



McNees Wallace & Nurick LLC
attorneys at law

PAMELA C. POLACEK
DIRECT DIAL: (717) 237-5368
E-MAIL ADDRESS: PPOLACEK@MWN.COM

#2591

July 31, 2008

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

VIA HAND DELIVERY

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

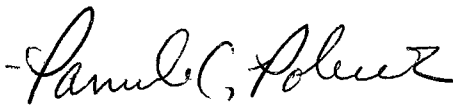
Dear Secretary McNulty:

Enclosed are the original and fifteen (15) copies of the Supplemental Comments of the Broadband Cable Association of Pennsylvania to the Proposed Rulemaking Order of the Commission in the above-referenced proceeding.

Copies of the Comments are being served on the parties indicated on the attached Certificate of Service. Please date-stamp the extra copy of the Supplemental Comments and this letter, and return them to our messenger for our files. If you have any questions, please contact us at your convenience. Thank you.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to the Broadband Cable
Association of Pennsylvania

PCP/km

Enclosures

c: Certificate of Service
Ms. Elizabeth Lion Januzzi, Asst. Counsel, Law Bureau (via Hand Delivery and E-mail)
Ms. Holly Frymoyer, Telecommunications Policy and Evaluation Supervisor,
Bureau of Consumer Services (via Hand Delivery and E-mail)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Office of Consumer Advocate
555 Walnut Street
Forum Place, Fifth Floor
Harrisburg, PA 17101

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101

Office of Trial Staff
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Kim Kaufman, Esq.
Independent Regulatory Review
Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Norman Kennard, Esq.
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108

Leigh A. Hyer, Esq.
Cynthia L. Randall, Esq.
Verizon
1717 Arch Street, 10th Floor
Philadelphia, PA 19103

Deanne M. O'Dell, Esq.
Wolf, Block, Schorr and Solis-Cohen, LLP
213 Market Street, 9th Floor
P.O. Box 865
Harrisburg, PA 17108-0865


Pamela C. Polacek

Counsel to the Broadband Cable Association
of Pennsylvania

Dated this 31st day July, 2008, in Harrisburg, Pennsylvania.

#2591

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
279 AUG -4 AM 10:49

Proposed Modifications to the Application :
 Form for Approval of Authority to Offer, :
 Render, Furnish or Supply Telecommunications :
 Services to the Public in the Commonwealth :
 of Pennsylvania :

Docket No. L-00060179

INDEPENDENT REGULATORY
REVIEW COMMISSION

**SUPPLEMENTAL COMMENTS OF THE
BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA**

I. INTRODUCTION

At Public Meeting held on June 22, 2006, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted a Proposed Rulemaking Order (the "Order") in the above docket, requesting public comment on proposed modifications to Chapter 64 of the Commission's regulations regarding the Section 64.21 separate billing obligation of telecommunications carriers offering bundled services.¹ The Order was entered by the Commission on July 3, 2006, and published in the *Pennsylvania Bulletin* on March 3, 2007.² Pursuant to the directives in the Order, on April 2, 2007, the Broadband Cable Association of Pennsylvania ("BCAP") submitted Comments. In addition to BCAP, the following entities submitted Comments to the Commission's Order: Verizon Pennsylvania, Inc. and Verizon North, Inc. ("Verizon"); the Pennsylvania Telephone Association ("PTA"); Full Service Network ("Full Service"); and the Independent Regulatory Review Commission ("IRRC").

On June 7, 2008, a notice appeared in the *Pennsylvania Bulletin* indicating that the Commission had reopened the comment period to accept additional public comments until July 31, 2008. The Commission identified three specific areas for which it was requesting comment: "1) Commission authority to establish consumer protection regulations for bundled service package plans under 66 Pa. C.S. § 3016 (e)(2) (relating to competitive services); 2) the status of a

¹ Proposed Rulemaking Order re Provision of Bundled Service Package Plans at a Single Monthly Rate by Local Exchange Carriers, Docket No. L-00060179 (Order entered July 3, 2006).

² 37 Pa. Bull. 1032 (March 3, 2007).

protected service once included in a bundled service package; and 3) detailed explanation of industry costs and technical difficulty associated with implementation of the proposed regulations, if any."³ The Commission also invited comments on any other relevant issues regarding the proposed regulations. Pursuant to the notice, BCAP hereby submits these Supplemental Comments.

II. SUPPLEMENTAL COMMENTS

BCAP previously submitted Comments focusing on three issues that are consistent with the Commonwealth's encouragement of competitive entry into communications services. First, BCAP explained Chapter 30's mandate that Competitive Local Exchange Carriers ("CLECs") have the option, but not the obligation, to offer basic service.⁴ Second, BCAP discussed the absence of authorization to regulate CLECs' application of partial payments under Chapter 30.⁵ Third, BCAP emphasized the need to avoid implementing requirements related to local telecommunications service that result in *de facto* regulation of non-jurisdictional services.⁶ BCAP continues to support the positions articulated in its original Comments and will not repeat those arguments here.

Since the submission of the original Comments, additional legislative and regulatory changes have further confirmed the policy of Pennsylvania to assume a "hands off" regulatory approach for voice services offered by competitive entrants, especially when those services are offered over IP-enabled or Voice-over-Internet Protocol ("VoIP") networks. Specifically, the Pennsylvania General Assembly recently enacted the Voice-over-Internet Protocol Freedom Act, Act 2008-52 (the "Act"), which was signed on July 4, 2008, and became effective immediately.

Section 4 of the Act states:

Except as set forth in Sections 5 and 6, notwithstanding any other provision of law, no department, agency, commission or political subdivision of the Commonwealth may enact or enforce, either directly or indirectly, any law, rule, regulation, standard, order or other provision having the force or effect of law that regulates, or has the effect of

³ 38 Pa. Bull. 2658 (June 7, 2008).

⁴ BCAP Comments, pp. 3-5.

⁵ Id. at 5-9.

⁶ Id. at 9-11.

regulating, the rates, terms and conditions of VoIP service or IP-enabled service.

Section 5 confirms that the Act does not affect the ability of the Office of Attorney General to enforce generally applicable consumer protection and unfair or deceptive trade practice laws and regulations. Section 6 authorizes the enforcement of State and Federal laws and regulations related to Enhanced 911 Service, Telecommunications Relay Service fees, Universal Service Fund fees, switched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company, and protected services (which are provided only by Incumbent Local Exchange Carriers ("ILECs")).

The Commission recently applied the Act in ruling on Comcast Business Communication, LLC d/b/a Comcast Long Distance's ("CBC") request to expand its authority to operate as a CLEC in certain rural territories in Pennsylvania. In that Order, the Commission concluded that the Voice-over-Internet Protocol Freedom Act "generally prohibits the Commission from regulating the rates, terms, or conditions of service of VoIP or IP-enabled services."⁷ The Order also recognized that the provisions of Chapter 64 will not apply to cable-based VoIP service providers that take advantage of CBC's gateway service; however, if CBC provides gateway service to an entity serving retail customers that is not utilizing VoIP or IP-enabled facilities, then the requirements of Chapter 64 might apply.

The proposed regulations clearly attempt to dictate the rates, terms and conditions for CLECs that offer bundled service packages. The Act has resolved many of BCAP's concerns regarding the application of the proposed regulations to digital voice services offered by its members over VoIP or IP-enabled networks; however, because several BCAP members also continue to operate traditional switched CLECs, it is also important for the PUC to expeditiously confirm that Chapter 30 does not contemplate the extension of the bundled service package regulations to CLECs, as argued in BCAP's initial Comments. BCAP provides below brief responses on the additional issues articulated by the PUC.

⁷ Application of Comcast Business Communications, LLC d/b/a Comcast Long Distance; Docket Nos. A-2008-2029089, A-2008-2029091, A-2008-2029092 and A-2008-2029093, p. 4 (July 18, 2008).

A. Any Commission Authority Under Section 3016(e)(2) Applies Only To ILECs.

The Commission requested comment on whether it has authority to regulate service bundles under Section 3016(e)(2) of the Code, which states: "a local exchange telecommunications company may offer and bill to customers on one bill bundled packages of services which include non tariffed, competitive, noncompetitive or protected services, including services of an affiliate, in combinations and at a single price selected by the Company." This section further provides that the local exchange telecommunications company may file an informational tariff for the package effective on one-day notice. Under the definitions in Chapter 30, a "Local Exchange Telecommunications Company" is defined as an incumbent carrier authorized by the PUC to provide local exchange telecommunications services.⁸ CLECs, by definition are not incumbent carriers. As such, any authority provided to the Commission related to the oversight of bundled packages pursuant to Section 3016(e)(2) is limited to offerings by ILECs.⁹

B. The Voice-over-Internet Protocol Freedom Act Does Not Appear to Impact the Status of a Protected Services Provided by an ILEC.

The Commission also sought comment on whether the status of a protected service is changed once the service is included in the bundled service package. Similar to Section 3016(e)(2), the definition in Chapter 30 of protected service discusses services provided by a Local Exchange Telecommunications Company, which is defined in Chapter 30 as an incumbent carrier.¹⁰ As the Commission is aware, Chapter 30 implemented a regulatory regime designed to encourage ILECs to expedite deployment of advanced networks in return for certain on-going benefits and obligations. In exchange for changes to the price stability mechanism and the expedited ability to declare certain services competitive, the ILECs were given as a quid pro quo the continued obligation to offer protected services. The same obligation does not apply to CLECs. As a result, the PUC's conclusion regarding the impact of placing a protected service in

⁸ 66 Pa. C.S. § 3012.

⁹ Furthermore, as explained in BCAP's Comments, Section 3019(g) specifically restricts the Commission from fixing or prescribing the "rates, tolls, charges, rate structures, rate base, rate of return or earnings of competitive services or otherwise regulate[ing] competitive services except as otherwise set forth in this chapter." BCAP Comments, p. 4. As such, the Commission lacks jurisdiction over bundled service packages provided by CLECs, and cannot require CLECs to offer "basic service to a customer that fails to pay its entire bill."

¹⁰ 66 Pa. C.S. § 3012.

a bundle will not apply to CLECs. Significantly, however, the Voice-over-Internet Protocol Freedom Act also specifically notes that the Act does not modify the authority of the Commission to enforce "regulations related to rates, terms or conditions of protected services provided under tariffs which are subject to approval by the Pennsylvania Public Utility Commission." As a result, the PUC's authority regarding protected services provided by ILECs is unaffected by the Act.

C. BCAP's Concerns Regarding the Technical and Financial Impact of Complying with the Bundled Service Regulations are Largely Resolved.

In its Comments, BCAP discussed its concerns related to the financial and technical ability if its members comply with the proposed bundled service package plan regulations. Although BCAP continues to be concerned that it may not be technically possible to provide "basic service" over an IP-enabled network, it appears that the recent Act has partially addressed those concerns by confirming that voice, data, and video services provided over IP-enabled networks should be free, as a matter of law and policy, from any "rule, regulation, standard, order or other provision having force or effect of law that regulates, or has the effect of regulating, the rates, terms, and conditions of VoIP service or IP-enabled service." This legislation, coupled with the Commission's confirmation that the Chapter 30 provisions related to bundled service packages apply only to ILECs as BCAP requested in its Comments, will fully resolve BCAP's concerns.

III. CONCLUSION

As noted in the Comments, BCAP members and other competitive entrants are responding to the public's demands for bundles of services that include voice, video and data applications. The Commission should encourage this continued innovation by confirming that the proposed regulations do not apply to CLECs, especially when the services are offered over a VoIP or IP-enabled network.

Respectfully submitted

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (I.D. # 78276)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (phone)
717.237.5300 (fax)

Counsel to the Broadband Cable Association
of Pennsylvania

Dated: July 31, 2008

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1000 Session of
2007

INTRODUCED BY WONDERLING, C. WILLIAMS, CORMAN, ORIE, GREENLEAF,
ERICKSON, RAFFERTY, FUMO, PICCOLA, FOLMER, KITCHEN, BROWNE,
MELLOW, O'PAKE, FONTANA, WASHINGTON, MADIGAN, McILHINNEY,
COSTA AND HUGHES, AUGUST 6, 2007

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 23, 2008

AN ACT

1 Prohibiting the regulation of voice-over-Internet protocol and
2 other Internet protocol-enabled products and services; and
3 providing for preservation of consumer protection, for fees
4 and rates and for preservation of cable franchise authority.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Voice-Over-
9 Internet Protocol Freedom Act ~~of 2007~~. ←

10 Section 2. Legislative findings.

11 The General Assembly finds and declares as follows:

12 (1) Growth and enhancement of services using Internet
13 protocol technology provide Pennsylvania consumers more
14 choice in voice, data and video service than at any other
15 time.

16 (2) The proliferation of new technologies and
17 applications and a growing number of providers developing and

1 offering innovative services using Internet protocol is due
2 in large part to little regulation, including freedom from
3 regulations governing traditional telephone service, that
4 these new technologies and the companies that offer them have
5 enjoyed in this Commonwealth. The economic benefits,
6 including consumer choice, new jobs and significant capital
7 investment, will be jeopardized and competition minimized by
8 the imposition of traditional State entry and rate regulation
9 on voice-over-Internet protocol and Internet protocol-enabled
10 services.

11 Section 3. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "IP." Internet protocol.

16 "Internet protocol-enabled service" or "IP-enabled service."

17 Except as provided in the definition herein of "Voice-over-
18 Internet protocol service," a service, capability, functionality
19 or application provided using Internet protocol or any successor
20 protocol that enables an end user to send or receive a
21 communication in Internet protocol format or any successor
22 format, regardless of whether the communication is voice, data
23 or video.

24 "Voice-over-Internet protocol service" or "VoIP service." A
25 service that:

26 (1) enables real-time, two-way voice communications that
27 originate or terminate from the user's location in Internet
28 protocol or any successor protocol;

29 (2) uses a broadband connection from the user's
30 location; and

←

1 (3) permits users generally to receive calls that
2 originate on the public switched telephone network and to
3 terminate calls to the public switched telephone network.

4 Section 4. Prohibition on IP services regulation.

5 ~~Notwithstanding~~ EXCEPT AS SET FORTH IN SECTIONS 5 AND 6, ←
6 NOTWITHSTANDING any other provision of law, no department,
7 agency, commission or political subdivision of the Commonwealth
8 may enact or enforce, either directly or indirectly, any law,
9 rule, regulation, standard, order or other provision having the
10 force or effect of law that regulates, or has the effect of
11 regulating, the rates, terms and conditions of VoIP service or
12 IP-enabled service.

13 Section 5. Preservation of consumer protection.

14 Nothing in this act shall be construed to affect the OFFICE ←
15 OF ATTORNEY GENERAL'S application or enforcement of laws or
16 regulations that apply generally to consumer protection or
17 unfair or deceptive trade practices.

18 ~~Section 6. Fees and rates.~~ ←

19 ~~Nothing in this act shall be construed to either mandate or~~
20 ~~prohibit the assessment of nondiscriminatory enhanced 911 fees,~~
21 ~~telecommunications relay service fees or Federal or State~~
22 ~~Universal Service Fund fees on VoIP service, or to mandate or~~
23 ~~prohibit the payment of any switched network access rates or~~
24 ~~other intercarrier compensation rates that may be determined to~~
25 ~~apply.~~

26 ~~Section 7. Preservation of cable franchise authority.~~

27 ~~Nothing in this act shall be construed to affect the~~
28 ~~authority of the Commonwealth or its political subdivisions,~~
29 ~~including municipalities, to require a cable operator to obtain~~
30 ~~franchises to provide cable service within such political~~

1 ~~subdivisions pursuant to section 541(b)(1) of the Cable~~
2 ~~Communications Policy Act of 1984 (Public Law 98-549, 98 Stat.~~
3 ~~2779).~~

4 SECTION 6. POWERS AND DUTIES RETAINED. <—

5 NOTHING IN THIS ACT SHALL BE CONSTRUED TO MODIFY ANY OF THE
6 FOLLOWING:

7 (1) THE AUTHORITY OF A COMMONWEALTH DEPARTMENT, AGENCY
8 OR COMMISSION TO ENFORCE APPLICABLE FEDERAL OR STATE STATUTES
9 OR REGULATIONS RELATING TO ANY OF THE FOLLOWING:

10 (I) THE PROVISION AND ADMINISTRATION OF ENHANCED 911
11 SERVICE AND NONDISCRIMINATORY ENHANCED 911 FEES.

12 (II) TELECOMMUNICATIONS RELAY SERVICE FEES.

13 (III) UNIVERSAL SERVICE FUND FEES.

14 (IV) SWITCHED NETWORK ACCESS RATES OR OTHER
15 INTERCARRIER COMPENSATION RATES FOR INTEREXCHANGE
16 SERVICES PROVIDED BY A LOCAL EXCHANGE TELECOMMUNICATIONS
17 COMPANY.

18 (V) RATES, TERMS OR CONDITIONS OF PROTECTED SERVICES
19 PROVIDED UNDER TARIFFS WHICH ARE SUBJECT TO APPROVAL BY
20 THE PENNSYLVANIA PUBLIC UTILITY COMMISSION.

21 (2) THE AUTHORITY OF THE COMMONWEALTH OR A POLITICAL
22 SUBDIVISION TO REQUIRE A CABLE OPERATOR TO OBTAIN A FRANCHISE
23 AGREEMENT TO PROVIDE CABLE SERVICE WITHIN A POLITICAL
24 SUBDIVISION UNDER SECTION 621(B)(1) OF THE COMMUNICATIONS ACT
25 OF 1934 (48 STAT. 1064, 47 U.S.C. § 541(B)(1)).

26 Section § 30. Effective date. <—

27 This act shall take effect immediately.