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INDEPENDENT REGULATORY
REVIEW COMMISSION



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July 31, 2008

VIA UPS OVERNIGHT DELIVERY

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

Re: Proposed Rulemaking Regarding Provision of Bundled Service
Package Plans at a Single Monthly Rate by Local Exchange Carriers
Docket No. L-00060179

Dear Mr. McNulty,

Pursuant to the Commission's Proposed Rulemaking Order in the above named matter, and the subsequent Notice in the June 7, 2008 Pennsylvania Bulletin, enclosed please find an original and fifteen (15) copies of the Supplemental Comments of Verizon Pennsylvania Inc. and Verizon North Inc. concerning the Commission's July 3, 2006 Rulemaking Order in the above named matter. As indicated in the courtesy copy listing below, the Verizon companies are sending electronic copies of the Comments to Ms. Januzzi and to Ms. Frymoyer via electronic mail.

Very truly yours,

Via E-Mail and UPS Delivery

cc: Elizabeth Lion Januzzi, Law Bureau
Holly Frymoyer, Bureau of Consumer Services
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Verizon Companies' Supplemental Comments upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 31st day of July, 2008.


VIA E-MAIL and UPS DELIVERY

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking Regarding	:	
Provision of Bundled Service	:	Docket No. L-00060179
Package Plans at a Single Monthly	:	
Rate by Local Exchange Carriers	:	

VERIZON'S SUPPLEMENTAL COMMENTS

Verizon Pennsylvania Inc. and Verizon North Inc. (“Verizon”) submit the following Supplemental Comments in response to the Commission’s extension of the public comment period relating to its proposed rulemaking to amend Chapter 64 of its regulations to permit all local exchange carriers (“LECs”) to offer bundled service packages, subject to certain billing requirements. *See* 38 Pa. Bulletin 2658.

INTRODUCTION

The Commission’s July 3, 2006 Rulemaking Order proposed to codify in regulations the terms of waivers that have routinely been granted to allow regulated carriers to offer bundled service packages at a single rate, notwithstanding provisions of Chapter 64 that would prohibit the offering of singly-priced packages. The Commission has normally waived its regulatory restrictions on single-priced packages, but only on the condition that the carrier agrees to mandatory customer disclosures and agrees not to terminate “basic” service to customers delinquent in paying for their packaged services but to “convert” the package to a basic local service plan.

The Commission’s conditions are no longer lawful or appropriate due to changes in the governing law and advances in the fiercely competitive market for service packages. They should not be codified in the Commission’s regulations. Rather, the

Commission should confirm that, consistent with the requirements of 66 Pa. C.S. § 3016(e)(2), single-priced packages may be offered without restrictions or conditions.

The Commission's conditions are no longer lawful – at least as to incumbent local exchange carriers (“LECs”) such as Verizon – following the 2004 revisions to Chapter 30 of the Public Utility Code known as “Act 183.” Recognizing the increasing importance in the marketplace of packages and bundles of services, the Legislature made clear that incumbent LECs subject to Act 183's alternative regulation “may offer and bill to customers on one bill bundled packages of services which include nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the company.” 66 Pa. C.S. § 3016(e)(2). The statute imposed no conditions or restrictions on the right to offer single-price packages and did not empower the Commission to impose its own conditions. Accordingly, as recognized in the May, 2007 comments of the Independent Regulatory Review Commission (“IRRC”), the Commission's rulemaking order is faulty because it fails to explain how the imposition of any conditions not stated in the statute upon the right to offer bundled packages could be consistent with 66 Pa. C.S. § 3016(e)(2) – a concern Verizon had also raised in its own comments in April of 2007.

Even if these conditions were lawful – which they are not – the Commission's attempt to burden the carriers subject to its regulation with regulatory conditions that do not apply to the variety of lightly regulated and wholly unregulated alternative service providers that provide the same service packages in direct competition with those regulated carriers is contrary to Legislative policy. A key goal of Act 183 was to set a level competitive playing field for carriers that remain subject to Commission regulation

by promoting the provision of competitive services “by a variety of service providers on equal terms” throughout the Commonwealth and by reducing incumbent LEC regulatory burdens “to levels more consistent with those imposed upon competing alternative service providers.” 66 Pa. C.S. § 3011(8) and (13). In regulating that portion of the market that remains under its jurisdiction, the Commission must be mindful of the Legislature’s instruction. Imposing these regulatory burdens only upon regulated LECs – while cable, Voice over Internet Protocol (“VoIP”) and wireless competitors offering the exact same bundled services remain free of such regulatory constraints and need not continue to serve customers who fail to pay their bills – would be counterproductive, unfair and contrary to the Legislative policies underlying Act 183.

In the almost 18 months since Verizon originally commented on these proposed regulations, the market for communications services has become even more fiercely competitive, and bundled packages of services are the heart of that market. The FCC recently concluded that “intermodal competition between wireline services and services provided on alternative service platforms, such as facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase” and this “competition is increasingly occurring between bundled offerings, rather than between a bundled package offered by an intermodal competitor and stand-alone local and long distance service offered by incumbent LECs.”¹ Comcast, for example, reports that it added over half a million voice customers during the second quarter of 2008 and that its penetration reached 12.5% of homes passed or 5.6 million customers – almost three times the number of customers reported in Verizon’s April 2007 comments. Comcast reports that its phone

¹ *In re Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements*, Rpt. And Order and Mem Op. & Order, 22 F.C.C.R. 16440, at ¶ 27 (rel. Aug. 31, 2007) (“*FCC Separate Affiliate Order*”).

revenue increased to \$640 million in the second quarter of 2008 – over two and a half times the Comcast phone revenue reported in Verizon’s April 2007 comments.²

Similarly, the FCC’s most recent local competition statistics show that wireless carriers have over 9 million access lines in Pennsylvania – far surpassing the number of lines served by incumbent and competitive LECs.³

Verizon’s position remains that – like their cable, wireless and VoIP competitors – incumbent LECs should be permitted to suspend and then terminate all package services, including those services that would be considered “basic” under Chapter 64, if the customer fails to pay the package price, so long as the customer is given prior notice of this consequence of nonpayment.

The Commission extended the comment period to seek additional comments on three specific issues: (1) the Commission’s authority to establish consumer protection regulations for bundled service package plans under 66 Pa. C.S. § 3016(e)(2); (2) the status of a protected service once included in a bundled service package; and (3) an explanation of industry costs and technical difficulty associated with implementation of the proposed regulations. Verizon provides specific comments on each of these questions below.

² Press Release, 07/30/08, “Comcast Reports Second Quarter 2008 Results,” available at www.comcast.com

³ “Local Telephone Competition: Status as of June 30, 2007,” Issued by the FCC Wireline Competition Bureau March 2008, at Tables 7 and 14 (available at www.fcc.gov/wcb/stats).

SUPPLEMENTAL COMMENTS

A. The Commission's Authority to Establish Consumer Protection Regulations for Bundled Service Package Plans

Section 3016(e)(2) does not empower the Commission to impose conditions upon an incumbent LEC's right to offer bundled service packages. Rather, the statute itself clearly states that incumbent LECs "may offer and bill to customers on one bill bundled packages of services which include nontariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the company." 66 Pa. C.S. § 3016(e)(2). Accordingly, the Commission's proposed regulation stating that "[a] LEC may offer bundled packages of services including nontariffed, competitive, noncompetitive, basic service, or services of an affiliate, combined in a single package plan at a single monthly rate, *under the following conditions,*" is directly contrary to Section 3016(e)(2). In fact, no Commission regulation is necessary to permit incumbent LECs to offer packages because the statute already provides that authority. Any portions of Chapter 64 that could be read to prohibit the offering of packages "at a single monthly rate" are contrary to Act 183 and must be revised.⁴

While other portions of Act 183 retain certain "powers and duties" to the Commission relating to consumer protection, such powers must be exercised so as not to impose conditions on the right to offer packages and to be consistent with the statute's overall goal of reducing regulatory burdens and ensuring a level playing field among communications providers. Thus, the Commission may "review and revise quality of

⁴ While 66 Pa. C.S. § 3016(e)(2) is limited in applicability to incumbent LECs, it cannot be consistent with the Legislative policy of Act 183 to impose more onerous regulatory burdens or restrictions upon competitive LEC service offerings where such restrictions cannot apply to incumbent LECs.

service standards contained in 52 Pa. Code” relating to among other things the “suspension, termination and restoration of any telecommunications service,” but any such review or revision “*shall* take into consideration the emergence of new industry participants, technology advancements, service standards and consumer demand.” 66 Pa. C.S. § 3019(b)(2) (emphasis added). Further, the Commission may “establish such additional requirements as the commission determines to be necessary to ensure the protection of customers,” but only if such requirements are consistent with the limitation on reporting burdens in Section 3015(e). 66 Pa. C.S. § 3019(b)(3).

Here, the Commission has not undertaken any analysis under these statutory standards of how its proposed regulatory burdens are justified given the “emergence of new industry participants” and the policy to reduce regulatory burdens and level the regulatory playing field. Further, as IRRC pointed out in its comments, the Commission has not stated “the authority and purpose” behind many of the details of its proposed requirements. (IRRC Comments at 2). In particular, the Commission has not stated why it is necessary to impose regulatory “protections” for consumers when the conduct of carriers will be disciplined by the competitive market.⁵

B. Status of a Protected Service Included in a Bundled Service Package

Under Act 183, a package may be made up of “nontariffed, competitive, noncompetitive or protected services.” 66 Pa. C.S. § 3016(e)(2). “Protected” services are defined in relevant part as the functionality “necessary to complete a local exchange call.” 66 Pa. C.S. § 3012. But the fact that a single-price service package may include the local calling functionality among the other services offered in the package does not mean that this Commission may regulate the package to the same degree as it regulates

⁵ *FCC Separate Affiliate Order* ¶ 66.

stand-alone basic local service under the terms of Act 183. To the contrary, regardless of the regulatory classification of the services included in the package, the Commission has no authority over the price for the package or over the terms of service. The price is “selected by the company” and the terms “may” be memorialized in an “informational” tariff. 66 Pa. C.S. § 3016(e)(2).

C. Industry Costs and Technical Difficulty Associated with Implementation of the Proposed Regulations

The Commission requests comment on the “industry costs” of complying with the conditions it wishes to impose on the offering of single-priced packages. As an initial matter, it is not the entire “industry” that will bear these costs. Only incumbent and competitive LECs will be restricted from terminating “basic” service when a customer fails to pay for its packaged service and instead be required to “convert” the non-paying customer to a “basic service plan.” Only incumbent and competitive LECs will be required to disclose to new customers that they will not lose basic local service if they fail to pay for their packages and to subject their customer communications to Commission review. The remainder of the “industry” – cable providers, VoIP providers and wireless providers – will be free to terminate service to non-paying customers in accordance with generally applicable consumer-protections laws and free of regulatory oversight of their customer communications.

Clearly these regulatory requirements will impose burdens and costs on competitive and incumbent LECs not faced by the rest of the industry. The LECs will have to maintain the systems and train their personnel to convert non-paying packages to basic service. There will likely be financial losses and higher uncollectibles because the LECs will be forced to continue to serve non-paying customers for months longer than

other industry members, while possibly never being paid. Further, this unbalanced regulatory burden may drive customers uncertain of their ability to pay to the LECs, further exacerbating the financial loss to the LECs and may skew customers' decisionmaking and encourage them to sign up for LEC packages they cannot afford. Moreover, these regulatory burdens and costs will make it more costly for LECs to offer packages, possibly preventing them from offering packages as attractive as those offered by the unregulated competitors. Artificially increasing the LECs costs in this manner may harm competition in general because weakening the competitive position of the LECs may remove incentives for cable, VoIP and wireless competitors to offer the lowest prices or most attractive packages that they otherwise could have offered. Further, being required to subject themselves to Commission review of customer communications will slow the LECs' ability to react quickly in a marketplace where their unregulated competitors are not subject to such regulatory roadblocks.

In any event, the statute precludes this Commission from imposing conditions on incumbent LECs' right to offer single-priced packages, regardless of how costly or onerous compliance with those conditions might be.

CONCLUSION

For the foregoing reasons and those discussed in Verizon's April 2, 2007, the Commission should not enact the proposed regulations.

Respectfully submitted,

July 31, 2008

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