November 12, 2004

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

Re: **No. 2402-Pennsylvania Public Utility Commission Rulemaking No. 57-234**; Pennsylvania Public Utility Commission Rulemaking Re: Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Companies

Dear Mr. McGinley:

Enclosed for filing with the Independent Regulatory Review Commission are the Comments of Verizon Pennsylvania Inc. and Verizon North Incorporated. with regard to the above-captioned matter. Also, attached is a mark-up of the proposed regulations showing changes proposed by Verizon in its Comments.

If you have any questions regarding these Comments, please do not hesitate to contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel For Verizon Pennsylvania Inc.
And Verizon North Incorporated

TSS/tap
cc James McNulty, Secretary, Pennsylvania Public Utility Commission

BEFORE THE INDEPENDENT REGULATORY REVIEW COMMISSION

No. 2402- Pennsylvania Public Utility Commission Rulemaking No. 57-234

Rulemaking Re: Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Company, Docket No. L-00020615

Comments of Verizon Pennsylvania Inc.
and Verizon North Inc.
on the Final Rulemaking
of the Pennsylvania Public Utility Commission
Entered September 16, 2004

Verizon Pennsylvania Inc. and Verizon North Inc. (collectively, "Verizon") submit the following Comments to the Independent Regulatory Review Commission ("IRRC") in opposition to two provisions of the above-captioned proposed final rulemaking of the Pennsylvania Public Utility Commission ("PUC" or "Commission").

First, the PUC's proposed rules are both unnecessary, unwarranted and add tremendous financial risk to Verizon. The proposed rules would significantly supersede the terms of existing PUC-approved interconnection agreements by proposing a "two-step" minimum 75-day pre-termination/termination process.[1] These are agreements between Network Service Providers

[1] Verizon has consistently urged the Commission not to interfere with negotiated agreements through these rules and not to extend the length of time that an ILEC must continue to provide service to a non-paying CLEC. In the proceeding at the Commission, Verizon opposed the PUC's use of a two step process that originally included a 30 day embargo period, citing the same reasons for which Verizon here opposes the 30 day default notice cure period, that is, that such requirements are inconsistent with the terms of many of Verizon's approved and effective interconnection agreements. The PUC removed the embargo requirement but nonetheless has proposed to impose lengthy "pre-termination procedures" before any termination notification is possible. Verizon only became aware of the content of the proposed final rules when the PUC issued its Order on October 19, 2004 and thus it is filing these comments with the IRRC.

("NSPs"), typically Incumbent Local Exchange Carriers ("ILECs") such as Verizon, and Local Service Providers ("LSPs"), typically Competitive Local Exchange Carriers ("CLEC").[2] Interconnection agreements are subject to PUC arbitration in the event that the parties cannot agree upon all terms and they are implemented only after PUC approval. They should not be overridden by subsequent or prospective PUC rules that significantly alter the rights of the parties.[3]

The "two-step" pre-termination/termination process in the proposed regulations should be altered so that a non-paying CLEC cannot slow-roll the service abandonment process and then continue to avoid payment obligations by filing for bankruptcy or becoming judgment proof. Permitting the pre-termination stage of the process to continue to be controlled by the interconnection agreement between the NSP and the LSP will preserve the primary intent of the regulations, which is to protect ***telephone customers***, while also protecting the rights of the parties. It will also allow the market, business negotiation, and PUC review (by means of approval of interconnection agreements) to govern pre-termination, rather than imposing an

[2] Verizon is by far the largest of the handful of NSPs in Pennsylvania, and there would be no prejudice to the PUC's taking some more time to reconsider the serious concerns Verizon expressed before the Commission and again here. Any near term CLEC abandonments will continue to be governed by interconnection agreements, current abandonment guidelines, and backed-up by PUC Staff monitoring to avoid any harm to affected customers.

[3] It is clear that the Commission wrongly intends to preempt application of the negotiated provisions of the parties' interconnection agreements. *Rulemaking Re: Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Company,* Docket No. L-00020615 (Final Rulemaking Order entered September 16, 2004 at p.5). Such PUC action could significantly impair Verizon's rights under existing interconnection agreements, causing Verizon to incur additional bad debt that it otherwise would avoid. To the extent that such PUC action could reasonably be interpreted as an intentional interference with Verizon's valuable contract rights, it could constitute a takings under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 10 of the Pennsylvania Constitution. To the extent that such action would impair Verizon's ability to operate successfully, it is inconsistent with the PUC's legal obligations to the utilities that it regulates. See, *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944)

overly generous "one size fits all" set of rules not tailored to the individual carriers' situation, that only adds financial risk to Verizon.

Providers of retail and wholesale telecommunications services are fully capable of negotiating and understanding default and notice issues without the assistance of the Commission. The interests of all parties are best protected if contract obligations, once negotiated and then approved by the PUC, are preserved and fully enforced. In fact, as recently as June 2003 the PUC approved a Verizon interconnection agreement that provides for a single notice of both default and intention to terminate if the default is not cured within 30 days.[4] In total, parties have negotiated and the PUC has approved twelve agreements that contain such provisions. It is in the interest of all parties–including telephone consumers–to move more expeditiously on termination processes so that customers can find new service providers and so that wholesale providers, including all the ILECs, can limit uncollectible bad debt. Further, the fact that these issues are thoroughly and fairly negotiated between the interested parties and subject to PUC review and approval obviates the need for any PUC imposed rules of the sort proposed here. At a minimum, however, the PUC should not abrogate the rights of the parties through any rules it adopts in this proceeding and its attempt to preempt contrary contract provisions should be rejected as both inconsistent with the law and not in the public interest.

In addition, the dispute provisions in the proposed rules need to be changed in order to prevent nonpaying LSPs from gaming the system to avoid collection action being taken against them by an NSP.

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[4] *In re Interconnection Agreement between Verizon Pennsylvania Inc. and Granite Telecommunications LLC,* Docket No. A-311204 F7000, (Order entered 06/30/03)

Sections 63.303 (RE: Notification Process Prior to Termination)

Verizon specifically opposes proposed Section 63.303(B), which requires a NSP first to issue a pre-termination default notice at least thirty (30) days (Section 63.303(B)(I)) before sending a second notice for termination. The termination notice must be provided to the LSP at least forty-five (45) calendar days prior to the effective date of the intended termination (§ 63.304(C)). This creates a minimum period of 75 days in which Verizon would be forced to continue to provide services to a nonpaying LSP – a period of services for which Verizon will most likely never collect payment.

Verizon proposes that the requirement of sending two (2) separate notices not be mandated by a rule. Verizon instead should have the option, where its interconnection agreements with the nonpaying LSPs permit, to send a single notice specifying a shorter period than 75 days, one that serves both as the notice of default and the notice of intention to terminate, so long as the nonpaying LSP is afforded a minimum 45-day termination period that is consistent with §63.304(C) of the proposed regulations. In Verizon's experience, the separate 30-day default notice requirement in these proposed regulations would simply allow nonpaying LSPs an opportunity to game the process and ultimately delay the termination of their service while they continue to amass ever higher arrearages that will never be collected from the LSP, even while the LSP continues to collect charges from its end-user customers. By the time many LSPs get to their financial "last gasp" stage, their continued operations are effectively being financed in large measure on Verizon's dime by virtue of the wholesale services Verizon must continue to provide, without compensation by the LSP. The PUC should not be allowed to impose rules that extend the time during which Verizon is forced to provide services without any payment.

Requiring two notices in instances where an interconnection agreement permits one modifies the agreement that was struck by the NSP and the LSP, without compensation and without good cause. If the amount of time allowed to LSPs to cure defaults and avoid termination is set by these regulations, CLECs that currently have 30 days to pay or dispute billed charges pursuant to their contracts would now get an additional 30 days to pay or dispute, thereby imposing what is essentially a minimum 60-day payment period where contracts now allow at most 30 days. Thus, deadbeat LSPs would get another 30 days to get services but not pay. The rules would benefit only the deadbeat carriers – their customers would not be affected since under Verizon's current practice and under existing guidelines, the customers have sufficient time to select a new carrier to replace the one that is exiting the market. Such customers' interest lies only in the length of the period between the termination notice and the actual termination -- i.e., will they have adequate time to receive notice of the LSP's abandonment and to switch to another LSP -- not in an additional 30-day "pre-termination" period to give the LSP a second chance to pay defaulted bill payments that the LSP **already** had 30 days to pay and rightfully should have paid in accordance with contract provisions. The only parties harmed under these regulations are Verizon and other providers of wholesale services that will have more bad debt on their books as a result.

Section 63.303(A) (Re: Effect of Dispute By LSP Wholesaler)

In a related issue, proposed Section 63.303(A) provides that an NSP such as Verizon cannot pursue termination of an LSP's wholesale service (§63.303(A)(5)) based on LSP-disputed charges while such disputes are pending resolution. Verizon does not seek termination over genuinely disputed charges, but the regulations, as drafted, could easily be abused. Since there

are no qualifications contained in the proposed language, it will only encourage LSPs to game the pre-termination/termination process by raising multiple and often baseless disputes multiple times on the same invoice. This practice already has been employed by some defaulting CLECs and Verizon has had to take aggressive action to collect on its legitimate bills from such carriers. The proposed PUC regulation would only exacerbate the problem by encouraging disputes even if such disputes are not legitimate. This clever but essentially dishonest financial brinkmanship, engaged in by too many deadbeat LSPs already, would continually restart the clock for issuance of a termination notice in an endless torrent of billing claims designed to ward off termination. Verizon suggests that this Commission direct the PUC to revise the regulation to make it clear that LSPs cannot abuse this process in such manner. In compliance with their interconnection agreements, LSPs must raise billing disputes only once and can go through only one thirty (30) day dispute period for each invoice. LSPs should not be permitted to raise multiple separate disputes concerning charges on a single invoice in order to drag out the dispute resolution process and avoid making payments to their wholesale provider, while all along collecting payments from their retail customers. To allow otherwise would incent defaulting LSPs to raise disputes in a piecemeal fashion, thus prolonging the process indefinitely to the severe detriment of Verizon and other providers of wholesale services. The suggested restrictions would not deprive LSPs of any rights. To the contrary, Verizon has a very clear public process, including multi-leveled escalations, which always is available for LSPs to use to press truly legitimate disputes.

Verizon's concerns are not academic. A majority of LSPs receiving wholesale services from Verizon in Pennsylvania are behind in their payments; collectively Verizon is owed tens of

millions of dollars from such companies. More specifically, as of November 1, 2004, Verizon has 148 LSPS using either UNEs, resale, or a combination of both, to serve end-user customers. **Of those 148 LSPs, 88, or nearly 60% have outstanding undisputed past due balances owed to Verizon**. The total undisputed past-due balances for those same 88 LSPs totals over **$47.6 million** as of that same date. Thus, a mandatory pre-termination period of 30 days, as proposed by the PUC, immediately creates several distinct harms: 1) the approximate $400,000 monthly cost of carrying $47.6 million (essentially an unsecured loan to the deadbeat LSP which is, only partially offset by late payment charges); 2) the potential $18 million per month in additional accrued charges for those 88 customers; and 3) the increased write offs that accrue due to the mandatory extra month of financing the LSP (not including labor cost to manage that additional month). In the 22 months between January 2003 through the end of October 2004 Verizon initiated formal collections actions 24 times in Pennsylvania.[5] Indeed, one LSP alone accounted for 9 separate collections actions as it engaged in classic payment-avoidance techniques, making payments only on the brink of service termination and disputing charges without any basis. In ten of the 24 collections actions, Verizon was able to get payment from the LSP. In 3 of the 24 cases, the LSP was terminated and in 6 of those cases, the LSP filed for bankruptcy.[6] However, in no case did the LSP notify its end user customers of its imminent departure from the market and then subsequently reach a payment arrangement with Verizon.

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[5] It is notable that in 22 months, Verizon initiated the termination process a mere 24 times. When one compares this relatively small number of termination actions to the thousands of arrearages over the same period (88 in November alone times 22 months), it is clear that Verizon works closely with the delinquent LSPs and uses the termination process only when warranted.

[6] Forcing a mandatory 30 day pre-termination process unreasonably puts more money at risk of being difficult or impossible to collect in the post-bankruptcy stage.

The numbers show that Verizon is already improperly being forced to act as the financier of last resort for many CLECs, and that the regulations that Verizon opposes will only exacerbate that problem. At present, approximately 40% of LSPs pay their bills on time. Approximately 60% of LSPs pay their wholesale bills late, and almost half of those businesses only make a payment after receiving a termination notice. **In spite of these statistics, only 3 of those 88 late-paying or non-paying LSPs were terminated in the last 22 months**. The numbers show that there is a very real financial impact and very real risk to Verizon in any regulation that manditorily extends Verizon's financial exposure. The PUC should not be allowed to increase Verizon's financial risk in the absence of any showing of benefit to any party except a handful of deadbeat carriers.

If the proposed regulations are left unchanged, it will increase Verizon's risk of non-payment from LSPs. Verizon has shown that it is able to manage the default and termination issues associated with LSPs within the requirements of its interconnection agreements, and that by working closely with the PUC, even without regulations, it has ensured that customers were not harmed in those few instances in which LSPs were terminated. Nonetheless, if the proposed regulations are revised in the two areas suggested above,[7] the regulations will add another layer of protection for the abandoning LSPs' customers, who are the target and the main beneficiary of the proposed regulations. If the regulations are not changed, however, these regulations would completely undercut provisions in approved interconnection agreements that the Commission already found to be in the public interest and approved, simply in the name of an unwieldy and inequitable "one-size-fits-all" solution.

Verizon thanks this Commission for considering these comments.

Respectfully submitted,

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February 11, 2005

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

Dear Mr. McGinley:

Verizon supports Regulation # 57-235 Establishing Local Service Provider Abandonment Process for Jurisdictional Telecommunications Companies (Docket No. L-00020615) and urge its approval by you and your fellow Commissioners.

Verizon had concerns in the previous final form regulations about a two-step minimum 75 day pre-termination/termination process and the potential that dispute provisions could allow for gaming of the collection process.

I appreciate the work of IRRC's staff in helping to resolve these issues in the revised final form regulations. The Pennsylvania Public Utility Commission staff was similarly helpful.

Jack, I urge IRRC's approval of theses regulations.

Sincerely,

Ronald F. Weigel

IRRC

From:	ronald.f.weigel@verizon.com on behalf of Ron Weigel [ronald.f.weigel@verizon.com]
Sent:	Monday, February 14, 2005 8:32 AM
To:	IRRC
Subject:	REGULATION 57-235

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DEVICE NAME: Verizon PA Government Relations
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