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November 12, 2004

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

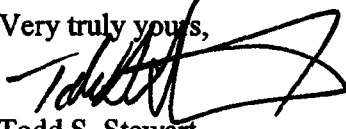
Re: No. <sup>2393</sup>~~2402~~ Pennsylvania Public Utility Commission Rulemaking No. ~~24~~<sup>57-232</sup>  
~~24~~; Pennsylvania Public Utility Commission Rulemaking Re:  
Establishing Local Service Provider Abandonment Process for  
Jurisdictional Telecommunications Companies

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

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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*

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

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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.<sup>1</sup> These are agreements between Network Service Providers

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<sup>1</sup> 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").<sup>2</sup> 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.<sup>3</sup>

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

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<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> 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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<sup>4</sup> *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.<sup>5</sup> 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.<sup>6</sup> 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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<sup>5</sup> 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.

<sup>6</sup> 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.

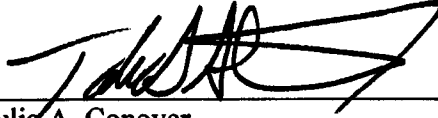


The numbers show that Verizon is already improperly being forced to act as the financier of last resort for many CLECs, and that the regulations that Verizon opposes will only exacerbate that problem. At present, approximately 40% of LSPs pay their bills on time. Approximately 60% of LSPs pay their wholesale 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 mandatorily 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,<sup>7</sup> 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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Dated: November 12, 2004

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT PROCESS

§ 63.301. Statement of purpose and policy.

(a) Purpose. The purpose of this subchapter is to:

(1) Provide for an orderly process when a NSP intends to embargo and terminate service to a LSP.

(2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under ANY OF the following circumstances:

(i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's INTERCONNECTION service agreement.

(ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.

(iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

~~(3) Ensure that customers do not lose service when their LSP exits the market.~~

~~(4) (3) Ensure that customers are provided ample notice and the opportunity to select a new LSP of their choice AND THEREBY NOT LOSE LOCAL SERVICE WHEN THE LSP EXITS THEIR MARKET.~~

~~(5)~~ (4) Coordinate information flow and activities through a project management team.

~~(6)~~ (5) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

~~(7)~~ (6) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) Application.

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale LOCAL ~~telephone~~ service to a LSP and intends to ~~embargo or terminate the LSP's service~~ FOR BREACH OF AN INTERCONNECTION AGREEMENT.

### **§ 63.302. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

*Abandon*--To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance, repair or failure of a LSP's equipment or facilities.

*Abandoning LSP*--A LSP that seeks to abandon providing local service to existing customers in a service area.

*Acquiring LSP*--A LSP that VOLUNTARILY undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

CSR--Customer service record--Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

Customer--The end-user recipient of telephone service provided by a LSP.

Default LSP--A NSP that assumes responsibility for the provision of local service when an abandoning LSP is a reseller of that NSP's service.

Embargo--The pretermination process in which a NSP refuses to process local service change requests or initiate new local service requests because the LSP that is reselling the NSP's services or buying the NSP's unbundled network elements (UNE) or unbundled network elements with platform (UNE-P) facilities is delinquent in paying for those services or facilities.

Exit date--The date upon which an abandoning LSP intends to cease providing telecommunications service.

**FULL FACILITIES** – TERM USED WHEN THE LSP HAS ALL THE SERVICES AND EQUIPMENT (THAT IS, CENTRAL OFFICE SWITCHES, LOCAL LOOPS, TRUNK LINES, AND THE LIKE) NECESSARY TO PROVIDE TELEPHONIC COMMUNICATIONS BETWEEN TELEPHONES CONNECTED TO IT OR TO OTHER CENTRAL OFFICES.

**INTERCONNECTION AGREEMENT** – AN AGREEMENT TO INTERCONNECT DIRECTLY OR INDIRECTLY WITH THE FACILITIES AND EQUIPMENT OF OTHER TELECOMMUNICATIONS CARRIERS.

LSP--Local service provider--A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

(i) NLSP indicates "new" LSP, and OLSP indicates "old" LSP.

~~(ii) A LSP may also provide other telecommunications services, as well as nonjurisdictional services.~~

Local service--Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

Local service reseller--A LSP that resells another company's wholesale telephone services to provide local service to customers.

NANPA – NORTH AMERICAN NUMBERING PLAN ADMINISTRATION. --  
HOLDS OVERALL RESPONSIBILITY FOR THE NEUTRAL ADMINISTRATION OF  
NORTH AMERICAN TELEPHONE NUMBERING RESOURCES, SUBJECT TO  
DIRECTIVES FROM REGULATORY AUTHORITIES IN THE COUNTRIES THAT  
SHARE THE NORTH AMERICAN TELEPHONE NUMBERING RESOURCES.  
NANPA'S RESPONSIBILITIES INCLUDE ASSIGNMENT OF TELEPHONE  
NUMBERING RESOURCES, AND, IN THE U.S. AND ITS TERRITORIES,  
COORDINATION OF AREA CODE RELIEF PLANNING AND COLLECTION OF  
UTILIZATION AND FORECAST DATA.

NSP--Network service provider--A carrier TELECOMMUNICATIONS PROVIDER that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may be referred to as an underlying carrier, and may also be a LSP.

**PREFERRED CARRIER FREEZE – A DESIGNATION ELECTED BY A CUSTOMER THAT RESTRICTS A THIRD PARTY'S ABILITY TO CHANGE A**

CUSTOMER'S CHOICE OF PREFERRED TELECOMMUNICATION SERVICE PROVIDER.

*RESALE* – TERM USED WHEN A LSP DOES NOT HAVE ITS OWN FACILITIES, BUT PURCHASES TELECOMMUNICATIONS SERVICES AT WHOLESALE RATES TO SELL TO THE PUBLIC. TYPICALLY, THE TELECOMMUNICATIONS SERVICES ARE PURCHASED FROM A NSP.

*UNE - UNBUNDLED NETWORK ELEMENT* – VARIOUS PHYSICAL AND FUNCTIONAL PARTS OF A NSP'S INFRASTRUCTURE THAT MAY BE LEASED TO ANOTHER LSP. THESE COMPONENTS INCLUDE SUCH THINGS AS LOCAL SWITCHING, LOCAL LOOPS, INTEROFFICE TRANSMISSION FACILITIES, SIGNALING AND CALL-RELATED DATABASES, OPERATOR SERVICES, DIRECTORY ASSISTANCE, AND THE LIKE.

*UNE - L - LOCAL LOOP* – THE TELEPHONE LINE (COPPER OR FIBER), THAT RUNS FROM THE LOCAL TELEPHONE COMPANY TO A CUSTOMER'S PREMISE. A LSP MAY OWN A LOCAL SWITCH AND LEASE THE LOCAL LOOP FROM THE NSP.

*UNE – P - UNE-PLATFORM* – A COMBINATION OF UNBUNDLED NETWORK ELEMENTS THAT FACILITATES END-TO-END SERVICE DELIVERY. A TYPICAL ARRANGEMENT INCLUDES AT LEAST A LOCAL LOOP AND SWITCHING.

*Wholesale customer--A LSP that provides local service by resale or by unbundled network elements (with or without platform).*

**§ 63.303. NSP embargo process. PRE-TERMINATION PROVISIONS.**

*(a) Authorized reasons for a NSP to embargo service. A NSP may embargo service to a wholesale customer for the following reasons:*

~~—(1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide customers with local service when that amount remains unpaid for 30 calendar days or more after the bill is rendered.~~

~~—(2) Failure of the wholesale customer to abide by the terms and conditions of a Commission approved interconnection agreement related to the provision of local service.~~

~~—(3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.~~

~~—(4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.~~

~~—(b) *Unauthorized reasons for a NSP to embargo service.* Unless specifically authorized by the Commission, a NSP may not embargo service for the following reasons:~~

~~—(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.~~

~~—(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.~~

~~—(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.~~

~~—(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless an embargo is specifically authorized by the Commission.~~

~~—(5) Failure of a wholesale customer to pay a charge when there is an open complaint or dispute with a NSP about the accuracy or correctness of the charge. A wholesale customer is obligated to pay amounts not under complaint or dispute.~~

~~—(c) *Embargo notification provisions.*~~



~~—(1) At least 10 days prior to the initiation of an embargo, a NSP shall issue a written notice of embargo to the wholesale customer using the following procedures:~~

~~—(i) A NSP shall send the embargo notice by first class mail unless other methods of delivery have been agreed to as part of the service agreement or are provided for in an applicable tariff.~~

~~—(ii) A NSP shall address the embargo notice to the wholesale customer's designee.~~

~~—(iii) A NSP shall send a copy of the embargo notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.~~

~~—(2) The embargo notice to a wholesale customer shall include the following:~~

~~—(i) The date that the embargo shall begin. The beginning date given for the embargo may not be less than 10 days from the date the notice is mailed or otherwise delivered.~~

~~—(ii) The amount owed which forms the grounds for the embargo.~~

~~—(iii) The embargo issuing NSP's contact information to be used by a wholesale customer for payment of the NSP's bill.~~

~~—(iv) A statement that if the bill is not paid or other acceptable arrangements are not made prior to the embargo date, the embargo shall commence on that date and a termination notice shall be issued.~~

*(A) WHOLESALE CUSTOMER BILLING DISPUTE RESOLUTION PROCESS.*  
WHOLESALE CUSTOMERS SHALL HAVE THE OPPORTUNITY TO DISPUTE CHARGES FOR THE PROVISION OF SERVICE WITH THE NSP. A WHOLESALE CUSTOMER IS OBLIGATED TO PAY AMOUNTS NOT UNDER COMPLAINT OR DISPUTE. ACCORDINGLY, A WHOLESALE CUSTOMER MUST EITHER DISPUTE OR PAY ALL CHARGES ON AN INVOICE FROM THE NSP BY THE DUE DATE ON THE INVOICE.

(1) WHEN DISPUTING NSP CHARGES, THE WHOLESALE CUSTOMER SHALL PROVIDE THE NSP WITH A WRITTEN DISPUTE NOTICE UNLESS OTHER

METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT.

(2) THE DISPUTE NOTICE SHALL BE ADDRESSED TO THE NSP'S DESIGNEE.

(3) THE DISPUTE NOTICE SHALL PROVIDE THE NSP WITH THE AMOUNTS THAT FORM THE GROUNDS FOR THE DISPUTE AS WELL AS THE SPECIFIC ACCOUNTS AND BILLS THAT ARE BEING DISPUTED.

(4) WITHIN FIVE CALENDAR DAYS OF RECEIVING A WRITTEN DISPUTE NOTICE FROM A WHOLESALE CUSTOMER, THE NSP SHALL PROVIDE WRITTEN ACKNOWLEDGEMENT OF THE RECEIPT OF SUCH NOTICE TO THE WHOLESALE CUSTOMER'S CONTACT.

(5) UPON RECEIVING A DISPUTE NOTICE FROM A WHOLESALE CUSTOMER, THE NSP AND THE WHOLESALE CUSTOMER SHALL MAKE A GOOD FAITH EFFORT TO RESOLVE THE DISPUTE WITHIN 30 CALENDAR DAYS UNLESS A LONGER DISPUTE RESOLUTION PERIOD IS PROVIDED FOR IN AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT. DURING THIS DISPUTE RESOLUTION PERIOD, THE NSP MAY NOT PURSUE TERMINATION OF THE WHOLESALE CUSTOMER'S SERVICE UNLESS IT IS BASED ON OTHER INDEBTEDNESS THAT IS NOT DISPUTED.

(6) IF RESOLUTION OF THE DISPUTE IS NOT ACHIEVED TO THE SATISFACTION OF THE NSP AND THE WHOLESALE CUSTOMER AT THE CONCLUSION OF THE DISPUTE RESOLUTION PERIOD, EITHER PARTY MAY FILE A COMPLAINT WITH THE COMMISSION TO RESOLVE THE DISPUTE.

(7) THE NSP AND THE WHOLESALE CUSTOMER SHALL SEEK TO FILE A COMPLAINT WITH THE COMMISSION TO RESOLVE A BILLING DISPUTE PRIOR TO THE TIME WHEN RETAIL CUSTOMERS ARE TO BE NOTIFIED OF THE PENDING ABANDONMENT.

(8) THE NSP MAY NOT PURSUE TERMINATION OF THE WHOLESALE CUSTOMER'S SERVICE WHILE A COMPLAINT TO RESOLVE THE DISPUTE IS PENDING WITH THE COMMISSION UNLESS THE TERMINATION IS BASED ON OTHER INDEBTEDNESS THAT IS NOT DISPUTED.

*(B) NSP PAYMENT DEFAULT RESOLUTION PROCESS.*

(1) PRIOR TO A NSP ISSUING A TERMINATION NOTICE TO A WHOLESALE CUSTOMER FOR A PAYMENT DEFAULT, THE NSP SHALL:

(I) PROVIDE THE WHOLESALE CUSTOMER WITH A WRITTEN NOTICE OF PAYMENT DEFAULT.

(II) SEND THE DEFAULT NOTICE BY FIRST CLASS MAIL UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS A PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT OR ARE PROVIDED FOR IN AN APPLICABLE TARIFF.

(III) ADDRESS THE DEFAULT NOTICE TO THE WHOLESALE CUSTOMER'S DESIGNEE.

(IV) SEND A COPY OF THE DEFAULT NOTICE TO THE SECRETARY OF THE COMMISSION AND TO THE COMMISSION'S BUREAU OF CONSUMER SERVICES.

(2) THE DEFAULT NOTICE TO A WHOLESALE CUSTOMER SHALL INCLUDE THE FOLLOWING:

(I) THE AMOUNT OWED THAT FORMS THE GROUNDS FOR THE PAYMENT DEFAULT AS WELL AS THE SPECIFIC ACCOUNTS AND INVOICES THAT ARE IN DEFAULT.

(II) A STATEMENT OF THE TERMS OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT THAT FORMS THE GROUNDS FOR THE NSP'S NOTIFICATION OF PAYMENT DEFAULT.

(III) AVAILABLE METHODS THE WHOLESALE CUSTOMER MAY USE TO CURE THE PAYMENT DEFAULT.

(IV) THE NSP'S CONTACT INFORMATION TO BE USED BY THE WHOLESALE CUSTOMER FOR PAYMENT OF THE NSP'S BILL.

(3) ALLOW AT LEAST 30 CALENDAR DAYS FROM THE DATE OF THE DEFAULT NOTICE FOR RESOLUTION OF THE PAYMENT DEFAULT PRIOR TO ISSUING A TERMINATION NOTICE. IF INTERCONNECTION OR OTHER GOVERNING AGREEMENTS BETWEEN THE NSP AND THE WHOLESALE CUSTOMER ALLOW FOR A LONGER DISPUTE RESOLUTION PERIOD PRIOR TO THE NSP ISSUING A TERMINATION NOTICE, THE TIME PERIODS IN THE AGREEMENT SHALL GOVERN.

(4) WITHIN FIVE CALENDAR DAYS OF RECEIVING A WRITTEN NOTICE OF PAYMENT DEFAULT, THE WHOLESALE CUSTOMER SHALL PROVIDE WRITTEN ACKNOWLEDGEMENT OF THE RECEIPT OF SUCH NOTICE TO THE NSP'S CONTACT.

**§ 63.304. NSP termination process for wholesale customers.**

~~*(a) Termination process initiation.*~~

~~(1) A NSP may initiate the termination process if a wholesale customer has not made payment in full or entered into a mutually acceptable written agreement for payment of outstanding debt by the embargo start date posted on the embargo notice.~~

~~(2) A NSP may not initiate the termination process for delinquent indebtedness which is the subject of an open dispute with the NSP or a pending complaint with the Commission filed by a wholesale customer.~~

~~(3) If during the termination process a wholesale customer initiates a properly filed dispute with a NSP or with the Commission, the NSP shall suspend the termination process unless it is based on other indebtedness that is not disputed.~~

*(A) AUTHORIZED REASONS FOR A NSP TO TERMINATE SERVICE.* A NSP MAY TERMINATE SERVICE TO A WHOLESALE CUSTOMER FOR ONE OR MORE OF THE FOLLOWING REASONS:

(1) FAILURE OF THE WHOLESALE CUSTOMER TO PAY AN UNDISPUTED DELINQUENT AMOUNT FOR SERVICES NECESSARY TO PROVIDE CUSTOMERS WITH LOCAL SERVICE WHEN THAT AMOUNT REMAINS UNPAID FOR 30 CALENDAR DAYS OR MORE AFTER THE DATE OF THE BILL UNLESS THE BILL HAS BEEN DISPUTED IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN §63.303(A) OR §63.303(B), ABOVE.

(2) FAILURE OF THE WHOLESALE CUSTOMER TO ABIDE BY THE TERMS AND CONDITIONS OF AN INTERCONNECTION OR OTHER GOVERNING AGREEMENT RELATED TO THE PROVISION OF LOCAL SERVICE THAT HAS BEEN APPROVED BY THE COMMISSION.

(3) FAILURE OF THE WHOLESALE CUSTOMER TO COMPLY WITH THE TERMS OF A PAYMENT AGREEMENT RELATED TO THE PROVISION OF LOCAL SERVICE.

(4) FAILURE OF THE WHOLESALE CUSTOMER TO COMPLY WITH A COMMISSION ORDER RELATED TO THE PROVISION OF LOCAL SERVICE.

*(B) UNAUTHORIZED REASONS FOR A NSP TO TERMINATE SERVICE.* UNLESS SPECIFICALLY AUTHORIZED BY THE COMMISSION, A NSP MAY NOT TERMINATE SERVICE FOR THE FOLLOWING REASONS:

(1) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE UNRELATED TO THE PROVISION OF LOCAL SERVICE, FOR EXAMPLE, A CHARGE FOR A LSP'S OWN DIRECTORY ADVERTISING IN A NSP'S YELLOW PAGES DIRECTORY.

(2) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT WAS NOT PREVIOUSLY BILLED PRIOR TO THE DUE DATE OF THE CURRENT BILL.

(3) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT IS UNDER A PAYMENT AGREEMENT PRIOR TO THE DATE OF PAYMENT SET FORTH IN THE AGREEMENT.

(4) FAILURE OF A WHOLESALE CUSTOMER TO PAY A CHARGE THAT IS AT ISSUE IN A COMPLAINT BEFORE THE COMMISSION UNLESS TERMINATION IS SPECIFICALLY AUTHORIZED BY THE COMMISSION.

~~(b)~~(C) Termination notice PROVISIONS.

(1) A NSP SHALL PROVIDE A WHOLESALE CUSTOMER WITH A WRITTEN TERMINATION NOTICE AT LEAST 45 CALENDAR DAYS PRIOR TO THE DATE THAT THE NSP INTENDS TO CEASE PROVIDING THE SERVICE THAT ENABLES THE WHOLESALE CUSTOMER TO SERVE END-USER CUSTOMERS.

(2) A NSP SHALL SEND THE TERMINATION NOTICE BY FIRST CLASS MAIL UNLESS OTHER METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT OR ARE PROVIDED FOR IN AN APPLICABLE TARIFF.

(3) A NSP SHALL ADDRESS THE TERMINATION NOTICE TO THE WHOLESALE CUSTOMER'S DESIGNEE.

(4) A NSP SHALL SEND A COPY OF THE TERMINATION NOTICE TO THE SECRETARY OF THE COMMISSION, TO THE COMMISSION'S BUREAU OF CONSUMER SERVICES AND THE LAW BUREAU.

~~(4)~~(5) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

§§ (iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

~~(2) A NSP shall provide a copy of the notice to the Commission's Secretary's Bureau, Bureau of Consumer Services and Law Bureau.~~

### **§ 63.305. Combined Default/Termination Notice**

**Notwithstanding any contrary provisions in §§63.303 and 63.304, where authorized by the provisions of its interconnection or other agreement with a wholesale customer, an NSP may provide the wholesale customer with a single notice of default and of termination that specifies that termination will occur in less than the minimum 75 calendar days provided for in §§63.303 and 63.304, provided that such termination will occur in not less than the 45 termination period provided for in § 63.304.**

### **§63.306. Initiation of abandonment.**

A LSP shall initiate abandonment of service when a LSP RECEIVES A NOTICE FROM THE NSP ~~initiates the~~ OF A termination of a LSP's service CONSISTENT WITH THE PRE-TERMINATION DISPUTE PROVISIONS IN §63.3034 OR §63.305, when the Commission issues an order to revoke a LSP's certificate of public convenience or when a LSP has made proper application to the Commission to abandon SOME OR ALL OF A LSP'S LOCAL service CUSTOMERS.

(1) NSP initiation.

(i) A NSP that intends to terminate the service of a LSP that IS A WHOLESALE CUSTOMER AND serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail UNLESS OTHER

METHODS OF DELIVERY HAVE BEEN AGREED TO AS PART OF THE INTERCONNECTION OR OTHER GOVERNING AGREEMENT BETWEEN THE NSP AND THE LSP, NOT LESS THAN 45 ~~110~~ calendar days in advance of the scheduled termination.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP'S ~~properly notifies its customers~~ HAVE BEEN PROPERLY NOTIFIED.

(2) Commission initiation. The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) LSP initiation. A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service not less than 35 ~~90~~ calendar days prior to the EXIT date ~~when financial or operational data indicates there is likelihood that the LSP may be unable to provide service to some or all of its customers.~~

**§ 63.3067. Abandoning LSP obligations for abandonment.**

(a) General. Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring ~~earlier~~ LSP to serve the customers it plans to abandon.

(b) Abandonment plan. The abandoning LSP shall file an abandonment plan with the Commission not less than ~~90~~ 35 calendar days in advance of abandoning service. The abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.



(3) A detailed outline of the procedures a LSP shall use to ensure FACILITATE continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A plan for an abandoning LSP to provide a list of current customers THAT WILL BE ABANDONED to the Commission within 60 calendar days prior to the exit date.

(6) THE ABANDONMENT NOTICE THAT IS an initial letter to be sent to customers.

(7) A plan for follow-up notification arrangements—for example, a second letter, phone calls, bill inserts, e-mail, and the like. THE BEGINNING AND ENDING DATES FOR THE PERIOD IN WHICH CUSTOMERS ARE TO SHOP AND SELECT A NEW LSP (CUSTOMER CHOICE PERIOD). CUSTOMERS SHALL BE ALLOWED UP TO 20 CALENDAR DAYS AFTER RECEIVING A CUSTOMER NOTICE OF ABANDONMENT TO SHOP AND SELECT A NEW LSP.

(8) THE BEGINNING AND ENDING DATES FOR THE CUSTOMER MIGRATION PERIOD WHEN THE BUSINESS ARRANGEMENTS ARE TO BE COMPLETED FOR THE TRANSFER OF SERVICE TO THE NEW LSP. THE CUSTOMER MIGRATION PERIOD SHALL IMMEDIATELY FOLLOW THE CUSTOMER CHOICE PERIOD, ALLOW 10 CALENDAR DAYS FOR MIGRATION, AND IMMEDIATELY PRECEDE THE EXIT DATE.

(8)(9) A proposed exit date. if the abandonment is initiated by termination by a NSP or by Commission order, the PROPOSED exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

(9) A date when customers shall select a carrier.

(10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.

(11) IF APPLICABLE, the arrangements made for an acquiring carrier.

(12) The procedures to be taken with the North American Numbering Plan Administrators (NANPA) to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.

(13) The name of the NSP and the current customer serving arrangements, for example, UNE-P (~~x-carrier~~), resale (~~y-carrier~~), UNE-L (~~x-carrier~~) or Full Facilities.

(14) ~~An~~ LIST ~~identification~~ of customers NAMES AND CONTACT INFORMATION when the abandoning carrier LSP is the only provider of facilities to a customer or group of customers.

(15) The number of customers TO BE impacted BY THE ABANDONMENT.

~~(16) The format of the CSRs, a statement of what data elements are in the CSRs and a statement of how the CSRs will be made available to other carriers.~~

~~(17) (16) the details of a transfer of assets or control that requires Commission approval PURSUANT TO 66 PA.C.S. § 1102 (A)(3).~~

~~(18) (17) A request to modify or cancel tariffs.~~

~~(19) (18) A plan for processing customer deposits, credits and termination liabilities or penalties.~~

~~(20) (19) A plan for unlocking the E-9-1-1 records.~~

~~(21) (20) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.~~

~~(22) When the default LSP provisions apply, a plan for providing the default LSP with the CSRs of customers who will be migrated to each default carrier. The CSRs shall be provided to the default LSP in electronic format 28 days prior to the exit date so that the default LSP shall notify the migrating customers of the terms and conditions of service.~~

(c) Transfer of customers' 9-1-1/E-9-1-1 records.

(1) Transfers to a NEW NLSP. An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a NEW NLSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) RECOMMENDED DATA standards FOR SERVICE PROVIDERS GOING OUT OF BUSINESS.

(2) Transfers after abandonment. An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1 service provider to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) Notification to the industry and NANPA.

(1) Industry abandonment notice. An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) NANPA ABANDONMENT NOTICE. An abandoning LSP WHICH HAS NXX OR THOUSAND BLOCK NUMBER RESOURCES FROM THE NANPA shall provide written notice to: THE NANPA IDENTIFYING AND AUTHORIZING THE RELEASE OF ALL OF ITS USED AND UNUSED NUMBER RESOURCES TO AN ACQUIRING CARRIER, OTHER LSPS OR THE NANPA, AS APPLICABLE. WHEN NUMBER

RESOURCES ARE TO BE RELEASED TO AN ACQUIRING CARRIER, THE NOTICE TO THE NANPA SHALL BE PROVIDED NOT LESS THAN 35 DAYS PRIOR TO THE ABANDONING LSP'S EXIT DATE.

~~(i) The NANPA, when applicable, authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.~~

~~(ii) The NANPA, authorizing the release of all assigned telephone numbers to the succeeding carriers not less than 66 days prior to the abandonment.~~

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

(e) Abandoning LSP notification to customers.

(1) The abandoning LSP (and acquiring carrier LSP if applicable) shall notify customers by letter not less than 30 ~~60~~ CALENDAR days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of ALL ~~the~~ services (FOR EXAMPLE, local basic, regional toll, long distance toll) that the abandoning LSP is currently providing to the customer THAT WILL NO LONGER BE PROVIDED AS OF THE EXIT DATE. The abandoning LSP shall direct customers to choose a NEW LSP service provider to OBTAIN WHATEVER SERVICES THEY WISH TO HAVE GOING FORWARD ~~replace the service that it has been providing.~~

(3) THE ABANDONING LSP SHALL LIFT ALL EXISTING PREFERRED CARRIER FREEZES ON THE SERVICES TO BE ABANDONED. ~~If applicable, the~~

abandoning LSP shall notify customers that if they do not act to obtain service from another LSP, the abandoning LSP shall automatically transfer them to a default carrier for local service provision.

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed MESSAGE ~~teaser~~ on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.

(ii) A statement on the notice: "At this time, (LSP name) provides you with local telephone service, (LIST OTHER SERVICES PROVIDED BY THE LSP THAT WILL NO LONGER BE PROVIDED UPON ABANDONMENT OF LOCAL SERVICE)."

(iii) A statement on the notice: "As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action."

(iv) A statement on the notice: "To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 10 ~~30~~ calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends."

(v) A statement on the notice: "Please remember that customers may choose the provider of their local telecommunications TELEPHONE service. You may select any company that is offering service in your area." CUSTOMERS SHALL BE NOTIFIED THAT THEY CAN CHECK THEIR TELEPHONE DIRECTORY YELLOW PAGES UNDER "TELEPHONE SERVICE PROVIDERS" OR IN THE FRONT OF THE DIRECTORY UNDER THE HEADING OF "OTHER LOCAL PHONE COMPANIES" FOR INFORMATION ABOUT LSPS SERVING THEIR AREA.

(VI) IF THE ABANDONING LSP HAS ARRANGED FOR AN ACQUIRING LSP TO SERVE CUSTOMERS, THEN THE ABANDONING LSP CUSTOMER NOTICE PROVISIONS SHALL REFLECT THESE ARRANGEMENTS. SPECIFICALLY, THE WRITTEN NOTICE TO CUSTOMERS SHALL BE A JOINT NOTICE FROM THE ABANDONING AND ACQUIRING LSPS. THE JOINT NOTICE SHALL BE SENT TO CUSTOMERS IN AN ENVELOPE FROM THE ABANDONING LSP. THE JOINT NOTICE SHALL INFORM CUSTOMERS THAT THEY MAY SELECT ANY LSP THAT SERVES THEIR AREA BY (DATE OF THE END OF CUSTOMER CHOICE PERIOD) OR THEY MAY TAKE NO ACTION AND THEIR SERVICE WILL BE TRANSFERRED TO THE ACQUIRING LSP NO LATER THAN (EXIT DATE). THE JOINT NOTICE SHALL ALSO INCLUDE INFORMATION ABOUT THE ACQUIRING LSP'S RATES AND TERMS AND CONDITIONS OF SERVICE.

~~(vi)~~ (VII) A statement on the notice: "This is an important notice (the word "important" in bold) about the loss of your local telephone service. If you have any questions, or need more information, OR HAVE PROBLEMS WITH CHANGING YOUR SERVICES, contact (LSP contact information including a toll-free telephone number)."

~~(vii) A list of alternative LSPs, including contact numbers and addresses, that serve the customer's area.~~

~~(viii) Information to customers outlining the procedure for obtaining refunds of credits and deposits, obtaining final bills and addressing questions or complaints.~~

(IX) CUSTOMERS WHO HAD PREFERRED CARRIER FREEZES ON THEIR ACCOUNTS SHALL BE DIRECTED TO CONTACT THEIR NEW LSP TO ARRANGE FOR NEW PREFERRED CARRIER FREEZES IF THEY WISH TO HAVE THIS PROTECTION GOING FORWARD.

**§ 63.3078. Abandonment process management.**

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

(1) The abandoning LSP.

(2) The acquiring LSP.

(3) The ~~default LSP~~ ABANDONING LSP'S CUSTOMERS.

(4) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

**§ 63.3089. Commission consideration and action.**

(a) The Commission will post information of an impending abandonment on its website AT WWW.PUC.STATE.PA.US under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the ~~acquiring, default~~ or other LSPs as applicable.

**§ 63.30910. Acquiring LSP provisions and obligations.**

~~(a) An acquiring LSP shall notify customers by letter of the pending change of service providers 60 days in advance of the exit date.~~

~~—(b) An acquiring LSP shall notify customers in writing of its rates and terms and conditions of service 60 days in advance of the exit date.~~

~~—(e) (A) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the CUSTOMER HAS NOT SELECTED ANOTHER LSP DURING THE 20 DAY CUSTOMER CHOICE PERIOD AND THE acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization. THIS PROVISION DOES NOT RELIEVE THE ABANDONING LSP OR THE ACQUIRING LSP OF ANY REQUIREMENTS IMPOSED BY THE FEDERAL COMMUNICATIONS COMMISSION'S (FCC) ANTI-SLAMMING RULES OR STATE RULES AT 52 PA CODE § 64.23(B).~~

~~—(d) An abandoning LSP shall reimburse the new provider (customer selected, acquiring carrier or default carrier) for the carrier change charges. The provision in this subsection does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 CFR 63.71 (relating to procedures for discontinuance, reduction or impairment of services by domestic carriers).~~

~~—(e) (B) If an acquiring LSP determines that it will be unable to provide MIGRATE service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.~~

~~**§ 63.310. NSP obligations to serve as the default LSP.**~~

~~—(a) Default LSP. When the following conditions are met, a NSP becomes the default LSP and shall continue to provide local service to customers who will not be served by an acquiring LSP and who have not selected another LSP:~~



~~—(1) An abandoning LSP serves its customers through resale using the facilities of a NSP.~~

~~—(2) There is no acquiring LSP or an acquiring LSP is not acquiring all customers from the abandoning LSP.~~

~~—(3) One or more customers have not chosen a new LSP within the selection period.~~

~~—(b) Notification to customers:~~

~~—(1) A default LSP shall send a letter to customers who will be switched from an abandoning LSP to the default LSP 20 days prior to the exit date.~~

~~—(2) The 20-day letter shall advise the customers that their service is being switched on a specific date and notify customers of the rates and terms and conditions of service.~~

~~—(c) Notification and service to customers with outstanding balances:~~

~~—(1) When a customer being switched to a default LSP has an outstanding balance for local service with the default LSP from a service period within the last four years, the default LSP shall provide provisional local service for at least 30 days from the exit date.~~

~~—(2) A default LSP shall notify a customer that the customer has an outstanding balance, the amount of the balance and the time period over which the balance accrued.~~

~~—(3) A default LSP shall inform a customer that the default carrier is obligated to provide local service only until (list a specific date that is 30 calendar days from the exit date) unless the customer pays the outstanding local service balance or makes a payment arrangement.~~

~~—(4) Information shall be contained in the 20-day letter regarding how a customer may contact a default provider to make payment or enter into a payment arrangement.~~

~~—(5) A customer who, upon notification of the customer's outstanding balance for local service, fails to make payment or enter into a payment arrangement for the outstanding~~

balance may be subject to suspension and termination action by a default LSP after expiration of the 30-day provisional local service period.

**§ 63.311 63.3101. Abandoning LSP follow-up obligations.**

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition BY ~~or default service with a NSP~~ ANOTHER LSP and has not taken action to select a new LSP. The ~~service~~ SECOND ABANDONMENT notice shall be sent AFTER CONSULTATION WITH THE COMMISSION ~~30 days before the exit date~~. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

- (1) First class mail.
- (2) A telephone call.
- (3) A bill insert.
- (4) Any other means of direct contact with the customer.

Original; 2393

*DZG*

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DALEY, ZUCKER & GINGRICH, LLC

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May 18, 2004

*Via Hand Delivery*

The Honorable James J. McNulty  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

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2004 MAY 19 AM 8:45  
SECRETARY'S BUREAU

In Re: Establishing Local Service Provider Abandonment Process  
for Jurisdictional Telephone Companies  
Docket No. L-00030165

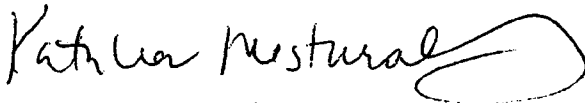
Dear Mr. McNulty:

Please find enclosed for filing an original and four copies of MCI's Comments in response to the above-captioned matter. Please return a time-stamped copy of the Comments to me via the Courier who delivered the filing.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

DALEY, ZUCKER, & GINGRICH, LLC



Kathleen Misturak-Gingrich

KMG/smh  
Enclosures

cc: Service list (w/enclosures)  
Michelle Painter, Esquire (w/enclosures)

SECRETARY'S BUREAU  
REVIEW OF COMMISSIONERS

11

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SECRETARY'S BUREAU

2004 MAY 19 AM 8:48

RECEIVED

In Re: Establishing Local Service Provider :  
Abandonment Process for Jurisdictional :  
Telephone Companies : Docket No. L-00030165  
:

AND NOW COMES, MCI WorldCom Network Services, Inc. ("MCI") and offers these comments in response to the Pennsylvania Public Utility Commission's ("Commission or PUC") proposed rulemaking involving establishing local service provider abandonment process for jurisdictional telephone companies, published at 34 Pa.B. 1795, on April 3, 2004.

1. MCI is a competitive local exchange carrier ("CLEC") offering local telephone service to residential and business customers within the Commonwealth of Pennsylvania. At the public meeting held on December 18, 2003, the PUC adopted a proposed rulemaking order to establish an orderly process to follow when a jurisdictional local service provider ("LSP") abandons local telephone service.

2. Previously, the PUC had developed interim guidelines and had held collaborative meetings. MCI participated in the various collaboratives. Subsequently, by PUC Order entered on December 23, 2003, at Docket No. L-00030165, the PUC adopted a Proposed Rulemaking Order to amend the PUC's regulations at 52 Pa. Code Chapter 63, consistent with the order and the recommendations of the collaborative industry participants, the Bureau of Consumer Services and the Law Bureau.

3. The proposed rulemaking was published in the Pennsylvania Bulletin on April 3, 2004 and said notice requested comments be provided within forty-five (45) days of the date of publication.

4. Accordingly, MCI thereby offers its comments on the proposed regulations.

§ 63.202. DEFINITIONS

The Commission should provide a definition for “Termination.” Section 63.303 deals with Embargo and Section 63.404 deals with Termination. The Commission should clarify the difference between these two sections as they tend to have overlapping requirements.

§ 63.303. NSP EMBARGO PROCESS.

MCI is concerned by this suggested regulation at 63.303(a)(1) whereby the regulation requires that a network service provider (“NSP”) may embargo service to a wholesale customer when “that [undisputed delinquent] amount remains unpaid for 30 calendar days or more after the bill is rendered.” The term “rendered” is not defined in the proposed regulations and MCI is concerned that that term may well be subject to multiple interpretations. As such, because the date on which the bill is “rendered” is the benchmark against which the 30 calendar days will be calculated, MCI suggests instead that the trigger date be stated in the regulation as 30 days from “the date of the bill.” In that regard, there can be no confusion or differing interpretations with respect to when the thirty (30) day clock actually begins to run, as the invoice date should be clearly stated on the face of the invoice to the wholesale customer.

Further, the Commission should clarify that the NSP shall not unilaterally determine that an issue or charge is no longer a valid dispute. If a party has either disputed or questioned a bill, the regulations should clarify that the dispute remains open until *both parties* agree that the dispute has been resolved and is closed. If either party believes that the dispute is no longer valid, they can raise the issue with the Commission through alternative dispute resolution procedures. Until the Commission decides that a dispute is not valid, the NSP may not initiate embargo or termination procedures pursuant to this or the following section. Additionally, it

should be clarified that a wholesale carrier's question of the accuracy of the NSP bill is a valid dispute.

MCI is also extremely concerned with the very short notice period for embargo by the NSP. Ten (10) days notice is simply not adequate notice, especially to a wholesale provider who may have tens of thousands of customers. The Commission must recognize that an embargo may not only involve the refusal to process new orders, but also the refusal to process orders to modify service for existing customers. Thus, MCI may not be able to add or remove features for its existing customers. If the wholesale provider believes that the embargo is not valid, ten days is simply not enough time to get to the Commission to stop the embargo process. MCI recommends that the Commission modify the regulations such that embargo is permitted no less than thirty (30) days after providing notice via overnight delivery or electronic mail to the wholesale provider.

Also, notice provided by first class mail, as provided in § 63.303(c)(1)(i) should be modified to require notice via overnight delivery. An embargo of a wholesale customer is simply too important to provide notice via first class mail, which may not arrive for over a week. The embargo notice should also be required to specify the exact reason for the embargo, and any possible ways of curing the reason for the embargo.

#### § 63.304. NSP TERMINATION PROCESS FOR WHOLESALER CUSTOMERS.

Section 63.304(a)(1) should clarify that any termination must be consistent with the remainder of Section 63.304, as those sections prohibit termination under various scenarios, including open disputes. Further, the Commission should incorporate the comments noted above regarding open disputes – namely that a dispute remains open until both parties agree that it is closed.

MCI is not clear whether this termination process is different from the embargo process. MCI hereby incorporates by reference its comments on the embargo process and requests that the same modifications apply to the termination process to the extent it is different from embargo.

#### § 63.305 INITIATION OF ABANDONMENT

The first sentence states that “A LSP shall initiate abandonment of service when a NSP initiates the termination of a LSP’s service...” However, if the termination is disputed by the LSP, then it is premature to require the LSP to begin the abandonment procedures herein. Therefore, it should be clarified that the LSP shall initiate abandonment of service when the NSP initiates an undisputed termination of the LSP’s services.

#### § 63.306. ABANDONING LSP OBLIGATIONS FOR ABANDONMENT

Similar to Section 63.305, the termination notice from the NSP must be undisputed before requiring the LSP to begin the abandonment process. Section 63.305(a) should make this clear.

The proposed regulation at 52 Pa. Code 63.306(e)(2) requires the abandoning LSP to notify customers of the services they have. Providing notice to thousands of customers of each and every service they have could be a very difficult and lengthy process that may delay the notice. Customers generally should know the services that they have with a provider. Therefore, MCI suggests that the notice provide the types of services the abandoning carrier provides with a suggestion for the customer to look at their most recent bill to determine which services they have so that they can then obtain those services from another carrier.

The proposed regulation at 52 Pa. Code 63.306(e), which addresses the abandoning LSP notification requirements to customers, at (4)(vii), requires the abandoning LSP to notify

customers of “a list of alternative LSPs, including contact numbers and addresses, that serve the customer’s area.”

MCI questions the availability of current, reliable, and accurate information to an LSP and the LSP’s ability to obtain such a list on short notice. MCI suggests that the Commission itself keep an updated list/database of alternative LSPs with the required information, which information an abandoning LSP could provide to its customers from the PUC’s database. If the PUC’s information is provided to the customers of the abandoning LSP, the notice would be sufficient to meet the requirements of the proposed regulation and both the PUC and the carriers would have a level of comfort about the accuracy and reliability of the information.

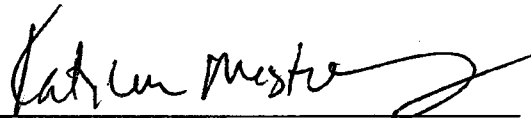


CONCLUSION:

MCI requests that the Commission give due consideration to the important changes and considerations raised by MCI in these comments.

Respectfully submitted,

DALEY, ZUCKER & GINGRICH, LLC



---

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Date: May 18, 2004

Counsel for MCI Network Services, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of May, 2004 caused a true copy of the attached Comments to be served upon the parties of record in the above-referenced docket, in accordance with the requirements of 52 Pa. Code §§ 1.52 and 1.54 in the manner and upon the parties listed below:

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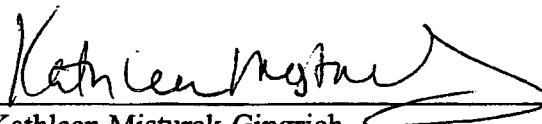
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May 18, 2004

VIA UPS OVERNIGHT DELIVERY

Mr. James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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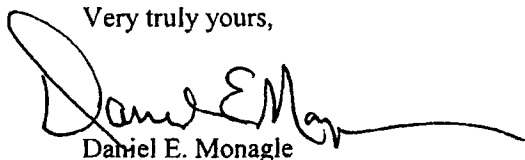
RE: Propose Rulemaking – Local Service Provider  
Abandonment, Docket No. L-00030165

Dear Mr. McNulty:

Enclosed please find an original and fifteen (15) copies of the Comments and Proposed Regulation Changes of Verizon Pennsylvania Inc. and Verizon North Inc. in the above-captioned proceeding.

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

Very truly yours,

  
Daniel E. Monagle

DEM/meb

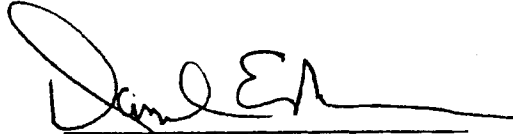
Enclosure

Via Electronic Mail  
cc: Louise Fink Smith  
Attached Certificate of Service



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MAY 18 2004  
PA PUBLIC UTILITY COMMISSION

I certify that, on the 18<sup>th</sup> day of May 2004, I caused copies of the foregoing Comments and proposed Regulation Changes of Verizon Pennsylvania Inc. and Verizon North Inc. to be served upon the parties on the attached service list by electronic mail.

A handwritten signature in black ink, appearing to read 'Daniel E. Monagle', written over a horizontal line.

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking -- Local :  
Service Provider Abandonment : Docket No. L-00030165

COMMENTS OF VERIZON PENNSYLVANIA INC.  
AND VERIZON NORTH INC.

Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") appreciate the opportunity which the Commission afforded Verizon and other interested parties in the collaborative that preceded the issuance of these Local Service Provider Abandonment regulations to shape the content of the regulations. As with the Changing Local Service Providers proposed regulations which were concurrently issued following another parallel collaborative, these regulations reflect a consensus of ILECs, CLECs and other parties on most of the myriad issues addressed in the regulations. Accordingly, Verizon PA's comments will be limited and with the exception of a few suggested language changes to improve clarity,<sup>1</sup> pertain only to the termination notice timetable and default LSP provisions in the regulations.

**A. Network Service Providers Such as Verizon Should  
Be Permitted to Notice Defaulting Wholesale Customer  
Service Embargo and Termination Dates That Comport  
with the Terms of the Governing Agreements.**

---

<sup>1</sup>For clarity, Verizon suggests that the words "one or more of" precede "the following reasons" in Section 63.303(a); and the word "service" be changed to "interconnection" in Section 63.303(c)(1)(i) the word "carrier" in Section 3.306(b)(9) be changed to "NLSP." These proposed language changes are set forth in revisions format in Attachment A hereto.



The proposed regulations at Sections 63.303-63.305 contemplate that service abandonment initiated by a Network Service Provider (NSP) because a LSP has not paid its bills to the NSP will take place in a neat, orderly and slow processional matter. They envision that termination will occur only after the defaulting LSP has been embargoed and still failed to pay what it owes; and that even then the NSP will still give the defaulting LSP another 110 days before it terminates the LSP's service, even though all during this period the defaulting LSP will be continuing to accrue still more charges it usually is not paying, and likely will not ever pay. Like other regulations that need to be reconsidered given developments since the underlying collaborative occurred starting in 2002 – here, for example, a tremendous ramp up in Verizon's wholesale customer uncollectible debt in Pennsylvania and elsewhere as CLECs have exited markets without paying their debts to Verizon -- these regulations need to be reconsidered too.

More specifically, in the absence of any bonding or other financial assurance requirement on a defaulting LSP that would protect an NSP from the LSP's adding to what is often already a mountain of debt during an abandonment period, the proposed regulations should not lock the NSP into any fixed and here extremely lengthy (110 day) termination notice period. The same is true for fixing an embargo notice period. Nor should the regulations provide that service termination must always be preceded by an embargo on new or changed service, since many interconnection or other pertinent agreements permit termination to occur without an interim embargo step. Instead, the regulations should not

prescribe notice periods or call for termination to occur only after embargo, and instead let these matters continue to be governed by the NSP's interconnection agreement with the LSP, or by subtending settlement or debt restructure agreements (among others) that specify the enforcement action that the NSP can take against the LSP for continued nonpayment of monies owed. To do otherwise would interfere with the NSP's and LSP's contractual rights and obligations.

Verizon understands that the focus of the proposed regulations is on the customers of abandoning LSPs and notes that while the changes it is proposing here will permit it and other NSPs continued flexibility in the enforcement of LSP contractual obligations, the Commission would retain the ability, under Section 63.305(1)(ii), to require an NSP to extend a LSP's termination date until the LSP notifies its customers. That will be far preferable to a "one size fits all" embargo/termination process that will last several months for even the smallest of LSPs (which, for example, might need only a couple of days to notify their relative handful of customers) and that will provide no financial protections whatsoever that the NSP will be paid by the LSP for the services it provides the LSP during this long period.<sup>2</sup>

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<sup>2</sup>To the extent an LSP might have to accelerate abandonment events it might otherwise do at a more leisurely pace under the regulations in order to comply with shorter lead times specified by an NSP in enforcing its contractual rights, it might need to seek expedited rule waivers (e.g. of the Section 3.306(b) requirement that the LSP file its abandonment plan no less than 90 days before its exit date). Verizon anticipates that the Commission will work with the parties in these situations to balance competing interests and achieve fairness. While Verizon agrees it is important to be fair to customers caught in an abandoning CLEC situations, Verizon and other NSPs also deserve equity in these situations and should not be required to continue financing the businesses of exiting LSPs on the NSPs' dime one day longer than necessary.

Proposed language changes in revisions format that effectuate the foregoing regulation modifications are set forth in Attachment A hereto.

**B. Network Service Providers Such as Verizon Should Not Be Default LSPs in Abandonment Situations.**

While the proposed regulations seek to limit the default LSP obligation of a Network Service Provider (NSP) such as Verizon to local service abandonments by resale CLECs, there are a number of reasons why NSPs still should not be default providers even in a resale situation.

First, in a competitive market, customers who choose to be served by a CLEC should be first permitted, and then if necessary required, to choose another LSP if their first LSP exits the market. These customers typically already know how to switch LSPs, since most have already done so at least once. To automatically assign a subset of such customers to the NSP, which is ordinarily the local ILEC, by regulatory fiat and without the customer's consent, especially where the customer has received prior notice of his provider's imminent departure and of his need to switch to a new LSP to avoid losing his service, is antithetical to the workings of a competitive market and the free choice that underlies this market.

Second, there are financial reasons why Verizon and other NSPs do not want to be required to assume responsibilities for customers of an exiting resale CLEC who do not sign up with another LSP before the exit date. Forcing NSPs to accept dilatory customers facing abandonment, whether they are consumers or businesses, deprives NSPs of any ability to assess the creditworthiness of such customers, and force NSPs to accept customers they would otherwise not accept. Moreover, Verizon's experience has been that many customers who leave

Verizon for CLECs, or who attempt to come back to Verizon from CLECs, often do so because they are payment troubled. While the proposed regulations (at §63.310) acknowledge and attempt to deal with the unfairness of forced transfers of payment troubled customers to NSPs, e.g., by permitting the NSP to suspend service to transferred customers who remain indebted to the NSP after a 30-day “provisional” local service period, such protections are largely illusory. Involuntarily moving such customers to NSPs, which have to incur the administrative costs to effectuate these transfers, only to take many of them off the OSP’s network in one month, amounts to mere wheel-spinning for both the OSP and the affected customers.

The better approach, in this era of ever-increasing competitive choices for local service telecommunications providers, including wireless and cable providers, is to eliminate the OSP default provider obligation all together. In its place, a second notice obligation – currently required only for customers without acquiring or default LSPs under Section 63.311 – for customers who have not taken action to select a NLSP in response to the first notice should be required for resale CLEC customers who are not being acquired. Such customers who after receiving two notices emphasizing that they will lose their telephone service on the exit date and who still fail to switch to another LSP before that date will as a consequence lose their service on the exit date.

Proposed language changes in revisions format that effectuate the proposed elimination of the default OSP are set forth in Attachment A hereto.<sup>3</sup>

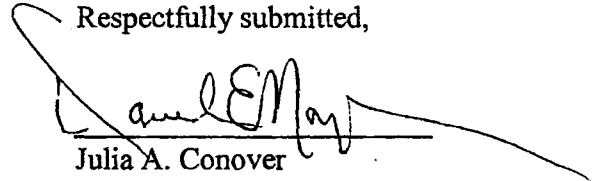
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<sup>3</sup>These changes include inserting the word “voluntarily” in the definition of “Acquiring LSP” in Section 63.202.

**CONCLUSION**

For the reasons set forth above, Verizon respectfully requests that the Commission adopt the language changes set forth in Attachment A in its final form regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Monagle", is written over a horizontal line. The signature is fluid and cursive.

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Attorneys for Verizon  
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Dated: May 18, 2004

**ATTACHMENT A**

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 63. TELEPHONE SERVICE**

**Subchapter N. LOCAL SERVICE PROVIDER ABANDONMENT  
PROCESS**

**Sec.**

- 63.301. Statement of purpose and policy.**
- 63.302. Definitions.**
- 63.303. NSP embargo process.**
- 63.304. NSP termination process for wholesale customers.**
- 63.305. Initiation of abandonment.**
- 63.306. Abandoning LSP obligations for abandonment.**
- 63.307. Abandonment process management.**
- 63.308. Commission consideration and action.**
- 63.309. Acquiring LSP provisions and obligations.**
- ~~63.310. NSP obligations to serve as the default LSP.~~**
- 63.3140. Abandoning LSP follow-up obligations.**

**§ 63.301. Statement of purpose and policy.**

- (a) *Purpose.* The purpose of this subchapter is to:**

(1) Provide for an orderly process when a NSP intends to embargo and terminate service to a LSP.

(2) Provide for an orderly process when a LSP seeks to stop the provision of existing service to residential and business customers under the following circumstances:

(i) A NSP that provides part or all of the services necessary to provide local service is intending to terminate a LSP's service agreement.

(ii) The Commission has issued an order to revoke a LSP's certificate of public convenience.

(iii) A LSP has filed an application to abandon a certificate of public convenience for the provision of local service.

~~(3) Ensure that customers do not lose service when their LSP exits the market.~~

(4) Ensure that customers are provided ample notice and the opportunity to timely select a new LSP of their choice and thereby not lose local service when their LSP exits the market.

(5) Coordinate information flow and activities through a project management team.

(6) Ensure that an abandoning LSP provides sufficient network information so that customers are able to be migrated seamlessly.

(7) Ensure that an abandoning LSP coordinates with 9-1-1 service providers and the North American Numbering Plan Administrator.

(b) *Application.*

(1) This subchapter applies to a LSP that provides local service to residential or business customers.

(2) This subchapter applies to a NSP that provides wholesale telephone service to a LSP and intends to embargo or terminate the LSP's service.

## § 63.302. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

*Abandon*--To cease providing local service to existing customers. The term does not include discontinuance as a result of a customer's request or a temporary change in the provision of service that may arise from maintenance repair or failure of a LSP's equipment or facilities.

*Abandoning LSP*--A LSP that seeks to abandon providing local service to existing customers in a service area.

*Acquiring LSP*--A LSP that voluntarily undertakes to provide local service to customers of the abandoning LSP after the abandoning LSP is permitted to alter or abandon providing local service.

*CSR--Customer service record*--Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features and other information associated with a customer account.

*Customer*--The end-user recipient of telephone service provided by a LSP.

~~*Default LSP*--A NSP that assumes responsibility for the provision of local service when an abandoning LSP is a reseller of that NSP's service.~~

*Embargo*--The pretermination process in which a NSP refuses to process local service change requests or initiate new local service requests because the LSP that is reselling the NSP's services or buying the NSP's unbundled network elements (UNE) or unbundled network elements with platform (UNE-P) facilities is delinquent in paying for those services or facilities.

*Exit date*--The date upon which an abandoning LSP intends to cease providing telecommunications service.

*LSP--Local service provider*--A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.



(i) NLSP indicates "new" LSP, and OLSP indicates "old" LSP.

(ii) A LSP may also provide other telecommunications services, as well as nonjurisdictional services.

*Local service*--Telecommunications service within a customer's local calling area.

(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal Line Cost Charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Local service reseller*--A LSP that resells another company's wholesale telephone services to provide local service to customers.

*NSP--Network service provider*--A carrier that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service. A NSP may be referred to as an underlying carrier, and may also be a LSP.

*Wholesale customer*--A LSP that provides local service by resale or by unbundled network elements (with or without platform).

### § 63.303. NSP embargo process.

(a) *Authorized reasons for a NSP to embargo service.* A NSP may embargo service to a wholesale customer for one or more of the following reasons:

(1) Failure of the wholesale customer to pay an undisputed delinquent amount for services necessary to provide customers with local service when that amount remains unpaid for 30 calendar days or more after the bill is rendered.

(2) Failure of the wholesale customer to abide by the terms and conditions of a Commission-approved interconnection agreement or other governing agreement related to the provision of local service.

(3) Failure of the wholesale customer to comply with the terms of a payment agreement related to the provision of local service.

(4) Failure of the wholesale customer to comply with a Commission order related to the provision of local service.

(b) *Unauthorized reasons for a NSP to embargo service.* Unless specifically authorized by the Commission, a NSP may not embargo service for the following reasons:

(1) Failure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP's own directory advertising in a NSP's yellow pages directory.

(2) Failure of a wholesale customer to pay a charge that was not previously billed prior to the due date of the current bill.

(3) Failure of a wholesale customer to pay a charge that is under a payment agreement prior to the date of payment set forth in the agreement.

(4) Failure of a wholesale customer to pay a charge that is at issue in a complaint before the Commission unless an embargo is specifically authorized by the Commission.

(5) Failure of a wholesale customer to pay a charge when there is an open complaint or dispute with a NSP about the accuracy or correctness of the charge. A wholesale customer is obligated to pay amounts not under complaint or dispute.

(c) *Embargo notification provisions.*

(1) ~~At least 10 days prior to the initiation of an embargo~~ Pursuant to the provisions of the interconnection or other governing agreement between the NSP and the wholesale customer, an NSP electing to exercise a right to embargo a wholesale customer shall issue a written notice of embargo to the wholesale customer ~~using and shall comply with~~ the following procedures:

(i) A NSP shall send the embargo notice by first class mail unless other methods of delivery have been agreed to as part of the ~~service~~ interconnection or other governing agreement or are provided for in an applicable tariff.

(ii) A NSP shall address the embargo notice to the wholesale customer's designee.

(iii) A NSP shall send a copy of the embargo notice to the Secretary of the Commission and to the Commission's Bureau of Consumer Services.

(2) The embargo notice to a wholesale customer shall include the following:

(i) The date that the embargo shall begin. ~~The beginning date given for the embargo may not be less than 10 days from the date the notice is mailed or otherwise delivered.~~

(ii) The amount owed which forms the grounds for the embargo.

(iii) The embargo issuing NSP's contact information to be used by a wholesale customer for payment of the NSP's bill.

(iv) A statement that if the bill is not paid or other acceptable arrangements are not made prior to the embargo date, the embargo shall commence on that date and a termination notice shall be issued.

#### § 63.304. NSP termination process for wholesale customers.

(a) *Termination process initiation.*

(1) A NSP may initiate the termination process if a wholesale customer has not made payment in full or entered into a mutually acceptable written agreement for payment of outstanding debt by the embargo start date posted on the embargo notice, or if the interconnections or other governing agreement between the NSP and the wholesale customer authorizes the NSP to initiate termination without first imposing an embargo on the customer.

(2) A NSP may not initiate the termination process for delinquent indebtedness which is the subject of an open dispute with the NSP or a pending complaint with the Commission filed by a wholesale customer.

(3) If during the termination process a wholesale customer initiates a properly filed dispute with a NSP or with the Commission, the NSP shall suspend the termination process unless it is based on other indebtedness that is not disputed.

(b) *Termination notice.*

(1) A termination notice from a NSP to a wholesale customer shall include the following:

(i) The date of the notification and reason for termination.

(ii) The date services shall be terminated unless payment is received or other mutually acceptable arrangements are made.

(iii) The amount owed, if applicable.

(iv) A contact telephone number and name for the NSP.

(2) A NSP shall provide a copy of the notice to the Commission's Secretary's Bureau, Bureau of Consumer Services and Law Bureau.

### § 63.305. Initiation of abandonment.

A LSP shall initiate abandonment of service when a NSP initiates the termination of a LSP's service, when the Commission issues an order to revoke a LSP's certificate of public convenience or when a LSP has made proper application to the Commission to abandon service.

(1) *NSP initiation.*

(i) A NSP that intends to terminate the service of a LSP that serves residential or business customers shall provide prior notice to the LSP and the Commission electronically and by first class mail ~~110 calendar days in advance of the scheduled termination~~ in accordance with the terms of the interconnection or other governing agreement between the NSP and the LSP.

(ii) The Commission may require a NSP to extend a LSP's termination date until the LSP properly notifies its customers.

(2) *Commission initiation.* The Commission may initiate the abandonment of a LSP's service through the issuance of a Commission order that revokes the LSP's certificate of public convenience.

(3) *LSP initiation.* A LSP may initiate the voluntary abandonment of some or all of its local service customers by filing with the Commission an application to abandon service to some or all of its existing customers. A LSP shall file an application to abandon service not less than 90 calendar days prior to the date

when financial or operational data indicates there is a likelihood that the LSP may be unable to provide service to some or all of its customers.

### § 63.306. Abandoning LSP obligations for abandonment.

(a) *General.* Upon receiving a termination notice from a NSP, or upon receiving a Commission order notifying a LSP of an effective date for revoking its certificate of public convenience, or upon a LSP's voluntary filing of an application to abandon service, the abandoning LSP shall make a good faith effort to secure an acquiring carrier to serve the customers it plans to abandon.

(b) *Abandonment plan.* The abandoning LSP shall file an abandonment plan with the Commission not less than 90 calendar days in advance of abandoning service. The abandonment plan shall contain the following information:

(1) An identification of the telecommunications services, either facilities-based or through resale, to be abandoned or curtailed in the associated service territory.

(2) An explanation of reasons for the abandonment of service.

(3) A detailed outline of the procedures a LSP shall use to ensure continuation of service for its affected customers. The abandoning LSP shall demonstrate that the abandonment will not deprive the public of necessary telecommunications services.

(4) The notices required by this section.

(5) A plan for an abandoning LSP to provide a list of current customers to the Commission within 60 calendar days prior to the exit date.

(6) A draft of an initial letter to be sent to customers.

(7) A plan for follow-up notification arrangements--for example, a second letter, phone calls, bill inserts, e-mail, and the like.

(8) A proposed exit date if the abandonment is initiated by termination by a NSP or by Commission order. The exit date may not be later than the termination date provided by the NSP or the date the certificate of public convenience is to be revoked.

- (9) A date when customers shall select a ~~carrier~~ NLSP.
- (10) Contact names and telephone numbers for a LSP's program manager, the regulatory contact and other pertinent contacts, for example, the contact for customer service records (CSR) or provisioning contacts.
- (11) The arrangements made for an acquiring carrier.
- (12) The procedures to be taken with the North American Numbering Plan Administrators (NANPA) to transfer NXX codes or thousand number blocks (if applicable) while preserving number portability for numbers within the code.
- (13) The name of the NSP and the current customer serving arrangements, for example, UNE-P (x carrier), resale (y carrier), UNE-L (x carrier) or Full Facilities.
- (14) An identification of customers when the abandoning carrier is the only provider of facilities to a customer or group of customers.
- (15) The number of customers impacted.
- (16) The format of the CSRs, a statement of what data elements are in the CSRs and a statement of how the CSRs will be made available to other carriers.
- (17) The details of a transfer of assets or control that requires Commission approval.
- (18) A request to modify or cancel tariffs.
- (19) A plan for processing customer deposits, credits and termination liabilities or penalties.
- (20) A plan for unlocking the E-9-1-1 records.
- (21) A plan for maintaining toll-free telephone access to an abandoning LSP's call center (including customer service and billing records) so that a customer is able to contact the LSP to inquire about or dispute final bills and refunds.
- ~~(22) When the default LSP provisions apply, a plan for providing the default LSP with the CSRs of customers who will be migrated to each default carrier. The CSRs shall be provided to the~~

~~default LSP in electronic format 28 days prior to the exit date so that the default LSP shall notify the migrating customers of the terms and conditions of service.~~

(c) *Transfer of customers' 9-1-1/E-9-1-1 records.*

(1) *Transfers to a NLSP.* An abandoning LSP shall unlock all of its telephone numbers in the 9-1-1/E-9-1-1 records to provide a NLSP with access to the abandoning LSP's customers' 9-1-1/E-9-1-1 records. The abandoning LSP shall unlock the 9-1-1/E-9-1-1 records in compliance with the National Emergency Numbering Association's (NENA) standards.

(2) *Transfers after abandonment.* An abandoning LSP shall submit a letter to the appropriate 9-1-1/E-9-1-1 service provider authorizing the 9-1-1/E-9-1-1 service provider to unlock remaining 9-1-1/E-9-1-1 records after the LSP has abandoned the market. The abandoning LSP shall provide this letter at least 30 days prior to abandoning the market.

(d) *Notification to the industry and NANPA.*

(1) *Industry abandonment notice.* An abandoning LSP shall provide written notice to:

(i) Telecommunications corporations providing the abandoning LSP with essential facilities or services or UNEs that affect the abandoning LSP's customers.

(ii) Telecommunications corporations providing the abandoning LSP with resold telecommunications services, if resold service is part of the telecommunications services provided to the abandoning LSP's affected customers.

(2) *NANPA.* An abandoning LSP which has NXX or thousand block number resources from the NANPA shall provide written notice to the NANPA identifying and authorizing the release of all of its used and unused number resources to an acquiring carrier, other LSPs or the NANPA, as applicable. ÷ Where number resources are to be released to an acquiring carrier, the notice to the NANPA shall be provided not less than 66 days prior to the abandonng LSP's exit date.

~~(i) The NANPA, when applicable, authorizing the release of all assigned telephone numbers to other telecommunications~~

~~companies and releasing all unassigned telephone numbers to the number administrator.~~

~~(ii) The NANPA, authorizing the release of all assigned telephone numbers to the succeeding carriers not less than 66 days prior to the abandonment.~~

(3) The notice shall include identification of all working telephone numbers assigned to the customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers shall be available for reassignment.

(4) The abandoning LSP shall authorize the release of each individually assigned customer telephone number to the subsequent provider selected by the customer. The abandoning LSP may not abandon NXX codes or thousand block numbers if a number within the relevant range of numbers has not been completely ported.

*(e) Abandoning LSP notification to customers.*

(1) The abandoning LSP (and acquiring carrier if applicable) shall notify customers by letter not less than 60 days in advance of the exit date.

(2) The abandoning LSP shall provide customers with a list of the services (local basic, regional toll, long distance toll) that the abandoning LSP is currently providing to the customer. The abandoning LSP shall direct customers to choose a service provider to replace the service that it has been providing.

(3) If applicable, the abandoning LSP shall notify customers that if they do not act to obtain service from another LSP, they will lose their service on the abandoning LSP's exit date. ~~abandoning LSP shall automatically transfer them to a default carrier for local service provision.~~

(4) The notice of pending abandonment of service to residential and business customers shall contain the following:

(i) A printed teaser on the envelope and the notice containing the words "Important Notice, Loss of Local Telephone Service" printed in bold letters with a font size of at least 14 points, conspicuously displayed on the front of the envelope to attract the attention of the reader.



(ii) A statement on the notice: "At this time, (LSP name) provides you with local telephone service."

(iii) A statement on the notice: "As of (the exit date) (LSP name) will no longer provide your local telephone service and you must take action."

(iv) A statement on the notice: "To prevent the loss of your local telephone service, you must select another local telephone service provider on or before (list a specific date 30 calendar days prior to the exit date). If you act by this date there will be enough time for the new local service provider you choose to start your new service before your current service ends."

(v) A statement on the notice: "Please remember that customers may choose the provider of their local telecommunications service. You may select any company that is offering service in your area."

(vi) A statement on the notice: "This is an important notice (the word "important" in bold) about the loss of your local telephone service. If you have any questions or need more information, contact (LSP contact information including a toll-free telephone number)."

(vii) A list of alternative LSPs, including contact numbers and addresses, that serve the customer's area.

(viii) Information to customers outlining the procedure for obtaining refunds of credits and deposits, obtaining final bills and addressing questions or complaints.

### § 63.307. Abandonment process management.

(a) The abandoning LSP shall appoint a program manager to coordinate the abandonment process. The program manager shall be selected from the abandoning LSP or, if applicable, the acquiring LSP.

(b) The program manager shall be accountable to each of the parties involved in the abandonment. The individual parties involved in the migration may be:

(1) The abandoning LSP.

(2) The acquiring LSP.

~~(3) The default LSP.~~

(43) The Commission.

(c) The parties involved in the abandonment shall appoint a project manager who will work with the program manager to ensure that the abandonment process flows in a seamless manner.

#### § 63.308. Commission consideration and action.

(a) The Commission will post information of an impending abandonment on its website under "Local Service Telephone Provider Abandonment Notification."

(b) If necessary, Commission staff may establish an industry conference call to address potential problem areas and procedures with the abandoning LSP, as well as with the acquiring, ~~default~~ or other LSPs as applicable.

#### § 63.309. Acquiring LSP provisions and obligations.

(a) An acquiring LSP shall notify customers by letter of the pending change of service providers 60 days in advance of the exit date.

(b) An acquiring LSP shall notify customers in writing of its rates and terms and conditions of service 60 days in advance of the exit date.

(c) An abandoning LSP and acquiring LSP may change the customer's local service provider without being considered to have engaged in slamming if the acquiring LSP does not change a customer's preferred interexchange carrier designation without the customer's authorization.

(d) An abandoning LSP shall reimburse the new provider (customer selected, or acquiring carrier ~~or default carrier~~) for the carrier change charges. The provision in this subsection does not relieve telecommunications providers of any requirements imposed by the Federal Communications Commission (FCC), including FCC anti-slamming rules and 47 CFR 63.71 (relating to procedures for discontinuance, reduction or impairment of services by domestic carriers).

(e) If an acquiring LSP determines that it will be unable to provide service to a customer by the abandoning LSP's exit date, the acquiring LSP shall notify the Commission, the customer and the abandoning LSP within 24 hours of the determination. If the customer is unable to select another available LSP, the abandoning LSP shall continue to provide service until the date on which a LSP is able to provide service or a date ordered by the Commission, whichever is earlier.

~~§ 63.310. NSP obligations to serve as the default LSP.~~

~~(a) *Default LSP.* When the following conditions are met, a NSP becomes the default LSP and shall continue to provide local service to customers who will not be served by an acquiring LSP and who have not selected another LSP:~~

~~(1) An abandoning LSP serves its customers through resale using the facilities of a NSP.~~

~~(2) There is no acquiring LSP or an acquiring LSP is not acquiring all customers from the abandoning LSP.~~

~~(3) One or more customers have not chosen a new LSP within the selection period.~~

~~(b) *Notification to customers:*~~

~~(1) A default LSP shall send a letter to customers who will be switched from an abandoning LSP to the default LSP 20 days prior to the exit date.~~

~~(2) The 20 day letter shall advise the customers that their service is being switched on a specific date and notify customers of the rates and terms and conditions of service.~~

~~(c) *Notification and service to customers with outstanding balances:*~~

~~(1) When a customer being switched to a default LSP has an outstanding balance for local service with the default LSP from a service period within the last four years, the default LSP shall provide provisional local service for at least 30 days from the exit date.~~

~~—(2) A default LSP shall notify a customer that the customer has an outstanding balance, the amount of the balance and the time period over which the balance accrued.~~

~~—(3) A default LSP shall inform a customer that the default carrier is obligated to provide local service only until (list a specific date that is 30 calendar days from the exit date) unless the customer pays the outstanding local service balance or makes a payment arrangement.~~

~~—(4) Information shall be contained in the 20-day letter regarding how a customer may contact a default provider to make payment or enter into a payment arrangement.~~

~~—(5) A customer who, upon notification of the customer's outstanding balance for local service, fails to make payment or enter into a payment arrangement for the outstanding balance may be subject to suspension and termination action by a default LSP after expiration of the 30-day provisional local service period.~~

#### § 63.3140. Abandoning LSP follow-up obligations.

(a) An abandoning LSP shall track the progress of migrations and provide Commission staff with progress reports on the number of customers that have and have not migrated to a new LSP. The frequency of the updates will vary with the magnitude of the mass migration and will be determined by the Commission on a case by case basis.

(b) An abandoning LSP shall send a second abandonment notice to a customer who is not subject to acquisition by another LSP ~~or default service with a NSP~~ and has not taken action to select a new LSP. The ~~service~~second notice shall be sent 30 days before the exit date. The form of the second notice is left to the discretion of the abandoning LSP and may be the following:

- (1) First class mail.
- (2) A telephone call.
- (3) A bill insert.
- (4) Any other means of direct contact with the customer.

Original: 2993



**COPY**

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May 18, 2004

**RECEIVED**

MAY 18 2004

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BY OVERNIGHT MAIL**

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

Re: **Establishing Local Service Provider Abandonment Process  
For Jurisdictional Telecommunications Companies  
Docket No. L-00030165**

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned matter the original and fifteen (15) copies of the Initial Comments of AT&T Communications of Pennsylvania, LLC. Also enclosed is a diskette containing an electronic version of those Comments.

Please do not hesitate to contact me with any questions regarding this submission.

Very truly yours,

Robert C. Barber

**Enclosures**

cc: (w/ enclosure and diskette)  
Mr. Wayne Williams, BCS

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RECEIVED  
MAY 18 2004

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Establishing Local Service Provider :  
Abandonment Process : Docket No. L-00030165  
for Jurisdictional :  
Telecommunications Companies :

INITIAL COMMENTS OF  
AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC.

Like its counterpart rulemaking in Docket No. L-00030165, this proposed rulemaking appears to be a premature effort to address a "problem" that has yet to occur in Pennsylvania in any significant way. In this case, the perceived problem is the customer dislocation that would attend the abandonment of service by a competitive local exchange provider. The record underlying these proposed rules shows that such a concern is, at present, essentially a hypothetical one. There certainly is no evidence showing that abandonment has, or is about to become, a major concern. Indeed, as the Order itself recognizes, there already are provisions in existing law requiring a service provider that wishes to abandon its certificate to apply for Commission approval, and nothing in the record indicates that this process is not working.

AT&T certainly understands the Commission's concerns in this matter, and shares the Commission's desire for an orderly process for mass customer migration in the event of abandonment of service. In view of the lack of apparent immediate need for such a process, however, the Commission should proceed cautiously in this area in enacting formal, final rules, so as to ensure that any regulations that are established in fact achieve the Commission's goals and do not inhibit the development of competition in the local exchange market.

Unfortunately, in many respects the proposed rules do not satisfy that standard. To the contrary, rather than advancing the Commission's goals for rules that address the

abandonment process, the rules veer off track into areas that have no discernable connection to that issue, and that, if adopted, would adversely affect competition in the market.

A prime example of this problem is the proposed Section 63.303, dealing with the NSP "embargo process." Rather than aiding the development of an orderly transitional process, this rule directly interferes with the terms and conditions of the interconnection agreements between competitive providers and the incumbents. Moreover, the rules invest the incumbents with essentially unfettered authority to declare a "dispute" with a CLEC – who, not coincidentally, is also the incumbent's competitor – and then unilaterally commence the process to put that competitive provider out of business. Indeed, this rule paradoxically gives the incumbent the ability to jump start the very same nightmare scenario that the Commission presumably is trying to avoid – the involuntary mass migration of a CLEC's customer base. This rule thus must be stricken in its entirety.

Additional issues concerning the proposed rules are addressed below.<sup>1</sup> As will be seen, addressing the issues identified with these draft rules will require a thorough and complete overhaul of the proposed provisions. Accordingly, after that revision process has been completed the Commission should publish the revised rules for a new round of review and comment.

**Section 63.303      *NSP embargo process***

As noted above, this proposed rule is fundamentally and irreparably flawed, and should be deleted.

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<sup>1</sup> In reviewing the proposed rules, it is apparent that many of the proposed definitions and other terms used in the rules suffer from the same vagueness issues as the proposed rules in Docket No. L-00030165. Rather than re-address those issues here, AT&T incorporates by reference its comments filed on this date in that rulemaking.

The basic problem with this rule (apart from its lack of relevance to the issue of CLEC abandonment) is that it purports to override the terms and conditions of existing interconnection agreements between CLECs and their wholesale providers, the incumbent LECs. The issues that the rule ostensibly addresses – “disputes” between the CLEC and ILEC, are not matters that should be addressed in a rulemaking, but should instead be handled on a carrier-to-carrier basis, and with the remedies available to the incumbent NSP via the interconnection agreement and (in Verizon Pennsylvania’s case) also its wholesale tariff.

The Rulemaking Order itself stated that “The terms and conditions of arrangements between the underlying carrier and a LSP for wholesale services should be spelled out in an interconnection agreement between the two parties.” “The Order proceeded to note the Commission’s expectation that “the parties will incorporate whatever specificity about disputes is desired by the parties into the interconnection agreement. The Commission does not wish to become routinely involved in contract matter disputes between the two entities.”

If that was the Commission’s desire, however, this rule utterly fails to satisfy it. Indeed, the proposed rule does something far worse than involve the Commission “routinely” in disputes between the CLEC and the ILEC – it actually puts the ILEC in control of those disputes, giving those carriers the authority to adjudicate whether a dispute has been resolved, and if not, to commence a Commission-sanctioned process unilaterally for cutting off wholesale service to the CLEC. Granting the ILECs such unfettered power virtually guarantees Commission involvement, and in anything but a “routine” situation.

The specific subsections of the rule demonstrate its inherent problems. Subsection (a), for example, purports to specify the bases for which an NSP would be authorized to



embargo service. Those reasons are anything but specific, however. The first involves the failure of a wholesale customer to pay an "undisputed" delinquent amount. But nothing in the rule specifies what is a properly "disputed" amount. That determination is apparently left entirely to the discretion of the ILEC/NSP. The provision also does not include any materiality threshold. This could lead to the disconnection of thousands of customers because of a dispute over a de minimis amount. The provision also fails to establish a reasonable and sufficient connection between the service being disconnected and the unpaid bill. For example, a CLEC that failed to pay a bill for one collocation could face disconnection for all of its customers statewide, including those served through other wholesale arrangements, such as UNE-P or resale. That plainly is an unreasonable result.

The second rationale for an embargo set forth in the proposed rule is, if anything, even more outrageous. Under that rule, an ILEC would be permitted to embargo service to a CLEC who, in the ILEC's view, had failed to abide by the terms and conditions of a Commission-approved interconnection agreement related to the provision of local service. There is no reason that disconnection or embargo is a reasonable enforcement mechanism for failure to abide by the terms and conditions of an interconnection. Just as important, this provision is a one-way and dead end street for the CLEC that is party to the ICA. On the one hand, the provision makes the ILEC the judge, jury and executioner for purposes of enforcing its contract with the CLEC for any perceived violation. The CLEC, on the other hand, has no corresponding avenue for redressing the ILEC's violations of the ICA. In short, the rule would establish an blatantly anticompetitive arrangement in which the ILEC has the ability to promptly and unilaterally penalize the CLEC, but in which the CLEC has no corresponding avenue to compel the ILEC to

perform its contractual obligations or to penalize the ILEC for a failure to abide by that contract. This strays far afield from the stated purposes of this proposed rulemaking.

Another reason listed for authorizing an embargo is the “[f]ailure of the wholesale customer to comply with a Commission order related to the provision of local service.” The rule would thus deputize the ILEC to enforce the Commission’s orders. But that is why the Commission has a prosecutorial staff, and why there are rules, guided by the principles of due process, for the adjudication of complaints alleging a violation of a Commission order. Granting those powers to the incumbent is a patent violation of those principles.

Subsection (b) of the proposed rule purports to limit the grounds under which an NSP can institute an embargo, those “limitations” are themselves poorly crafted, and leave the door open for anticompetitive conduct by the ILEC. For example, the first limitation listed ostensibly bars imposition of an embargo for the “[f]ailure of a wholesale customer to pay a charge unrelated to the provision of local service, for example, a charge for a LSP’s own directory advertising in a NSP’s yellow pages directory.” The provision, however, does not define what constitutes an “unrelated” charge, again leaving that determination to the ILEC. This presents the possibility that the NSP could begin disconnection for charges that are arguably “related” to, but perhaps not essential to, the provision of local service.

Yet another provision ostensibly prohibits an embargo for a failure to pay a charge “when there is an open complaint or dispute with a NSP.” But this again raises the threshold question of who determines whether a complaint or dispute is “open.” Insofar as the rule answers that question by vesting the authority in the ILEC, it must be rejected.

Finally, subsection (c), which sets forth the embargo notification procedures, presents its own set of problems. Chief among these is the fact that the provision

requires the NSP to give the wholesale customer as little as 10 days notice of the initiation of the embargo, to commence from the date the notice is mailed "or otherwise delivered." The rule is not clear whether this is "business" or "calendar" days. Whatever the unit of measure, however, 10 days from the date notice is provided is plainly inadequate, giving the affected CLEC little or no time to provide notice to its customers or to seek emergency relief from the Commission. That also holds true for the means by which the notice is to be provided. Indeed, the rule suggests that the notification may simply be mailed (thus potentially consuming a substantial portion of the notice period), and without requiring proof of receipt of such a critical document.

The information required under the rule to be provided in that notice also evinces a fundamental lack of understanding of the wholesale billing process. For example, the provision simply requires that the notice indicate "[t]he amount owed which forms the grounds for the embargo." This rule, which may be adequate in the case of a retail billing situation involving a single line residential account, is plainly inadequate in a wholesale scenario involving potentially years of invoices with charges amounting to millions of dollars. At a minimum, the provision fails to provide the specificity that the wholesale customer will need to determine which of many possible accounts and invoices are allegedly overdue.

Finally, the rule provides that the notice from the NSP must indicate that if a bill is not paid prior to the date set for the embargo, "the embargo shall commence on that date and a termination notice shall be issued." Obviously, this raises concerns regarding the amount of time that the CLEC actually has to make those payment arrangements, especially if the NSP sets the embargo date at the minimum 10-day period, and then simply mails the notice. Beyond that, the provision raises an issue that is unresolved in the rules: that is, is an embargo a mandatory prerequisite to disconnection, or is an

embargo simply an option, to be exercised at the ILEC's discretion and that can be bypassed in favor of an immediate disconnection notice?

**Section 63.304      *NSP termination process for wholesale customers***

The same problems of improper delegation to the ILEC and vagueness that afflicted the embargo rule undermine this provision as well.

At the outset, Subsection (a) indicates that the termination process is stopped when the "wholesale customer initiates a properly filed dispute. . . ." Yet again, this begs the question as to who determines whether a dispute has been "properly filed. And yet again, the answer under this rule appears to be "the ILEC." Even if that delegation was proper –which it is not – the rule fails to specify how will it be communicated that the NSP has accepted that the dispute has been "properly filed." This would be the wrong time to have the CLEC think that the termination process had been halted, only to find itself in the midst of a disconnection crisis because the incumbent LEC unilaterally determined that there was no properly filed dispute with respect to those charges, or that the dispute was not open.

Subsection (b), which concerns termination notice, raises additional concerns: For example, the rule indicates that the notice must indicate the date that "services shall be terminated." This appears to suggest that the ILEC, rather than disconnecting all wholesale provisioning, can target a specific wholesale service for disconnection. If that is the case, this leaves the door open for selective action by the ILEC to defeat competition in discrete areas.

**Section 63.305      *Initiation of abandonment***

The problems inherent in section 303 and 304 come to a head in Section 305, in that one basis for requiring an LSP to initiate abandonment of service under this rule is termination by the NSP. That cannot be sustained as a basis for involving this rule,

however, so long as those prior rules are so fundamentally and irretrievably broken.

Accordingly, subsection (a) of this provision must be eliminated.

That is not the only problem with this rule, however. In particular, subsection (c) suggests that the abandonment provisions of the proposed rules would be implicated in those cases in which the local service provider voluntarily abandons "some" of its local service customers. This provision is problematic in that it would involve the abandonment rules in cases in which the local service provider is not abandoning the market, but rather is simply managing its products by terminating certain offerings that may be replaced with improved and newer products. Thus, the rule as written could convert routine product management into a very regulatory process, when the intent was to prevent termination without notice to all of the CLEC's customers. The rule should be revised to delete the words "some or."

**Section 63.306      *Abandoning LSP obligations for abandonment***

This section should be deleted as excessive and unnecessary. The rule should instead be revised to reflect the FCC's streamlined process, which requires: (1) the names of the parties to the transaction, (2) the types of telecommunications services to be provided to the affected subscribers, (3) the date of the transfer of the subscriber base to the acquiring carrier, and (4) a copy of customer notice. The following information must be included in the advance subscriber notice: (i) The date on which the acquiring carrier will become the subscriber's new provider of telecommunications service, (ii) The rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions, (iii) The acquiring carrier will be responsible for any carrier change charges associated with the transfer, (iv) The subscriber's right to select a different preferred carrier for the

telecommunications service(s) at issue, if an alternative carrier is available, (v) All subscribers receiving the notice, even those who have arranged preferred carrier freezes through their local service providers on the service(s) involved in the transfer, will be transferred to the acquiring carrier, unless they have selected a different carrier before the transfer date; existing preferred carrier freezes on the service(s) involved in the transfer will be lifted; and the and the subscribers must contact their local service providers to arrange a new freeze, (vi) Whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier, and (vii) The toll-free customer service telephone.

These provisions plainly meet the needs at the federal level. There is no reason to believe they would not provide sufficient protection in Pennsylvania as well. In contrast, the onerous requirements in the proposed rule would only serve to increase the costs of carrier that presumably is either bankrupt or in dire financial straits.

**Section 63.309 Acquiring LSP provisions and obligations**

Subsection (d) of this proposed rule would require the “abandoning LSP” to reimburse the new provider for any carrier change charges associated with the transfer. This is plainly contrary to FCC requirements, which place that responsibility on the acquiring carrier. The rule is also nonsensical, in that imposes a new monetary obligation on a carrier that is abandoning the market in the first place because it does not have the financial wherewithal to continue operating. This provision thus should be revised to reflect the FCC requirements.

Similarly, Subsection (e) purports to require the abandoning carrier to continue providing service, for an unspecified period of time, to those customers who are “unable” to select another local service provider when the original “acquiring” LSP essentially backs out of providing that service. However, it is not realistic to expect that an already

failing LSP will be in a position to maintain active service indefinitely for a few customers, or even a single customer. This would be prohibitively expensive. It is also unnecessary, in that the customer should be able to select another carrier at that point rather than waiting for the Commission to take action or another LSP to agree to take all of the customers.

**Section 63.310. NSP obligations to serve as the default**

This section (along with the references to "default carrier" in other rules) should be stricken in its entirety. There should be no presumption, such as the one this rule establishes, under which customers are "transferred back" to the ILEC before going to someone else. There also should be no unique right accorded to the ILEC to use CPNI to market to those customers. All carriers that are active in the market should receive an equal shot at winning the abandoning CLEC's customers. The ILEC, which already enjoys all of the benefits of that incumbency, should not obtain an additional marketing benefit through these rules.

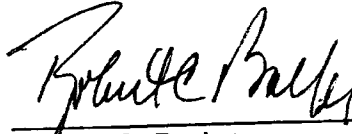
**Section 63.311. Abandoning LSP follow-up obligations**

This rule, and in particular Subsection (b), would impose still more notification requirements on the abandoning CLEC. Those requirements should be deleted as unnecessary and costly. Repeated customer notifications should be optional, not required. The circumstances under which a CLEC exits a market can vary widely, and multiple customer notifications could in some cases impose a significant burden on the exiting CLEC.

Respectfully submitted,

**AT&T COMMUNICATIONS  
OF PENNSYLVANIA, LLC.**

By its Attorneys,

A handwritten signature in black ink, appearing to read "Robert C. Barber", written over a horizontal line.

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