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May 18, 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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2004 MAY 18 PM 4:22

Re: Proposed Rulemaking—Changing Local Service Providers;
Docket No. L-00030163; **COMMENTS OF THE PENNSYLVANIA
TELEPHONE ASSOCIATION**

Dear Secretary McNulty:

Enclosed please find an original and fifteen (15) copies of the Comments of The Pennsylvania Telephone Association regarding the above-captioned matter. A copy of the Comments is also provided on the enclosed disk as directed by the Proposed Rulemaking.

If you have questions, please do not hesitate to contact the undersigned.

Very truly yours,

Norman James Kennard

NJK/tap

cc: Louise Fink, Law Bureau (Comments and disk)
David Freet, President

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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking--Changing Local Service
Providers

Docket No. L-00030163

SECRETARY'S BUREAU

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**COMMENTS OF THE
PENNSYLVANIA TELEPHONE ASSOCIATION**

I. INTRODUCTION

The Pennsylvania Public Utility Commission ("Commission"), on October 2, 2003, adopted a Proposed Rulemaking Order which sets forth proposed regulations establishing an orderly process for customer migration between local service providers within the telecommunications industry. The Pennsylvania Telephone Association ("PTA")¹ files these comments before the Commission in response to the publication of the Proposed Rulemaking in the Pennsylvania Bulletin on Saturday, April 3, 2004 (34 Pa.B. 1784).

¹ The Pennsylvania Telephone Association is the state's oldest trade organization for the local exchange carrier industry. PTA represents more than 30 telecommunications companies that provide a full array of services over wire line networks. PTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities. As referenced herein, PTA represents its member companies that have not filed comments individually on this topic.

II. COMMENTS²

A. Porting Where Service Is Suspended

*§63.206. Porting telephone numbers.
An OLSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for service that has been terminated or discontinued under Chapter 64 (relating to standards and billing practices for residential telephone service) for residential customers or consistent with the LSP's lawful tariff for other customer classes.*

Comment: A customer should not be permitted to port his/her telephone number to another LSP where the account is suspended for nonpayment by the current LSP or if there is an outstanding balance owed to the current LSP. A customer may be permitted to obtain service from another LSP if he/she has an unpaid bill with another LSP, but to allow the customer to port the same number after suspension occurs appears to encourage customers to easily jump from LSP to LSP each time they find themselves suspended for not paying a bill.

While the majority of telephone subscribers are good paying customers, there is a percentage of customers who will use this loop-hole to avoid both payment and a continued suspension. Once the number is ported, the opportunity for the old LSP to collect is severely restricted. As a result, there will be an adverse economic impact to both customers and consumers associated with increased write-offs and bad debt.

There is no reason that would rationally justify permitting a customer with past due payments with the telephone company and who has been suspended for nonpayment (after receiving the requisite notices, etc.) to port the telephone number under which the customer failed to pay the charges. Typically, there is no dispute over the amount due and owed or the customer's liability for that amount. In 99% of the cases, the customer is simply declining to pay. The

² For the convenience of the reader, before each Comment the PTA has repeated (or paraphrased) the Interim Guideline (or portion thereof) to which Comments are being made.

customer should not be permitted to escape the suspension by taking the telephone number which is the subject of the suspension to another carrier. The PTA believes that regulations should be consistent -- if a customer's service is suspended or terminated,³ porting the current number to another LSP should not be permitted. The customer should be required to pay off any unpaid balances owed to the old LSP in order to keep his/her same telephone number when migrating service to a new LSP.

The PTA has reviewed FCC regulations regarding wireline to wireline porting and finds no federal policy relating to withholding porting pending resolution of a suspension on an arrearage underlying the suspension.⁴ In the event the Commission feels that the FCC has occupied this field such that it has been preempted, it should not undertake any regulation of this matter. For the reasons set forth above, the Commission should not endorse the FCC's point of view. On the other hand, in as much as there is no FCC regulation found on this point, it is appropriate, the PTA believes, for the Commission to undertake the regulation suggested here by the PTA.

B. CSR Timeframes

§63.204. Standards for the exchange of customer service information.

(f) Timetable for providing CSRs, minimum requirements:

(1) By _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.), OLSPs shall provide 80% of requested CSRs within 48 hours.

(2) After _____ (Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposal.), OLSPs shall provide 80% of requested CSRs within 24 hours.

(3) After _____ (Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal.), OLSPs shall provide 80% of requested CSRs the same day if the request is made

³ Unless a suspended customer pays his bill or makes arrangements to pay, he/she usually will be a terminated customer within approximately 15 days of suspension.

⁴ Except as referenced in the Memorandum Opinion and Order providing clarification of Wireless-to-Wireless Porting Issues. *In the Matter of Telephone Number Portability Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order Released October 7, 2003 at 4-6.

by noon of that day, or by noon the next day if requested after noon.

Comment: The PTA supports the Commission's proposed provisions regarding the sharing of customer service records ("CSRs") between the OLSP and the NLSP. The information required is appropriate and the procedures reasonable.

However, the PTA member companies will be unable to comply with the CSR provisioning timetable proposed at § 63.204(f)(3). A maximum standard of 24 hours is the most that should be required and the PTA member companies will commit to meet that standard at the 80% threshold. However, requiring same day or less than 24 hour provision as contemplated at subsection (f)(3) is unreasonable. The PTA member companies, simply stated, do not have the resources to be able to turn around a request that quickly and new personnel hires will be required in order that they be able to do so.

On the other hand, the proposed 24 hour standard is reasonable. No customer could reasonably expect that the information be exchanged sooner than that. There is no basis put forward by the Commission in the order describing why a truncated, quicker provisioning interval is required.

Therefore, the PTA suggests that (f)(3) be deleted and that (f)(2) be revised so that the 24 hour standard becomes effective within twelve (12) months.

C. Interfering Stations

§63.211. Duties of OLSPs and NSPs when an interfering station condition is identified.

(b)(2) If the LSR information is incorrect, the OLSP or NSP shall correct the information and continue with the installation.

§63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application and submit a new LSR.

(d) The prospective NLSP shall provide the new service installation date.

(e) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new service is not able to be installed using the same facilities due to preexisting service at the address and request the applicant to provide proof of ownership or right of occupancy.

(f) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options. The applicant may:

(1) Authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) Attempt to resolve the interfering station condition with the customer of record.

(3) Arrange for the installation of new facilities.

§63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.

Comment: For the most part, the PTA supports the interfering station procedures established by the Commission. The PTA offers the following improvements to the interfering station process.

Proposed Section 63.211 requires first that the local service request ("LSR") issued by the NLSP be reviewed for possible errors before the conclusion is made that an interfering station condition exists. This is a reasonable way to proceed. However, subsection (b)(2) would require, in the event that the LSR is in error, that the OLSP or NSP, neither of whom issued the LSR in the first place, to correct the LSR. The PTA believes that after the collaborative discussions between the NLSP

and OLSP/NSP, it should be the responsibility of the issuing NLSP to correct the information where an error is found in the LSR.

In Section 63.212, as drafted, subparagraphs (c) and (d) should be combined into one subsection and (e) and (f) should be similarly condensed into a single provision, inasmuch as they are part of the same scenario (i.e., the first is the "if" provision and the second is the "then" provision).

Moreover, in Section 63.212(f), in addition to providing proof of ownership, the customer also should be required to prove of identity. Further, subsection (f)(2) should be clarified to reinforce the intention that there be no disclosure of confidential proprietary customer information.

Finally § 63.213 should also be modified, in the caption, to include the requirement that identity also be established in addition to proof of ownership.

Respectfully submitted,

Norman James Kennard
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Counsel for the
Pennsylvania Telephone Association

DATED: May 18, 2004

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FACSIMILE TRANSMITTAL SHEET

TO: Jim Smith
IRRC

FAX#: 717-783-2664

FROM: Norman James Kennard

DATE: May 20, 2004

PAGES: 7 (INCLUDING COVER SHEET)

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SUBJECT: Proposed Rulemaking-Changing Local Service Providers; Docket No. L-00030163; COMMENTS OF THE PENNSYLVANIA TELEPHONE ASSOCIATION

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May 18, 2004

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RECEIVED
2004 MAY 18 PM 3:39
SECRETARY'S BUREAU

Re: Rulemaking Re: Changing Local Service Providers;
Docket No. L-00030163

Dear Secretary McNulty:

Enclosed for filing, please find the original and 15 copies of Full Service Network's Comments to Proposed Rulemaking regarding the above-referenced matter. Also enclosed is a disk containing the comments.

Sincerely,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls
Enclosure

cc: Louise Fink Smith, Esq. (w/disk)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking Re: Changing Local :
Service Providers : Docket No. L-00030163

SECRETARY'S BUREAU

2004 MAY 18 PM 3:40

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**COMMENTS OF DAVID E. SCHWENCKE
ON BEHALF OF FULL SERVICE NETWORK TO
PROPOSED RULEMAKING ORDER**

INTRODUCTION AND SUMMARY

The Public Utility Commission's Proposed Rulemaking Order for establishing regulations governing the processes for customer migrations between local telephone service providers within the telecommunications industry is best summed up by an old truism: "The road to hell is paved with good intentions." Full Service Network ("FSN"), through its president, David E. Schwencke, applauds the goal of the Commission's proposed regulations which seek to establish consistent procedures and standards for customer migration that will enable consumers to switch local service providers ("LSP") without confusion, abuse, delay or service interruptions.

Unfortunately, FSN fears that in certain key respects the proposed regulations will produce the exact opposite result; (a) creating loopholes to current slamming protections, (b) focusing on after-the-fact enforcement rather than slamming prevention, (c) unlawfully delegating regulatory powers to a potentially lop-sided industry body and eliminating due process protections, and (d) expanding access to customer data in a manner that encourages abuse and could discourage the very competition the proposed regulations are designed to facilitate.

For instance, the regulations are ambiguous about whether a new LSP ("NLSP") may qualify as an "appropriate agent" for lifting a customer approved LSP freeze ("LSPF"). While

the proposed regulations appear properly to prohibit NLSPs from serving in such a role, the Commission states in its Proposed Rulemaking Order that status as a prospective NLSP should not preclude the same.¹ The Commission continues, asserting that whether or not an NLSP actually had proper authority from the customer to migrate the service "should not trouble" the old LSP ("OLSP") and that the best way to deter slamming is through enforcement against the NLSP.²

First, customers with a LSPF have clearly expressed what is important to them: ensuring that they are not slammed, maintaining control over the migration of their service, and making certain that they get to have the final say on switching LSPs. If interpreted in accord with the Commission's dicta in the Proposed Order, the regulations would discard the plainly enunciated desires of these consumers in the name of facilitating migrations without confusion. In reality, the regulations would create a loophole to LSPFs that would only facilitate slamming and leave many consumers confused about how their service was switched despite their lack of authorization and the protection they thought they had in the freeze.

Perhaps even more significant, the proposed regulations would be in direct contravention of the Federal Communications Commission's ("FCC") regulations on the lifting of LSPFs.³ The FCC's regulations require the subscriber to give his current carrier his "express consent" in order to remove the freeze and allow a migration.⁴ An interpretation of the FCC's regulations or the proposed regulations that would allow a prospective NLSP to act for the subscriber is completely

¹ Cf., Section 63.205(a)(3); Order at 13.

² Order at 13.

³ 47 C.F.R. § 1190(a) and (e).

⁴ 47 C.F.R. § 1190(a).

unreasonable, and would literally turn the FCC's carrier freeze provisions on their head. Such an interpretation would strip consumers of their self-initiated, electronic protections, open the migration process to wonton abuse, and lead to a tsunami of slamming complaints for regulators. Additionally, Pennsylvania LSPs would be forced to choose between complying with the proposed regulations and what is the unmistakable dictates of federal law.

Second, it is naïve at best to suggest that the OLSP should not be troubled by whether or not the NLSP in fact was appropriately authorized to act as an agent of the customer in lifting the LSPF and that enforcement will be sufficient to prevent abuses. The OLSP is the entity that will be losing a customer (as well as dealing with that irate customer when he calls to complain about having been switched despite the freeze). Likewise, if the industry and regulators' experience with slamming to date has taught us anything, it is that slamming providers can be very creative at finding ways to deceptively elicit a consumer's "authorization" and that regulators do not have sufficient resources or staff to prosecute all of the bad actors. Simply put, far too many get away with slamming to accept the notion that after the fact enforcement is the best *prevention* of the problem. Accordingly, the proposed regulations should not sacrifice protection, particularly where it has been expressly approved by the customer, for the sake of purported convenience. NLSPs should be precluded from acting as a customer's agent in lifting LSPFs, and that act should remain in the hands of the customers themselves.

Similarly, well-intentioned provisions of the proposed regulations aimed at keeping up with the pace of the industry and easing access to customer records will lead to equally unfortunate results, and those provisions are addressed herein by Mr. Schwencke. Additionally, clarifications are required in certain provisions to ensure fairness to LSPs and that customers are not harmed in the migration process.

COMMENTS OF DAVID E. SCHWENCKE

As a home grown Pennsylvania company, serving Pennsylvania consumers, that has committed itself to local telephone competition and dared to tread into customer bases and geographic territories where others have not ventured, Full Service Network is appreciative of the Commission's efforts to clarify and streamline customer migrations between LSPs. FSN did not participate in many of the working group meetings at the Commission on this subject matter because we have limited staff and were already spread too thin between other working groups.

However, we are concerned about the proposed regulations. FSN is a smaller company that has built a significant business, with over 8,500 lines in service in Pennsylvania and a growing employee base. Our success is a product of our ability to employ ingenuity and innovation in developing telecommunications arrangements for customers. Additionally, we look to regulators to exercise their authority to enforce a level playing field for all market participants.

In my view, the proposed regulations, in their present form, unfortunately threaten to do more harm than good. The potential for abuse from the proposed increased access to customer records could endanger our customers' proprietary information and our work product. The envisioned "migration guidelines" place at risk that level playing field and appear to be an unlawful delegation by the Commission of *its* authority to set binding rules for competition, consumer protections and industry procedures. Finally, and perhaps most significantly, the potential tampering with the LSP freeze, an important consumer protection, places in jeopardy the real security enjoyed by FSN's customers today in exchange for the promise to make it all better after a slam has occurred. These results are far worse than any present delay, confusion or inconvenience that exists today in the migration of customers between LSPs.

Nonetheless, I continue to have faith in the potential for the proposed regulations to effect real improvement for consumers and LSPs. With the changes I have noted, I believe the regulations will facilitate customers' changing of LSPs, while minimizing customer inconvenience and safeguarding customer proprietary account information. Therefore, on behalf of FSN, I strongly urge the Commission to revise the proposed regulations in accordance with these Comments.

Section 63.205 Removal or Lifting of LSPFs

The proposed regulations got it right – “a prospective NLSP may not authorize the removal of an applicant’s LSPF.”⁵ The Executive Summary to the Proposed Rulemaking Order reflects this rule: “The prospective new LSP may not process a change in LSPs for a customer who has a local service freeze in effect. All LSPs are to provide various methods for customers to lift or remove [LSPFs].”⁶

This rule is appropriate given the purpose of LSPFs as a consumer-approved protection against slamming. The rule is also consistent, I am advised, with the FCC’s regulations on LSPFs, which require the subscriber to lift the freeze.⁷ To my understanding, this Commission

⁵ Section 63.205(a)(3) (emphasis added).

⁶ PA Bulletin, Doc. No. 04-558 at 2 (emphasis added).

⁷ 47 C.F.R. § 64.1190 (a) and (e). The suggestion that NLSPs should fall within the definition of “subscriber” in Section 64.1100(h) is, in FSN’s view, beyond the intent of that definitional language and directly inconsistent with the purpose behind Section 64.1190(e)’s requirement that the subscriber lift the freeze. Section 1190(e) is designed to guard against the overzealous NLSP. Interpreting Section 1100(h) so as to allow a NLSP to act for the subscriber is tantamount to letting the fox into the hen house. FSN cannot stress enough that if such an interpretation of the FCC’s regulations was contemplated by anyone in the telecommunications industry, LSPs would have been using it to attempt to lift potential customers’ LSPFs for years. The fact that such an agency relationship has not been asserted to date is sufficient evidence alone to rule out this flawed interpretation.

has already recognized that Pennsylvania LSPs must comply with the FCC's LSPF regulations and requirements so that customers have the "ability to freeze their local service account so that their local carrier cannot be changed without *their* express consent in accordance with [FCC] rules and procedures for imposing and lifting freezes."⁸

Importantly, for many of the reasons already set forth in these Comments, the proposed regulations should be clear on this point and should not be ambiguous about the ability of NLSPs to lift a customer's freeze. Accordingly, the terms "appropriate agent" in Section 63.205(a)(2) should be stricken. Those terms, taken together with the statement in the disposition section of the Proposed Rulemaking Order that NLSP status should not preclude such an entity from receiving freeze-lifting authority from the consumer,⁹ produce confusion about the role of the NLSP. Yet, there should be no confusion: allowing a NLSP to serve as a current LSP's customer's agent would directly contradict Section 63.205(a)(3)'s clear prohibition that a "NLSP may not authorize the removal of an applicant's LSPF." Moreover, as noted above, it would violate the clear provisions and intent of the FCC's regulations on this exact same issue.

Even without these proposed regulations, FSN has seen many recent examples where Verizon, acting as the NLSP and NSP, has simply removed LSPFs on its own under the apparent theory that it was the agent for the customer.¹⁰ Allowing NLSPs to act as a customer's agent will only lead to abuse. The Proposed Rulemaking Order mentions "appropriately documented

⁸ *Petition of Full Service Computing Corporation t/a Full Service Network for Resolution of Disputed Issues with Verizon Pennsylvania, Inc.*, Docket No. P-00011912, Initial Decision (August 29, 2001) at ¶ 2, adopted as modified by Opinion and Order (September 27, 2001) at ¶ 2.

⁹ Order at 13.

¹⁰ The point of this proceeding is not to address such situations. Nonetheless, should the Commission be interested in receiving documentation of these instances, FSN would be happy to provide the same.

circumstances” as a prerequisite for the delegation of authority to a NLSP,¹¹ but the proposed regulations offer absolutely no guidance as to what those circumstances must be. The history of slamming is replete with examples of creative ways to secure a customer’s “explicit delegation” or authorization when in fact the customer actually knew nothing about authorizing a switch of providers.

Ultimately, customers are not looking to the Commission to create a loophole to facilitate slamming. Claiming that the NLSP is the party at risk if the delegation is not documented and that the best deterrent to slamming is swift action against the provider is simply unrealistic.¹² While a NLSP may face risk – *if* it is caught – the OLSP, whose relationship the *customer* wanted to keep sacrosanct, will definitely face the loss of a customer. Forgive me, but I have simply seen too many actors get away with disregarding regulations and pay no penalty. In the defense of the regulators charged with enforcing those laws, they typically have too many cases, too few staff and too little resources. As a result, even if a case of deceptive freeze lifting and slamming were suspected, it would likely take a pattern or threshold number of alleged violations to reach the “swift recourse” suggested by the Commission.¹³ If NLSPs are precluded from removing freezes and acting as an agent of the customer in the process, then there will be much much less need for any enforcement action because the problem will have been prevented before it occurred.

And let us not forget, it was the customer who added the LSPF to their account and they did so for a particular reason! Allowing a NLSP to remove the customer's LSPF will facilitate

¹¹ Order at 13.

¹² *Id.*

¹³ *Id.*

slamming, take away the only *electronic* protection that a consumer once had to prevent erroneous changes,¹⁴ and erode consumers' already diminished confidence in the carrier change process.

Section 63.203 Migration Guidelines and Industry Work Group

This section must be stricken in its entirety. FSN is advised that the envisioned guidelines cannot serve as a binding norm, addressing industry-wide conduct and to be complied with by all LSPs, unless they are properly promulgated as regulations in accordance with due process and state law. Moreover, the provision appears to effectuate an unlawful delegation of the Commission's statutory authority. I am in complete agreement with this analysis.

A “working group” is not a rule making body, and should have no authority for issuing formal decisions or guidelines that are binding upon a service provider. Indeed, it appears from the proposed regulations that the Commission would only be involved if the working group cannot “agree on the details.”¹⁵ The Proposed Rulemaking Order references that the cooperative development of guidelines is already underway,¹⁶ but any such guidelines would otherwise be voluntary and would not pretend to have the force of law.

Furthermore, the proposed regulations themselves say nothing about the due process rights and roles of industry members, customers, businesses, interested organizations and associations, state agencies, etc. In Section 63.203, there is no mention of publications, notices,

¹⁴ FSN has had experience in the importance to consumers of having an electronic means to prevent an involuntary change of carriers. In regard to long distance service, prior to the establishment of the PIC freeze, FSN's customers frequently suffered repeated slams by the same carriers even as they were trying to correct the problem. Only the electronic protection put a stop to the customers abuse.

¹⁵ Section 63.203(c).

¹⁶ Order at 8.

or comment periods in which an LSP or other party is afforded the opportunity to participate as required by law. The proposed guidelines would be as inappropriate as allowing the local police to decide on the present day's traffic laws during their morning cup of coffee at the police station, and then telling the public "you're welcome to join us for coffee if you're concerned about what traffic laws we are going to have today."

Finally, while the Proposed Rulemaking Order references a "consensus process under the regulatory umbrella of the Commission,"¹⁷ the regulations say absolutely nothing about how that consensus process will actually operate. Does consensus mean decisions are made by affirmative vote of 50% + 1 of the participants? Does it mean unanimity? Two-thirds approval? Further, the Commission needs to understand that many small to mid-sized LSPs simply do not have the resources or the staff to maintain a constant presence on what seems to be an ever-growing number of working groups, collaboratives, etc. The market dictates that carriers like these, including FSN, actually focus on the business of running their companies, acquiring and serving customers, etc. As a result, these types of groups are typically dominated by and skewed toward larger carriers.

I understand the desire for flexibility and the ability to adapt to changing marketplace developments, but FSN believes that the proposed tool for fulfilling those desires is starkly unlawful, unfair and imprudent. The Commission should strike Section 63.203 in its entirety.

Section 63.204 Standards for the Exchange of Customer Service Information

FSN's overarching concerns with the proposed provisions of this section revolve around the need to limit abusive and inappropriate access to customer records and to protect, for both the customer and the LSP, proprietary and sensitive information contained in those records. The

¹⁷ Order at 8.

failure to allow both the LSP to verify CSR requests to ensure that they are *bona fide* and the customer to designate CSR data as proprietary will harm both parties as well as the very competition the proposed regulations are intended to facilitate.

Since local service became competitive in the Commonwealth, FSN has had numerous requests for our customers' CSRs that were later found to be fraudulent or unauthorized by the consumer. Verification of a customer's authorization must remain an option under appropriate circumstances. A regulation which ties the hands of a provider and requires immediate and unverified dissemination of CSR information in all cases (which may be sensitive and proprietary trade secrets of the customer) is a regulation that does not benefit competition. In fact, it discourages commercial end user customers from developing special telecommunications arrangements to further their business knowing that their competitor up the street need only fraudulently request, and receive, their sensitive CSR information through a competing LSP. Penalties for abuse are not enough, as we have seen by the over 1 million consumers that were slammed even though slamming laws existed.

Abuse of the CSR request process is already taking place and both FSN and its customers have been victims of this abuse. The proposed regulation is as bad as requiring your doctor to give out your medical records to anyone who walks into his office and asks for them, and then prohibiting the doctor from calling you to see if the release was authorized. While Section 63.204(c) limits its prohibitions to a current LSP contacting a customer to retain him or her after the prospective NLSP's request for the customer's CSR, it will effectively extend to attempts by the current LSP to verify the CSR authorization as well. A carrier must have the discretion, from time to time as the circumstances may warrant, to require a copy of the LOA from the requesting NLSP, and subsection 204(c) should be clarified to allow for the same.

In addition to periodic verifications, businesses and other consumers need to be able to stamp their CSR records as “Proprietary and Not for Disclosure.” Afterall, even in doing so, the customer may always request, and receive, a copy of their CSR. To the extent the customer has proprietary information on their CSR, he may still furnish the CSR information on his own to whomever he chooses and may do so at any time. However, without a “Proprietary” option, customers are naked in all cases. For example: a business that may have a secret production location would be exposed to competitors seeking this information by the competitor’s initiating a fraudulent request for the CSR through an unwitting or unscrupulous NLSP. Or, in the case of a governmental agency, such as the Office of Attorney General or Homeland Security Department, sensitive governmental information would be available to any NLSP requesting it absent a "Proprietary" indicator option.

Also, consumers may very well be discouraged from subscribing to such services as low income services or prison-call services once they know that their privacy cannot be protected in these situations as that information is contained on a CSR and MUST be furnished without verification to any NLSP that requests it. It's almost unconscionable, and the damage resulting from an unauthorized disclosure is irreparable.

For these reasons, a LSP must be afforded the opportunity, from time to time, to verify a CSR request, and both consumers and businesses must be afforded a "Proprietary" records protection indicator.

Additional concerns that I have with Section 63.204 include the following:

- Subsection 204(a)(4) is simply too vague. Oral authorization "documented with appropriate retained documentation" seems redundant and offers no guidance whatsoever as to what constitutes "appropriate documentation."
- Subsection 204(d)(11) is overly broad and must be changed. Service configuration information is not needed for migrations and, in many cases,

constitutes proprietary trade secret information of the OLSP. By forcing the disclosure of this information to competitors, the proposed regulations would harm the ability of any LSP to develop and implement proprietary and often more cost-effective solutions for use by end user customers. If the underlying concern of this subsection is reusing loops, then the regulation should be changed to read: "Unbundled loop information." Otherwise, in its present form, it should be stricken.

Section 63.201 General Migration Standards

Section 63.201(e), regarding the NLSPs ability to reuse facilities that are no longer needed by the OLSP, includes an improperly broad use of the word "facilities." The section fails to consider the scenario where the OLSP has installed OLSP-owned customer premises equipment, such as voice over IP integrated access devices ("IADs") or voice-cable modems. The use of the word "facilities" is too broad, and will be misinterpreted to include equipment such as this which is owned by the OLSP (and which it paid for) and is well within the right of the OLSP to remove when service is discontinued. To the extent the proposed regulations are aimed at the reuse of "loops" by NLSPs, then changing the word "facilities" to "loops" is needed to resolve this ambiguity.

In addition, Section 63.201(f), addressing 9-1-1 and directory databases, should be revised so as to substitute NSP for LSP. The use of the term LSP is inappropriate, and could subject a carrier that is a pure reseller to undue hardship by requiring it somehow to open up its service records. In practice, the NSP is the entity that houses the 9-1-1 and directory listings databases. Therefore, the term LSP should be changed to NSP.

Section 63.202 Migration Responsibilities of NLSPs and NSPs

Section 63.202(e) places responsibility on the NLSP for coordinating a customer's service restoration, if necessary, due to problems with the migration. Frankly, this requirement is an optimistic view of how solving migration problems might work if regulators get involved, and constitutes nothing more than randomly picking a party to the transaction and saying, "you fix

it.” The provision is written as if there is a magical “service restore” button that the winning carrier can press to solve an outage.

Moreover, the proposed regulation overlooks the fact that, in all cases, the NSP is the party that is in possession of the service and is in direct control of the service arrangement at any given moment. The OLSP or the NLSP may restore service, but only to the extent either is also the NSP. Thus, the responsibility for coordinating a service restoration should be transferred to the NSP, and Section 63.202(e) should be revised accordingly.

Section 63.207 Discontinuance of Billing

The present wording of Section 63.207(b) will likely cause many customers, who did not migrate properly, to go out of service completely. The proposed regulation, which requires an OLSP to issue a final bill within a certain time from notification by the NLSP of a *request* to migrate, does not consider that many orders fail or experience errors for many different reasons. Section 63.207(b) inappropriately marries the discontinuation of service and billing to a notification from a prospective NLSP of the request to migrate. For example, customers frequently cancel orders before the order is confirmed. However, under the section's present wording, the OLSP, once in receipt of a notification from a prospective NLSP of the request to migrate, would be obligated to discontinue service anyway. Additionally, orders from an NLSP will often contain errors or mis-information that needs to be corrected before service can migrate. In its present form, this section would require the discontinuation of service after the receipt of a notification of a request -- as opposed to a good LSR and subsequent confirmation (LSC).

Accordingly, the language in Section 63.207(b) should be changed to "Upon receipt of an LSC that the customer has migrated to a NLSP," Such a revision will require billing to end from the OLSP only after the service has actually migrated.

CONCLUSION

The proposed regulations are well intentioned, but intentions are often divorced from actual results. The changes outlined in the Comments of Mr. Schwencke stem from real world experience in the migration of customers, and are necessary to ensure that customers can continue to enjoy the most effective slamming *prevention* measure, LSPFs, that customers, industry members and the public in general will have certainty in the law and enjoy their due process rights, and that customers and LSPs will be able to protect sensitive CSR information. Ultimately, the changes outlined herein will give effect to the intentions behind the proposed regulations and truly facilitate LSP migrations without delay, confusion, abuse or inconvenience.

Respectfully submitted:



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Dated: May 18, 2004

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MAY 18 2004



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VIA UPS OVERNIGHT DELIVERY

Mr. James J. McNulty, Secretary
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COPY

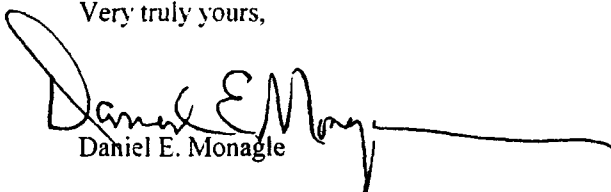
RE: Propose Rulemaking – Changing Local Service Providers,
Docket No. L-00030163

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

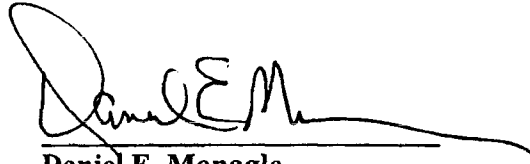
Enclosure

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

RECEIVED
MAY 18 2004
SECRETARY'S BUREAU



I certify that, on the 18th 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.



Daniel E. Monagle

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MAY 18 2004

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

Proposed Rulemaking -- :
Changing Local Service Providers : Docket No. L-00030163

**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 Changing Local Service Provider regulations to shape the content of the regulations. As with the Local Service Provider Abandonment 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 will have only limited comments on these regulations.

A. NLSPs Cannot Be Agents for Lifting LSPFs.

The proposed regulation for Local Service Provider Freeze (LSPF) lifting states at Section 63.205(c) that Local Service Providers (LSPs) "shall provide various methods to customers for lifting freezes, as required by the Commission or the Federal Communications Commission." Section 63.205(a)(2) provides that the applicant "or appropriate agent" shall contact the Old LSP (OLSP) to have the LSPF lifted. While the regulation itself does not specify who such an "appropriate agent" might be, the promulgating Order in its discussion of this section concludes that the New LSP

(NLSP) can be such an agent. Order at §63.205. But such an interpretation runs squarely afoul of FCC freeze lifting rulemaking orders and associated regulations that make clear that local freeze lifting at the OLSP generally must be done directly by the NLSP applicant himself, and that this is not a responsibility that the applicant can delegate by any type of oral or written authorization to the NLSP. The reason for this prohibition on NLSP agency in the LSPF-lifting arena is obvious: it is a “bad” (i.e., slamming) NLSP that the FCC’s strict LSPF-lifting requirement is designed to protect a customer with an LSPF against, and therefore blanketly permitting any NLSP to claim that it has an applicant LSPF-lifting authorization would largely vitiate the LSPF protection.¹ The Commission should not sanction a rule, or rule interpretation that cites the promulgating Order, that is at odds with federal law in the area of LSPF lifting.

Suggested regulation revisions that would avoid this conflict and clarify that NLSPs cannot be agents for lifting their applicants’ LSPFs are set forth in Attachment B hereto.

¹The promulgating Order (at fn. 17) correctly cites the “subscriber” definition in the FCC Rules at 47 CFR Sec. 64.1100(h) to include “any person contractually or otherwise lawfully authorized to represent” the party “responsible for payment of the telephone bill.” While this provision might authorize typical subscriber representatives (e.g., relatives with power of attorney) to lift a LSPF with the OLSP as part of shifting the subscriber to a NLSP, the FCC is very explicit in its LSPF-lifting orders and rules that the LSPF-lifting cannot be done by the NLSP even with some sort of third-party verification (such as the “.wav file” MCI suggested in an underlying collaborative). A detailed analysis of the pertinent FCC orders and rules that prevent NLSPs from engaging in LSPF-lifting with or without the customer’s authorization was presented by Verizon in the collaborative and is set forth in Attachment A hereto.

B. The Commission Should Place the Interfering Station Procedure in the Migration Guidelines.

During the collaborative, Verizon PA proposed a detailed interfering stations procedure that was based on a lengthy and still continuing trial between Verizon PA and MCI in Pennsylvania. That trial through March 2004 has been extraordinarily successful, resulting in only two erroneous disconnects since June 2001 out of 8,867 interfering station conditions (success rate of 99.98%). The MCI/Verizon PA procedure imposes specific obligations on NLSPs to contact landlords, do property deed searches and contact taxing authorities as necessary to help promptly clear interfering stations conditions. Faced with opposition from the majority of other parties to these measures, the Commission declined to adopt them in the proposed regulations on the ground that they are too burdensome and go beyond a utility's traditional role in the application process. Promulgating Order at §§63.301-63.304. The downside of proposing a less stringent procedure is that some applicants in interfering station situations will face delays of two weeks or more in getting their service installed or will have to incur the costs of installing a new line to avoid such a delay.

While Verizon PA does not again ask that the MCI/Verizon PA interfering station procedure be adopted as the rule binding all OLSPs and NLSPs, Verizon PA does request that the Commission consider not adopting any rule in this area and instead direct that the procedure now proposed in the regulations be instead incorporated in the Migration Guidelines referenced in Section 63.203. Placing this procedure in the Guidelines developed and updated by the industry will permit flexibility in adapting and fine tuning the procedure with experience. Moreover, the industry is beginning

to examine the problem of interfering stations on a regional basis in the CLEC User Forum (CUF). To the extent a uniform industry solution spanning numerous jurisdictions is arrived at, it will be much easier to modify the Guidelines to reflect this solution than to amend the Commission's regulations locking in one specific procedure.²

A proposed regulation language change to accomplish this result is set forth in Attachment B hereto.

C. The Timetables for Providing CSRs
and LSR Responses Should Be Revised.

The dramatic increase in local competition and rising customer expectations of speedy LSP changes since the underlying collaborative here occurred starting in 2002 call for migration process intervals that may have seemed reasonable back in 2002 to be reexamined. More specifically, Section 63.202 now permits a NSP to take up to 5 working days to provide a Local Service Confirmation (LSC) after it receives a valid LSR. Verizon proposes that this interval be reduced to 48 hours, and after one year to allow time for increased mechanization, to 24 hours.³ Similarly, in Section 63.204(f), OLSPs are required to provide 80% of Customer Service records (CSRs) to NLSPs in a step-down over one year from 48 hours to the same or next day after the OLSP request is received. Verizon proposes that all CSRs be provided within 2

² The Guidelines are the "nitty-gritty" substrata of detailed procedures governing carrier interactions in at least 16 identified LSP customer migration scenarios. Since Section 63.203(a) mandates that all LSPs and NSPs follow the Migration Guidelines, it is of course essential that the Commission promptly reconvene the industry and other interested parties to finalize the Guidelines as quickly as possible and not later than the effective date of these regulations referencing them.

Regardless of whether the Commission opts to retain the interfering station procedure in the final form regulations or move it to the Migration Guidelines, Verizon proposes that a few minor clarifying changes be made to the procedure. These suggested changes are set forth in Attachment B hereto.

business days initially and within 1 business day after 6 months, unless the OLSP has a legitimate reason for needing more time, such as having to produce business customer CSRs that are complex and/or numerous. For these limited exceptions, the OLSP and new NLSP will negotiate a date for the OLSP's provision of the CSR.

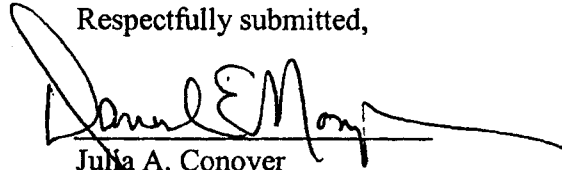
Suggested regulation language revisions that make these changes are set forth in Attachment B hereto.

:

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission adopt the amended language set forth in Attachment B in promulgating its final-form regulations.

Respectfully submitted,



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Attorneys for Verizon
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Dated: May 18, 2004

³Since Section 63.203 makes reference to a "valid LSR," Verizon also recommends that the words "or rejection" be deleted in this section.

ATTACHMENT A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LOCAL FREEZE COLLABORATIVE

Docket No. C-00015149F0002

**VERIZON COMMENTS ON .WAV FILE AND LOA FREEZE
LIFTING AND THE FCC DEFINITION OF "SUBSCRIBER"**

Verizon's opposition to WorldCom's and other parties' proposals for the use of .wav files and/or letters of authorization/agency (LOAs) springs from FCC orders and rules. These orders and rules make clear that freeze lifting can be done only by direct contact between the subscriber and the executing carrier, and they expressly rule out freeze lifting by the carrier change submitting carrier.

In a 1998 order, the FCC stated that "[b]y definition, preferred carrier freezes create an additional step (namely, that subscribers **contact directly the LEC** that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection."¹ The FCC further stated that a written and signed authorization from the subscriber to the executing LEC, which it approved as a freeze lifting mechanism, "is clearly consistent with the purpose of the preferred carrier freeze because it permits the subscriber to **notify the LEC directly** of her or his intention to lift a preferred carrier freeze."² The FCC also noted that three-way calls, like two-way

¹*Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order, Order released Dec. 23, 1998, para. 114 (emphasis added). NOTE: This paragraph 114 was mislabeled as paragraph 115 in the Verizon "direct contact" position email the Law Bureau circulated to the Collaborative on November 30, 2001.

calls which it also authorized for freeze lifting, establish “**direct contact** between the LEC and the subscriber.”³

In a 2000 order the FCC hammered home its requirement of direct subscriber contact with the executing carrier for freeze lifting, and expressly ruled out any submitting carrier or TPV as a middle man in this process. More specifically, the FCC reaffirmed that only a subscriber can lift a freeze, and that he or she must do so through **contact** with the executing carrier.⁴ It also expressly ruled that carrier change submitting carriers (including their TPV agents) are prohibited from submitting preferred carrier freeze lift orders to executing carriers, even if those lift orders are first verified by a neutral third party. The FCC found that prohibiting such carrier-submitted freeze lifts and limiting the submission of freeze lift requests to subscribers would preserve the protective effect of the freeze (which is derived from the requirement for direct communication between the customer and the executing carrier to lift the freeze), curb the potential for abuse by slamming carriers, and avoid undermining the effectiveness of freezes.⁵

Against this backdrop of clearly delineated orders and rules, and after having argued for and lost at the FCC having TPV carrier change authorizations suffice for

²*Id.* at para. 127 (emphasis added). It is also consistent with the FCC’s freeze rule which requires that a freeze lifting subscriber give “the carrier from whom the freeze was requested his or her express consent.” 47 C.F.R. Sec. 64.1190(a).

³ *Id.* (emphasis added). The FCC emphasized that “the essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to . . . lift a freeze.” *Id.* at para. 130.

⁴*Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order, Order released Aug. 15, 2000, paras. 69-70.

⁵*Id.* at paras. 70-71.

lifting any associated freezes the customer might have,⁶ WorldCom is now pushing a TPV variant it calls “Electronic Authorization,” which would extend the carrier change TPV contact⁷ to record the subscriber’s consent (with some verifier) to having any associated freeze lifted and then make a .wav file of the recording available to the executing carrier via an email attachment or on the Internet. While the .wav file is all gussied up by WorldCom in a vain attempt to make it appear to be a direct communication between the subscriber and the executing carrier, with WorldCom’s TPV akin to the U.S. Postal Service delivering a written, signed freeze lift authorization from the subscriber to the executing carrier,⁸ it would be nothing of the sort. The .wav file would reflect direct communication only between the TPV and the subscriber. Making that .wav file available to the executing carrier via a second (email) communication or on a website somewhere would at best be a second-hand indirect communication coming not the subscriber, but from WorldCom’s TPV. As such, it would plainly run afoul of the FCC’s requirements that freeze lifting requests come to executing carriers directly from subscribers, and not from or through submitting carriers or their TPVs, even with verification. It is for this reason, among others,⁹ that to Verizon’s knowledge

⁶*Second Report and Order* at para. 130.

⁷While not specifically addressing TPV freeze lifting contacts, the FCC did prohibit TPVs from discussing the submitting carrier’s freezes during the TPV contact, noting, *inter alia*, that “incorporating information about preferred carrier freezes into the verification script is likely to be confusing to subscribers and would prolong the verification process unnecessarily.” *Third Report and Order* at para. 42.

⁸This is a blatantly false analogy. The USPS, unlike WorldCom and its TPV agent, is not competing with the recipient of the letter for the telephone business of the subscriber covered by the letter and accordingly has no incentive to skew the freeze lifting process for its own competitive advantage. See *Third Report and Order* at para. 71 for discussion of some of the competitive concerns cited by the FCC in keeping carriers and TPVs out of the freeze lifting process.

⁹WorldCom blithely assumes that watching the .wav’s roll in would be just another day at the beach for Verizon and other executing carriers. However, listening to the recordings would require Verizon and presumably other carriers as well to devote people and special equipment to this task, which

WorldCom's "Electronic Authorization" proposal has not been approved by any commission in the country.

For the same reasons a .wav file freeze lift request is not authorized by the FCC, neither is a freeze lift request by a submitting carrier or TPV that purports to be supported by an LOA from the subscriber authorizing the carrier to lift the freeze on the subscriber's behalf. Under the FCC orders and regulations, the carrier or TPV cannot lift a freeze by LOA or otherwise. The subscriber himself must directly contact the requesting carrier and ask that the freeze be lifted. The inability to use LOAs for freeze lifting is made clear in the FCC's rules, where LOAs are expressly permitted in connection with making preferred carrier changes¹⁰ but are not included in the rule listing freeze lifting methods.¹¹ The latter omission was purposeful; the FCC did not want submitting carriers or their agents to circumvent the subscriber direct contact requirement that lies at the heart of the freeze protection by using an LOA to eliminate that direct contact.

Finally, the very expansive reading of the FCC's rule definition of "subscriber"¹² that some parties have urged in the Collaborative in arguing for the legality of submitting carrier/TPV LOAs from subscribers to lift freezes is unsupported by the FCC rulemaking record. The extensive discussion of this definition in the *Third Report and Order* (at

for Verizon would require a substantial amount of time and money. Inevitably, some recordings would be garbled or inaudible, and thus additional time would be lost in trying to decipher them, or ultimately in obtaining replacement recordings. Even if this mechanism were legal, which it is not, its efficacy is questionable.

¹⁰47 C.F.R. Sec. 64.1160.

¹¹*Id.* at Sec. 64.1190(e).

¹²"Subscriber" has been defined in 47 C.F.R. Sec. 64.1100 as "[t]he party identified in the account records of a common carrier as responsible for payment of the telephone bill, any adult person authorized

paras. 46-52) makes crystal clear that the ambit of the definition was designed to include persons who controlled the entire telephone account either informally (e.g., adult household members) or formally (guardians, caretakers, business telecommunications vendors, etc., pursuant to powers of attorney or other written authorizations), and does not extend to submitting carriers or their TPV agents in a freeze lifting (or even initial placement) context. Attempting to read the definition so overbroadly would permit submitting carriers to obtain overbroad LOAs from subscribers granting them complete control over the subscribers' accounts for freeze lifting and other purposes and vitiate the carefully crafted regulatory scheme the FCC has put together in the freeze area.

In summary, under the FCC's orders and rules (including its definition of "subscriber"), .wav files or LOAs from submitting carriers or their TPV agents are not permitted to lift freezes. Even if they were legal, they would not be needed since Verizon PA's proposed 24/7 website for freeze lifting, combined with the other lifting methods it already offers, should be more than adequate to handle its and resellers' freeze lifting for the foreseeable future.

Respectfully submitted,

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DATED: December 17, 2001

by such party to change telecommunications services or to charge services to the account, and any person contractually or otherwise lawfully authorized to represent such party."

ATTACHMENT B

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter M. CHANGING LOCAL SERVICE PROVIDERS

GENERALLY

Sec.

- 63.191. Statement of purpose and policy.
- 63.192. Definitions.

MIGRATION

- 63.201. General migration standards.
- 63.202. Migration responsibilities of NLSPs and NSPs.
- 63.203. Migration guidelines and industry work group.
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- 63.208. Carrier-to-carrier guidelines and performance assurance plans.

~~INTERFERING STATIONS~~

- ~~63.211. Duties of OLSPs and NSPs when an interfering station condition is identified.~~
- ~~63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.~~

~~Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.~~

~~Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.~~

DISPUTES

63.221. Consumer complaint procedures.

63.222. Expedited dispute process.

GENERALLY

§ 63.191. Statement of purpose and policy.

(a) The purpose of this subchapter is to establish general rules, procedures and standards governing the migration of customers between LSPs, including porting telephone numbers, resolving interfering stations, exchanging customer records and the transition of billing accounts. The primary objective of this subchapter is to establish standards to ensure that customers can migrate from one LSP to another LSP without confusion, delay or interruption to their basic service.

(b) This subchapter applies to:

- (1) LSPs and NSPs for migration of customers between LSPs.
- (2) LSPs and NSPs when interfering station conditions are encountered.

(c) This subchapter does not apply to:

- (1) Mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another.
- (2) A LSP that has properly proceeded with the abandonment of service to its customer base.
- (3) DSL migration.

(4) Line sharing/splitting arrangements.

(d) To the extent that other regulations do not address circumstances as described in subsection (c), this subchapter may provide guidance for those transactions.

§ 63.192. Definitions.

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

Applicant--

(i) A person who applies for telephone service, other than a transfer of service from one dwelling to another within the service area of the LSP or a reinstatement of service following a discontinuation or termination.

(ii) The term does not apply to a customer who is subject to special contractual arrangements and has otherwise agreed to different conditions of service that do not contradict Commission rules or regulations.

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.

Commission review--Includes informal or formal review, evaluation or adjudication, staff-level review or alternate dispute resolution.

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

DSL--Digital subscriber line--A dedicated, high-speed, always-on service, frequently used in the context of "aDSL" or "xDSL."

Discontinuation of service--The temporary or permanent cessation of service upon the request of a customer.

Freeze--A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred service providers.

Interfering station--Preexisting service that prevents the reuse of existing telephone facilities by a new LSP to serve a new customer at a location where the prior customer did not notify the previous LSP to disconnect the telephone service. The previous LSP and the new LSP may be the same company.

LOA--Letter of authorization--

(i) Sometimes used in a general sense as the data or record indicating that the customer has authorized the new LSP to act as the customer's agent for purposes other than lifting the customer's LSPF.

(ii) The term is used to indicate a specific document signed by a customer granting a new LSP the authority to act as the customer's agent for purposes other than lifting the customer's LSPF.

LSC--Local service confirmation--Documentation issued by the NSP to inform the LSP of the confirmed scheduled completion date for work affecting specific telecommunications service activities such as unbundled loop connections.

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.

LSP-to-LSP end user migration guidelines or migration guidelines--A documentation of processes and procedures that establish general business rules, privacy protocols and general procedures governing the migration of end users (customers) between LSPs.

(i) The migration guidelines were developed by consensus among telecommunications industry participants and associations, statutory advocates and the Commission.

(ii) The migration guidelines will be amended from time to time as industry practices change.

LSPF--Local service provider freeze--A designation elected by a customer that restricts a NLSP's or other-third party's ability to change a customer's choice of preferred LSP.

LSR--Local service request--Document issued by LSPs to NSPs to arrange for installation of, change in or disconnection of services.

(i) The LSR is sent by a LSP to a NSP, for example, to request the activation of number portability, the installation of an unbundled loop facility, or the disconnection of loop facilities and migration of a number.

(ii) The NSP uses the LSR to create the internal directives, for example, a service order, to cause the work to be performed as ordered.

Line sharing--The sharing of facilities by a LSP and a NSP in the provision of voice and data services to a given location over the same facilities.

Line splitting--The sharing of facilities by two LSPs, when neither is the NSP, in the provision of voice and data services to a given location over the same facilities.

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.

Migration--The movement of a customer from one LSP to another LSP at the same service location.

NLSP--New local service provider.

*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.

(i) An NSP may also be referred to as an underlying carrier.

(ii) An NSP may also be a LSP.

OLSP--Old local service provider.

*Preferred service provider--*The company chosen by a customer to provide particular telecommunications services. A preferred service provider is sometimes referred to as a "preferred carrier."

*Porting--*The process that allows customers to keep their telephone numbers when changing LSPs.

*Service provider--*A generic term to include LSPs and NSPs.

*Termination of service--*Permanent cessation of service after a suspension without the consent of the customer.

MIGRATION

§ 63.201. General migration standards.

(a) A customer has the right to migrate from one LSP to another LSP.

(b) The NLSP shall communicate and explain to the customer the migration process and the migration timetable for various services, when applicable.

(c) The OLSP has the right to protect itself from potential loss as permissible by Commission regulations and by its lawful tariff in instances when Commission regulations do not address a situation.

(d) The OLSP and the NLSP shall work together in good faith to minimize or avoid problems associated with migrating the customer's account.

(e) The OLSP may not prohibit the NLSP from reusing facilities that are no longer needed by the OLSP to provide service to the migrating customer or other customer. If the OLSP has a conflict

over the use of the facilities, it shall be resolved using the interfering station procedure.

(f) Each LSP shall ensure that its 9-1-1 and Directory Listings/White Pages databases are accurate, accessible and updated as appropriate.

(g) Each LSP and NSP shall maintain a company contact and escalation list for use in resolving migration problems and interfering station conditions. LSPs and NSPs shall exchange their lists with each other and provide copies to the Commission. The lists shall be updated as necessary to ensure that the information is current and accurate.

§ 63.202. Migration responsibilities of NLSPs and NSPs.

(a) The prospective NLSP shall communicate and explain the migration process and the migration timetable for various services, when applicable, to the customer.

(b) The prospective NLSP shall be responsible for coordinating the migration of the customer's local service with its NSP, if any, and with the OLSP.

(c) The prospective NLSP shall provide the LSR information to affected service providers, as applicable.

(d) For one year after the effective date of this section, the NSP shall issue an LSC or rejection within 5 working days from the date it receives 48 hours after its receipt of a valid LSR from the prospective NLSP. Thereafter, the LSC shall be issued within 24 hours

(e) The NLSP shall be responsible for coordinating a customer's service restoration that may become necessary due to problems with the migration.

§ 63.203. Migration Guidelines and industry work group.

(a) In addition to compliance with this subchapter, LSPs and NSPs shall follow the Migration Guidelines developed and updated by a telecommunications industry work group as a baseline set of principles, responsibilities and ground rules to facilitate migration of customer service.

(b) The Commission will establish an industry work group to be responsible for creating and updating the Migration Guidelines and addressing issues associated with LSP migrations as industry practices change.

(c) To the extent that the industry work group cannot agree on the details of the Migration Guidelines, the industry work group may request Commission review.

§ 63.204. Standards for the exchange of customer service information.

(a) Prospective NLSPs may not acquire CSRs without a verified customer authorization. The prospective NLSP shall use one of the following verification procedures and shall retain the authorization and verification for 2 years:

(1) An LOA from the customer of record to review the customer's account.

(2) A third-party verification of the customer's consent.

(3) A recording verifying permission from the customer.

(4) Oral authorization documented with appropriate retained documentation.

(5) Additional procedures as may be authorized by the Federal Communications Commission (FCC) or the Commission.

(b) The prospective NLSP shall indicate to the customer's current LSP that it has a verified authorization for access to the CSR. The NLSP is not required to provide a copy of the authorization or verification to the current LSP.

(c) A current LSP may not contact a customer to retain or keep that customer as a result of a request from another LSP for the customer's CSR.

(d) When a prospective NLSP has verified authorization from the customer to switch the customer's LSP, the prospective NLSP shall request the customer's network serving arrangements and a CSR from the OLSP. The prospective NLSP is not required to provide proof to the OLSP of the authorization or verification at the time of migration. The prospective NLSP shall use one of the

following types of verification and shall retain the authorization and verification for 2 years:

- (1) An LOA from the customer to switch LSPs.
 - (2) A third-party verification of the customer's request.
 - (3) An electronic verification of the customer's request to switch LSPs that contains unique identifying information.
 - (4) Additional procedures as may be authorized by the FCC or the Commission.
- (e) A customer's current LSP shall provide the following information when the CSR is requested to migrate a customer's service:
- (1) Billing telephone number and working telephone number.
 - (2) Complete customer billing name and address.
 - (3) Complete service address, including floor, suite unit and any other unique identifying information.
 - (4) 9-1-1/E-9-1-1 information.
 - (5) Directory listing information, including address, listing type and all other pertinent information.
 - (6) Preferred service providers for interLATA, intraLATA, local basic service and other services.
 - (7) Provider freeze status by interLATA toll, intraLATA toll, local basic service and other services.
 - (8) Listing of all vertical services (for example, custom calling, hunting, and the like) to which the customer currently subscribes.
 - (9) Listing of all optional services (for example, 900 blocking, toll blocking, remote call forwarding, off-premise extensions, and the like) to which the customer currently subscribes.
 - (10) Tracking number or transaction number (for example, purchase order number).

(11) Service configuration information (for example, resale, UNE-P, unbundled loop).

(12) Identification of NSPs.

(13) Identification of any line sharing/line splitting on the migrating customer's line.

(f) Timetable for providing a CSRs, minimum requirements:

(1) For the first six months after the effective date of this rule, and subject the exception in subsection (3). By _____ (Editor's Note: The blank refers to the effective date of adoption of this proposal.), an OLSPs shall provide 80% of requested a CSRs within 48 hours two business days after it is requested.

(2) After six months from the effective date of this rule, and subject the exception in subsection (3). After _____ (Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposal.), an OLSPs shall provide 80% of requested a CSRs within 24 hours. one business day after it is requested.

(3) After _____ (Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposal.), OLSPs shall provide 80% of requested CSRs the same day if the request is made by noon of that day, or by noon the next day if requested after noon. Where the OLSP cannot meet the applicable deadline in subsections (1) and (2) due to the complexity of the requested CSR or any other reasonable cause, the OLSP shall notify the NLSP of that fact within one business day after the CSR is requested. The OLSP and NLSP shall then negotiate a reasonable due date for the OLSP's provision of the CSR.

§ 63.205. Removal or lifting of LSPFs.

(a) The prospective NLSP may not process a change in LSP if the customer does not remove an existing LSPF at the time of application. The prospective NLSP shall inform the applicant of the following at the time of application:

(1) If the applicant has a LSPF, the LSPF must be removed before the OLSP may process the prospective NLSP's request for a change of the customer's LSP.

(2) The applicant or appropriate authorized agent other than the prospective NLSP shall contact the OLSP to have a LSPF lifted before an order to migrate the service may be processed.

(3) A prospective NLSP may not authorize the removal of an applicant's LSPF with or without the applicant's authorization to do so.

(b) When the prospective NLSP is also seeking to provide other services, (for example, interexchange, intraLATA, interLATA, interstate or international toll) covered by freezes, authorizations to lift the freezes may be transmitted in one process, if the applicant expressly requests that each freeze be lifted. The prospective NLSP shall inform the applicant of the distinctions among the services and of the requirement that service may not be migrated unless the customer expressly lifts each freeze.

(c) LSPs shall provide various methods to customers for lifting LSPFs, as required by the Commission or the Federal Communications Commission.

§ 63.206. Porting telephone numbers.

An OLSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for service that has been terminated or discontinued under Chapter 64 (relating to standards and billing practices for residential telephone service) for residential customers or consistent with the LSP's lawful tariff for other customer classes.

§ 63.207. Discontinuance of billing.

(a) LSPs shall minimize overlap in billing during the migration between LSPs.

(b) Upon notification from the prospective NLSP that the customer has requested to migrate service to the prospective NLSP, the customer's OLSP shall, within 42 days, issue the customer a final bill for services rendered.

(c) Once the customer has paid the charges on the final bill, the OLSP shall immediately remove the customer from its billing system and discontinue billing.

(d) The OLSP shall stop billing the customer for any recurring charges as of the date of the change to the NLSP.

(e) This subchapter does not affect a customer's debtor/consumer rights or a LSP's creditor's remedies, as may be otherwise permitted by law.

§ 63.208. Carrier-to-carrier guidelines and performance assurance plans.

For a LSP or NSP subject to state or Federal carrier-to-carrier guidelines or performance assurance plans, if the carrier-to-carrier guidelines or performance assurance plan provide a more explicit or a narrower window for performance, the carrier-to-carrier guidelines or performance assurance plan shall control for that LSP or NSP.

Verizon's principal proposal is that the Commission remove Sections 63.211 through 63.214 from the regulations and direct that the interfering stations procedure set forth in these provisions be incorporated into the industry-maintained Migration Guidelines referenced in Section 63.203. Regardless of whether the Commission opts to retain the interfering station procedure in the final-form regulations or move it to the Migration Guidelines,

Verizon proposes that a few minor clarification changes be made to the procedure.]

[INTERFERING STATIONS

§ 63.211. Duties of OLSPs and NSPs when an interfering station condition is identified.

(a) The OLSP or NSP shall inform the prospective NLSP of an interfering station condition by the end of the next working day after the OLSP or NSP identifies that an interfering station condition exists.

(b) The OLSP or NSP shall review the LSR information with the prospective NLSP to determine possible errors:

(1) Upon confirmation that the LSR information is correct, the OLSP or NSP shall inform the prospective NLSP that the LSR is ~~cancelled~~cannot be fulfilled because there is preexisting service at the service location.

(2) If the LSR information is incorrect, the OLSP or NSP shall correct the information and continue with the installation.

§ 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.

(a) The prospective NLSP shall notify the applicant that there is preexisting service at the service location within 1 business day of the date it receives notice of the interfering station condition. The prospective NLSP shall contact the applicant by telephone, email, first class mail or in person to request that the applicant verify the address at the service location.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application and submit a new LSR.

(d) The prospective NLSP shall provide the new service installation date.

(e) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new service is not able to be installed using the same facilities due to preexisting service at the address and request the applicant to provide proof of ownership or right of occupancy.

(f) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options. The applicant may:

(1) Authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) Attempt to resolve the interfering station condition with the customer of record.

(3) Arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example, outside wiring or a network interface device (NID), are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to lawful tariff rates and that the installation may take longer than 5 days.

(4) Cancel the application.

§ 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.

(a) Within 3 business days of such notification, the OLSP shall issue a termination notice to the customer of record in the OLSP's billing system. The notice of termination shall state the reason for termination, date of termination and what the customer of record is required to do to prevent termination. The termination date shall be 7 days from the date of mailing of the notice by first class mail.

(b) If ~~thereit~~ is not contacted from by the customer of record by the termination date, the OLSP shall terminate the customer's service, remove the customer from billing and take appropriate action to release the customer's facilities to the prospective NLSP.

(c) If ~~the OLSP is contacted by~~ the customer of record who contacts the OLSP by the termination date and does not agree to the termination of service, the OLSP shall notify the prospective NLSP of the inability of the OLSP to release the facilities to be used by the prospective NLSP.

§ 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.

(a) The prospective NLSP shall contact the applicant and explain that the preexisting customer will not agree to the termination of service and that the prospective NLSP is not able to use the existing facilities.

(b) The prospective NLSP shall inform the applicant of the following options:

(1) The applicant may pursue any disputes between co-tenants, owners and occupants before an appropriate forum for the remedy. The prospective NLSP shall inform the applicant that neither the prospective NLSP, the OLSP nor the Commission is responsible for or available to resolve private disputes between customers and applicants.

(2) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(3) If new facilities (for example, outside wiring or a NID) are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant

to lawful tariff rates and that the installation may take longer than 5 days.]

DISPUTES

§ 63.221. Consumer complaint procedures.

(a) *Records of complaints.* A service provider covered by or operating under this title shall preserve written or recorded complaints showing the name and address of the subscriber or complainant, the date and character of the complaint, the action taken and the date of final disposition. Records of complaints for residential customers shall be kept in accordance with § 64.192 (relating to record maintenance).

(b) *Commission review.* If a customer or applicant expresses dissatisfaction with the service provider's decision or explanation, the service provider shall inform the customer or applicant of the right to have the dispute considered and reviewed by the Commission and shall provide the name, address and telephone number of the appropriate Commission bureau. This subsection shall be read in conjunction with §§ 64.141--64.182 for residential service.

(c) *Investigations.* Upon receiving a complaint covered by this subchapter from an applicant, customer or third party, the Commission will transmit a summary of the complaint to the service provider. When complaints are referred to the service provider through the Commission, the service provider and the Commission will work to process and resolve the complaints. A service provider shall make a full and prompt investigation of complaints made to it through the Commission by the applicant, customer or third party.

(d) *Resolutions.* If a complaint is resolved between the service provider and the complaining party, the service provider shall advise the Commission and submit a copy of the service order or other documentation of satisfaction which identifies the action taken by the service provider to resolve the complaint. The service provider may not consider the complaint closed until the Commission advises the service provider that the Commission has closed the complaint.

§ 63.222. Expedited dispute process.

(a) The Commission will provide a nonadversarial, expedited dispute process to address migration disputes. The Commission will designate contact persons through which LSPs and NSPs may request expedited resolution for alleged problems between service providers or compliance with this title and the migration guidelines pertaining to the migration of customer service.

(b) A LSP or NSP that has a dispute under this subchapter with another LSP which cannot be resolved between the entities may refer the dispute to the expedited dispute process for a suggested resolution in a nonadversarial context.

(c) The Commission designee will review the dispute within 2 working days of the date the dispute was received, attempt to contact the involved entities and suggest a nonbinding resolution of the dispute, consistent with § 1.96 (relating to unofficial statements and opinions by Commission personnel).

(d) If the expedited dispute process fails to resolve the dispute, the parties may resort to the Commission's alternate dispute or formal dispute resolution processes.

(e) The expedited dispute process is neither mandatory nor a prerequisite to the Commission's alternate or formal dispute resolution processes.

[Pa.B. Doc. No. 04-558. Filed for public inspection April 2, 2004, 9:00 a.m.]



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May 18, 2004

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

RECEIVED
MAY 18 2004
OFFICE OF CONSUMER ADVOCATE

Re: Proposed Rulemaking Changing Local
Service Providers
Docket No. L-00030163

Dear Secretary McNulty:

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

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

Sincerely,

Philip F. McClelland
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record
*79277

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SECRETARY'S BUREAU

26

CERTIFICATE OF SERVICE

Re: Proposed Rulemaking Changing Local Service Providers
Docket No. L-00030163

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

Dated this 18th day of May, 2004.

SERVICE BY INTER-OFFICE MAIL

Office of Trial Staff
Pa. Public Utility Commission
Commonwealth Keystone Building
400 North Street, Rm. 2 West
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SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

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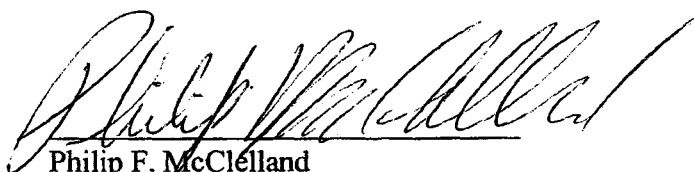
Steve Trotman
Association of Communications Enterprise
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Pennsylvania Telephone Association
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Pennsylvania Cable & Telecommunications
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SECRETARY'S BUREAU
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Public Utility Law Project
118 Locust Street
Harrisburg, PA 17101

A handwritten signature in black ink, appearing to read "Philip F. McClelland". The signature is written in a cursive style with a horizontal line underneath it.

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