

Suzan DeBusk Paiva
Assistant General Counsel
Pennsylvania

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The Verizon logo, featuring a checkmark symbol above the word "verizon" in a bold, lowercase sans-serif font.

1717 Arch Street, 17W
Philadelphia, PA 19103

Tel: (215) 466-4755
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

2877

November 23, 2010

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Proposed Rulemaking:
Elimination of the Call Recording Prohibition Under
52 Pa. Code §63.137 and Establishment of Regulations
to Govern Call Recording for Telephone Companies
Docket No. L-2009-2123673**

Dear Secretary Chiavetta:

Enclosed please find the Comments of Verizon Pennsylvania Inc., Verizon North Retain Co., MCI/metro Access Transmission Services LLC, Verizon Long Distance LLC, Verizon Enterprise Solutions LLC and MCI Communications Services, Inc. (collectively, "Verizon") on the Proposed Rulemaking on the Elimination of the Call Recording Prohibition Under 52 Pa. Code §63.137 and Establishment of Regulations to Govern Call Recording for Telephone Companies. These Comments are being filed with the Commission in response to the Proposed Rulemaking Order approved at the April 15, 2010 Public Meeting and subsequently published in the Pennsylvania Bulletin, in the above-captioned matter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb
Enclosure

VIA ELECTRONIC MAIL

cc: Tawana Dean, BCS
Melissa Derr, FUS
Louise Fink Smith, Law Bureau
Cyndi Page

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking: Elimination Of :
The Call Recording Prohibition In : Docket No. L-2009-2123673
52 Pa. Code § 63.137 And Establishment :
Of Regulations To Govern Call Recording :
For Telephone Companies :

COMMENTS OF VERIZON¹

I. Introduction

By Order entered April 19, 2010 and published in the Pennsylvania Bulletin on October 9, 2010, the Commission initiated this rulemaking to reconsider an outdated and discriminatory restriction in 52 Pa. Code § 63.137(2) that prohibits telecommunications carriers from recording customer contact calls for any reason. As a testament to the inappropriate nature of this restriction, the Commission issued numerous telecommunications carrier-specific waivers of this provision in recent years. Now that the Commission is reconsidering this issue through a rulemaking, it is time to remove the recording prohibition for telephone companies without imposing conditions.

Electric, gas and water companies regulated by this Commission — as well as the numerous competitors for communications services that are not regulated by this Commission and every other business operating in Pennsylvania — are free to record calls for training and quality of service purposes simply by complying with a statute that applies equally to all companies. Only regulated telephone companies are subject to this Commission's additional and more onerous regulatory call recording prohibition. As detailed below, there is no reason to single out regulated telephone companies for this

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unnecessary and inappropriate treatment, and doing so is contrary to the directives of Chapter 30 of the Public Utility Code and ultimately harms consumers.

Unfortunately, the proposed regulation would continue to impose unnecessary and impracticable restrictions and conditions on call recording by regulated telephone companies that do not apply to other utilities or companies doing business in Pennsylvania. These conditions would have a direct anti-consumer effect on the small segment of the market for communications services that this Commission regulates. Accordingly, the Commission should modify its proposed regulation as shown in Exhibit A to these comments so that telephone companies may record calls subject to the requirements of the Wiretapping and Electronic Surveillance Act, just like every other business in Pennsylvania, including every other utility group regulated by this Commission.

II. Background

Section 63.137 of this Commission's regulations applies to public utilities that "provide[] regulated telecommunication services subject to Commission jurisdiction." 52 Pa. Code § 63.132 (definitions). Under this regulation, a telephone company may "monitor" customer communications "necessary for the provision of service to its customers," but the "recording of conversations is prohibited." 52 Pa. Code § 63.137(2).

The Commission recognized recently that telephone companies should not be prohibited from recording customer service calls because "call recording for quality of service and training is basically ubiquitous."² The Commission acknowledged that "[n]o other jurisdictional utility industry is subject to similar customer or call-center call-

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recording prohibitions under our regulations,”³ and that “[o]ther utilities, as well as other businesses and this Commission, routinely record calls for service quality purposes within the bounds of applicable laws concerning wiretaps and trap and trace devices.” (*Id.* at 6).

After numerous telephone companies sought waivers to allow them to participate in the ubiquitous practice of recording customer service calls for quality assurance purposes, the Commission on July 29, 2009 issued a “blanket partial waiver” of the recording prohibition set forth in Section 63.137(2). This waiver permitted regulated telephone companies to record customer calls, but only if they accepted a list of conditions, including a pre-recorded message informing the customer that it has the option to be called-back from an unrecorded line prior to the recording of any aspect of the call, an advance bill insert explaining the recording and opt-out process, and the requirement to erase the recordings within 90 days.⁴ This onerous laundry list of conditions continues to set telephone companies apart from other regulated utilities and every other business operating in Pennsylvania, and makes it impracticable – if not impossible — for companies like Verizon to institute the kind of call recording quality assurance programs that that they have instituted in other states and that unregulated competitors are free to utilize in Pennsylvania. The Commission itself recognizes that “if any Pennsylvania regulated utility other than a jurisdictional telephone company, or any other business or entity operating in Pennsylvania, chose to implement a call recording program,” then these blanket waiver conditions and restrictions “would not apply to them.” (*10/21/10 Waiver Order* at 5).

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On August 27, 2010, Verizon brought this problem to the Commission's attention through a petition for a waiver to allow it to implement a call recording quality assurance program to benefit Verizon's customers. On October 21, 2010 the Commission issued an order modifying the blanket waiver conditions that required the telephone company to provide customers an option to be called back on an unrecorded line and the associated pre-recorded message and bill insert informing customers of that option. Verizon had notified the Commission that those conditions would prevent it from employing for the benefit of Pennsylvania customers certain call analysis software that it has been using in other states to improve customer service. The Commission eliminated those conditions not only for Verizon but for all carriers, thereby allowing calls to be recorded if the company "notifies customers when they call, through a prerecorded message, that the call may be monitored or recorded for quality assurance and training purposes," "uses these recorded phone calls solely for the purpose of measuring and improving service quality" and erases the recordings after thirty (30) days. (*10/21/10 Waiver Order* at 8).

Separately, the Commission continued to consider through this rulemaking whether to change the regulation permanently.⁵ Yet the proposed rules would reinstitute all of the blanket waiver conditions from the July 29, 2009 order, including those that the Commission subsequently eliminated for Verizon and all other carriers on October 21, 2010.

⁵ The Commission noted in its October 21, 2010 waiver order that it was not "making any determination herein as to what the final rules should be" as a result of this rulemaking. (*10/21/10 Waiver Order* at 7).

III. The Commission Should Eliminate the Recording Prohibition Without Imposing Conditions.

It is time for the Commission to fully eliminate the call recording prohibition for telephone companies from its regulations, without imposing onerous conditions. Indeed, imposing restrictive conditions on telecommunications carriers (even conditions that do not apply today because of waivers) as proposed in this rulemaking would continue an unlawful and inappropriate disparity in treatment of call recordings.

A. Chapter 30 Mandates Elimination of the Recording Prohibition and Prohibits Imposition of Onerous Conditions.

The recording prohibition must be eliminated to comport with the directive in Chapter 30 of the Public Utility Code to eliminate disproportionate regulatory burdens on the telephone companies that the Commission continues to regulate by “[r]ecogniz[ing] that the regulatory obligations imposed upon the 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). Verizon’s unregulated competitors, including cable voice over IP (“VoIP”) providers and wireless carriers, are free to record calls in Pennsylvania so long as they comply with the Wiretapping and Electronic Surveillance Act. Chapter 30 requires that Verizon and other regulated telephone companies should have the same freedom, and not be faced with onerous restrictions on call recordings. Promulgating a regulation that states that the “recording of conversations is prohibited” unless the telephone company complies with a list of conditions that do not apply to other utilities or to other companies under Pennsylvania law would have the same impermissible effect as retaining the current prohibition.

B. Onerous Conditions on Call Recordings are Unnecessary and Would Hurt Consumers.

No beneficial purpose will be gained by prohibiting telephone companies from recording customer calls, or by imposing onerous conditions that make it impracticable for them to do so.⁶ Indeed, the purpose of recording calls is generally to *improve* service and better meet the needs and expectations of customers. Prohibiting or restricting call recording for this small segment of telephone companies ultimately hurts consumers because they are deprived of those benefits. Further, customers today expect their calls to customer service representatives to be recorded, and the up-front reminder that “your call may be recorded or monitored for quality purposes” is virtually universal. The Commission should bring its regulations in line with modern business practices and customer expectations by eliminating the call recording prohibition without conditions. That is the case as a general matter, and is confirmed by a review of the proposed conditions.

(i) Issues raised in the proposed conditions are already addressed by Pennsylvania statutes.

The Wiretapping and Electronic Surveillance Act already cares for many of the issues addressed by the conditions in the proposed rules. For example, the statute already restricts businesses that record customer service calls to use the recordings “only . . . for the

⁶ Other states generally do not prohibit or unduly restrict the recording of customer calls by Verizon and its affiliates. The Commission has recognized the importance of allowing uniformity across multistate service territories with regard to customer service issues such as call recording rules and practices, noting the importance of allowing companies “to standardize operations throughout [their] national service territories.” (4/19/10 Rulemaking Order at 7-8). That is the case here as well. For example, Verizon was required to file for an additional waiver and await a Commission decision before it could bring to Pennsylvania one of its best practices that it had implemented in other states much earlier: the Nexidia product that was the subject of the waiver petition granted on October 21, 2010. The result of the onerous process of seeking such a waiver meant that Pennsylvania customers could not enjoy the benefits of this program as soon as customers in other states. Carriers with multi-state operations are not likely to face call-recording prohibitions or conditions such as those set forth in the proposed regulations in other states, and should not be required to treat Pennsylvania calls differently.

purpose of training or quality control.”⁷ Indeed, the Commission concluded that the Wiretapping and Electronic Surveillance Act does not permit “calls, taped under the mantle of training and quality service improvement purposes” to then be “used for an evidentiary purpose.”⁸ Thus there is no reason for the Commission to impose such a restriction as it would under proposed regulation § 63.137(2)(iv)(D).

The statute also addresses the retention period for recordings, requiring them to “be destroyed within one year from the date of recording.” 18 Pa.C.S. § 5704(15). That one year time frame applies to all other utilities and other companies operating in Pennsylvania, and no substantive explanation has been provided to justify the shorter 90 day retention period for telephone companies in the proposed rules (see proposed regulation § 63.137(2)(iv)(E)).

Each of these issues is already cared for under existing law; it is not necessary to repeat them in a Commission regulation, particularly when that regulation applies only to one of the utility segments the Commission regulates.

(ii) The Commission itself recently rejected certain of the proposed conditions.

Other proposed overreaching conditions include requirements for: (i) a bill insert or equivalent customer contact explaining call recording and the opt-out processes at least 30 days before commencing call recording or to new customers at the time service commences (proposed regulation § 63.137(2)(iv)(A)), and (ii) a pre-recorded message advising callers that they have the option to discontinue the call and to request a call back on an unrecorded

⁷ 18 Pa.C.S. § 5704(15). The statute also contains a separate exemption allowing “[p]ersonnel of any public utility to record telephone conversations with utility customers or the general public relating to receiving and dispatching of emergency and service calls provided there is, during such recording, a periodic warning which indicates to the parties to the conversation that the call is being recorded.” 18 Pa.C.S. § 5704(6).

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line, with instructions on how to request a call back prior to any aspect of the call being recorded (proposed regulation § 63.137(2)(iv)(C)). Verizon explained why such requirements are inappropriate in its August 27, 2010 waiver petition, and the Commission agreed in its October 21, 2010 order granting that petition. There is no compelling rationale for the Commission to even seriously consider reinserting these onerous and unnecessary conditions in the final regulations after just rejecting them as waiver conditions.

The inclusion of such conditions in the proposed regulations appears to be a vestige of the mistaken concept in the Commission's April 19, 2010 Rulemaking Order that the original blanket waiver conditions from its July 29, 2009 Blanket Waiver Order should be codified in its regulations. The Commission justified such an approach by claiming that it had "not seen any problems or customer complaints" under the blanket waiver process and "[t]he telephone companies have not requested any alterations to the terms of the blanket waiver." (4/19/10 Rulemaking Order at 8). That is not the case, however, as Verizon was forced after the commencement of this rulemaking to file a petition explaining how these conditions are onerous and impracticable.

As Verizon explained, and as the Commission agreed in the 10/21/10 Waiver Order, adding cumbersome messaging explaining the option to discontinue the call and providing instructions on how to request a call back on an unrecorded line *prior to any aspect of the call being recorded* (proposed regulation § 63.137(2)(iv)(C)) would make it completely impracticable for Verizon to implement recording programs to enhance customer experiences, such as the Nexidia program in Pennsylvania. Verizon's voice response unit ("VRU"), like the ones used by other companies receiving large volumes of customer calls daily, is essentially a traffic routing device designed to identify issues and route callers to

the correct call center quickly, depending on the nature of their inquiry or service problem. Explaining a recording opt-out procedure to every one of the millions of callers who call into Verizon's VRU annually would lengthen VRU hold times to an unacceptable level and delay customers from being routed to a live call-taker who can help them. Both having to listen to this extended message and the attendant delay in VRU call routing would likely frustrate most customers, and irritate many, especially those who make multiple calls into the VRU over time, and the vast majority of whom are not likely to opt out of the call recording. Further, potential Verizon customers would face this unnecessary complexity, delay and irritation, while Verizon's unregulated competitors cannot be required to make the same disclosures to their own callers. Competitors such as cable, VoIP providers and wireless carriers may implement call recording programs in full compliance with Pennsylvania law without providing an option for an unrecorded call-back or the lengthy and complicated announcement that would be required by the proposed regulation.

Although the number of opt-out customers likely would be relatively tiny in comparison to the total number of callers, Verizon would nevertheless have to devote call center personnel and other resources to make any required callbacks. This would be a difficult misallocation of resources, which already are constrained by competition and other factors, particularly where Verizon's unregulated competitors would not have to incur these costs. In fact, Verizon informed the Commission in August of 2010 that it would not be able to implement the Nexidia program in Pennsylvania if it had to provide this opt-out option and the additional recorded announcement, preventing both Verizon and its customers from benefitting from a program aimed at improving the customers' call experience with Verizon.

Likewise, the proposed requirements of advance bill insert notice to all customers of the call recording process and the opt-out process are unreasonably burdensome. If the opt-out process is eliminated, as it should be, the bill insert would be largely duplicative and unnecessary because customers would be informed of the possible recording when they place their calls. As the Commission has recognized, many companies and other employers with call centers have initiated call recording programs with the preliminary VRU announcement that calls may be monitored or recorded for quality control purposes. Such employers include many cable, wireless and other competitors of Verizon, other types of Pennsylvania public utilities, and even the Commission's own Bureau of Consumer Services, none of which is bound by the Commission's call recording requirements. Indeed, this announcement has become virtually ubiquitous across Pennsylvania and throughout the country.⁹ It is what Verizon's customers hear from other companies they call; it provides adequate call recording notice; and it obviates any need for an essentially duplicative bill insert notice that would impose unnecessary costs on regulated telephone companies that do not apply to their competitors.

C. The Commission Should Adopt the Proposed Regulation Set Forth in Exhibit A.

Rather than attempting to restrict or condition call recording by telephone companies, the Commission should allow regulated telephone companies to record calls to the extent and in the manner permitted by the Wiretapping and Electronic Surveillance Act. That would be accomplished by the proposed language in Exhibit A to these comments, and


⁹ The Commission has recognized that this announcement is already a ubiquitous practice. *10/21/10 Waiver Order* at 6. Accordingly, there is no need to include a requirement for such an announcement, as proposed in regulation § 63.137(2)(iv)(B). That is particularly the case given that no such regulation applies to other utilities, and because FCC rules already address this issue by allowing call recording preceded by a pre-recorded message or and automatic tone warning device. 47 CFR § 64.501.

would put telecommunications carriers on equal footing with all other regulated utilities and all other businesses operating in Pennsylvania.

CONCLUSION

For the foregoing reasons, the Commission should move forward expeditiously to remove the discriminatory and outdated call recording prohibition for telephone companies from its regulations.

Respectfully submitted,


Suzan D. Paiva (Atty ID No. 53853)
Verizon
1717 Arch Street, 17W
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail: Suzan.D.Paiva@verizon.com

Counsel for Verizon

Dated: November 23, 2010

Exhibit A – Verizon’s Suggested Modifications To 52 Pa. Code § 63.137(2)

§ 63.137. Service monitoring and related matters.

* * *

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. ~~The recording of conversations is prohibited.~~

* * *

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As Verizon explained, and as the Commission agreed in the *10/21/10 Waiver Order*, adding cumbersome messaging explaining the option to discontinue the call and providing instructions on how to request a call back on an unrecorded line *prior to any aspect of the call being recorded* (proposed regulation § 63.137(2)(iv)(C)) would make it completely impracticable for Verizon to implement recording programs to enhance customer experiences, such as the Nexidia program in Pennsylvania. Verizon's voice response unit ("VRU"), like the ones used by other companies receiving large volumes of customer calls daily, is essentially a traffic routing device designed to identify issues and route callers to

the correct call center quickly, depending on the nature of their inquiry or service problem. Explaining a recording opt-out procedure to every one of the millions of callers who call into Verizon's VRU annually would lengthen VRU hold times to an unacceptable level and delay customers from being routed to a live call-taker who can help them. Both having to listen to this extended message and the attendant delay in VRU call routing would likely frustrate most customers, and irritate many, especially those who make multiple calls into the VRU over time, and the vast majority of whom are not likely to opt out of the call recording. Further, potential Verizon customers would face this unnecessary complexity, delay and irritation, while Verizon's unregulated competitors cannot be required to make the same disclosures to their own callers. Competitors such as cable, VoIP providers and wireless carriers may implement call recording programs in full compliance with Pennsylvania law without providing an option for an unrecorded call-back or the lengthy and complicated announcement that would be required by the proposed regulation.

Although the number of opt-out customers likely would be relatively tiny in comparison to the total number of callers, Verizon would nevertheless have to devote call center personnel and other resources to make any required callbacks. This would be a difficult misallocation of resources, which already are constrained by competition and other factors, particularly where Verizon's unregulated competitors would not have to incur these costs. In fact, Verizon informed the Commission in August of 2010 that it would not be able to implement the Nexidia program in Pennsylvania if it had to provide this opt-out option and the additional recorded announcement, preventing both Verizon and its customers from benefitting from a program aimed at improving the customers' call experience with Verizon.

Likewise, the proposed requirements of advance bill insert notice to all customers of the call recording process and the opt-out process are unreasonably burdensome. If the opt-out process is eliminated, as it should be, the bill insert would be largely duplicative and unnecessary because customers would be informed of the possible recording when they place their calls. As the Commission has recognized, many companies and other employers with call centers have initiated call recording programs with the preliminary VRU announcement that calls may be monitored or recorded for quality control purposes. Such employers include many cable, wireless and other competitors of Verizon, other types of Pennsylvania public utilities, and even the Commission's own Bureau of Consumer Services, none of which is bound by the Commission's call recording requirements. Indeed, this announcement has become virtually ubiquitous across Pennsylvania and throughout the country.⁹ It is what Verizon's customers hear from other companies they call; it provides adequate call recording notice; and it obviates any need for an essentially duplicative bill insert notice that would impose unnecessary costs on regulated telephone companies that do not apply to their competitors.

C. The Commission Should Adopt the Proposed Regulation Set Forth in Exhibit A.

Rather than attempting to restrict or condition call recording by telephone companies, the Commission should allow regulated telephone companies to record calls to the extent and in the manner permitted by the Wiretapping and Electronic Surveillance Act. That would be accomplished by the proposed language in Exhibit A to these comments, and

⁹ The Commission has recognized that this announcement is already a ubiquitous practice. *10/21/10 Waiver Order* at 6. Accordingly, there is no need to include a requirement for such an announcement, as proposed in regulation § 63.137(2)(iv)(B). That is particularly the case given that no such regulation applies to other utilities, and because FCC rules already address this issue by allowing call recording preceded by a pre-recorded message or and automatic tone warning device. 47 CFR § 64.501.

would put telecommunications carriers on equal footing with all other regulated utilities and all other businesses operating in Pennsylvania.

CONCLUSION

For the foregoing reasons, the Commission should move forward expeditiously to remove the discriminatory and outdated call recording prohibition for telephone companies from its regulations.

Respectfully submitted,

Suzan D. Paiva (Atty ID No. 53853)
Verizon
1717 Arch Street, 17W
Philadelphia, PA 19103
Telephone: 215-466-4755
Facsimile: 215-563-2658
E-mail: Suzan.D.Paiva@verizon.com

Counsel for Verizon

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Exhibit A – Verizon’s Suggested Modifications To 52 Pa. Code § 63.137(2)

§ 63.137. Service monitoring and related matters.

* * *

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. ~~The recording of conversations is prohibited.~~

* * *