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May 16, 2002

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

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

Dear Secretary McNulty:

Please accept this letter as my comments to the above proposed rulemaking which purports to set forth competitive safeguards to govern the relationship between Verizon- PA's wholesale operations and its retail sales and marketing activities, as well as to require non-discriminatory interactions with Competitive Local Telephone Companies ("CLECs"). I believe that the Commission's efforts to establish a Code of Conduct for the local telephone market should be considered in light of similar efforts in the electric and natural gas industries. As you know, I was a sponsor of both the electric and natural gas choice laws that mandated competition for these utility services. The combined efforts of this Commission, the General Assembly and the Ridge administration to bring competition to the electric and natural gas industries have, by all accounts, produced hundreds of millions of dollars of savings to customers throughout the state and have provided significant economic development incentives.

The state's efforts in the electric and gas markets should be compared to the pace of local telephone competition. According to the Pennsylvania Office of Consumer Advocate, in several areas of the state, as much as 30% of the electric and natural gas usage of residential customers is now being provided by competitive companies. While the pace of electric competition in particular has slowed a bit, the level of switching remains far ahead of the level of local telephone competition, where by all accounts, only a small number (1 -2 %) of residential customers have switched to a competitive provider and virtually all of the high speed internet telephone service (DSL) is being provided by Verizon.

Because of the relative lack of progress in the residential local telephone market, I was heartened by the PUC's prior decision to borrow from its success in the energy field and to enact a series of steps intended to turbo charge telephone competition. In particular, the Commission

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decision to impose upon Verizon-PA a Code of Conduct modeled after the Codes that govern the relationship between electric and gas utilities' wholesale and retail activities seemed particularly appropriate. In the electric industry, the PUC decided that it needed to impose a set of rules to police and control the incumbent's ability to use its position as the monopoly provider of wholesale services and its historic relationship with customers to impede or destroy competition. The rules essentially mandated the electric or gas distribution utility to deal on an equal footing with its retail marketing arm and assured that they did not give its marketing division or affiliate a special preference or advantage over competitive providers. For example, if the electric or gas utility obtains information about the customer in the course of providing distribution service, it may not give that information exclusively to its affiliated marketing arm. Moreover, distribution division employees (and their activities) must not be shared with the marketing division. These rules appeared to be working so well for electric restructuring that the General Assembly actually directed the PUC to impose the same type of rules on natural gas distribution utilities.¹

It was with this background that I viewed very favorably the PUC's initial decision in its *Global Order* to adopt the electric and gas approach and to impose a strong Code of Conduct – very similar to those imposed in the electric and gas areas – to govern the relationship between Verizon's wholesale operations and its retail marketing activities. In fact, the PUC itself referenced its similar action in the electric industry to impose a Code of Conduct on electric distribution operations as one of the reasons that justified doing the same for local telephone service.²

Since that decision, however, the PUC has continued to backtrack on its initial decision to apply essentially the same rules in the electric, natural gas and telephone industries. Its most recent proposal, in my opinion, completely eviscerates the original very reasonable proposal by suggesting that Verizon continue its current practice of having a separate wholesale division that provides service only to competitors, and to require this wholesale/CLEC division to create equal treatment requirements only for this "wholesale only" division that only provides service to other CLECs. This would be like requiring an electric company's electric generation affiliate to not discriminate when it sold power directly to residential customers, something it obviously does not do.

The PUC's original concept of applying to Verizon the same, highly successful Code of Conduct used in the electric and natural gas industries made enormous sense. The PUC's new version, unfortunately, simply does not provide any useful protections and will do nothing to prevent Verizon from using its role as the wholesale service provider to sell its own retail services to the exclusion of competitors.

¹ 66 Pa. C.S. § 2209(a).


² See, PUC *Global Order*, p. 236.

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Pennsylvania has, quite rightly, been seen as a leader in restructuring traditional monopoly industries to allow greater choices and competition. The result has been lower rates and greater service choices with no reduction in safety or reliability. The PUC needs to maintain its leadership role and continue to move beyond the minimal requirements imposed on the national level and create an environment where local telephone competition can grow and thrive. Unfortunately, the current proposed rule would do nothing to advance this cause and I fear that the result will be that local telephone competition will continue to lag far behind our progress in the energy markets for years to come.

Accordingly, I respectfully request that the PUC revise its proposed Code of Conduct so that it returns to the Code that the PUC announced in its *Global Order*.

Very truly yours,


Representative Frank Tulli, Jr.