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May 9, 2008

VIA UPS OVERNIGHT
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building54
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Regulations to Streamline Transfer of Control and Affiliate Filing Requirements for Competitive Carriers
Docket No. L-00070188/57-26

Dear Mr. McNulty:

Enclosed please find an original and Fifteen (15) copies of the Reply Comments of Verizon Pennsylvania Inc., Verizon North Inc. and MCImetro Access Transmission Services LLC in the above-named matter.

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

Very truly yours,

Suzan D. Paiva

Suzan D. Paiva

SDP/slb
Enclosure

Via E-Mail and UPS Delivery
cc: Joseph K. Witmer, Esquire
Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of Verizon Pennsylvania Inc.'s, Verizon North Inc.'s and MCImetro Access Transmission Services LLC's Reply 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 9th day of May, 2008.

VIA E-MAIL and UPS DELIVERY

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend Chapter 63 Regulations	:	Docket No. L-00070188
So as to Streamline Procedures for Commission	:	
Review of Transfer of Control and Affiliate	:	
Filings for Telecommunications Carriers	:	

REPLY COMMENTS OF VERIZON

Verizon[1] replies to the various comments submitted on April 9, 2008 to the Commission's proposed regulations aimed at streamlining the review and approval process for mergers and other transactions requiring the issuance of a certificate of public convenience under 66 Pa. C.S. § 1102 involving telecommunications carriers.[2]

INTRODUCTION

With the exception of the OCA, each of the commenting parties supports some degree of streamlining of the Commission's current procedures to address telecommunications companies' applications under 66 Pa. C. S. § 1102(a)(3). The filed comments provide no reason for this Commission to deviate from its stated goal of providing for a simpler, quicker and more certain process to obtain certificates of public convenience for transfers of assets or control for regulated telecommunications carriers. Further, the comments provide no reason to abandon the Commission's three-tiered procedure set forth in the proposed regulations, under which the simplest transactions would be deemed approved in 30 days, most transactions would be deemed approved in 60 days, and the Commission retains discretion to exempt particular significant and

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1 These Comments are filed on behalf of Verizon Pennsylvania Inc. ("Verizon PA"), Verizon North Inc. ("Verizon North") and MCImetro Access Transmission Services LLC (collectively "Verizon").

2 In addition to Verizon, comments were submitted by the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Broadband Cable Association of Pennsylvania ("BCAP"), Pennsylvania Telephone Association ("PTA"), Windstream Pennsylvania LLC ("Windstream"), Level 3 Communications LLC ("Level 3"), and Neutral Tandem-Pennsylvania, LLC ("Neutral Tandem").

complex matters from the streamlined procedure. While the proposed regulations would benefit from some simplification and clarification, Verizon supports the substance of the Commission's regulations (with the discrete changes discussed in Verizon's comments) and looks forward to working with the Commission and interested parties to finalize them promptly.

The Commission should reject the appeals by OCA, BCAP and OSBA to retain in whole or in part its antiquated review process, which is a holdover from the days before telecommunications competition and alternative regulation. While the telecommunications market place and the level of regulation have been completely transformed, the Commission has not altered its procedures for handling section 1102(a)(3) applications.

Section 1102(a)(3) requires a regulated public utility to obtain prior Commission approval for a wide variety of transactions involving changes in control or transfers of regulated assets. For telecommunications carriers, section 1102(a) is the source of the Commission's authority to review high profile transactions, such as the recent Verizon/MCI merger. But it also operates to require regulated telecommunications carriers to seek advance approval for a wide variety of smaller or uncontested transactions. Regulated telecommunications carriers must obtain approval, for example, for a parent-level merger even if only a few utility assets are in Pennsylvania, for parent-level investments or financing agreements involving controlling blocks of shares, for corporate spin-offs, for proposals to scale back or abandon service, for transfers of customers or access lines, for certain sales of public utility assets such as real estate or equipment, and the like.

Even with the Commission's best intentions to process these applications efficiently, the nature of the current process is a burden on regulated telecommunications carriers and on competition. A minor application may still require publication in the Pennsylvania Bulletin and a subsequent period to await any protests. *See* 52 Pa. Code § 5.14. Even an uncontested application must be reviewed by Commission staff, with a proposed order prepared for consideration at a Commission public meeting. The filing of a comment or protest complicates the proceedings considerably, even if it turns out to be baseless. Contested or uncontested, there is no deadline or timetable for the tasks leading to ultimate Commission approval.

Meanwhile, unregulated competitors such as the cable companies represented by commenter BCAP, as well as VoIP providers and wireless carriers, may freely engage in ***the precise same transactions*** without the delay and uncertainty caused by this regulatory burden. While the delay and filing complexity are burdensome in themselves, the lack of deadlines and uncertain timetable for approval is equally troublesome. As Windstream accurately pointed out, "[t]he certainty of timely regulatory action is crucial for companies seeking a CPC as well as for their customers, employees and shareholders." (Windstream Comments at 3).

There is simply no basis for OCA to claim that the present process "meet[s] the business needs of telecommunications carriers." (OCA Comments at 2). Telecommunications carriers presently have no choice but to follow the present process, notwithstanding the inefficiency and burden on competition, but that is no reason to perpetuate cumbersome regulatory requirements that no longer serve a useful purpose.

The filed comments also highlight another proven danger of this open-ended process. As PTA and Windstream persuasively explained, the current process is susceptible to exploitation where protests can be filed to extract "merger concessions" as a price for an expedited approval of time sensitive transactions, and where even a baseless protest provides enough leverage to "forc[e] applicants to seek negotiated settlements" as the price for "a relatively expedited conclusion." (PTA Comments at 5; Windstream Comments at 3). OCA and BCAP make little secret of the fact that they oppose streamlining in order to preserve their "opportunity" to use the approval process to short-circuit substantive litigation of their pet issues and to force carriers to agree to conditions that have no direct bearing on the transaction in question and are not needed to make the transaction serve the public interest. (*See, e.g.*, BCAP at 8, 12-13; OCA Comments at 23). The cable companies, VoIP providers and wireless carriers that compete head-to-head with Pennsylvania's regulated telephone companies are not prey to the same opportunity to extract regulatory concessions, thus artificially skewing the marketplace.

The Commission should continue its efforts to streamline these procedures and should reject attempts to undermine that effort, as discussed more specifically below.

COMMENTS

A. THERE IS NO BASIS TO EXCLUDE TRANSACTIONS INVOLVING ILECS FROM THE STREAMLINED PROCEDURE

BCAP and OCA reassert an argument that was already rejected by the Commission, contending that the streamlined approval process should apply only to CLECs. (BCAP Comments at 4; OCA Comments at 5). But as this Commission already rightly recognized, there is no legal or factual justification for limiting the opportunity for

a streamlined approval process to CLECs. BCAP – which concedes that its members include both cable companies and CLECs – simply seeks to extend the competitive advantage already enjoyed by its unregulated members to its CLEC members by allowing them to transfer assets and stock more easily while their ILEC competitors continue to be encumbered by outdated regulatory approval procedures.

This attempt to use the regulatory process to gain an advantage in the competitive marketplace is directly contrary to the Commonwealth's policy, as expressed in Act 183, to provide a level playing field for competitors and to reduce regulatory burdens on ILECs to levels more consistent with those imposed on alternative service providers. That statute specifically states that "it is the policy of this Commonwealth to . . . [r]ecognize that the regulatory obligations imposed upon the incumbent local exchange telecommunications companies should be reduced to levels more consistent with those imposed upon competing alternative service providers." 66 Pa. C.S. §3011(13). Subsection 3011(8) further makes it Commonwealth policy to "promote and encourage the provision of competitive services by a variety of service providers ***on equal terms*** throughout all geographic areas of this Commonwealth. . ." (emphasis added). It is certainly not consistent with Commonwealth policy to continue to impose heavy regulatory burdens on ILECs while creating special streamlined processes exclusively for CLECs. The Legislature envisioned a level regulatory playing field for all competitors, including ILECs, CLECs, and alternative service providers.

Further, the FCC – whose streamlining rules served as a model for Level 3's request – expressly declined to exclude "dominant carriers" from its streamlined approval process, instead making the process available to all carriers while retaining the discretion

to remove certain applications from the streamlined process based on characteristics of the particular transaction.[3] This flexible approach makes sense, as the crucial fact in determining whether a particular transaction merits streamlining is whether it raises any legitimate public interest concerns, not the status of one of the parties as an ILEC or a CLEC.

OCA and BCAP provide no reasonable basis automatically to single out ILECs for more onerous regulatory treatment for all transactions requiring Commission approval. Under the proposed regulations, the Commission retains the discretion to pull out of the streamlined process a transaction that raises particular public interest concerns, whether it involves an ILEC or not. But many transactions that involve ILECs will raise no such special concerns. There is no reason for the Commission to apply a harsher regulatory standard, for example, to a sale of real estate by an ILEC versus the sale of the same real estate by a CLEC. In short, it is the nature of the transaction, not the identity of one of the parties as an ILEC, that determines whether closer scrutiny is warranted.[4]

OCA contends that a lengthy review process is necessary for any transaction involving an ILEC because ILECs have "provider of last resort obligations" under federal law and broadband deployment obligations if they are alternatively regulated under Chapter 30. (OCA Comments at 6-7). However, the majority of ILEC transactions that may require Commission approval through a certificate of public convenience will have

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3 *In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations,* CC Docket No. 01-150, 17 FCC rcd 5517 (March 21, 2002).

4 Under OCA and BCAP's theory, for example, the Verizon/MCI merger would not have qualified for streamlining because Verizon owns ILEC properties in Pennsylvania, even though the public utilities subject to the transfer of control were actually the MCI CLEC and IXCs. Had those same MCI entities been acquired by a large and powerful company that does not own ILEC properties in Pennsylvania, such as Comcast, Microsoft, or AT&T, the transaction would have been streamlined. This blatant attempt to penalize companies that own ILEC properties in Pennsylvania is illogical and should be rejected.

no impact on the ILEC's provision of basic service or on its broadband deployment. Even a parent level acquisition would not affect the ILEC's obligations unless there was some proposal to alter the legal obligations of the Pennsylvania regulated ILEC to honor its tariffs and network modernization obligations, which would rarely, if ever, be the case. In the event some transaction is proposed where there legitimately could be an impact on these regulatory obligations of the ILECs, the Commission retains the authority to pull that case out for more detailed review. It makes no sense, however, to disqualify every single transaction involving an ILEC in order to maintain Commission oversight over these rare and exceptional cases.

BCAP argues that the standard process should always apply to any transaction "involving ILECs" because ILECs have the "ability to impede competitive entry." (BCAP Comments at 4). BCAP makes no secret of the fact that it views the opportunity to obtain merger concessions as one arrow in its quiver of attacks against the rural ILECs, which it alleges are impeding competitive entry by BCAP's members in their territories. (BCAP Comments at 15). But the Commission provides other opportunities for BCAP to make its competitive arguments against the rural ILECs, and there is no reason to burden Verizon and to burden ILEC transactions that have no bearing on competition in order to enhance BCAP's opportunities to force the rural ILECs to meet its demands.

BCAP further argues that ILEC transactions should not be streamlined because "ILECs continue to serve the vast majority of the landline local phone service customers in the Commonwealth." (BCAP Comments at 6). While this statement might have been true in the days before competition, the Commission should not be so quick to credit BCAP's self-serving statement today. The FCC's local competition statistics show that

the number of wireless lines far outstrip ILEC lines in Pennsylvania. Further, VoIP providers and BCAP's own CLEC and cable companies provide considerable competition to the ILECs. BCAP is simply attempting to obtain an artificial regulatory competitive advantage over the ILECs by continuing burdens that no longer serve a purpose. It is fairly obvious from the comments that those parties that seek to deny ILECs the opportunity to participate in the streamlined filing process are making that argument for their own selfish reasons and not because there is any principled basis to distinguish ILEC and CLEC filings.

In a related but slightly different argument, OSBA would revise the regulations to exclude from the streamlined procedures any transaction that "involves a carrier with dominant market power or if approval of the transaction will result in a carrier's having dominant market power." (OSBA mark-up of proposed regulations). OSBA would exempt "all mergers, acquisitions and similar transactions involving LECs with substantial market shares" unless the transaction is unopposed. (OSBA Comments at 2). Verizon appreciates OSBA's effort to extend the streamlined procedure to some ILEC transactions and to attempt to define the cases in which closer Commission scrutiny would be warranted. However, OSBA's standards are undefined and will lead to uncertainty and confusion. Verizon agrees with Level 3's observation that reference to factors such as a "major acquisition" or "substantial market share," and the similar terms suggested by OSBA is "so vague as to offer no useful guidance to the parties involved in the transaction or the staff." (Level 3 Comments at 12). Verizon has suggested more workable factors to guide the Commission in its exercise of the discretion to pull a transaction out of the streamlined process. (Verizon mark-up of proposed regulations §

63.324(j)). The most important issue, however, is to have a deadline on the Commission's decision to pull a transaction, so that the parties will have certainty over what procedures and timetable will apply. (Verizon mark-up of proposed regulations § 63.324(b)(2)(i)).

B. THE FILING OF A PROTEST SHOULD NOT AUTOMATICALLY EXEMPT A TRANSACTION FROM STREAMLINED CONSIDERATION

OSBA "recognizes that streamlined review may be appropriate in instances in which a proposed transaction is unopposed," but suggests that the filing of ***any*** protest should disqualify a transaction from streamlined consideration. (OSBA Comments at 2). While this suggestion has superficial appeal because it provides a bright-line rule to classify a transaction as streamlined or not streamlined, it has the danger of encouraging frivolous protests intended simply to delay approval or to gain leverage for merger concessions, protests of the sort that BCAP and OCA strongly signal they and others will continue to file.[5] It could defeat the purpose of the Commission's streamlining regulations if any filed protest automatically disqualified an application from streamlining without an assessment of whether the protest has any merit or addresses issues relevant to the Commission's analysis. Only a protest that raises legitimate public interest concerns, or disputes of material fact, or a material application of law to fact relating directly to the standard to be applied under section 1102(a) should merit closer review.

Windstream suggests an interesting alternative for handling protested and complex cases. Rather than allowing the filing of a protest to derail the case entirely,

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[5] No one appears to support the concept currently in the proposed regulation that a protest by a statutory advocate would automatically remove an application from the streamlined process, but another type of protest would not. (*See* PTA Comments at 9; OCA Comments at 22).

Windstream suggests that ***all*** applications be streamlined and the Commission simply should build in the option to extend the review period to 90 days for a protested or more complex transaction. (Windstream Comments at 6, 10). With an additional 30 days, the Commission could not only determine whether the protest has merit but could also provide for an expedited proceeding to address the merits of any legitimate issues and provide the opportunity to be heard.

C. THE REGULATIONS SHOULD NOT MAKE THE FILING REQUIREMENTS MORE ONEROUS

Verizon shares PTA's concern that "[t]he proposed regulations would increase the size, scope and complexity of the required filings as to telephone utilities only." (PTA Comments at 9). Verizon has proposed specific edits to the proposed regulations to cure this problem, and is open to discussion of this issue with the Commission and the parties. For this reason, Verizon disagrees with Neutral Tandem's suggestion that the application be made more complex by requiring a listing of all state and federal proceedings where the utility violated or is alleged to have violated a regulatory requirement. (Neutral Tandem Comments at 3). The Commission should be well-aware of any regulatory issues a particular company might have before this Commission. A party should not be penalized by being deprived of the opportunity for streamlined approval simply because some accusation has been made in another jurisdiction that has nothing to do with the proceeding before this Commission. Further, if something has occurred in another state that is of sufficient concern that a competitor believes the Commission should be made aware of it, doubtless a competitor comment or protest will be filed.

D. THE COMMISSION HAS THE AUTHORITY TO STREAMLINE ITS OWN PROCEDURES

Because OCA opposes the concept of streamlining altogether, it attempts to argue that this Commission is powerless to streamline its own procedures. But even the OCA concedes that a lengthy review process is not required for uncontested applications. (OCA Comments at 15, n. 36). OCA further concedes that hearings are only required when protests raise disputes of ***material*** fact. (*Id.* at 20). This Commission certainly may delegate to its staff to make final decisions, subject to the right of appeal. 52 Pa. Code § 5.44.[6] Clearly the Commission has the flexibility to streamline its procedures to provide certainty as to the time frame for a decision, to shorten the time for approval and to eliminate unnecessary and inefficient steps.

CONCLUSION

For the foregoing reasons, Verizon strongly supports the Commission's efforts to adopt a streamlined procedure for applications under § 1102(a) and generally supports the concept behind the Commission's proposed regulations. Verizon respectfully suggests that the proposed regulations be considerably simplified and clarified in order better to achieve what the Commission intended, as set forth in Attachments A and B to Verizon's original comments.

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[6] OCA's reference to the need to produce a record sufficient to support an appeal under 66 Pa. C.S. § 703(e) is a red herring. (OCA Comments at 25). If the matter is uncontested and an application is deemed approved, there will be no appeal. Indeed, an appeal is unlikely unless the case is the type of complex or significant matter that would be pulled out of the streamlined procedures in any event.

Respectfully submitted,

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