COMMONWEALTH OF PENNSYLVANIA

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May 20, 2002

James J. McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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
Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers
Docket No. M-00960799

Dear Secretary McNulty:

Enclosed please find for filing an original and fifteen (15) copies of the Office of Consumer Advocate's Comments in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures
cc: All parties of record
*69203

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**
Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA Services by Local Exchange Carriers	:	**Docket No. M-00960799**

COMMENTS OF
THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

The Pennsylvania Office of Consumer Advocate ("OCA") hereby submits these Comments in response to the Proposed Rulemaking Order entered on January 29, 2002 at the above-captioned document regarding competitive safeguards for telecommunications utilities. 32 Pa.B. 1986. The Proposed Rulemaking Order accurately articulates the extensive history of competitive safeguards proceedings before the Pennsylvania Public Utility Commission ("PUC") dating back to 1993. The OCA has participated in many such proceedings and will not reiterate such history here. Rather, the OCA submits these Comments to support the PUC in its efforts to create a level playing field in the telecommunications marketplace through the rules proposed in this Order. However, the OCA submits that such rules should be modified as per the discussion below.

II. SUMMARY OF COMMENTS

The OCA submits that the competitive safeguards are necessary for the proper development of a fully functioning competitive market for local telecommunications service. The

PUC should be commended for its efforts in putting in place appropriate and effective competitive safeguards. However, the OCA submits that the competitive safeguards in the Proposed Rulemaking Order should be modified in the following ways:

- the competitive safeguards must not eliminate other existing competitive safeguards unless such provisions are inconsistent with the new safeguards;

- the competitive safeguards should be revised to recognize the diverse nature of local exchange telephone companies including those which offer data services;

- the accounting and auditing procedures in the competitive safeguards should be modified so that retail services and additional other wholesale services are defined;

- the competitive safeguards should be modified so that ILECs cannot discriminate in their provisioning of unbundled network elements to CLECs;

- the competitive safeguards should specifically reference the Pennsylvania Unfair Trade Practices and Consumer Protection Law when discussing corporate advertising and marketing; and

- the competitive safeguards should consistently use the mandatory terms "shall" instead of the permissive word "may" so that it is clear that these safeguards are not optional but must be followed by the LECs.

III. COMMENTS

A. Competitive Safeguards Are Necessary For The Proper Development Of A Fully Functioning Competitive Market For Local Telecommunications Services.

The OCA has emphasized the importance of competitive safeguards in prior proceedings before the PUC. Furthermore, the PUC has noted in the Proposed Rulemaking Order that most of the commenting parties in the past have agreed that there should be a Code of Conduct. 32 Pa. Bull. 1988. The OCA submits that effective competitive safeguards will further the goals and

objectives of both the Pennsylvania General Assembly and the United States Congress in opening the provisioning of local telecommunications services.[1]

In enacting Chapter 30 of the Public Utility Code, the Pennsylvania General Assembly found it to be the policy of this Commonwealth to "promote and encourage the provision of competitive services by a variety of service providers on equal terms through all geographic areas of the Commonwealth."[2] The General Assembly simultaneously expressed its intention to have competitive safeguards established so that a competitive market can develop on a level playing field.[3] The OCA submits that it is important that the public interest will prevail in the creation of an environment in Pennsylvania where competitors and consumers alike will benefit from the operation of a competitive marketplace.

The provisions in the competitive safeguards addressed in this Proposed Rulemaking Order, with the modifications discussed below, will provide a more fair and open marketplace for telecommunications service providers while protecting consumers as the marketplace continues to evolve. Without appropriate and effective competitive safeguards, certain telephone companies may have an unfair advantage over competitors which would slow or thwart the development of a flourishing telecommunications marketplace. At that point, the goals and objectives of the Pennsylvania General Assembly and the United States Congress in opening the local telephone market to competition may be dashed.

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1 *See*, 66 Pa.C.S. §§3001, *et seq.* ("Chapter 30") and 47 U.S.C. §§251, *et seq.* ("TA-96").

2 66 Pa.C.S. §3001(7).

3 66 Pa.C.S. §3005(b).

B. The Competitive Safeguards In The Proposed Rulemaking Order Should Be Modified So As To More Effectively Protect The Nascent Competitive Marketplace.

The OCA submits that the competitive safeguards articulated in the Proposed Rulemaking Order are a sound basis upon which effective and appropriate competitive safeguards can be established. The Proposed Rulemaking Order appears to be the result of well-reasoned discussions and collaborations. However, in order to create competitive safeguards that will more effectively protect the developing competitive marketplace and bring about the benefits to consumers created by such a market, the OCA suggests the following changes:

1. The Competitive Safeguards In The Proposed Rulemaking Order Must Not Eliminate Other Existing Competitive Safeguards Currently In Effect Unless They Are Inconsistent With These New Safeguards.

Section 63.141(c) of the competitive safeguards specifically indicates that "the code of conduct contained in §63.144 (relating to code of conduct) supersedes and replaces any other codes of conduct applicable to any LEC." The OCA submits that there are many important and effective protections articulated in other Codes of Conduct that have been issued by the PUC. Allowing the competitive safeguards proposed herein to displace all the existing Codes of Conduct may risk losing existing important provisions.

As such, the OCA submits that section 63.141(c) should be deleted or modified so that other codes of conduct applicable to any LEC are **not** replaced or superseded unless such provisions are inconsistent with the new safeguards.

2. The Competitive Safeguards Should Be Revised To Recognize The Diverse Nature Of Local Exchange Telephone Companies Including Those Which Offer Data Services.

Section 63.142 of the competitive safeguards provides the definitions for terms used in this subchapter. This section defines competitive local exchange carriers ("CLECs") as "a telecommunications company that has been certified by the Commission as a CLEC under the Commission's procedures implementing the Telecommunications Act of 1996 or under the relevant provisions in 66 Pa.C.S. §3009(a) and its successors and assigns" (citations omitted). This section then defines incumbent local exchange carriers ("ILECs") as "a telecommunications company deemed to be an ILEC under section 101(h) of the Telecommunications Act of 1996, and its successors and assigns." The definition also notes that the term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service. Generally, this section defines local exchange carrier ("LECs") as "a local telephone company that provides telecommunications service within a specific service area... encompass[ing] both ILECs and CLECs."

The OCA submits that these definitions do not recognize the diverse nature of LECs, many of which provide multiple telecommunications services including data services. Many LECs provide data services and are known as data LECs (or "DLECs"). DLECs may provide data services such as access to the Internet or e-mail either in conjunction with other telecommunications services or on a stand alone basis. The PUC may be aware that the Federal Communications Commission is currently considering the classification of wireline broadband Internet access service providers.[4]

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[4] In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Notice of Proposed Rulemaking, CC Docket No. 02-33 (rel. Feb. 15, 2002).

It nonetheless remains true that such services are currently considered telecommunications services, but are not specifically recognized in the definitions contained in the Proposed Rulemaking Order section 63.142.

Therefore, it is unclear whether DLECs are to be included in these competitive safeguards. It is also unclear whether the data services provided by many ILECs and CLECs are also to be covered by these competitive safeguards. For example, section 63.144(1)(i) prohibits an ILEC from giving itself or its affiliate any preference or advantage over any other CLEC in the provisioning of any goods, services or network elements unless expressly permitted by State or Federal law. It is unclear whether this prohibition includes an ILEC's data affiliate and its provision of its data network elements to a competitor. However, the OCA submits that the provision of data services is a vital element to the success of local telephone competition and the PUC here must ensure that such services are also covered by these competitive safeguards.

As such, the OCA submits that the definitions section in the Proposed Rulemaking Order should recognize the diverse nature of LECs, some of whom are both ILECs and CLECs, and some of whom provide data services, either directly or through an affiliate.

3. The Accounting And Auditing Procedures In The Competitive Safeguards Should Be Modified So That Retail Services And Additional Other Wholesale Services Are Defined.

Section 63.143 of the competitive safeguards articulates requirements for the entire corporate organization for large ILECs. Among the requirements are to maintain separate accounting and business records subject to the review of the PUC, prohibitions on marketing, sales and advertising to retail customers and restrictions of conduct of the ILECs employees. The competitive

safeguards then also subject the ILEC to an independent compliance review to ascertain and verify the ILECs compliance with these requirements.

The OCA supports the PUC in its efforts to create a level playing field by placing these accounting and auditing requirements on large ILECs. However, the OCA submits that these requirements do not appear to explicitly address the retail organization of the ILEC. In particular, the competitive safeguards should identify which functions are retail functions and which are wholesale functions. The retail functions would include activities such as sales, marketing, advertising, subscription activities and customer information and billing inquiries. Currently, it is unclear that these activities are specifically retail functions and would not be included in the additional wholesale accounting and auditing procedures.

The OCA further submits that these requirements do not specifically apply to all wholesale functions. For example, in Section 63.143(1), the wholesale functions articulated are limited to "preordering, ordering and the processing and transmission of instruction to field forces for the provisioning of services, network elements ..., or facilities necessary to provide competitive or noncompetitive services to consumers." However, the requirements fail to include wholesale functions such as service installation, maintenance and repair services, billing and collection activities, operator services and other network functions such as improvement, engineering, planning, reliability, security and modernization. The OCA submits that these wholesale functions are also important and should, therefore, be specifically articulated as wholesale functions in this section. These functions would, therefore, be included in the accounting and auditing procedures as articulated in the competitive safeguards.

As such, the OCA submits that the accounting and auditing procedures in the competitive safeguards should be modified so that retail services and additional other wholesale services are defined.

4. The Competitive Safeguards Should Be Modified So That ILECs Cannot Discriminate In Their Provisioning Of Unbundled Network Elements To CLECs.

Section 63.144(ii) provides that an ILEC "may not condition the sale, lease or use of any noncompetitive services on the purchase, lease or use of any other goods or services offered by the ILEC or on a direct or indirect commitment not to deal with any CLEC." This section further provides that "nothing in this paragraph prohibits an ILEC from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the ILEC continues to offer any noncompetitive service contained in the bundle on an individual basis."

The OCA submits that the competitive safeguards should specifically articulate that ILECs cannot discriminate in the provisioning of unbundled network elements ("UNEs") to CLECs. The OCA has long advocated that UNEs should be made available to CLECs on a nondiscriminatory basis. This is important because much of the local telephone competition for residential customers in Pennsylvania is premised on CLECs providing alternative local telephone service through the use of UNEs. In fact, if CLECs were no longer able to provide such service through UNEs, a substantial portion of the local residential competition in Pennsylvania would disappear. This Commission has recognized the importance of UNEs by specifically articulating UNE prices in its Global Order[5] and further continuing its examination of the UNE process through additional proceedings. In fact, the

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[5] In re: Nextlink Pennsylvania, Inc., 196 PUR 4th 172 (Pa.P.U.C. Sept. 30, 1999), *affirmed*, Bell-Atlantic Pennsylvania, Inc. v. Pennsylvania Public Utility Comm'n, 763 A.2d 440 (Pa. Cmwlth. Oct. 25, 2000)("Global Order"), *appeal docketed*, No.1 EAP 2002 (Pa. Sup. Ct.).

latest FCC statistics reveal that, nationwide, ILECs have provided almost 8 million UNE loops to other carriers as of the end of June 30, 2001.[6]

Should ILECs be able to discriminate in their provision of UNEs to CLECs, the market for the provision of local telephone service may no longer be fair or level. As such, the competitive safeguards should specifically provide that ILECs shall offer UNEs to CLECs on a non-discriminatory basis.

5. The Competitive Safeguards Should Specifically Reference The Pennsylvania Unfair Trade Practices And Consumer Protection Laws When Discussing Corporate Advertising And Marketing.

Section 63.144(3) addresses the code of conduct provisions as they relate to corporate advertising and marketing. In particular, this section provides, *inter alia*, that a LEC "may not engage in false or deceptive advertising with respect to the offering of any telecommunications service in this Commonwealth." The OCA submits that this section should specifically reference the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL")[7] which deals directly with this issue.

In Pennsylvania, the UTPCPL addresses all communications that are false, deceptive or misleading. The purpose of the UTPCPL is to protect the public from fraud and unfair or

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[6] "Local Telephone Competition: Status as of June 30, 2001," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, February, 2002, at 2.

[7] Act of December 17, 1968, P.L., No. 1224, as amended, 73 P.S. § 201-1 *et seq.*

deceptive business practices.[8] The UTPCPL is to be construed liberally to effect its objective of preventing unfair or deceptive practices.[9]

Under Section 201-2(4) of the UTPCPL, "unfair methods of competition" and "unfair or deceptive acts or practices" means any one or more of the following:

> ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
>
> iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by another;
> ...
>
> v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have; ...
>
> viii) Disparaging the goods, services or business of another by false or misleading representation of fact; ...
>
> xi) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; ...
>
> xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

Section 201-3 of the UTPCPL provides that unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses above are unlawful.

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[8] Johnson v. Hyundai Motors America, 698 A.2d 631 (Pa. Super. 1997), *alloc. denied*, 712 A.2d 286; Burke v. Yingling, M.D., 446 Pa.Super 16, 666 A.2d 288 (1995).

[9] Commonwealth of Pennsylvania v. Bell Telephone Company of Pennsylvania, 121 Pa. Cmwlth 642, 551 A.2d 602 (1988).

The OCA submits that the competitive safeguards in this proceeding should specifically reference the UTPCPL so as to ensure that all of the protections discussed above are applicable to LECs corporate advertising and marketing.

6. The Competitive Safeguards Should Consistently Use The Mandatory Term "Shall" Instead Of The Permissive Word "May" So That It Is Clear That These Safeguards Are Not Optional But Must Be Followed By The LECs.

Throughout the competitive safeguards, the specific provisions are prefaced with either "may" or "shall" when articulating the requirements of each section. The OCA submits that the PUC should review the competitive safeguards to more consistently use the appropriate terms and should use "shall" instead of "may" so that it is clear that these competitive safeguards are not viewed as being anything other than mandatory. This ambiguity may become an issue in the future should litigation arise concerning these provisions where the use of the term "may" could be construed as not being mandatory. However, the term "shall" is always interpreted as being mandatory which these competitive safeguards should be for every LEC.

Therefore, the OCA submits that the competitive safeguards should consistently use the mandatory term "shall" instead of the permissive word "may" so that it is clear that these safeguards are not optional but must be followed by the LECs.

C. Conclusion.

The OCA submits that competitive safeguards are necessary for the proper development of a fully functioning competitive market for local telecommunications services. Such safeguards are necessary to meet the goals and objectives of both the United States Congress and the Pennsylvania General Assembly in opening the provision of local telephone service to competition.

The PUC here should be commended for its efforts to establish competitive safeguards that will satisfy these goals and objectives. However, the OCA submits that the competitive safeguards proposed by the PUC in the Proposed Rulemaking Order should be modified to further meet these goals.

In particular, the OCA submits that the competitive safeguards should not eliminate the existing competitive safeguards currently in effect unless such existing safeguards are inconsistent with the new safeguards. The competitive safeguards should recognize the diverse nature of local exchange carriers, many of whom provide varying services including data services. Furthermore, the accounting and auditing procedures proposed in the competitive safeguards should be modified so that retail services and other additional wholesale services are defined. The competitive safeguards should also be modified so that ILECs cannot discriminate in their provisioning of UNEs to CLECs and also to specifically incorporate the Pennsylvania UTPCPL when discussing corporate advertising and marketing. Finally, the competitive safeguards should be modified to consistently use the mandatory term "shall" so that it is clear that these safeguards are not optional but must be followed by all LECs.

IV. CONCLUSION

The Pennsylvania Office of Consumer Advocate submits these Comments to support the adoption of the Competitive Safeguards regulations as articulated in the Proposed Rulemaking Order being considered in this proceeding. The OCA submits that these safeguards, with the modifications proposed above, will help ensure that incumbent local exchange carriers do not use their incumbent status inappropriately in the competitive marketplace. The OCA further submits that the Public Utility Commission should continue its efforts to prohibit subsidy or support for competitive services. The OCA, therefore, requests that the PUC consider these Comments regarding the regulations set forth as competitive safeguards in this matter.

Respectfully submitted,

Philip F. McClelland
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For: Irwin A. Popowsky
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May 20, 2002

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CERTIFICATE OF SERVICE

Re: Rulemaking Re: Generic competitive Safeguards Under 66 PA. C.S.§§3005(b) and 3005(g)(2)
Docket No. L-00990141
Implementation of the Telecommunications Act of 1996: Imputation requirements for the Delivery of IntraLATA Services by Local Exchange Carriers
Docket No. M-009960799

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 20th day of May, 2002.

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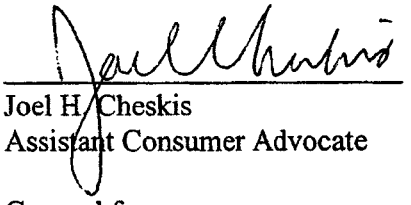

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May 20, 2002

HAND DELIVERY

James J. McNulty, Secretary
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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; **Comments of the Pennsylvania Telephone Association to Second Rulemaking**

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Comments of the Pennsylvania Telephone Association to Second Rulemaking 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 TO SECOND RULEMAKING

I. INTRODUCTION

The Pennsylvania Telephone Association ("PTA")[1] submits these comments in response to the Second Proposed Rulemaking Order[2] issued by the Pennsylvania Public Utility Commission ("Commission") at the above docket.

II. THE RULEMAKING SHOULD NOT BE FINALIZED

This rulemaking proposes a Code of Conduct be applied to all incumbent local exchange carriers ("ILEC") in Pennsylvania. The Code predominantly relates to the ILECs' provisioning of

[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 context, 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.

[2] Proposed Rulemaking Order adopted November 30, 2001; 32 *Pa. Bulletin* 1986.

service and facilities to competitive local exchange companies ("CLEC") under the under the Federal Telecommunications Act of 1996 ("TCA-96") and to the ILEC/CLEC relationship,[3]

As the PTA suggested in its comments filed on February 23, 2001[4] at the first Rulemaking at this docket,[5] 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.[6] Without some showing of need and some better understanding of the associated costs, the PTA stated then that it did not understand why the Commission was proposing a Code of Conduct at this time. The Second Proposed Rulemaking Order does not address this inquiry.

Moreover, as the PTA previously stated:

> 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.

In point of fact, a CLEC has a decided "market power advantage," particularly over smaller ILECs[7] who are obligated to serve all customers, regardless of opportunity for return on investment. Many CLECs are affiliates of larger interexchange carriers ("IXCs"). Notably, CLECs enter an ILEC's franchise territory with the intention of selectively serving only the choicest customers (i.e., large business customers that generate sizable revenues who can be reached with minimum capital investment). For this reason, the PTA encouraged the Commission to avoid a harmful "one size fits

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[3] 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.

[4] Incorporated by reference.

[5] Docket No. L-00990141, Proposed Rulemaking Order entered on November 30, 1999.

[6] 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.

all" solution and, instead, fashion a remedy only after examination of the actual circumstances involved in an allegedly anticompetitive situation.

CLECs clearly have both the motive and opportunity to advance unfair competition. 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.

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 selectively 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.

No party has requested a Code of Conduct of all ILECs in Pennsylvania. No circumstances or abuses have been alleged which support the imposition of the Code on all companies. No problems have surfaced which create a rush to this "solution." There must be some basis in fact for the Commission to impose these restrictions. The Commonwealth has confirmed the need for an evidentiary basis: "Record portions cited by the PUC provide factual support for the Code's directives."[8] Here, a self-justifying need for a Code based upon theoretical arguments is an

[7] The majority of smaller, more rural ILECs represented by the PTA in this proceeding serve less than 5,000 customers and are smaller than most CLECs.
[8] Id., Commonwealth Court Opinion filed October 25, 2000 at 39.

insufficient foundation upon which to impose yet another set of regulatory conditions upon incumbent local exchange carriers.

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 Pennsylvania 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 operating cable television (AT&T/TCG) or wireless (AT&T/Vanguard) or fiber optic (Adelphia) networks.[9] 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 and continue implementation of their Chapter 30 network modernization plans.

[9] Level 3 Communications, LLC ("Level 3") has filed an Application with the Commission seeking authority to offer, render, furnish or supply telecommunications services as a CLEC in the service territories of nuerous PTA member companies. *Application of Level 3 Communications, LLC For Approval To Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier and a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania,* Docket No. A-_____. The PTA has file a Protest to Application, in part, because Level 3 appears to be proposing a form of interconnection, "virtual NXX," which uses the assignment of NXXs to customers located outside of the rate center assigned to the NXX in order to avoid both facility construction and just compensation to the incumbent carriers.

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 renewal, there is no evidence presented by the CLECs or this Commission upon which to determine the need for a Code of Conduct.

III. Specific Comments

A. The Scope Of The Proposed Code Is Too Broad

If, in fact, it is the intention of the Commission to insert additional regulations 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. The entire section should be re-written to apply to all LECs or better still, to apply to all telecommunication providers, which would include IXCs and CLECs. If the Commission finds that further telecommunications regulation are needed, any new regulations should not be one-sided; they should be required of and applied to all telecommunications carriers.

B. 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 §§63.143, 63.144 and §63.145 Pennsylvania Code provisions, in the eventuality that the Commission implements a form of these regulations.

1. §63.142 - Definitions

ILEC--Incumbent local exchange carrier--

(i) A telecommunications company deemed to be an ILEC under section 101(h) of the Telecommunications Act of 1996 (47 U.S.C.A. § 251(h)), and its successors and assigns.

(ii) The term includes any of the ILEC's affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service.

By including all "affiliates, subsidiaries, divisions or other corporate subunits that provide local exchange service," the application of the latter provisions of §§63.143 and 63.144 apply not only to the incumbent itself, but also to, for example, an incumbent's competitive local exchange affiliate operating out of franchise. This creates confusion in the application of the rules, because, in those cases, the target is clearly the incumbent and not a competitor. The regulations identify no purpose for the inclusion of an affiliated competitive local exchange carrier into the rules. As written, the definition would apply the Code of Conduct, for example, to affiliated CLECs, while unaffiliated CLECs would not be affected at all. This incomplete application of the rule is discriminatory and fails to provide equal application of law to all similarly situated companies.

Therefore, the PTA suggests that the (ii) portion of the definition be deleted in its entirety.

2. §63.143 - Accounting And Audit Procedures For Large ILECS

This regulation, which requires functional separation, is applicable to "*any ILEC with more than 1 million access lines.*" PTA's comment on this aspect of the regulations is limited, inasmuch as none of the members participating in these comments are subject to this provision at the present time. However, the 1 million access line threshold is the trigger, which will impose functional separation upon any ILEC in the future and, therefore, is of critical importance.

The PTA suggests that the first paragraph of this section should be clarified, so as to agree with the revised definition of "ILEC" discussed previously. Affiliates should not be combined in the calculation of the access line threshold and, if so, should be limited to only ILECs owned by the same holding company. This would clarify that affiliated CLECs and non-jurisdictional affiliates would not be included in the calculation of the 1,000,000 access lines - only affiliated ILECs. Moreover, although it may be obvious, the definition should be limited to access lines "served in Pennsylvania." Several of the PTA members have multi-state operations and could be inadvertently subjected to this provision, if the requested clarification is not provided.

3. §63.144 - Code of Conduct

(a) §63.144 (1) Nondiscrimination

(ii) An ILEC may not condition the sale, lease or use of any noncompetitive service on the purchase, lease or use of any other goods or services offered by the ILEC or on a direct or indirect commitment not to deal with any CLEC. Nothing in this paragraph prohibits an ILEC from bundling noncompetitive services with other noncompetitive services or with competitive services so long as the ILEC continues to offer any noncompetitive service contained in the bundle on an individual basis.

The last sentence in Section 63.144(1)(ii) should be revised to refer to LECs, rather than just ILECs.

(b) §63.144(3) - Corporate Advertising And Marketing

(i) An LEC may not engage in false or deceptive advertising with respect to the offering of any telecommunications service in this Commonwealth.
(ii) An LEC may not state or imply that the services provided by the LEC are inherently superior when purchased from the LEC unless the statement can be factually substantiated.
(iii) An LEC may not state or imply that the services rendered by a competitor may not be reliably rendered or is otherwise of a substandard nature unless the statement can be factually substantiated.

The LECs cannot be targeted for denial of their constitutionally protected First Amendment rights by a selective prohibition upon their product advertising (i.e., stating that their service is superior to that of a competitor and from informing customers why a competitor's service is inferior).[10] The courts have rejected such prior restraint consistently. The Supreme Court has held that restrictions on commercial free 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.[11] Moreover, the LEC-only focus of the regulation makes it particularly obnoxious under the equal protection provisions of the Pennsylvania and U.S. Constitutions. This is "profiling" without any basis.

Nor is there a need for the Commission to impose these requirements exclusively upon the LECs. In Pennsylvania there are public laws that prohibit false advertising by any business.[12] In

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[10] *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.").
[11] *Central Hudson Gas & Electric Corp. v. New York PSC, 447 U.S. 557 (1980).*
[12] *See* 18 Pa. C.S. §4107(A)(5).

addition, private parties can sue in civil actions for false statements. The law in Pennsylvania already has sanctions and remedies available for false commercial speech.

Moreover, Commonwealth's Unfair Trade Practices and Consumer Protection Law ("UTPCPL")[13] proscribes twenty-one different commercial activities by any business that constitute "unfair methods of competition" and "unfair or deceptive acts or practices," five of which are directly on point in this rulemaking:

> (ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
> (iii) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
> ****
> (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
> ****
> (viii) Disparaging the goods, services or business of another by false or misleading representation of fact;
> ****
> (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.[14]

The UTPCPL expressly authorizes the Attorney General to "adopt, after public hearing, such rules and regulations as may be necessary for the enforcement and administration of the act."[15] In addition, only the Attorney General or an appropriate District Attorney may bring an action in the name of the Commonwealth, to enjoin a violation of the UTPCPL.[16]

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[13] 73 P. S. §§201-1 to 201-9.3
[14] 73 P.S. § 201-2(4).
[15] 73 P.S. §201-3.1.
[16] 73 P.S. §201-4; *See also, Commonwealth by Packel v. Shults*, 362 A.2d 1129 (Pa. Cmwlth. 1976) (Bureau of Consumer Protection had no authority under UTPCPL, to bring enforcement action, because UTPCPL specifically authorized only the Attorney General to bring such action).

Left unstated in the regulation is what judicatory forum decides when statement or implication can be factually substantiated. Certainly, the Commission is not empowered or equipped to make this determination. Decisions are better left to the civil courts and civil remedies or to the Attorney General or an appropriate District Attorney under the UTPCPL.

The Commission has no power to regulate free speech. It is well settled that this Commission is a creature of the legislature and, as such, only has those duties, powers, responsibilities, and jurisdiction expressly given it by the legislature.[17] Nowhere in the Code has the legislature given the Commission the power to restrict free speech or to apply and enforce statutes that the legislature has enacted outside of the Code. No authority is provided for the regulation's assumption that the Commission has the requisite statutory authority to apply the prohibitions of Pennsylvania's UTPCPL[18] or to regulate free speech generally. This would be a function of the General Assembly. Certainly, if the General Assembly believed it appropriate to authorize and empower the Commission to create new causes of action under Section 1501, then the General Assembly would have done so. Since the General Assembly has not done so, the Commission is without authority to do so.

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 to distinguish between services and service providers in the customer's mind. Customer Choice is predicated on customer awareness. If a statement is false, there do exist legal remedies to prevent this.

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[17] *Western Pennsylvania Water Company v. Commonwealth, Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth. 1973)

[18] The Commission itself has addressed the issue of whether it has the jurisdiction to enforce the UTPCPL. On every occasion it has held that the UTPCPL is under the authority of the Attorney General, and has either dismissed a complaint alleging violations of the UTPCPL[18] or referred the matter directly to the Attorney General. *Mid-Atlantic Power Supply*

LEC targeting by this free speech restriction is discriminatory, anti-competitive and poor public policy. Nor is the subject matter even limited to local services. Any "telecommunications service" is encompassed in (i) and any "service" period is the stated scope of (ii). This is grotesquely unfair. LECs provide interexchange services, Internet services, wireless services and all other manner of services. They must comply with this section, but no one else? If the Commission insists upon enacting this provision, and the PTA counsels against doing so, at the very least it should apply to all telecommunications and information carriers.

> *(iv) An ILEC may not state or imply that the continuation of any service from the ILEC is contingent upon taking other services offered by the ILEC.*

A restriction applied to "any service" is excessively broad. A literal reading of this subpart would prohibit the ILEC from informing the consumer that the continuation of Caller ID, for example is contingent upon subscribing to dial tone service. This provision is an unnecessarily general statement of rules which are specifically addressed elsewhere.

If, on the other hand, the Commission concludes that a general statement is required, then the PTA suggests that the regulation include all LECs and be restricted to the implication that a competitive services is contingent upon taking a noncompetitive service. This provision should be rewritten to provide that: "A LEC may not state or imply that the continuation of any noncompetitive service from the LEC is contingent upon taking other competitive services offered by the LEC."

Association v. PECO Energy Company, Docket Nos. P-00981615, C-00982011, C-0098846, C-00981862, Opinion and Order Entered March 4, 1999

(c) §63.144 (4) - Cross Subsidization

(i) An ILEC may not use revenues earned or expenses incurred in conjunction with noncompetitive services to subsidize or support any competitive services. An ILEC may not provide any assets, goods or services to its competitive local exchange affiliate, division or other corporate subunit at a price below the ILEC's cost, market price or tariffed rate for the goods or services, whichever is higher. An ILEC may not purchase any assets, goods or services from its competitive affiliate, division or other corporate subunit at a price above the market price or tariffed rate for the goods or services.

The first sentence of this provision 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.[19]

The second sentence, however, establishes a prohibition on provision of ILEC "goods or services" to its competitive local exchange affiliate, division or other corporate subunit "at a price below the ILEC's cost, market price or tariffed rate for the goods or services, whichever is higher." The prohibition 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.[20] And, given that most ILECs are subject to and inflation-based, and not cost-based, ratemaking regimen, there is no advantage to the ILEC's ratepayers.

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. On the other hand, if the Commission wishes to preclude self-dealing which might occur where the affiliated CLEC is operating in the ILEC franchise area, then the regulation should be so limited.

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[19] 66 Pa. C.S. §3005(g)(2).

(4) §63.145 - Remedies

(a) A violation of this subchapter allegedly harming a party may be adjudicated using the Commission's Interim Guidelines for Abbreviated Dispute Resolution Process, at Docket Nos. P-00991648 and P-00991649, which were published at 30 Pa.B. 3808 (July 28, 2000), or any successor Commission alternative dispute resolution process, to resolve the dispute. This action, however, does not preclude or limit additional available remedies or civil action, including the filing of a complaint concerning the dispute or alleged violations with the Commission under relevant provisions of 66 Pa.C.S. (relating to the Public Utility Code).

The PTA suggests that the following additional language should be added to the regulation: "The Code of Conduct may not be construed as giving rise to any civil remedy." Certainly, regulatory sanctions will apply for violations; however, it should be made clear that private causes of action are not created under these regulations. This limitation appears to be implicit in the use of the word "additional" in the second sentence, but should be made express.

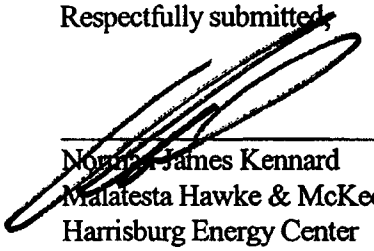
III. CONCLUSION

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

[20] 66 Pa. C.S. §2102.

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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Counsel to
Pennsylvania Telephone Association

Dated: May 20, 2002

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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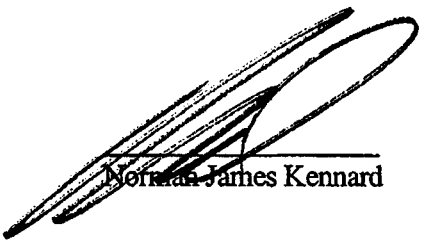

Norman James Kennard

Date: May 20, 2002

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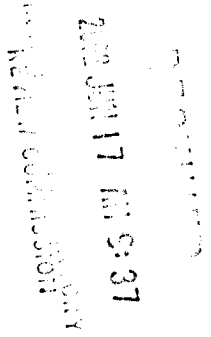

June 13, 2002

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

Re: L-00990141 Proposed Rulemaking Re: Generic Competitive Safeguards Under 66 Pa. C.S. §§3005(b) and 3005(g)(2)

Dear Secretary McNulty

I am writing to clarify the record regarding an issue addressed by the May 20, 2002 Comments of AT&T Communications of Pennsylvania, LLC ("AT&T")[1] and the June 4, 2002 Reply Comments of Verizon Pennsylvania, Inc. ("Verizon") pertaining to the comparative level of remedy payments made by Verizon under the Commission's Performance Assurance Plan over the past two years. In its Comments, AT&T presented a chart that reflected the aggregate remedy payments for each month from July 2000 through March 2002, pointed out that the level of remedy payments had decreased dramatically between June and July 2001 when the PUC made its 271 recommendation and concluded that "the only reasonable explanation for these dramatic increases in Verizon's backsliding since it received the Commission's Section 271 recommendation."[2] In its reply comments, Verizon characterized this analysis as "deceitful" and concluded "...the dollars have gone up ***only*** because the Commission has increased the magnitude of the penalty per payment missed from an average of $4,000 in May of 2001 to $17,000 in March of 2002." Essentially Verizon placed the blame for the dramatic increase in payments on the Commission, rather than its own wholesale performance.

Because Verizon has characterized AT&T's analysis as "deceitful," AT&T has no choice but to respond. AT&T's contention that the only reasonable explanation for the magnitude of the

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1 The Competitive Telecommunications Association and CoreComm/ATX, Inc. joined AT&T in the May 20, 2002 Comments.

2 Comments at 10-11.

dramatic increases in remedy payments is backsliding is entirely supportable; in contrast, Verizon's conclusion that the increase is only because of Commission increases in required remedy payments is not supportable.

Prior to making its statements in the Comments, AT&T conducted a careful analysis of Verizon remedy payments over the entire period, and concluded that the margin of the increase in payments between June and July of 2001 was caused by something other than the Commission's requirements pertaining to the PAP in its 271 recommendation.[3] AT&T's analysis revealed the following:

- The largest increase in per metric remedy payments to which Verizon agreed as a condition of a positive Commission 271 recommendation involved increases in billing metric payments, which increased to $50,000, $75,000 or $100,000 depending on the length of violation. However, these increased amounts, while large, had a very negligible effect on Verizon's post-271 recommendation aggregate monthly remedy payments.[4]

- The other increase in per metric remedy amounts to which Verizon agreed pertained to violations which exceeded 90 days in duration. Penalties in those circumstances were increased from $5,000 per violation (including the PUC payment) to $25,000 per violation.

- While this increase had an impact on Verizon payment levels, it is not responsible for the magnitude of the dramatic increase in payments from July, 2001 to the present, because:

  - From July of 2000 through May of 2001, a significant portion of Verizon remedy payments pertained to violations of one metric, OR-5-01 (responsible for ⅓ to ½ of each aggregate monthly payment), for a period exceeding 90 days.

  - This OR-5-01 problem was apparently fixed in May of 2001, since from June of 2001 to the present no violations of this metric were reported.

---

3 That analysis also revealed that the remedy payments to the Commission which resulted from the Structural Separation Order were not responsible for the dramatic increase between June and July of 2001 because they were incorporated months earlier.

4 The data available to AT&T reflects that Verizon never once paid these increased remedy amounts for violation of billing metrics despite the fact that it appears that Verizon did experience violations of billing metrics during the period, including violations which exceeded 90 days in duration.

- If Verizon had maintained its wholesale performance from June of 2001 to the present, its aggregate remedy payments would have decreased on June of 2001 and increased in July of 2001, but not by anywhere near the magnitude of the increased payments reported.

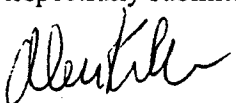
- Instead, Verizon's violation of metrics for over 90 days (other than OR-5-01) increased and was the primary driver of the dramatically increased remedy payments from July of 2001 to the present.

The Commission has recognized that metric violations that continue for over 90 days have the most severe adverse effect on competition, thus justifying a higher remedy payment. While the data appears to reflect some decrease in metric violations of shorter duration, it very clearly demonstrates an increase in violations of longer duration (after fixing OR-5-01)[5]. Accordingly, with the exception of fixing one systematic problem, Verizon's performance in this area (as measured by the PAP) has deteriorated, not improved.

Ultimately, it is Verizon's inferior performance, and not any action by the Commission, that is primarily responsible for the dramatic increase in remedy payments from July of 2001 to the present. Accordingly, AT&T stands by its statement that the only reasonable explanation for the magnitude of the dramatic increase in Verizon's remedy payments since July of 2001 is post 271 backsliding. In any case, Verizon's claim that the PAP shows wholesale service improvement is not supportable. Verizon's remedy payments since July of 2001 have remained relatively consistent during a period when the PAP has not been modified.

Hopefully, this letter serves to clarify the record regarding this issue.

Respectfully submitted,



Alan C. Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/sam
cc: Interested Parties

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June 13, 2002

James J. McNulty, Secretary
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Respectfully submitted,

Alan C. Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

ACK/sam
cc: Interested Parties

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DSH:32551.1/ATT004-149046

PA. PUBLIC UTILITY COMMISSION
LAW BUREAU FAX

Date: 6-17-02

# of Pages: 4 (including transmittal sheet)

To: KIM

From: SHERI DEUBIONDO

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(fax): (717) 783-3458

Comments: I WANTED TO BE SURE YOU RECEIVED A COPY OF THIS. THE LETTER DID NOT LIST THE PARTIES THEY SERVED.

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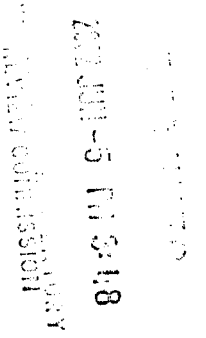
June 5, 2002



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

Dear Chairman McGinley:

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

Please find enclosed a copy of Verizon's Reply Comments that were filed with the Public Utility Commission June 4, 2002 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,

Ronald F. Weigel

Attachment

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**

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

Date: June 4, 2002

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Suzan DeBusk Paiva
Verizon
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Counsel for Verizon Pennsylvania Inc.
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INTRODUCTION

If the Commission requires evidence of the evils that come from one-sided regulation of a single company, it need look no farther than to the Comments of the competitive local exchange carriers ("CLECs") to these proposed regulations.[1]

The CLECs spare no effort to devise the most burdensome, expensive and wholly unnecessary regulations for Verizon,[2] and to a lesser extent for the other incumbent local exchange carriers ("ILECs"). To the CLECs, this process is not a fair effort to devise rules to govern the conduct of all parts of the industry; rather, it is an opportunity to hamstring their largest competitors with expensive and unnecessary regulations. It is quite telling that Sprint,[3] the only company with both a CLEC and an ILEC presence in Pennsylvania, has a quite different view of the proposed regulations. To Sprint, "[b]ut for a few limited exceptions, the proposed regulations fairly balance the interests of Pennsylvania's dominant incumbent carriers . . . other incumbents and competitive carriers." (Sprint Comments at 1).

The common theme of the CLEC Comments is to urge the Commission to resurrect a CLEC-authored definition of "functional separation" that the Commission has specifically rejected – a wholesale/retail split of Verizon's own internal retail operations that have nothing to do with CLECs. Such a split would

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1 Verizon refers generally to the comments of AT&T Communications of Pennsylvania, Inc. ("AT&T"), Corecom/ATX, Inc. ("ATX"), the Competitive Telecommunications Association ("Comptel"), XO Pennsylvania, Inc. ("XO"), Full Service Network ("FSN") and Curry Communications Inc. ("Curry") as "CLEC" comments.

2 Verizon Pennsylvania Inc. ("Verizon PA") and Verizon North Inc. ("Verizon North") (collectively "Verizon").

3 The United Telephone Company of Pennsylvania and Sprint Communications Company, L.P ("Sprint").

be so onerous and burdensome, and so radically different from Verizon's current business structure, that it would be tantamount to full structural separation. Rather, the Commission has opted to require Verizon to functionally separate the "wholesale" portion of its business that provides services to CLECs from the remainder of Verizon's business, so that the employees who service CLECs do not also service Verizon's retail customers.

In its January 29, 2002 Proposed Rulemaking Order, the Commission rejected the precise "full" functional definition that the CLECs press again here, concluding that "'full' functional separation, which involves the reorganization and separation of all employees and facilities of the affected ILEC along wholesale/retail lines, is unnecessary" because it is "an intrusive remedy designed to fix a problem that has not been shown to exist." (Jan. 29 Order p. 10).

Noting that both the Commission and the FCC had found that "Verizon-PA's local telecommunications market had been irreversibly opened to competition," and that "Verizon-PA was providing wholesale services to CLECs in a nondiscriminatory fashion," the Commission found that continued good performance would be enforced by Verizon-PA's Performance Assurance Plan ("PAP"), and that "full functional separation is likely to result in significant additional costs and duplication of resources, while the benefits to competition are speculative." (Jan. 29 Order, p. 11-12). AT&T's assertion that the Commission has taken a "hands-off" approach to local telephone competition over the last couple of years could not be farther from the truth. (AT&T/ATX/Comptel Comments p.1).

During the 271 proceeding and the proceeding to examine the PAP, the Commission has thoroughly reviewed – and taken action where necessary -- CLEC issues raised with respect to wholesale service.

Nothing has occurred to alter the Commission's conclusion in its January 29 15 Order that "full" functional separation is unnecessary. AT&T's attempt to demonstrate that Verizon's wholesale service has "deteriorated" since Verizon obtained long distance relief is based on a deceitful analysis of Verizon's performance assurance payments. AT&T argues that there has been intolerable "backsliding" because the amount of the penalty payments per month has gone up. AT&T deliberately omits the key fact --- of which AT&T as an active participant in all of these cases is well aware: the dollars have gone up ***only*** because the Commission has increased the magnitude of the penalty per metric missed from an average of $4,000 in May 2001 to $17,000 in March 2002. AT&T well knows that Verizon's ***performance*** has actually improved steadily and substantially, even after Verizon entered the long distance market, with the metrics missed declining to less than half of what they were in January of 2001. Also, many of these misses and payments are based on flawed metrics that even AT&T agrees should be removed from the plan, and that soon will be removed. AT&T's claims about "backsliding" and an "ineffective" metrics/remedies system are therefore downright false. The truth is that the monthly performance reports provide concrete evidence of excellent and steadily improving wholesale service.

The Commission also should not be influenced by the anecdotal contentions of FSN and Curry. It is hardly fair to expect Verizon to defend itself from such claims in a forum where there is neither time nor opportunity for discovery, much less cross-examination. Verizon has already determined, however, that many of these claims are factually baseless. Verizon will thoroughly investigate this type of contention where necessary and take appropriate action, but these unsubstantiated complaints certainly do not warrant the unprecedented punishment of imposing the CLECs' "full" functional separation proposal that the Commission has already rejected.

Notably, no other state has adopted structural separation, or even the onerous CLEC definition of "full" functional separation, despite CLEC attempts to shop the concept throughout the country. Recently the Florida Commission rejected structural separation as a "solution in search of a problem," and found the CLECs to be requesting

> ...relief so draconian that of the states that have examined the issue, all have rejected it. To find that structural separation is necessary to promote competition, as the Petitioners urge, implies at best, that we question our confidence that the other dockets will promote competition; and at worst, that our earlier efforts have been in vain.[4]

Pennsylvania, as one of the first states for which the FCC granted long distance authority, is in the forefront of local telephone competition without structural

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[4] *In re Petition by AT&T Communic. Of the Southern States, Inc., et al., for Structural Separation of BellSouth Telecoms. Inc.*, Docket No. 010345-TP (Opinion and Order issued Nov. 6, 2001) at 8.

separation or its first cousin, "full" functional separation. There is no reason to change course now.

Rather than being distracted by CLEC attempts to resurrect arguments the Commission has already rejected, the Commission should think carefully about what regulations are truly necessary here, and especially reconsider the accounting requirements that Verizon discussed at length in its initial Comments. The Commission should not impose useless and potentially expensive "make work" accounting rules. The CLECs will surely argue that Verizon's suggestion to remove the accounting requirements weakens the regulations or shows that harsher separation is required, but that is not true. Regulations should not be imposed if they serve no useful purpose. Verizon has made a huge commitment of time and resources to ensure good wholesale service to CLECs through its detailed performance monitoring and agreement to implement substantial performance penalties This extensive program is precisely targeted to the Commission's goal of preventing discrimination, while in contrast the proposed rules requiring Verizon to account for the cost of providing wholesale service serve no useful purpose at all.

As Commissioner Fitzpatrick's Motion noted, "the most important section of the proposed regulations is Section 63.144, 'Code of Conduct,' because this section regulates the ***behavior***, rather than the organization, of ILECs." (Motion, p. 1) (emphasis added). With the minor changes noted in its initial Comments, Verizon supports the proposed version of the Commission's Code of Conduct, which has already been refined through the formal and informal comment process (but

Verizon does ***not*** support the CLEC efforts to go back to earlier counterproductive and unworkable versions of some of these provisions).

Finally, the Commission should reject the CLECs' self-serving arguments for exemption from the general behavioral rules contained in the Code of Conduct. The CLECs must also abide by the rules of fair competition. Verizon is aware of many incidents of customer deception and competitor disparagement perpetrated by CLECs, and the Commission is wise to include them in some of the general Code of Conduct provisions.

REPLY COMMENTS

A. The CLECs' Attempts To Justify Harsher Regulations By Disparaging The Quality Of Verizon's Wholesale Service Are Baseless.

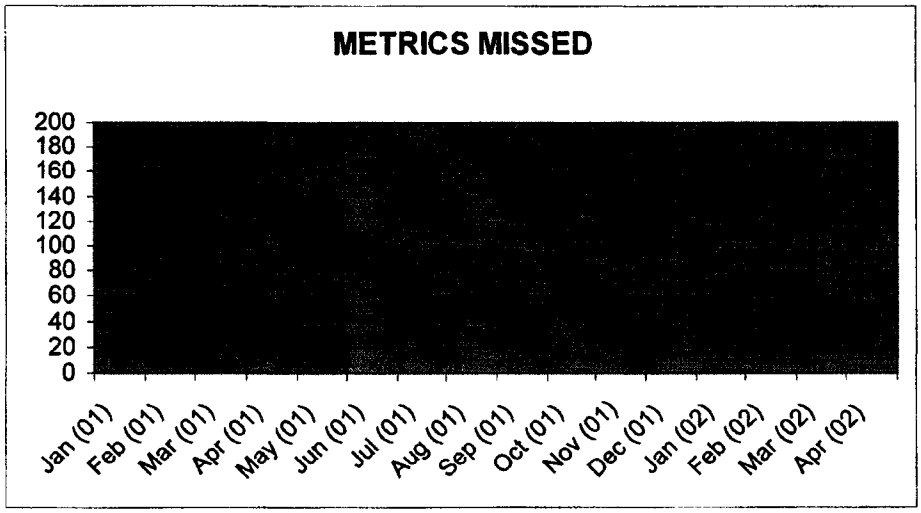
1. Contrary To AT&T's Misleading Claims, Verizon PA's Performance Reports Conclusively Demonstrate That Verizon's Wholesale Performance Is Excellent And Continues To Improve.

AT&T and others contend that the Commission's metric/remedies system "has not been effective" and that the performance data "reveals that since [the Commission's] 271 recommendation Verizon has more than doubled and, in some cases, tripled its anti-competitive behavior."[5] This alleged "failure" is AT&T's justification for the Commission to impose a punitive Code of Conduct, including a version of "full functional separation" that is virtually indistinguishable from the structural separation it previously championed in its failed national campaign. The data shows, however, that AT&T's claim that Verizon PA's performance has

[5] AT&T/ATX/Comptel Comments, p. 3.

declined is completely false. In fact, Verizon PA's wholesale performance has, by any measure, ***continued to improve*** since its long distance entry.

This Commission exhaustively evaluated Verizon PA's performance last year in the 271 proceeding and concluded "that the Pennsylvania local telephone markets are irreversibly open to competition."[6] Since that time, Verizon PA's performance has continued to improve, as demonstrated by the steady decline in the total number of metrics for which Verizon PA misses the Commission's approved performance standard, as reported on the monthly Carrier to Carrier performance reports:



Even more dramatic than this absolute reduction in the number of "misses" is the reduction in the overall percentage of metrics "missed" as compared to the total of the thousands of transactions with individual CLECs measured every month.

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6 Consultative Report of the Pennsylvania Public Utility Commission, *In re: Application of Verizon Pennsylvania Inc., et al, for Authorization Under Section 217 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania,* slip op. at 4 (June 25, 2001)(PUC Consultative Report)

The percentage of metrics "missed" has declined from a high of 4.3% in January 2001, to just 1.2% in April 2002. In other words, ***of the thousands of performance measurements gathered each month, Verizon PA "misses" just over 1%!*** Said differently, performance has improved by a factor of five.

Even this statistic tends to overstate the deficiencies in Verizon PA's performance, however, for two reasons. First, many of the "misses" are attributable to metrics that the FCC, this Commission and even the CLECs have recognized are "flawed." These flawed metrics will be fixed by adoption of the current New York Carrier-to-Carrier Guidelines, which the Commission voted to adopt in its May 23rd meeting.[7] For example, approximately one-third of Verizon PA's total liability in February and March is attributable to certain metrics that Verizon PA has petitioned the Commission to modify because they do not accurately reflect Verizon PA's performance for providing "hot cuts" or installing UNE-loops.[8] In New York, AT&T has supported, as part of the Carrier Working Group, fixing the same flaws. Second, as both the Commission and the FCC recognize, not every "miss" represents a performance failure. In many cases, Verizon PA has missed the

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7 *Performance Measure Remedies,* Docket No. M-00011468 (Motion of Chairman Thomas, May 23, 2002). Additionally, on March 20, 2002, Verizon PA petitioned the Commission to exclude these flawed metrics from remedy payments. AT&T commented that the Commission should not grant the instant petition but rather move expeditiously to adopting the NY metrics.

8 *See* Petition Of Verizon Pennsylvania Inc. For Declaration That Remedies Are Not Due For Statistically Invalid Metrics And For Modification Of Those Metrics (filed March 20, 2002). As Verizon PA explains in this motion, these metrics were specifically identified as "flawed" in connection with this Commission's and the FCC's review of Verizon PA's 271 application, and Verizon PA's performance in the relevant areas was recognized to be good. *See* Petition at ¶¶ 7-9, 13.

relevant standard by a negligible amount – e.g, providing system response time a few seconds slower than the mandated standard. These kinds of "misses" have no meaningful impact on the operation of the competitive market.

AT&T's claim that Verizon PA's performance has "rapidly deteriorated" (at 9) is based solely upon the increase in the dollar amount of remedies payments made since June 2001. As AT&T is well aware, this statistic is wholly misleading because twice during that time period the Commission ***increased the weighting of penalties due for missing a metric***. In both the April 2001 *Structural Separation Order*, [9] and the 271 Consultative Report, the Commission substantially increased the payments Verizon PA is required to make when it "misses" the mandated standard for a given metric.[10] As a result of these increases, Verizon PA's ***average*** remedy amount paid per metric increased from $4,024 in May 2001 to $17,000 in March 2002. The increase in remedy payments cited by AT&T is therefore entirely attributable to the increased penalties imposed by the Commission. ***It does not reflect any deterioration in Verizon PA's actual performance; on the contrary, that performance has improved.***

AT&T is fully aware of these facts, yet has chosen to ignore them and instead make misleading statements about Verizon PA's performance to support its

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9 Re: *Structural Separation of Bell Atlantic – PA, Inc., Retail and Wholesale Operations*, Dkt. No. M-00001353, slip op. at 39 (April 11, 2001) *"Structural Separation Order")*

10 PUC Consultative Report at 265-267. In particular, the Commission increased the remedy payments for a three month "miss" for any specific metric from $3000 to $25,000. As discussed above, many of the metrics that Verizon PA is missing are so flawed that they can never be met, so the higher remedy payments are triggered.

advocacy of "full functional separation." The Commission should not be fooled by AT&T's distortion of the facts.

AT&T also paints a false picture of the state of competition in Pennsylvania, and seeks to blame Verizon for CLEC failures that were obviously the result of the economic downturn and poor business plans. Though some CLECs may be having problems, competition itself continues to flourish as the CLEC industry consolidates. According to the Eastern Management Group's Quarterly report on competition dated April 1, 2002, "CLECs are decreasing in total numbers as any pundit will tell you, but their power is growing by leaps and bounds," and "[c]ompetitive service providers continue to grow their share of the business and residential markets." Specifically, "Eastern Management Group has seen a prodigious up-tick in the amount of competition in states where 271 approval is expected or has been granted," including Pennsylvania.[11] As Chairman Thomas testified before the Senate Appropriations Committee in February of this year, "[t]hanks to telephone competition, nearly 1 million Pennsylvania homes and businesses are choosing competitive local phone service" and "325,000 Pennsylvania homes and businesses receive local phone service from their cable company."[12]

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[11] *Competition in the Telecom Sector: CLECs, Cable and Wireless are Making Waves Despite the Downturn*, The Eastern Management Group's Quarterly Report on Competition in the Communications Industry, April 1, 2002, available at www.easternmanagement.com.

[12] Testimony of Chairman Glenn R. Thomas on Behalf of the Pennsylvania Public Utility Commission, Before the Senate Appropriations Committee, February 6, 2002.

Thus, the claim that Verizon's wholesale service has deteriorated since its long distance entry is baseless, and does not support the CLECs' demand for punitive regulations.

2. The One-Sided, Anecdotal Complaints Of Two CLECs Are Not A Proper Basis For Imposing Harsher Regulations On Verizon, Nor Do They Survive Closer Scrutiny.

Two CLECs – FSN and Curry – submitted "Comments" that were simply diatribes about wrongs they believe were committed against them by Verizon. As an initial matter, it would not be proper to change the proposed regulations based on these anecdotal claims made in a forum where there is limited response time and no discovery or cross-examination. The Commission has conducted detailed evidentiary proceedings, both in the structural separation case and in the 271 proceeding, in which it thoroughly investigated any claims CLECs cared to raise alleging "improper" conduct by Verizon – including some of the same claims Curry raises here. Based on its findings in those proceedings, the Commission decided not to structurally separate Verizon, and determined that even "full" functional separation is an "intrusive remedy designed to fix a problem that has not been shown to exist." (Jan. 29, 2002 Order, p. 10). These CLEC anecdotes, most of which have already been or are being investigated by the Commission through ordinary channels, do not provide a proper basis for the Commission to change its mind on such an important issue that it has so thoroughly explored before.

Nonetheless, Verizon will attempt to respond where it can to these allegations because Verizon vehemently but respectfully disagrees with their

implication that Verizon is providing shoddy service to CLECs. As discussed above, the systematically collected and objective information from the PAP and the carrier-to-carrier performance reports proves otherwise – showing excellent and steadily improving service. Additionally, the claims of FSN and Curry do not withstand closer scrutiny.

a. Full Service Network

FSN Complaints About Alleged Improper Conduct By Verizon Service Technicians: FSN claims that on three occasions Verizon service technicians told FSN customers to switch back to Verizon to cure their technical troubles, and provided the 800 number for them to do so. (FSN Comments, p. 9-10). FSN admits that – if true – this conduct would already be covered by the proposed regulations, so this claim does not justify any change to the draft regulations. Moreover, FSN had over 450 trouble tickets during this period, so three previously unreported incidents are hardly a significant portion of FSN's business.[13] When Verizon received FSN's Comments (the first report of these incidents) Verizon obtained more details from FSN's counsel and investigated the incidents. One was over 18 months old and could not be readily investigated, but the technicians allegedly involved in the other two incidents deny making any statements of the sort FSN claims. To the extent these technicians are claimed to have told the customers that the troubles were on FSN's side of the network, those statements were true, as

[13] There is a well-documented escalation process for maintenance issues available on Verizon's website, but FSN did not use it.

evidenced by the fact that all three trouble tickets were closed and not one of them was reopened.

In any event, Verizon agrees that, if true, behavior of the kind reported by FSN is inappropriate and is in fact prohibited by the proposed Code of Conduct, as well as Verizon's own internal code of conduct. Verizon properly instructs its service technicians about their obligations to CLECs. The handbook provided to Verizon's technicians specifically instructs them "never to make disparaging remarks about CLECs," and "if questioned by the end user refer them to their CLEC. Never discuss any Verizon services with the end user [and] make no sales attempts." Verizon investigates claims of inappropriate behavior and punishes employees who engage in such behavior. It is regrettable that FSN chose to raise these alleged incidents in litigation rather than through the proper escalation channels.

FSN Allegations About Service Installation at Home of FSN President: FSN claims that its president submitted an order for new service, after inexplicably providing an alias name to Verizon, and then received calls from Verizon retail asking for him by the alias name. Upon receiving FSN's Comments, Verizon investigated the alleged incident, and obtained from FSN's counsel the telephone number to which these calls were alleged to have been made. Verizon's records show no marketing campaign to that telephone number by Verizon's ILEC or DSL units, and the records of Verizon Long Distance do not show that number on the list of numbers purchased from its outside vendors. In any event, Verizon does not

market to target new wholesale/resale connects (which FSN's descriptions portrays this line to have been). Verizon scrubs CLEC accounts from its data weekly, before it is loaded into the retail marketing database. Moreover, marketing list production and vendor loading lead time is roughly 6 weeks, making it inconceivable that any vendor could have called this customer and addressed him by name within a week of the installation.

FSN Claims About Verizon's Billing Practices: FSN claims a history of disputes with Verizon over its bills, but it admits that it was able to file an informal complaint with the Commission under existing rules and obtain satisfaction.

FSN Complaints About Verizon's Ordering Procedures and Processes: FSN complains about Verizon's ordering procedures and processes; in other words, procedures and processes associated with Verizon's Operations Support Systems ("OSS"). However, Verizon's OSS were subject during the 271 proceeding to extensive third party testing by KPMG, which found that Verizon "had remedied any major problems with the OSS." (Jan. 29 Order, p. 11). Both this Commission and the FCC found Verizon's OSS to be satisfactory in the 271 proceeding. If FSN has new complaints, it is free to bring them to the Commission, but in light of the Commission's prior extensive examination of Verizon's OSS, FSN's issues do not justify making the proposed regulations harsher.

FSN Complaints About Parity in Line Loss: FSN is clearly wrong in the several allegations it makes concerning the Line Loss Report (LLR) Verizon provides to the CLECs. Verizon provides a daily Line Loss Report to CLECs and

to Verizon retail identifying end user lines that have migrated from one local service provider to another. The daily Line Loss Report is created and sent in the exact same manner for CLECs as for Verizon retail and it contains the same information. Verizon makes Line Loss Reports available on an Internet server where they can be downloaded by the CLECs. Verizon also provides Line Loss Reports to CLECs upon request via Connect:Direct and EDI (Electronic Data Interchange) – two electronic information transfer methods. The Line Loss report has been available to FSN since October 1999, when FSN was issued a Logon ID to access the report via the Internet server.[14] Whether FSN has taken advantage of its access to the report is only known to FSN. While FSN claims that the Line Loss Report contains errors, FSN provided no specific information about missing or erroneous data. There is a documented process for reporting LLR exceptions, and Verizon located only two FSN trouble tickets from January 1, 2001 to May 28, 2002 and both appeared to be resolved to FSN's satisfaction.[15]

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[14] On January 30, 2002, FSN requested the LLR be sent via EDI for OCN 7820. The EDI connection was implemented on February 17, 2002. Subsequently, on March 5, 2002, FSN requested the LLR for OCN 9098 sent via EDI. This request was implemented on March 17, 2002.

[15] On trouble ticket 551483, FSN claimed a WTN (Working Telephone Number) was missing from the report on April 12, 2002. FSN was asked to send a spreadsheet for the WTN. However, later that day, FSN contacted the Verizon and advised that an investigation was not necessary and that the trouble ticket was closed. FSN opened trouble ticket 535654 on February 27, 2002. FSN reported that it received duplicate LLRs via EDI on February 19 and February 24, 2002. The WCCC investigated this trouble and on March 6, 2001 advised FSN that there is no trouble as FSN is set up to receive two files, one from Production and one from CLEC Test Environment (CTE) and these files are identical. FSN was advised to notify Verizon Connectivity Management if FSN wanted to point the CTE file to a different directory/server or to remove it. On March 13, FSN advised Verizon to close this trouble ticket. [I don't think we need this level of detail]

Alleged Discrimination Against UNE-P CLECs: FSN's portrayals of Verizon PA as offering preferential treatment for Verizon PA Retail and discriminatory treatment for UNE-P CLECs are unfounded. First, with respect to the provision of LSPF (Local Service Provider Freeze) for UNE-P, the facts show that Verizon PA has been extremely cooperative and gone the extra mile for FSN and other UNE-P CLECs. Verizon offers a LSPF to its retail customer, preventing a customer's local service provider from being changed without the customer's consent, but only after the customer contacts Verizon PA and alleges that he or she was slammed, expresses fear of being slammed, or inquires as to how he or she can protect against being slammed. The Commission's regulations require all local exchange carriers, incumbent and competitive, to offer the local freeze to customers who contend they have been slammed. Verizon PA does not charge its end user customers for the LSPF service.

Contrary to FSN's claims, Verizon PA does not promote LSPF in its marketing – it offers the local freeze only on a reactive basis based on the above criteria. Further, Verizon PA does not refuse to make LSPF available to UNE-P CLECs. In fact, Verizon PA raised the issue of the availability of LSPF on UNE-Ps in the Change Control collaborative process[16] in February 2000, after LSPF over UNE-P became technically possible. At that time, all other CLECs participating in Change Control process , with the exception of FSN, rejected or declined to support

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[16] The Change Control process is an industry collaborative process to address the coordination and prioritization of changes to the Verizon OSS. All CLECs are able to participate in the Change Control process.

making a UNE-P local freeze available, with many expressing concern about their ability to accurately handle migration orders involving UNE-P customers with local freezes on their accounts. At FSN's urging, Verizon PA again raised the UNE-P LSPF availability in the Change Control process, only to have it again rejected. At that point, FSN filed a complaint against Verizon PA before the Commission under the Commission's abbreviated dispute resolution process. Verizon PA responded that it was willing to make LSPF available to UNE-P providers, but that such a change first must go through and be approved in the Change Control process. Thereafter, because Verizon agreed that UNE-P customers should have the ability to place a local freeze on their accounts, Verizon PA cooperated with FSN to obtain an Order from the Commission requiring Verizon PA to provide LSPF to UNE-P providers so that the change could be implemented as a regulatory requirement, and thus a higher priority. As a result, in October 2001, Verizon PA began to offer an LSPF capability to FSN and other UNE-P CLECs. FSN's attempt to portray Verizon PA as refusing to provide UNE-P service providers with LSPF simply is contrary to the facts. Indeed, given Verizon PA's cooperation with FSN in getting the UNE-P local freeze capability provided, FSN's baseless charges not only come with ill grace but show that no good deed goes unpunished.[17]

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[17] That a few customers who switched to FSN may have been able to retain local freezes on their UNE-P provider account after the switch, as FSN alleges, reflects only order processing errors and nothing more. Verizon PA necessarily put the UNE-P local freeze programming in place in its OSS in advance of making the UNE-P freeze capability available in October 2001. Verizon PA was not authorized to offer the UNE-P local freeze capability before it was offered to all UNE-P CLECs, so if any FSN customers retained local freezes after switching to FSN before October 2001 they

Similarly, FSN's suggestion that Verizon PA acts anticompetitively because it can place an LSPF on the customer service report ("CSR") at the account level, while UNE-P CLECs can only place e LSPF only at the line level, is not accurate. It is true that for Verizon PA retail customers the LSPF can be applied on the CSR at either the account level (an account can include one or several individual telephone numbers or lines), or at the "line level," which places the LSPF only on specified lines of a customer's account. For residential customers account level and line level are the same on single line accounts. However, it is the customer's request, not Verizon PA's practice, which determines whether the entire account has an LSPF applied to it or whether the LSPF is applied only to specific lines on a multiline account. For UNE-P customers, Verizon PA cannot apply the LSPF at the "account" level, because the "account" is that of the UNE-P provider itself, and not that of individual end-user customer's number (Verizon's customer is FSN (the "account"). FSN's customers are end users (the "lines")). However, whether the freeze indicator is at the line or account level, it appears in the body of the CSR and the entire CSR must be reviewed under any circumstance. If a freeze indicator is anywhere on an account, Verizon PA cannot switch that customer unless the freeze is lifted. FSN's unsupported hypothesis that its customers are being switched, even with the freeze on their accounts, is erroneous. If a freeze is on a customer account, the only way that customer can be switched is if the customer gives his

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did so because the service rep handling their order failed to note they were now UNE-P provider customers.

affirmative consent to remove the freeze to his service provider. In short, Verizon PA does not "hide" the freeze feature and does not switch LSPF customers unless the customer first takes the steps necessary to remove the freeze.

b. Curry Communications

Curry filed its Comments after the deadline, and recites complaints that it has repeated many times – including in the recent 271 proceeding and in various formal and informal complaints to the Commission.[18] Because these issues have been addressed many times before, Verizon will not rebut them point by point here.

However, the questionable nature of some of Curry's contentions is evidenced by its complaint that Verizon will not let Curry lift a customer's local service freeze. (Curry Comments, p. 5). As Curry should well know, Verizon cannot allow Curry to lift a freeze because to do so would be illegal under FCC rules. Only the end user customer can lift the freeze, and the CLEC cannot act as the customer's agent.

Additionally, Curry makes many claims about alleged problems with service after it moved offices. Curry has raised these issues already with the Law Bureau, which contacted Verizon. Investigation revealed that the bulk of Curry's problems were the result of its own ordering errors and repeatedly changing its mind about the facilities it wanted, and that other claims were factually wrong.

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[18] Mr. Curry testified before the Commission as a witness for OTS in the state 271 proceeding and filed formal comments with the FCC in the federal 271 proceeding, raising claims such as the "late BARMS delivery" that he raises here. Curry also filed two formal complaints and informal complaints with the Commission's Law Bureau encompassing all of the issues it raises here.

In any event, the Commission has been well-aware of Curry's allegations for some time now and nonetheless decided that "full" functional separation and the onerous regulations the CLECs demand are not warranted. There is no basis to change this conclusion.

B. The Functional Separation And Accounting Requirements (Section 63.143).

1. The Commission Has Already Rightly Rejected The CLECs' Definition of Functional Separation, Which Is Tantamount To The Structural Separation The Commission Found Was Not Warranted.

Verizon agrees with Commissioner Fitzpatrick's Motion that these regulations should be focused on *conduct* (behaviors) that may harm competition, not on "restructuring" Verizon. Therefore, Verizon strongly opposes the "full" functional separation definition put forth by AT&T and the other CLECs. The Commission has already given thorough consideration to all of these arguments about the degree to which Verizon's operations should be functionally separated, and has rejected them.

In its January 29 Order, the Commission rejected the precise "full" functional definition that the CLECs advocate, concluding that:

> [I]n adopting this more limited functional separation approach, the Commission believes that the imposition of "full" functional separation, which involves the reorganization and separation of all employees and facilities of the affected ILEC along wholesale/retail lines, is unnecessary. . . .
>
> First, and most importantly, full functional separation is an intrusive remedy designed to fix a problem that has not been shown to exist. Less than six months ago, the Commission concluded in

> Verizon-PA's section 271 proceeding under TA-96 that Verizon-PA's local telecommunications market had been irreversibly opened to competition. Specifically, the commission concluded that Verizon-PA was providing wholesale services to CLECs in a nondiscriminatory fashion. The [FCC] agreed and granted Verizon-PA's application to provide long-distance service under section 271 of TA-96. This action followed a third-party test of Verizon-PA's operations support systems ("OSS") by our third-party consultant, KPMG Consulting, which concluded that Verizon-Pa had remedied any major problems with the OSS.
>
> Secondly, as part of the section 271 approval process, Verizon-PA agreed to withdraw court appeals from the Commission's earlier adoption of a performance assurance plan (PAP).17 The PAP contains detailed standards for Verizon-PA's wholesale services to CLECs, and also contains self-executing penalties for Verizon-PA's failure to meet these standards. Verizon-PA could pay roughly up to $183 million per year for failure to meet the performance standards in the PAP. These standards and penalties are in addition to the Commission's normal enforcement processes and penalties. Finally, full functional separation is likely to result in significant additional costs and duplication of resources, while the benefits to competition are speculative. (January 29 Order, p. 10-11).

Based on their untrue claims that Verizon is "backsliding" in its relations with CLECs, AT&T and the others ask the Commission to reverse its course set in its January 29 Order and to mandate a major restructuring of Verizon's business. The CLECs' definition of "full functional separation" is much closer to the "structural separation" that the Commission ***rejected*** last year than to true "functional separation."

The CLECs real complaint is that after years of evidentiary proceedings and thorough consideration, the Commission has made a reasoned decision to reject the CLECs' demands to restructure Verizon. Indeed, XO relies upon several year old statements from the Global Order without addressing the more relevant and recent

proceedings in which the Commission has considered these issues in detail, such as the 271 case and this rulemaking. XO completely ignores the admonition in Commissioner Fitzpatrick's Motion that "[i]n the absence of proof that the quality of Verizon's wholesale services has deteriorated . . . our focus should be on Verizon's (and other ILECs') behavior rather than its organization." Like every other state to consider the issue, Pennsylvania has rejected CLEC proposals for a major restructuring of the ILEC's business. Significantly, the Codes of Conduct adopted in both the electric and gas industries similarly contain no attempt to redefine or restructure those industries. Instead, those Codes focus primarily on the rules of *conduct* that should govern the existing industry structure. The same should apply here.

Contrary to AT&T's rhetoric, the Commission has not "omitted wholesale/retail functional separation entirely." (AT&T/ATX/Comptel Comments p. 8). Rather, the Commission has defined "functional separation" in the way that term has consistently been used in these proceedings, and declined to adopt the new and harsher definition recently concocted by AT&T.

An examination of the history of the Commission's use of the term "functional separation" demonstrates that it has always been understood to mean having a separate wholesale organization to serve CLECs (an organizational structure Verizon already has in place) and ***not*** to include the additional requirement demanded by the CLECs of also pulling apart the company's integrated retail operations to create a separated "retail" unit that must purchase its network and

other requirements from a "wholesale" entity. The Commission first used the term "functional separation" in the *Global Order,* requiring interim "functional separation" pending resolution of the structural separation proceeding. (*Global Order* at 235). The only guidance on the meaning of "functional separation" comes earlier in the order, when the Commission described the two alternatives before it – functional and structural separation. The Commission described "functional separation" as the plan contained in the 1649 petition, which the Commission described as requiring "a separate organization within the company to take orders for wholesale services to CLECs and to process and transmit instructions to the field for the provisioning of such services to CLECs, . . . [with] its own direct line of management. . ." (*Global Order* at 217). The *Global Order* never stated any different definition or configuration of "functional separation," so the only reasonable conclusion is that the Commission was directing Verizon to implement the 1649 petition's definition of functional separation in the interim, which meant Verizon should have a separate wholesale unit to serve CLECs.

Shortly after the *Global Order*, the Commission proposed Code of Conduct regulations for all ILECs, further demonstrating the Commission's understanding of "functional separation." The regulations explicitly defined functional separation as "maintain[ing] a functionally separate organization (the 'wholesale operating unit')" to provide services to CLECs [19] -- i.e., a separate wholesale unit. In the comments

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[19] *Rulemaking Re Generic Competitive Safeguards Under 66 Pa. C.S. §§ 3005(b) and 3005(g)(2),* No. L-00990141, Annex A, § 63.143(1).

on these proposed regulations, no party challenged this definition of "functional separation." In fact, both AT&T and Sprint specifically characterized this structure as "functional separation" and proposed no change to the definition.

This history demonstrates that the term "functional separation" has consistently referred to having a separate wholesale unit to serve CLECs – which is what the currently proposed regulations would require. The different "full functional separation" definition appeared for the first time in AT&T's petition for clarification of the Commission's April 11, 2001 Order rejecting structural separation (a petition that the Commission denied). An almost verbatim version of AT&T's definition then appeared in the September, 2001 draft regulations by the Commission Staff, referred to on page 7 of the AT&T/ATX/Comptel Comments. It was this draft of the regulations that the Commission specifically rejected in its January 29 Order.[20]

The CLEC's "full functional separation" proposal that Verizon create a separate "wholesale" division to serve its retail customers would significantly

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[20] The OCA suggests a revision to the definition of functional separation, Section 63.143(1) that seems to be driven by confusion about the two definitions. Although the OCA appears to accept the current definition as a conceptual matter, it urges to Commission to specify that other functions, such as "service installation, maintenance and repair services, billing and collection activities and other network functions" would be wholesale functions. (OCA Comments, p. 7). The Commission should reject OCA's proposal. The current definition is very careful to draw the line between wholesale and the rest of the business at the level of ordering and processing/transmitting instructions to the field forces. Otherwise, the definition would cross the line into splitting up Verizon's currently integrated retail operations. For example, the actions of service installation and network personnel when working for the CLECs are governed by the Code of Conduct. E.g., Sections 63.143(6) and 63.144(2).

change the way Verizon is structured. Verizon has in place today a functionally separate wholesale organization that is dedicated to serving CLEC and IXC customers. There is no artificial "wholesale" unit within Verizon's retail business – which is what the CLECs demand. Today, Verizon's retail customers are served in an integrated manner so that there is full communication among the people who develop the products, market the products, install and maintain the products, etc. The CLECs' definition would require a complete restructuring of the retail business, would result in duplication of resources, inefficiencies and unnecessary costs, and would seriously hamper Verizon's ability to deal quickly and efficiently with its retail customers' requirements. Verizon's existing wholesale operating unit has ***no business dealings whatsoever*** with retail customers or the retail side of the business -- the burden addressed here is the attempt to create separation within Verizon's currently integrated retail business.

The kind of functional separation required by the proposed regulations is more than sufficient to ensure nondiscriminatory treatment of CLECs and to foster competition in Pennsylvania for several reasons. First, both the Commission and the FCC have concluded that Verizon has opened its local exchange market to competition in Pennsylvania. Second, stringent performance metrics, standards and remedies have been adopted by the Commission (and are being reviewed yet again by the Commission) that cover virtually every aspect of the service provided by Verizon to the CLECs. These performance metrics and standards are designed to

measure, in minute detail, the quality of all products and services Verizon is required to provide to the CLECs under the Telecom Act.

Verizon painstakingly documents how it provides service to its retail customers and its wholesale customers in order to demonstrate that it provides non-discriminatory service to its competitors -- i.e., service that is at parity with the service it provides to its retail customers. As described above, this is done through the PAP and its Carrier-to-Carrier Performance Reports required to be submitted monthly to the Commission and to the CLECs, consistent with the Commission's *Performance Metrics Order*. Verizon's extensive tracking and reporting of the quality of service it provides to itself and to its competitors goes far beyond what is required in either the gas or electric industries. In short, the Commission has already implemented tools to enable it to detect and remedy differences in the quality of service Verizon provides to its competitors, and to ensure nondiscriminatory treatment. Micro-management of the way that Verizon structures its business will only place additional costs and inefficiencies on Verizon that will hurt -- not help -- Pennsylvania consumers.[21]

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[21] The intrusive nature of the CLECs' proposal is apparent from the discussion by XO and AT&T/ATX/Comptel of the "provider of last resort" obligation that they would place on the wholesale unit. Their proposal amounts to some sort of regulatory "slamming" of all local telephone customers, so that if they do not affirmatively choose a CLEC to serve them (including the Verizon retail CLEC), they would be forced to accept some sort of limited service from the Verizon wholesale unit which would not be Verizon's ordinary retail service. Such a proposal would be harmful to Pennsylvania consumers and provide no purpose other than crippling Verizon. See AT&T/ATX/Comptel Comments p 14-14, n. 23; XO Comments p. 5.

2. No Commentor Has Pointed To Any Real Purpose For The "Accounting Rules" Other Than To Make It More Expensive And Difficult For Verizon To Do Business.

In Verizon's Initial Comments it pointed out that there is no useful purpose for the "accounting" requirements contained in proposed sections 63.143(2),(4) and (7), which could be interpreted to require significant expense to Verizon. Therefore, Verizon suggested that these provisions be omitted or significantly modified, so that they can reasonably be accommodated.

None of the other commenters has provided in the initial comments any real use for these accounting rules. AT&T, for example, makes the lukewarm comment that there is "some value" in 63.143(4) but does not say what that value might be. (AT&T/ATX/Comptel Comments, p. 18). Likewise, XO calls the recordkeeping requirements of 63.143(7) "adequate," but never says what they will do or what benefit they provide or what purpose they serve. (XO Comments, p. 8)

The CLEC comments on the accounting rules, like their other issues, are focused on justifying their long-sought restructuring of Verizon through "full" functional separation. AT&T, for example, suggests that with full functional separation the accounting requirements would control for "cross-subsidization between wholesale and retail operations, one of the primary purposes of the regulations under the Commission's enabling statutes." (AT&T/ATX/Comptel Comments, p. 16). However, wholesale services are priced according to very specific FCC regulations and the rates are set by the Commission in litigated proceedings. UNE rates must be set at the "TELRIC," or forward-looking cost. It

would be impossible, therefore, for Verizon to use its wholesale rates to subsidize its retail business, particularly when it is questionable whether the wholesale rates cover the wholesale costs. There is certainly no justification to radically restructure Verizon's entire business to create accounting requirements to prevent cross-subsidization of retail services by wholesale services.

In fact, the enabling statute is concerned with cross subsidization of competitive services by noncompetitive services (66 Pa.C.S. ə 3005(g)(2)). To control for this type of cross-subsidization, the competitive services must cover their costs; in other words, carriers should not be permitted to price competitive services below cost and make up the difference by inflating their noncompetitive rates. This concern is cared for by proposed Section 63.143(4), as well as existing applicable Commission cost imputation requirements. The proposed accounting requirements for the wholesale unit do not advance this goal at all.

3. The Commission Should Reject The CLECs' Changes To This Section.

The CLECs' proposed changes to section 63.143 are all driven by their demand to change the definition of functional separation to the "full functional separation" rejected in the Commission's January 29 Order. Therefore, all such changes should all be rejected.

For example, AT&T argues that without "full" functional separation, proposed section 63.143(3) would allow wholesale employees to "promote" Verizon retail service. (AT&T/ATX/Comptel Comments, p. 17). This is not true

since proposed section 63.143(6) directly prohibits such conduct. AT&T's revision to section 63.143(6) seeks to go even farther by prohibiting Verizon's service and network personnel from "promoting" Verizon, even when they are engaged in business purely for a Verizon retail customer that has nothing to do with a CLEC. *Id.* at 19. This proposal should be rejected.

AT&T's proposed changes to section 63.143(8) to mandate an annual compliance audit were already rejected by the Commission. (AT&T/ATX/Comptel Comments, p. 20).[22] If the Commission adopts Verizon's suggested revisions to this section, it would give the Commission more flexibility in the future regarding Verizon's discretion in managing the audit (XO Comments, p.8) and the procedures of 66 Pa.C.S. ə 516(b). (AT&T/ATX/Comptel Comments, p. 20).

C. The Code of Conduct for all LECs (Section 63.144).

1. The Code of Conduct Correctly Applies To All LECs Because There Is Substantial Evidence Of Marketing Abuses and Misleading Consumer Dealings By CLECs.

In the comments relating to the Code of Conduct is a statement buried in footnote 20 on page 13 of the AT&T/ATX/Comptel comments. These CLECs claim that "[a]s a matter of policy, applying a Code of Conduct to CLECs is inappropriate." If the Commission is to have a Code of Conduct at all, it must apply to all participants in the local telephone service market, or it will be of little use.

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[22] Fitzpatrick Motion p. 1 (requiring staff to "remove the obligation . . . for an ILEC to retain a consultant annually to verify the ILEC's compliance with the Code of Conduct. I believe it would be sufficient for the Commission to order such a review on an as-needed basis.")

Verizon is aware of examples of marketing abuses and misleading of consumers perpetrated by CLECs.

Verizon has investigated and found to be valid a large number complaints from its end user customers of CLECs impersonating Verizon representatives or falsely claiming to be Verizon affiliates to mislead the customer into unknowingly switching their local or toll service to the CLEC. For example:

- A CLEC representative appeared at an elderly Verizon customer's door wearing a Verizon shirt and cap and told her Verizon was "changing to another company." He demanded to see her phone bill and "slammed" her service to the CLEC.
- Verizon had reports from dozens of angry Verizon customers about a campaign of misrepresentation through which a certain CLEC's representatives falsely stated either that they worked for Verizon, that Verizon had contracted them to take over small business customers, that Verizon had contracted them to review the customer's bills for overcharging or that Verizon had sold their account to the CLEC. All of the calls attempted to switch the customer's service to the CLEC.
- Another CLEC had representatives calling Verizon customers, claiming to work for Verizon and then slamming the customers, after telling them they would still be with Verizon.
- A well-known company's representatives have told Verizon's customers that Verizon is going out of business
- Another well-known company's representatives have called Verizon customers and claimed that the company owns Verizon and has better products to offer.

Verizon attempts in the first instance to work these issues out with the CLECs, including if necessary sending a "cease and desist" letter. Should the Commission desire more details and substantiation, Verizon stands ready to provide

them. However, Verizon believes the Commission should be at least generally aware of this pattern of conduct if it is going to give any consideration to CLEC claims that there is no need for a Code of Conduct for CLECs.

Although there are other remedies available for such conduct by any carrier, if the Commission is going to have a Code addressing this conduct for some, it must address it for all in order to signal to the marketplace that it expects this standard of conduct from everyone. Otherwise, it will send the wrong signal to CLECs. The substantive portions of the Code of Conduct applicable to CLECs are 63.144(2) (Employee Conduct) and 63.144(3) (Corporate Advertising and Marketing). These provisions repeat fair competition requirements that CLECs should already abide by, such as refraining from false and deceptive advertising. It should be of concern to the Commission that any CLEC operating in Pennsylvania objects to abiding by such a code.

2. The Commission Should Reject The CLECs' Attempts To Return To Earlier Drafts Of The Code And To Eliminate The Well-Reasoned Changes And Refinements The Commission Has Made Through The Formal And Informal Comment Process.

The CLECs have made many comments to the Code of Conduct section that confusingly seek to return to the language of earlier drafts or to eliminate changes and refinements the Commission has added through the formal and informal comment process. The Commission should reject these counterproductive suggestions.

Section 63.144(1)(i): Both XO (p.9) and AT&T/ATX/Comptel (p. 21) seek to remove from Section 63.144(1)(i) the "expressly permitted by state or federal law" exception. In other words, these CLECs want to be able to read these regulations as prohibiting preferences that have been "expressly permitted by state or federal law." This omission would risk making the Commission's regulations inconsistent with other laws and potentially invalid or unenforceable. If state or federal law has carved out an exception to the general rule of non-discrimination, then there is a good reason for it. The CLECs should not be able to use these regulations as a "back door" method to eliminate those exceptions without any consideration of their merits.[23] OCA wants to add here that an ILEC shall not discriminate in the provisioning of UNEs, but this prohibition is already included in the broader concepts of 144(1)(i) and the Telecom Act. (OCA Comments, p. 8).

Section 63.144(1)(ii): In Section 63.144(1)(ii), XO and AT&T want to go back to the original language of the Global code of conduct ignoring clarifying changes that the Commission has made by considering rounds of public comment. (XO Comments, p. 10; AT&T/ATX/Comptel Comments, p. 22). AT&T's

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[23] Whether the issue XO raises about access to information about dark fiber is a preference at all, or is permitted by state or federal law, is a claim to raise with the Commission or the FCC, not a proper consideration in a generic rulemaking. (XO Comments, p. 9). In any event, Verizon PA does not offer dark fiber as a retail service so Verizon's "retail unit" would not be ordering dark fiber for its end user customers and would not be seeking access to TIRKS (a VZ computer system) or other dark fiber records. Moreover, the unterminated fiber XO refers to, which has not yet been installed in Verizon's network, goes beyond the FCC's unbundling requirements and are not available for Verizon or CLEC use.

additional language is unnecessary because the prices of non-competitive services are approved by the Commission.

Section 63.144(4)(i): Like Verizon, XO is concerned about the second sentence of section 63.144(4)(i). XO suggests that appropriate cost allocation parameters are needed. (XO Comments, p. 10-11). However, such parameters already exist, which is why Verizon has suggested replacing the second sentence with "An ILEC shall comply with all applicable state and federal rules governing the pricing of services and asset transfers provided between ILECs and their affiliates."[24]

Section 63.144(5): Both AT&T and XO seek to add back to section 63.144(5) concepts and language from the Global code that the Commission has since rejected in the extensive formal and informal comment process. (XO Comments, p. 11; AT&T/ATX/Comptel Comments, p. 23). Their proffered language is confusing and makes no sense outside of the now abandoned structural separation scenario, because there is no "Verizon CLEC." The current proposed regulations prohibit Verizon's wholesale unit from disclosing CLEC proprietary information to the retail unit, a prohibition with which Verizon already complies.

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[24] AT&T's comments on this section are again wrongly focused on preventing cross-subsidization between retail and wholesale services, which is impossible with TELRIC pricing and is not the intent of the statute anyway. (AT&T/ATX/Comptel Comments, p. 23).

D. The Commission Should Reject The CLECs' Changes To The Remedies And Enforcement (Section 63.145).

Verizon objects to the suggestion of XO and AT&T/ATX/Comptel that the Commission should add an explicit reference to structural separation as a penalty for violating the code. (XO Comments, p. 11; AT&T/ATX/Comptel Comments, p. 24). Obviously, the Commission has whatever statutory powers the Legislature has chosen to give it, but they do not all need to be enumerated specifically in these regulations. There is no basis for the claim that Verizon needs to be explicitly threatened with these sanctions, for as Verizon has demonstrated, its conduct is good. The Commission already rejected structural separation in a contentious and highly publicized proceeding. It would only add confusion and unnecessary controversy to mention structural separation in the regulations.

XO's vague comment calling for more Commission resources to be spent on "regulatory oversight" is also baseless. (XO Comments, p. 11) XO does not state what else it thinks the Commission should be doing, since it already reviews Verizon's metrics and carrier-to-carrier reports, which show no problem to exist. Moreover, the Commission stands ready to respond to CLEC complaints now, just as it has in the past. XO's implication that the Commission is somehow negligent in protecting the rights of CLECs is without basis in fact.

E. The Commission Should Reject The CLECs' Changes To The Definitions And Statement Of Policy (Sections 63.141 and 63.142).

The CLECs suggest several unnecessary changes to the definitions and statement of policy, most going hand in glove with their demand to impose "full"

functional separation, and all of which the Commission should reject. For example, AT&T and XO call for a confusing "provider of last resort" obligations on the wholesale unit, something that was removed from earlier drafts of the regulations. (XO Comments, p. 7; AT&T/ATX/Comptel Comments, p. 7, n. 17 and p. 14-15, n. 23).[25] As noted before, Verizon's wholesale unit does not provide any retail function or contact retail customers, so it makes no sense to require it to be a provider of last resort to retail customers. Indeed, this proposal (which would have VZ wholesale commingling wholesale and retail POLR service) flies in the face of other ATT demands for full structural separation of all retail and wholesale functions. As discussed earlier, this concept is part of a structural separation scenario with a separate Verizon CLEC. It makes no sense since the Commission has rejected structural separation.

It is unclear how XO believes the concept of CAPs and other types of carriers should be added to "definitions". (XO Comments, p. 5). The obligations of Verizon and other ILECs to provide nondiscriminatory treatment and the like under the Telecom act are broader than just to CLECs. However, the Commission might legitimately want to target its own code of conduct to CLECs because it is concerned particularly with local telephone competition.[26]

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[25] The concept implies that the Commission would mandate a type of regulatory slamming of all customers – something irrational in a competitive market in which customers are entitled to choose the carrier from which they want service, rather than have the choice made for them by the government.

[26] Verizon reads the regulations, especially the Code of Conduct applicable to all "LECs" to apply to data LECs, or DLECs. See OCA Comments, p. 6.

The OCA suggests eliminating the statement from section 63.141(c) that this Code of Conduct supersedes other codes of conduct. (OCA Comments, p. 4). The Commission explicitly considered this issue in its order and decided to add this language because "[w]e agree that having two or more Codes of Conduct in existence may be confusing and make compliance and enforcement more difficult." (Jan. 29 Order, p. 18). There is no reason for a contradictory Code of Conduct containing concepts the Commission has since rejected to remain in force. The entire premise of this rulemaking is to refine, improve and replace those earlier codes. Of course, Verizon continues to be subject to other statutory obligations, federal and state regulations, UNE pricing requirements and the PAP requirements. If OCA believes these obligations would be eliminated by the Code of Conduct, it is mistaken.

CONCLUSION

For the foregoing reasons, Verizon urges the Commission to modify its proposed Annex A regulations as set forth on the mark-up attached as Exhibit A to Verizon's Initial Comments.

June 4, 2002

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COMMONWEALTH OF PENNSYLVANIA

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2002 JUN -5 PM 3:01

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June 5, 2002

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2002 JUN -5 PM 3:26
SECRETARY'S BUREAU

HAND DELIVERED

James J. McNulty, Secretary
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P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary McNulty:

Please be advised that the Office of Small Business Advocate ("OSBA") received Comments at this Docket only from the following parties: XO Pennsylvania, Inc. ("XO"), Office of Consumer Advocate ("OCA"), Pennsylvania Telephone Association ("PTA"), and Verizon Pennsylvania, Inc. and Verizon North, Inc. (collectively, "Verizon"). In review of the Reply Comments it appears that AT&T Communications of Pennsylvania, Inc., Corecom/ATC, Inc., Competitive Telecommunications Association, Full Service Network, United Telephone Co. of Pennsylvania and Sprint Communications Co., L.P. and Curry Communications Inc., (collectively, "Non-Service Commenters") also filed Comments that the OSBA did not receive. Please do not construe the OSBA's silence regarding the Non-Service Commenters' Comments as agreement. As evidenced by the enclosed certificate of service, all parties have been served as indicated.

If you have any questions, please contact me.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

cc: Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulmaking Re: Generic Competitive Safeguards Under 66 Pa. C.S. Sections 3005(b) and 3005(g)(2)	:	DOCKET NO. L-00990141

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the foregoing document on behalf of the Office of Small Business Advocate by first class mail (unless otherwise indicated) upon the persons addressed below:

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June 4, 2002

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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 Mr. McNulty:

Please find enclosed an original and fifteen (15) copies of the Reply Comments of MCI WorldCom Network Services, Inc. in the above-referenced matter.

Please contact me if you have any questions or concerns.

Very truly yours,

Michelle Painter

Michelle Painter

Enclosure

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**
Implementation of the Telecommunications Act of 1996: Imputation Requirements for The Delivery of IntraLATA Services by Local Exchange Carriers	:	**Docket No. M-00960799**

REPLY COMMENTS OF
MCI WORLDCOM NETWORK SERVICES, INC.

The Pennsylvania Public Utility Commission ("Commission") issued a landmark decision in its Global Order in 1999.[1] That decision paved the way for competition to emerge in the Pennsylvania residential local market. Unfortunately, the Commission has recently been back-tracking on numerous pro-competitive aspects of the Global Order. For example, the Commission originally required Verizon to structurally separate its retail and wholesale operations.[2] The Commission then reversed itself and instead ordered that Verizon separate its data affiliate, and implement a Code of Conduct.[3] Since that time, the Commission has reversed the requirement that Verizon have a separate data affiliate[4], and has put out for comment a draft Code of Conduct that is even weaker than the Code of Conduct originally adopted in the Global Order, and contemplated in the Structural Separation Order.[5]

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[1] Joint Petition of Nextlink Pennsylvania, Inc., et. al., Docket Nos. P-00991648 and P-00991649 (September 30, 1999) (hereinafter "Global Order").
[2] Global Order at 215-236.
[3] Re: Structural Separation of Bell Atlantic Pennsylvania, Inc.'s Retail and Wholesale Operations, M-0001353 (April 11, 2001) (hereinafter "Structural Separation Order").
[4] Joint Application of Verizon Pennsylvania Inc. and Verizon Advanced Data Inc. for the authorizations necessary to transfer certain assets from Verizon Advanced Data Inc. to Verizon Pennsylvania, Inc., Docket Nos. A-310200F0006 et. al. (April 26, 2002).
[5] Proposed Rulemaking Order, January 29, 2002.

It is MCI WorldCom Network Services, Inc.'s ("MWCOM") position that a Code of Conduct in and of itself is insufficient to effectively ensure that Verizon treats competitors in an anti-discriminatory manner, and to ensure that local competition can continue to develop and grow in Pennsylvania. This is because the Code requires detailed insight into Verizon's retail and wholesale practices. Detailed monitoring of such conduct is virtually impossible, and therefore it is dangerous to rely on a Code of Conduct that is unenforceable in assuming that such Code actually modifies Verizon's behavior towards its competitors.[6]

Verizon's comments in this case make an already weakened Code of Conduct completely useless. Essentially, Verizon does not want to have any requirements that would in any way modify its current practices or behavior. Verizon agreed as part of the Structural Separation case that a Code of Conduct materializing functional separation terms should be implemented. Verizon expressly accepted the Commission's terms from the Structural Separation Order. Included in those terms was the Commission's requirement of functional separation, which would be memorialized through a Code of Conduct. Specifically, the Commission stated at pages 32-33 of the Structural Separation Order:

> Verizon must engage in the functional separation of its wholesale and retail units. This requires Verizon to separate its wholesale and retail divisions through the application of a Code of Conduct, in a way which provides for non-discriminatory access to its wholesale division by all CLECs. This plan shall encompass personnel, accounting, record keeping and business practices. We envision that the functional separation of Verizon's wholesale and retail units will be analogous to the functional separation we have ordered in the electric and gas industries, which has been implemented successfully.

Verizon agreed to accept this term of the Order. As with other parts of the Commission's Structural Separation Order, Verizon is now attempting to renege on its acceptance of this term, and essentially eliminate the Commission's requirement to implement a Code of Conduct that provides for non-discriminatory access. The Commission

[6] As a result of Verizon's position as both the main competitor and main supplier to competitive local exchange carriers, MWCOM continues to believe that divestiture is the best method of ensuring that Verizon does not treat

should reject Verizon's modifications as requested in their May 20, 2002 Initial Comments in their entirety.

In order to ensure that local competition is not eliminated in Pennsylvania, the Commission must put a stop to its recent actions of reversing previously adopted pro-competitive measures. Competitors must be permitted to compete on non-discriminatory terms and conditions with Verizon. A Code of Conduct will not accomplish this goal, especially where Verizon is attempting to essentially eliminate any hope of local competition through its efforts to reverse years of pro-competitive decisions this Commission made in the past. A primary example is Verizon's attempt to more than double the current unbundled network element rates competitors must pay to Verizon. Under Verizon's proposals, competition would be stopped in its tracks as competitors would be forced to pay substantially higher rates than the rates currently in effect. Given that Verizon now has authority to provide in-region long distance, MWCOM agrees with the Joint Comments of AT&T, CoreCom/ATX and Competitive Telecommunications Association ("Joint Commenters") that the Commission should not relax the rules applicable to Verizon's conduct towards competitors now that the incentive of long distance entry is no longer present.[7]

Although MWCOM disagrees with the Commission's decision to not structurally separate Verizon, and believes that a Code of Conduct is not sufficient to effectively curb Verizon's incentives to act anti-competitively, to the extent that the Commission intends to adopt a Code of Conduct as a form of a "competitive safeguard," then MWCOM agrees with the changes suggested by the Joint Commenters.

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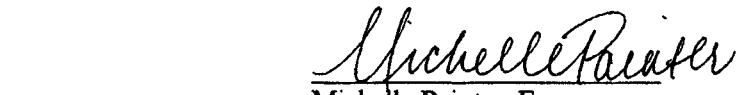
its retail division more favorably than competitors.

[7] Joint Comments of AT&T of Pennsylvania, Inc., CoreCom/ATX, Inc. and Competitive Telecommunications Association, May 20, 2002, pages 12-13.

However, given that many pro-competitive steps previously adopted by the Commission have been recently reversed, and that a Code of Conduct will not be sufficient in and of itself to ensure that competitors are treated fairly and in a non-discriminatory manner, the Commission must be vigilant in ensuring that all terms and conditions associated with Verizon's provision of services to its competitors, including UNE rates, are compliant with the current state of the law, as well as the requirement in Pennsylvania to ensure that local competition continues to be a reality for all consumers throughout the Commonwealth.

Respectfully submitted,



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DATED: June 4, 2002

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Suzan DeBusk Paiva
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SECRETARY'S COMMISSION

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June 4, 2002

VIA UPS OVERNIGHT DELIVERY

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

COPY

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

Dear Mr. McNulty:

Enclosed please find an original and fifteen (15) copies of the Reply Comments of Verizon Pennsylvania Inc. and Verizon North Inc., which are being filed in the above-captioned Rulemaking matter.

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

Very truly yours,

Suzan D. Paiva

SDP/slb

Enclosure

cc: Via Overnight Express Mail
Attached Certificate of Service

RECEIVED
JUN 04 2002
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, Esquire, hereby certify that I have this day served Reply Comments of Verizona 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 4th day of June, 2002.

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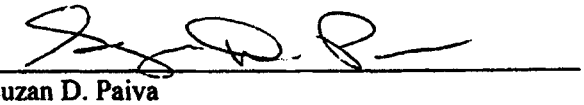

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