail shall not remove or otherwise provide information to Verizon-PA Retail that it would otherwise be precluded from having pursuant to these Rules (including Rule 13).

Transfer Pricing

26. Network elements, services and other goods produced, purchased or developed for sale on the open market by Verizon-PA Wholesale will be sold to affiliated and unaffiliated companies on a nondiscriminatory basis, except as otherwise permitted by these Rules or otherwise specifically directed by this Commission. Similarly, regulated network elements and services provided by Verizon-PA Retail shall be sold to affiliated and unaffiliated companies on a nondiscriminatory basis.

27. Transfers from Verizon-PA Wholesale to Verizon-PA Retail of non-tariffed network elements, services and other goods will be priced at the higher of cost or fair market value.
28. Transfers from Verizon-PA Retail to Verizon-PA Wholesale of network elements, services and other goods will be priced at no more than fair market value.
29. Tariffed network elements, services and other goods shall be provided at tariffed rates.
30. Except when made generally available by Verizon-PA Wholesale through an open, competitive process, if Verizon-PA Wholesale offers a discount or waives all or any part of any other charge or fee to Verizon-PA Retail, or offers a discount or waiver for a transaction in which Verizon-PA Retail is involved, Verizon-PA Wholesale shall make such discount or waiver available to all similarly situated competitors contemporaneously. Verizon-PA Wholesale should not use the "similarly situated" qualification to create such a unique discount (e.g., volume discount) arrangement with Verizon-PA Retail such that no competitor could be considered similarly situated. All competitors serving the same market as Verizon-PA Retail should be offered the same discount as the discount received by Verizon-PA Retail. Verizon-PA Wholesale shall document the cost differential underlying the discount to Verizon-PA Retail and such documentation will be reviewed and verified in the annual audit conducted by an independent auditor described below. These restrictions on discounting shall apply equally to the regulated network elements and services of Verizon-PA Retail.

Corporate Advertising and Marketing

31. Verizon-PA Wholesale and Verizon-PA Retail shall not be permitted to recover costs associated with promoting the Verizon brand in rates for regulated network elements and services. If Verizon-PA Retail markets or communicates to the public using the Verizon or BA name or logo, it shall include a disclaimer that states:
 - a. That Verizon-PA Retail is not the same company as Verizon-PA Wholesale or BA; and
 - b. That a customer does not have to buy products or services from Verizon-PA Retail in order to receive the same quality wholesale service from Verizon-PA Wholesale.
32. Verizon-PA Wholesale shall not jointly market or bundle its regulated services with the services of Verizon-PA Retail. This prohibition includes prohibiting Verizon-PA Wholesale from establishing a link from its web site to any Verizon-PA Retail web site.

33. No employee or agent of Verizon-PA Wholesale shall promote any service of Verizon-PA Retail.


Record-Keeping, Annual Audits and Enforcement

34. Verizon-PA Wholesale shall maintain contemporaneous records documenting all tariffed and nontariffed transaction with Verizon-PA Retail. Such records shall be available for public inspection.
35. No later than 60 days after approval of these Separation Requirements by the Commission, Verizon-PA Wholesale and Verizon-PA Retail shall file a compliance plan demonstrating that there are adequate controls and procedures in place to effectively implement these rules and ensure no preferential treatment is provided to Verizon-PA Retail by Verizon-PA Wholesale. This compliance plan will be provided to all parties to this proceeding and will be reviewed and approved by the Commission.
36. An independent audit will be conducted every calendar year to ascertain and verify Verizon-PA Wholesale's compliance with these Rules. The Commission staff will manage the independent auditor and Verizon-PA shareholders will fund the audit. An audit report will be submitted to the Commission and served on all parties no later than March 31, following the calendar year. Parties will have the opportunity to provide written comments on the audit report and make recommendations to the Commission to address any instances of noncompliance.
37. Violations of these Separation Requirements shall result in Commission ordered fines at the levels determined to be appropriate by the Commission. Any such Commission action will not preclude or limit additional private remedies or civil action. The Commission shall refer violations of these Separations Requirements to the Pennsylvania Office of Attorney General, the FCC and the U.S. Department of Justice.

Dispute Resolution

38. Any dispute between Verizon-PA Wholesale, Verizon-PA Retail and a competitive service provider alleging a violation of these Separation Requirements shall be adjudicated using the Commission's Abbreviated Dispute Resolution Process ("ADRP") adopted on July 13, 2000 in Docket P-00991648 and P-00991649, or any successor Commission dispute resolution process.

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February 23, 2001

VIA AIRBORNE EXPRESS - OVERNIGHT DELIVERY

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

RECEIVED

FEB 23 2001

PUBLIC UTILITY COMMISSION

Re: Rulemaking Re: Generic Competitive Safeguards --
Docket No. L-00990141

Dear Secretary McNulty:

Enclosed for filing on behalf of Sprint Communications Company, L.P. and The United Telephone Company of Pennsylvania (collectively "Sprint") are an original and fifteen (15) copies of its Joint Comments in the above-referenced matter.

Would you please time-stamp the additional copy of this letter and Certificate of Service with the date of February 23, 2001, and return it to me in the enclosed, self-addressed, stamped envelope.

As evidenced by the attached Certificate of Service, all active parties to the proceeding are being duly served.

Sincerely,



Zsuzsanna E. Benedek

ZEB/pn
Enclosures
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking)	Docket No. L-00990141
Regarding Competitive)	
Safeguards Under 66 Pa. C.S.)	
§§3005(b) and 3005(g)(2))	Docket No. M-00960799

CERTIFICATE OF SERVICE

I hereby certify that I have on this 23rd day of February, 2001, served a true and correct copy of Sprint's Comments upon the persons below via service by overnight mail, in satisfaction of the requirements of 52 Pa. Code § 1.54.

RECEIVED

FEB 23 2001

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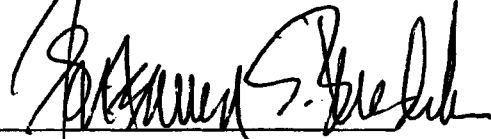
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**Counsel for Sprint Communications
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking)	Docket No. L-00990141
Regarding Competitive)	
Safeguards Under 66 Pa. C.S.)	
§§3005(b) and 3005(g)(2))	Docket No. M-00960799

**JOINT COMMENTS OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA
AND
SPRINT COMMUNICATIONS COMPANY, L.P.**

RECEIVED

FEB 23 2001

PENNSYLVANIA PUBLIC UTILITY COMMISSION

In response to the Commission's Secretarial Letter of January 3, 2001,¹ and the preceding notice of Proposed Rulemaking Order,² The United Telephone Company of Pennsylvania and Sprint Communications Company, L.P. (collectively "Sprint") respectfully submit these Joint Comments in response to the Commission's Proposed Rulemaking regarding the implementation of Competitive Safeguards for Telecommunications Utilities ("Proposed Regulations").

I. INTRODUCTION

It is Sprint's position that the blanket use of access lines to demarcate imposition of the "functionally separate organization" requirement, as set forth in Section 63.143(1) of the proposed Code of Conduct, is unnecessary. Sections 63.143(2) through (10) of the proposed Code of Conduct, coupled with both the language in Chapter 30 itself and the existing PUC-approved Chapter 30 Plans of the various incumbent local exchange carriers are sufficient for establishing the necessary

¹ 31 Pa.B. 80.
² 30 Pa.B. 539.

competitive safeguard guidelines. Thus, the Commission should either: (1) implement by rulemaking Sections 63.143(2) through (10) of the Code of Conduct, generally speaking; or (2) provide all non-Verizon Pennsylvania Inc. Incumbent local exchange carriers ("ILECs") in the Commonwealth with an opportunity to present evidence of the need for a "wholesale operating unit" as proposed in Section 63.143(1).

Sprint undertakes a myriad of roles in the provisioning of telecommunications services within the Commonwealth of Pennsylvania.³ Sprint has attempted to approach the underlying Proposed Regulations from a balanced standpoint, rather than from the viewpoint of an "ILEC" or a "CLEC." Sprint respectfully requests that its balancing of the various interests at stake in the position set forth on these issues be adopted by the Commission.

II. Section 63.143(1) is unreasonable and discriminatory and cannot be implemented as proposed.

The Proposed Regulations assume, for each affected ILEC, that these proposed provisions are necessary to prevent unfair competition and cross-subsidization in "any local exchange market in Pennsylvania." 30 Pa.B. 542. Moreover, the Proposed Regulations and Code of Conduct are directed only at ILECs and their affiliates "as the entities with market power that may be abused" without adequate competitive safeguards in place. *Id.*

The "market power" concern of the Commission is based upon the Commission's stated assumption that "ILECs, with a nearly 100% market share currently in their

³ For example, through The United Telephone Company of Pennsylvania, Sprint provides ILEC services and performs ILEC responsibilities in portions of the Commonwealth. Through Sprint Communications Company, L.P., Sprint is authorized to offer competitive local exchange service in portions of the Commonwealth.

respective local markets . . . do have the power to engage in . . . anticompetitive conduct." *Id.* In distinguishing competitive local exchange carriers ("CLECs") from ILECs, the Commission noted that its "market power" concerns included the ability to curb entry of new providers by the control of the bottleneck, to set prices above competitive levels, or engage in unlawful predatory pricing to eliminate competition. *Id.* at 543.

Allegedly keeping with this market power viewpoint, the Commission arbitrarily imposes, however, a functional separation requirement upon ILECs with more than 250,000 but less than 1 million access lines. *Id.* at 544. The proposed language in 52 Pa. Code §63.143(1) provides as follows:

An ILEC with more than 250,000 but less than 1,000,000 access lines shall maintain a functionally separate organization (the "wholesale operating unit") for the ordering and provisioning of any services or facilities to CLECs necessary to provide competing telecommunication services to consumers. The wholesale operating unit shall have its own direct line of management and keep separate books of accounts and records which shall be subject to review by the Commission . . .

Id. Conversely, under the Proposed Regulations, for ILECs over 1 million access lines, the Commission will determine, after appropriate notice and hearing whether the Proposed Regulations concerning functional separation will apply or whether further safeguards "will be necessary to protect CLECs from unfair competition and to ensure nondiscriminatory access to the ILECs services and facilities." *Id.*

The Proposed Regulations then impose the following widely disparate standards of regulatory treatment:

- For ILECs with less than 250,000 access lines, no separation requirements are imposed.
- For ILECs with 1 million access lines or greater, an appropriate notice and hearing is accorded in order to determine what level of separations, if any, is reasonable and appropriate. *Thus, it is conceivable that for ILECs having in excess of 1 million access lines no functional separations will be imposed if demonstrated as such at hearing*
- For ILECs having between 250,000 and 1 million access lines, the Proposed Regulations would automatically impose functional separation requirements -- without any opportunity for a hearing as whether functional separation is even warranted.

A plain and fair reading of the Proposed Regulations indicates that no functional separation may be imposed upon ILECs having in excess of 1 million access lines (after a hearing) or for those ILECs with less than 250,000 access lines. However, a functional separation requirement will be applied regardless of the circumstances to ILECs having between 250,000 and 1 million access lines. Thus, ILECs having between 250,000 and 1 million access lines become bound to the functional requirements: (1) regardless of whether the market share and market power assumptions underlying functional separation necessitate or require functional separation; and (2) regardless of whether functional separation appropriately and reasonably accomplishes the intended goals of the statute.

In this matter, the Proposed Regulations create an absolute presumption that all PUC-regulated ILECs with 250,000 to 1 million access lines must undertake "functional separation" without any evidentiary means of rebutting the need or reasonableness of imposing such regulations prior to having to devote resources to implement the

regulations. It is Sprint's position: (1) that the use of access lines as a threshold for implementing "functional separation" is not necessary or proper; and (2) that the proposed 250,000 to 1 million access line distinction bears no reasonable relationship to any legitimate purpose and, if implemented as proposed, would constitute arbitrary and capricious agency action.⁴

Sprint recognizes that a relationship between access lines and market share may exist if an appropriate foundation for that relationship has been properly demonstrated. However, in this instance, no evidentiary support exists for that proposition. There has been no evidence garnered whatsoever that the proposed 250,000 to 1 million access line threshold is reasonable or appropriate. Moreover, there has been absolutely no record support for the assumption that the market share allegedly associated with ILECs having between 250,000 and 1 million access lines constitutes, *ipso facto*, an exercise of market power such that a functional separation requirement becomes necessary in all instances and for all ILECs meeting the threshold.

There has been no determination as to how the thresholds were determined and whether the number of access lines in this manner is reasonably tailored to accomplish any rational end. Likewise, there has been no record showing that ILECs having between 250,000 and 1 million access lines have inhibited competition in the local

⁴ The general power to make regulations is not unlimited. Regulations will be set aside if going beyond the purpose of a statute or if it does not bear a rational relationship to that purpose. Pennsylvania Bankers Association v. Secretary of Banking, 481 Pa. 332, 342, 392 A.2d 1319, 1324 (1978).

exchange market in Pennsylvania or elsewhere.⁵ No evidentiary support exists for imposing a functional separation burden, when smaller ILECs in similar situations will not have to undertake the burden of functional separation.⁶ Similarly, no record support exists for the assumption that only an ILEC with access lines greater than 1 million access lines (*i.e.*, Verizon) should be afforded the opportunity to demonstrate that less-than-functional separation may be appropriate.⁷

Until an appropriate record can be developed, Sprint believes it is premature to impose functional separation upon companies with less than 1 million access lines. In the case of Sprint, there have been no complaints from CLECs concerning the provisioning of service or "bottleneck" issues. Even if the Commission believes in the advantages of functional separation, it should impose such a drastic measure only after an ILEC has demonstrated that it is impeding the competitive telecommunications marketplace.

In sum, functional separation must not be imposed as a matter of course upon all ILECs having 250,000 to 1 million access lines. The Proposed Regulations in this regard are unreasonable and discriminatory.

⁵ For this reason, the reliance upon separation requirements that may have been imposed for other utility arenas (*e.g.*, the electric industry) is unfounded and inappropriate. There has been no demonstration that the arbitrary access line determination contained in the Proposed Regulation is reasonable or is supported by record evidence for application to the telecommunications industry, let alone that such a distinction is similar in nature, scope, design and application to the code of conduct for the electric industry. Indeed, a code of conduct or regulations which *may* be necessary in the electric or natural gas industries may not be necessary, or advisable, in the telecommunications field.

⁶ Under the access line threshold proposed in the Code of Conduct, Rochester/Global Crossing will not have to implement functional separation simply because their access lines do not meet the threshold.

⁷ It is also likely that a significant "timing of implementation" issue may develop if Section 63.143(1) were promulgated. That is, the regulation would absolutely require functional separation of certain ILECs (those having 250,000 to 1 million access lines), whereas the notice and hearing procedures, including appeals thereof, afforded to larger ILECs may not be imposed for some time.

III. Additional record support is necessary if Section 63.143(1) is implemented.

Sprint recommends that all ILECs, regardless of access lines or size, should be accorded the same opportunities and the same regulatory treatment relative to their ability to demonstrate at a hearing all relevant factual circumstances pertinent to the imposition, if any, of a functional separation requirement. If the Commission deems that an access-line based form of generic competitive safeguards is necessary, Sprint submits that additional, evidentiary support is necessary before the Commission determines to apply an access line method of demarcation “to prevent local exchange telecommunications companies from engaging in unfair competition” or to require that the same “provide reasonable nondiscriminatory access to competitors.” 66 Pa. C.S. § 3005(b). The Proposed Regulations should not be applied unless an ILEC has first been afforded an opportunity to demonstrate the need for the Proposed Regulations. This opportunity was afforded to Verizon Pennsylvania Inc. (“Verizon”) and likewise should be afforded to non-Verizon ILECs in the Commonwealth.

In the *Global Order* proceeding and now in the *Structural Separation* proceeding, the Commission afforded Verizon ample opportunity to provide evidentiary input as to Verizon’s structure and alleged behavior relative to competitors. Conversely, in this “generic rulemaking,” the Commission seeks to foist a Code of Conduct upon a select group of ILECs without any regard to individual circumstances of need for such regulations and without any ability of the ILEC to present evidence of behavior and structural mechanisms which obviate the need for compliance with particular aspects of the Proposed Regulations.

Thus, the Commission has afforded Verizon greater opportunities to shape its corporate structure and relationship than it will accord to other ILECs under the Proposed Regulations. The disparate treatment as between Verizon, on the one hand, and all other ILECs, on the other hand, is not reasonable or justified. Verizon was afforded an opportunity to provide evidentiary input as to a Code of Conduct applicable to Verizon's circumstances. Sprint requests a similar opportunity to respond in an on-the-record proceeding as to whether or not a particular Code of Conduct is necessary, ripe and appropriate given Sprint's individual circumstances.

The Commission retains the discretion to use either its rulemaking or adjudication powers to develop policy.⁸ However, Sprint urges the Commission to consider implementing any separation requirements upon individual ILECs via the Commission's adjudicatory authority – if it determines to retain Section 63.143(1). Moreover, functional separation in the manner imposed by the proposed rules places incredible costs and burdens upon an ILEC. Requiring major changes in the manner in which companies operate and provide service based upon a perceived possible problem concerning market share and market power remains unreasonable and unfair. Due process in this circumstance requires a hearing on the merits and the right to be heard.

Given the property rights implicated, the lack of existing evidentiary support for the Commission's access line threshold, and the burdens associated with the functional separation proposed, Sprint submits that a limited evidentiary hearing or an on-the-record review/study of the assumptions is necessary and appropriate regarding the

⁸ Pennsylvania Human Relations Commission v. Norristown Area School District, 473 Pa.334, 374 A.2d 671 (1977).

alleged market power held per ILEC and the implications thereof. It is Sprint's position that all ILECs, regardless of access lines or size, should be treated equally relative to the opportunity to demonstrate in an adjudication⁹ all individual factual circumstances pertinent to it.

IV. Sections 63.143(2) through 63.143(10), coupled with existing statutory requirements of Chapter 30 and the PUC-approved Chapter 30 Plans, are adequate competitive safeguards.

Section 63.143(1)'s arbitrary imposition of functional separation upon ILECs having between 250,000 and 1 million access lines is unnecessary given: (1) the existing requirements of Chapter 30 and the associated obligations contained within Pennsylvania PUC-approved Chapter 30 Plans; and (2) the remaining requirements proposed in Sections 63.143(2) through 63.143(10). For example, Section 3005(g) prohibits a local exchange telecommunications company from maintaining or imposing any resale or sharing restriction on competitive services. 66 Pa. C.S. § 3005(g)(1). In addition, Section 3005(g) also prohibits a local exchange telecommunications company from using revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. 66 Pa. C.S. § 3005(g)(2). Other safeguards in Chapter 30 include unbundling requirements and consistent pricing of competitive services for ILECs and non-ILECs. 66 Pa. C.S. § 3005(e)(1) and § 3005(g)(2).

⁹ Section 101 of the Administrative Law, 2 Pa. C.S. § 101, states in pertinent part that an "adjudication" is:

Any final order, decree, decision, determination, or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

The Commission-approved Chapter 30 Plans also provide safeguards against unfair competition. Sprint's approved plan, for example, provides for: (1) a Price Stability Mechanism which ensures that revenues earned and expenses incurred for any noncompetitive service will not cross-subsidize or support any competitive service; (2) provision of aggregated customer and network information on a nondiscriminatory basis to any other provider; and (3) competitive services subject to the Commission's jurisdiction regarding safety, adequacy, and reliability.

While Sprint generally agrees with these additional regulations, it should be noted that the regulations could be subject to varying interpretations.¹⁰ For example, there will be differences of opinion as to what constitutes a "preference" or an "advantage" as proposed in Section 63.143(2). The requirements proposed in Sections 63.143(2) through 63.143(10) can provide additional safeguards against unfair competition and ensure reasonable, nondiscriminatory access to competitors for ILEC services and facilities.

Thus, there is no need for a "wholesale operating unit" as proposed in Section 63.143(1).

Moreover, Sprint has already organized itself in a manner consistent with Section 3005(g). Sprint has already tailored its operations to best respond to the needs of

¹⁰ Conditioning the sale of non-competitive services with "the purchase, lease or use of any other goods or services" creates a level of ambiguity in the proposed Code of Conduct. (See proposed §63.143(6)(i).) A strict interpretation of this point could severely disadvantage ILECs. For example, any ILECs offering pre-combined packages of calling features to be used with the dial-tone line provides the customer with a simple and convenient ordering procedure. Clearly, however, this convenience is not to be prohibited under the proposed Code of Conduct since the Commission has "not prescribed rules restricting joint marketing between the ILEC and its retail marketing affiliates." Therefore, in Sprint's view, an ILEC offering a package of non-competitive, competitive, and/or non-regulated services cannot constitute a "condition" for the offering of a non-competitive service.

various carriers. The corporate philosophy of Sprint embraces competition. Sprint's Local Operations consist of three market segment organizations and a variety of support groups. The market-segment groups are: (1) Business Markets, (2) Consumer Markets, and (3) Carrier Markets. Carrier Markets was specifically created to help focus on carriers as customers, not competitors.

Carrier Markets is led by a president-level position within Sprint's local operations and is dedicated to working with wholesale customers, including CLECs. Carrier Markets' role is to provide sales, customer service, billing and to oversee the provisioning and maintenance processes for customers in their purchases of contractual and tariffed services. Carrier Markets has both an operations group and a market interface group. Carrier Markets' operations consist of a variety of centers that specialize in processing of orders for given customer segments such as Interexchange Carriers, CLECs and Cellular Mobile Radio Service.

In regard to CLECs, Sprint has a dedicated center, the National Exchange Access Center ("NEAC") located in Decatur, Indiana that is dedicated to handling CLEC orders. NEAC has introduced an on-line ordering system, Integrated Request Entry System ("IRES") that permits CLEC customers to submit electronic orders via a web-browser-based internet system. This provides an increase in service order accuracy and efficiency in order response.

The market interface group consists of National Account Managers and Regional Account Managers. The regional group located in Mansfield, Ohio is focused on sales and customer service efforts and interconnection negotiations for customers in Sprint's North Central Region (Indiana, Ohio, Pennsylvania, and New Jersey). This group is

dedicated to assisting with sales and service issues associated with access tariff purchases, contractual services, and services purchased by customers for their own use under tariffs. The group also serves as an internal customer advocate to help in meeting expedited service or special customer requests. Each CLEC has an assigned account manager responsible for insuring that Sprint provides quality service to its CLEC customers.

It is important to note that Sprint's efforts to accommodate CLECs have been undertaken without any prodding from regulators. Sprint has met the competitive challenge with a market-driven solution that is working well. Sprint is unaware of any complaints from CLECs regarding the provisioning of services. In light of Sprint's practical approach to CLEC provisioning, it would be improper and unnecessary to impose a functional separation requirement upon Sprint simply because the number of access lines falls within the parameters of the Proposed Regulations. Clearly, the imposition of arbitrary access line distinctions elevates form above substance in Sprint's specific circumstances.

V. CONCLUSION

Sprint appreciates the opportunity to present Joint Comments in this matter and requests that the Commission consider its recommendations on these issues.

Respectfully submitted,



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**Counsel for Sprint Communications
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Dated: February 23, 2001

Original: 2082

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February 23, 2001

VIA HAND DELIVERY

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RE: *Rulemaking Regarding Generic Competitive Safeguards*
Docket No. L00990141

COPY

Dear Secretary McNulty:

Please accept this letter as the comments of MCI WorldCom Communications, Inc. ("MWCOC") on the above-referenced Rulemaking Regarding Generic Competitive Safeguards. MWCOC supports the Commission's proposed Code of Conduct and believes that such regulation of incumbent carrier behavior is necessary and essential for the development of vibrant competition within Pennsylvania. MWCOC supports adoption of the Code of Conduct as proposed in the Rulemaking as competitive safeguards.

As further evidence of the need to adopt and enforce such Codes of Conduct, MWCOC points to admissions from Verizon of Pennsylvania, Inc. ("Verizon") in the course of other proceedings before the Commission that Verizon is not complying with the Code of Conduct applicable to it via the Commission's Global Order dated September 30, 1999. As Verizon has failed to implement the required Code of Conduct, MWCOC believes that it

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will strongly oppose the Rulemaking and herein requests the Commission provide commentors with the opportunity to provide Reply Comments.

Very truly yours,



Kathleen Misturak-Gingrich
Counsel for MCI WorldCom Communications, Inc.

/bjh

Enclosure (Certificate of Service)

c: *Carl Giesy (via email)*
Michelle Painter, Esquire (via email)
Attached Certificate of Service

L0219774.DOC

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**RULEMAKING REGARDING GENERIC
COMPETITIVE SAFEGUARDS**

:
:
:

Docket No. L00990141

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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of February, 2001, caused a true copy of the foregoing Comments of MCI WorldCom Communications, Inc. for the Rulemaking Regarding Generic Competitive Safeguards to be served upon the parties of record in Docket No. L00990141, in accordance with the requirements of 52 Pa. Code § 1.52 and 1.54 in the manner and upon the parties listed below:

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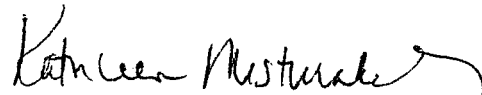
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February 23, 2001

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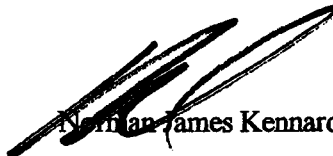
Re: Rulemaking Re Generic Competitive Safeguards Under
66 Pa. C.S. §§3005(b) and 3005(g)(2); Docket No. L-00990141

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Comments of the Pennsylvania Telephone Association in the above-captioned docket.

If you have any questions concerning this filing, please direct them to the undersigned.

Very truly yours,



Norman James Kennard
Counsel for Pennsylvania
Telephone Association

NJK/tap
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Generic Competitive Safeguards :
Under 66 Pa. C.S. §§3005(b) and 3005(g)(2) : Docket No. L-00990141

**COMMENTS OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION**

I. INTRODUCTION

The Pennsylvania Telephone Association (“PTA”)¹ submits these comments in response to the Proposed Rulemaking Order² issued by the Pennsylvania Public Utility Commission (“Commission”). A Secretarial Letter of January 3, 2001 requires that comments thereto be filed on or before February 23, 2001.

II. THE RULEMAKING IS PREMATURE AND SHOULD NOT BE FINALIZED

In its Order entered on March 23, 1999 at the above docket, the Commission issued a Notice Of Proposed Rulemaking which sought comments on two issues: (1) whether the Commission should establish regulations on the subject of safeguards for services declared competitive under Chapter 30; and (2) whether access charges should be imputed into ILEC toll services for pricing purposes. Comments and Reply Comments were submitted by various parties on these issues.

¹ The PTA is an industry trade association comprised of local exchange companies (“LECs”) operating in the Commonwealth, which companies are subject to regulation under the Public Utility Code by this Commission. 66 Pa. C.S. §§ 101, *et seq.* The PTA represents the interests of its members in several contexts, including before this Commission in matters of generic, industry-wide concern. In this proceeding, the PTA represents those member companies who elect not to file individual comments.

The Proposed Rulemaking Order subsequently entered on November 30, 1999, disposed of both these issues, finding that regulations for services declared competitive under Chapter 30 are not needed³ and that access imputation should not be expanded beyond that required under the Federal Telecommunications Act of 1996 ("TCA-96") for Verizon Pennsylvania Inc. ("Verizon PA").⁴ This should have ended the notice of proposed rulemaking.

However, the November 30, 1999 Order goes far beyond the original scope, as well as any party's comments, and proposes that the Code of Conduct established in the Global Order as applicable to Verizon PA, also be applied to all other incumbent local exchange carriers ("ILEC"). This Code of Conduct predominantly relates to the ILECs' provisioning of service and facilities to CLECs under the TCA-96 and to the ILEC/CLEC relationship,⁵ a topic totally unrelated to the two issues which were raised in the original NOPR. A Code of Conduct was not an issue in the original NOPR and no party has suggested that a Code is needed. This docket has metamorphosed into something it was never intended to be.

In addition, the Code of Conduct and its application to Verizon PA is uncertain. A Joint Petition for Settlement submitted to the Commission on January 18, 2000 in the Global Proceeding proposing a substantially revised Code of Conduct for Verizon PA, is still pending. Moreover, the Structural Separation Proceeding involving Verizon PA has not yet been ruled upon by the Commission as of the date of these Comments.⁶

² Proposed Rulemaking Order Entered November 30, 1999 (Adopted November 18, 1999).

³ "As the statutory language is clear on this point, there is no further need to create a regulation mandating this result." November 30, 1999 Order at 16.

⁴ "Similarly, we are satisfied that no additional rulemaking is required at this time on the issue of imputation." November 30, 1999 Order at 16. TCA-96 requires imputation by Verizon PA upon receipt of §271 authority.

⁵ To be fair, some of the provisions exceed this scope and relate to competition for customers and affiliated charges. However, the overwhelming focus and thrust is upon ILEC/CLEC provisioning and competition for local service.

⁶ Docket No. M-00001353, Recommended Decision of Administrative Law Judge Weismandel dated January 26, 2001.

No party has made a claim that a Code is needed for non-Verizon ILECs in Pennsylvania, many of whom are not required at this time to offer wholesale services to CLECs.⁷ While most of ILECs represented by the PTA have facilities-based CLECs certified for operation their service territory, those CLECs have not yet begun to offer service. Nor was this issue raised in the Global Proceeding. Without some level of need being established and some better understanding of the associated costs, the PTA does not understand why the Commission is proposing a Code of Conduct at this time.

Under these circumstances, it would appear that a rulemaking is not needed. Therefore, the PTA would request that the Commission discontinue the Proposed Rulemaking Order and terminate this docket, inasmuch as it has served its original purposes.

III. COMMENTS

A. The LECs Targeted Do Not Have Market Power

1. LEC Market Power is Wrongly Assumed

The imposition of a Code of Conduct upon the smaller local exchange carriers of the PTA is based on the erroneous theory that “ILECs have substantial market power...and the CLECs do not.” This proposition is devoid of supporting facts or findings, anecdotal or otherwise. The discussion in the Proposed Rulemaking Order dismisses as insufficient the fact that “some CLECs have name recognition and sizable financial resources,” and concludes that the Code of Conduct is only concerned with the market power associated with an ability to “curb the entry of new providers,” a power which supposedly only the ILECs possess.

⁷ For example, see Docket Nos. P-00971177, P-00971188, P-00971229, and P-00971244 for Orders by this Commission granting suspension of certain interconnection obligations under TCA-96.

Simple common sense clashes with the assumption that CLECs lack market power and, therefore, must be given preferential treatment until a rural ILEC loses a large portion of its customer base. A CLEC has a decided “market power advantage,” particularly over smaller ILECs⁸ who are obligated to serve all customers, regardless of opportunity for profit. Notably, CLECs enter an ILEC’s franchise territory with the intention of selectively serving only the choicest customers, i.e., large business customers with sizable revenues who can be reached with minimum capital investment.

The Commission’s “market power” concept is ambiguous and difficult to define, leaving the door wide open for subjectivity. A theoretical, but unsubstantiated, claim of “market power” is inconsistent with and directly contrary to the Commission’s commendable efforts to establish objective criteria, standards and/or parameters that can be utilized to ensure a “level playing field” for all providers of telecommunications services within Pennsylvania. For this reason, PTA encourages the Commission to avoid a harmful “one size fits all” solution. Instead, the Commission should fashion a remedy only after examination of the actual circumstances involved in an allegedly anticompetitive situation.

2. A Blanket Solution Is Not Workable.

While a “one size fits all” solution for all ILECs versus IXC/CLEC situations might create administrative ease for regulators in a perfect world, reality must prevail -- all ILECs cannot be treated as though they were the same size for obvious reasons. Regulatory “blanket” solutions are adverse to real marketplace solutions and open competition. Moreover, the Commission must avoid intervention designed to provide CLECs with an inequitable opportunity for unfair competition.

⁸ The majority of smaller, more rural ILECs represented by the PTA in this proceeding serve less than 5,000 customers

3. The Majority of CLECs Possess Market Power.

To the extent the Commission considers the "market power" concept, it must conclude that CLECs possess great market power. There may be exceptions to the rule, i.e., smaller CLECs in a stand-alone, "start-up mode." However, the overwhelming majority of CLECs certified in this state are corporate giants, like AT&T and WorldCom, who clearly possess market power.

AT&T is still the "phone company" to many telephone customers. This can be attributed to the massive marketing campaigns sponsored by AT&T and other IXCs over the years. Oftentimes, the ILEC is faced with the task of educating its customers to the fact that the local network was built and is maintained by the ILEC. In other words, it is the ILEC that must overcome the customer's perception of the CLEC's market power.

4. Size and Economic Power Makes a Difference.

The Commission cannot ignore the relative size of the ILEC, IXC, or CLEC and the ability to cross-subsidize when determining market power. One key ingredient is the relevant market. Bundling of telecommunications services into a packaged service offer and the ability to give discounts in other (less regulated or less competitive) services is a centerpiece in the business strategy of many carriers.

The most blatant example today which demonstrates a CLEC's ability to sustain predatory prices can be seen in AT&T's current promotion. AT&T is enticing customers to switch local service providers by offering five months free local service, 300 minutes free toll service, and free installation. Furthermore, AT&T is able to expand its existing customer base (cable) by creating an additional service (local telephone) without substantial additional investments, thereby creating an incremental source of revenue. Using this strategy, AT&T is able to under-price its LEC services, recouping only enough expenditure to meet the incremental costs of upgrading its cable network to telephony. This

and are smaller than most CLECs.

tariff offering, if extended to the small rural carriers' service territories will have catastrophic effects⁹ since the rural ILEC is severely restricted from co-mingling cable television with local service.¹⁰

Naturally, CLECs want to downplay their relative size and economic power as an issue. However, when evaluating corporate giants such as AT&T and WorldCom, it is obvious that the Commission must recognize that size and economic power are prerequisites for any definition of market power.

As the result of massive advertising dollars being poured into the telephone markets over the years, each of the major IXCs enjoys the benefits of strong market presence and name recognition within ILEC service territory. Accordingly, telecommunications customers recognize their IXCs as well as their ILEC, and perhaps even more readily. When the IXC expands its horizons as a CLEC, it does not have to gain the confidence of customers before those customers decide to switch local service providers. All the IXC/CLEC needs to do to gain market share is to undercut the ILEC's prices.

6. CLECs Ability To Participate In Unfair Competition.

CLECs clearly have the opportunity and the incentive to advance unfair competition. To believe otherwise is naive. The Commission must not enhance the IXC/CLEC position by placing a lopsided regulatory code of conduct on the ILECs, to ensure that the IXC/CLEC is given additional advantages. For this reason, the Commission should establish a truly balanced policy to treat all competitors equally, unless there is evidence that a competitor, whether an ILEC, IXC or CLEC, is competing unfairly.

⁹ AT&T in Verizon PA's service territory currently offers the above-described promotion. At the December 20 public meeting, this Commission voted to certify AT&T local service in an extensive area surrounding Pittsburgh. AT&T has not yet filed its local service tariffs for this expanded area, but has stated that it expects its rates "will be the same or probably similar" to those currently offered elsewhere in the Commonwealth.

The PTA companies do not seek protection from the Commission. Indeed, all the ILECs truly desire is a fair opportunity to compete with the same degree of freedom as these corporate giants who aggressively price and market their services in the ILEC's territory. PTA emphasizes that, unless an ILEC or CLEC can show that it is at a competitive disadvantage, rules and regulations should be designed to be equally applicable to all providers of telecommunications services, regardless of the service provider's designation. An "ILEC-only" Code of Conduct thwarts this objective.

B. There Is No Evidence That The Proposed Code Is Necessary

1. There Is No Evidence That Supports the Imposition of a Code.

No party has requested a Code of Conduct. No circumstances or abuses have been alleged which support the imposition of the Code. No problem has surfaced which created the rush to this "solution."

The imposition of a "Code of Conduct" upon Verizon PA in the Global Order, at least, relied upon a scintilla of evidence. As explained by this Commission to the Commonwealth Court on appeal:

The Commission relied upon substantial record evidence to support its imposition of the more stringent Code of Conduct. As discussed above, the record contains numerous examples where Bell not only abused its market power by providing its competitors with less than comparable access to its network, but also engaged in discriminatory conduct that prevented customers from switching to a competitor [citations to record deleted].¹¹

¹⁰ See Section 303 and Section 652 under TCA-96.

¹¹ Bell Atlantic-Pennsylvania, Inc., et al v. Pa. PUC, Commonwealth Court Docket No. 2790 C.D. 1999, Brief for the Respondent, Pennsylvania Public Utility Commission at 94.

The Commonwealth confirmed the need for an evidentiary basis: "Record portions cited by the PUC provide factual support for the Code's directives."¹²

Here, a self-justifying need for a Code based upon theoretical arguments is an insufficient foundation upon which to impose yet another set of regulatory conditions upon incumbent local exchange carriers.

2. CLEC Competition is Not Present in Rural ILEC Service Territories.

The main focus of the Code of Conduct is directed at regulating the relationship between the ILEC and CLEC where the former is providing services or facilities, which are used by the latter to provide telecommunication services to customers, i.e., ILEC provisioning of resale services and/or unbundled network elements ("UNEs") to the CLECs. However, resale and UNE provisioning are absent from all but three ILEC territories in PA today.

This is due to several factors. First, only a handful of CLECs have sought certification in rural territories. The rural customer profile of high cost and low revenues, understandably, has not created an environment conducive to the vigorous competition existing in the more urban areas. Those CLECs that have applied for authority are already engaged in existing cable television (AT&T/TCG) or wireless (AT&T/Vanguard) or fiber optic (Adelphia) networks. Second, this Commission rightfully granted a suspension to certain rural companies from provisioning resale services and UNE elements, for numerous reasons, including adverse financial consequences upon rural communities, and to allow rural ILECs an opportunity to prepare for competition.

While the companies represented here by the PTA appreciate that the suspension of resale and UNE "obligations" is of a finite term and subject to annual renewal, until resale and UNE services are

¹² Id., Commonwealth Court Opinion filed October 25, 2000 at 39.

provided by the smaller, rural local exchange carriers, there is little or no evidence presented by CLECs or this Commission upon which to determine the need for a Code of Conduct.

C. Specific Comments

1. The Scope Of The Proposed Code Is Too Broad

If, in fact, it is the intention of the Commission to insert additional regulation into the provisioning of resale service and UNEs by an incumbent, then the proposed Code of Conduct needs to be so limited. To be clear, the particular provisions of the Code of Conduct need to be more narrowly drawn to accomplish this result. Otherwise, several of the provisions will limit the ILECs ability to compete, even with facilities-based carriers, and prohibit them from undertaking various, otherwise legal acts; marketing campaigns for example, where there is no similar limitation placed upon the CLEC. This hobbling of the ILEC is unfair and unreasonable.

2. Review of Specific Provisions

While the PTA, for policy and practical reasons, opposes the imposition of additional regulatory requirements upon ILECs, it provides the following specific, constructive comments to the proposed Code provisions, (a) through (j), in order to provide assistance, in the eventuality that the Commission implements a form of these regulations.

(a) There are four local exchange carriers in Pennsylvania which serve greater than 250,000 but less than 1,000,000 access lines. It is the PTA's understanding that these companies will be commenting individually on the functional separation contemplated by item (a).

(b) Provision (b), as a general statement, is not objectionable. However, it can certainly be anticipated that disputes will arise as to whether any "preference or advantage" is

permissible under the Code, which appears to prohibit any preference whatsoever, even between unaffiliated CLECs. The PTA suggests that if one is granted, it must have a reasonable basis. For example, the Pennsylvania Public Utility Code does not prohibit discrimination entirely, only that which is “unreasonable.”¹³ A similar clarification would be helpful here, because preferences or advantages may be conferred for legitimate reasons and a blanket statement prohibiting any “preference or advantage” may impair the development of the ILEC/CLEC relationship.

(c) As a general statement, a provision requiring that the ILEC maintain the confidentiality of CLEC proprietary information has a valid purpose. The provision, however, leaves it up to the ILEC to determine whether or not the information is “otherwise available” and, hence, whether it is proprietary information. Rather than placing this burden upon the ILEC, the PTA suggests that the CLEC mark information as proprietary, so that there is no interpretational dispute arising later. Moreover, it would more likely be consistent with the Commission’s intent that this provision encompasses all ILEC employees, not just “wholesale operating unit employees” (which only would be applicable only to LECs of greater than 250,000 access lines).

(d) This provision, which precludes an ILEC employee from disparaging the service of a competitor or promoting an ILEC service “while engaged in undertaking acts on behalf of a competitor” makes sense and the PTA does not object. This would appear to be strictly limited to a situation where the LEC is provisioning services, either resale or UNE, on behalf of the competitor. It would be helpful to insert the same language “to any end-user” as used in item (e) to make the provision more specific.

(e) This provision appears to be the same as item (d) above except that it relates to order processing and service repair/restoration. The PTA does not object.

¹³ 66 Pa. C.S. §1304.

(f) The PTA suggests that this provision is unneeded and confusing. A blanket prohibition on ILECs' ability to obtain exclusive customer contracts or to bundle noncompetitive services together or with competitive services is an overly broad and unfair limitation on the ILECs' ability to compete. Item (f) is a generic statement, which is not even limited to the stated purpose (regulating the ILEC/CLEC relationship), and, therefore, it is not germane at all to the subject of the Code. Moreover, there is no identification of what is meant by the phrase "noncompetitive telecommunications service" and whether it follows a Chapter 30 or some other definition. The absolute prohibition represented by item (f) could prevent the creative provision by the ILECs of a bundled local/toll package designed to compete with the above-described AT&T local service offering in Western Pennsylvania, for example. Moreover, the prohibition would prevent long-term exclusive contracts for telecommunication services, inasmuch as this would represent, at least arguably, "a direct or indirect commitment not to deal with any CLEC" (or, as an exclusive contract, with anyone else for that matter). Therefore, the PTA strongly urges that item (f) be excluded entirely.

(g) The first sentence of item (g) is a general statement prohibiting the subsidization of competitive services by noncompetitive services and the PTA does not object to the inclusion of this item. It is verbatim from the Public Utility Code.¹⁴ The second sentence of this item, however, establishes a prohibition on provision of ILEC "goods or services" to affiliates, divisions or operating units at other than "cost or market price..., whichever is higher" and, in the case of ILEC purchased goods "at a price above the market price..." The statement is overly broad and not germane to the topic at issue (the ILEC/CLEC relationship). If it is the Commission's intent to address ILEC preference to an affiliated CLEC, then item (b) above already covers this situation. Moreover, item (g) is overly broad in that it is inclusive of anything from paper products to backhoe services to

network services to anything. There is no description in the Proposed Rulemaking Order, which describes why this item is necessary. It exceeds the requirements of the Public Utility Code on affiliated relations.¹⁵ Given its lack of relevance, its excessive breadth, and lack of justification, the PTA strongly recommends that the second sentence of item (g) be deleted.

(h) This provision is anticompetitive and must be deleted. In a competitive market, the participants naturally extol the virtues of their service, by comparison, as superior and more reliable. All services are not created equally and may be provisioned in such a way as to be distinct. The nature of advertising in a competitive market is the distinguishing of services in the customer's mind. Customer Choice is predicated on customer awareness. Provision (h), as written, prevents an ILEC from exercising its commercial first amendment rights (free speech) and even from telling the truth. Existing CLEC advertising routinely disparages the incumbent as not responsive to the consumer or as providing old-fashioned service. This provision would prevent the ILECs from defending themselves against such advertising campaigns. If a statement is false, there are existing legal remedies to prevent this.

Moreover, the reference to the ILECs "affiliates, divisions, or operating units," also extends the prohibition to affiliated CLECs, wireless, and internet service providers, and, therefore, is too broad. Appendix "C" to the Global Order does not go this far. These matters are largely beyond the Commission's jurisdiction. The prohibition against disparagement of CLEC service, when the ILEC is acting on behalf of the CLEC to install resale or UNE services is already covered in items (d) and (e). However, provision (h) extends well beyond this and covers competition for customers even with a facilities-based carrier. PTA proposes that this item be stricken.

¹⁴ 66 Pa. C.S. §3005(g)(2).

¹⁵ 66 Pa. C.S. §2102.

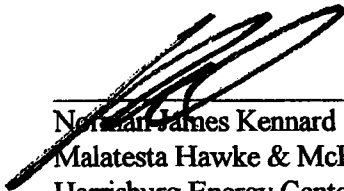
(i) This provision, which requires that the ILEC adopt and implement the finalized Code of Conduct is not objected to, provided that the changes discussed above are made.

(j) Incorporation of the Commission's alternative dispute preparation procedures is also a good idea. However, the PTA suggests that the second sentence should be revised to explain that: "the Code of Conduct may not be construed as giving rise to any civil remedy." (This limitation appears to be implicit in the use of the word "additional" in the second sentence, but should be made express).

III. CONCLUSION

The PTA appreciates the opportunity to comment on the promulgation of a Code of Conduct. The PTA respectfully submits that the Commission should decline to require any Code of Conduct at this time. If the Commission is inclined to adopt a Code, then the PTA requests that the suggestions offered in these Comments be adopted.

Respectfully submitted,



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Dated: February 23, 2001

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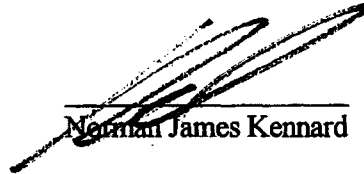
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