Pennsylvania Office of Consumer Advocate
Verizon Pennsylvania, Inc. - Pennsylvania

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Application by Verizon Pennsylvania, Inc.	**:**	
for Authorization under Section 271	**:**	
of the Communications Act to Provide	**:**	**CC Docket No. 01-138**
In-Region, InterLATA Service in the	**:**	
State of Pennsylvania	**:**	

COMMENTS OF THE PENNSYLVANIA OFFICE OF CONSUMER ADVOCATE TO THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 99-200

Philip F. McClelland
Senior Assistant Consumer Advocate
Barrett C. Sheridan
Lori Pantelich
Christy Appleby
Assistant Consumer Advocates

For: Pennsylvania Office of Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048

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I. INTRODUCTION

On June 21, 2001, Verizon Pennsylvania, Inc. ("Verizon") filed its Section 271 application in this proceeding. On June 25, 2001, the Pennsylvania Public Utility Commission ("Pa. PUC") issued its consultative report in Application of Verizon Pennsylvania, Inc., et al., for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth if Pennsylvania, FCC Docket No. 01-138 (dated June 25, 2001) ("Pa. PUC Consultative Report" or "Consultative Report"). This Consultative Report marked a lengthy process at the Pa. PUC period of examining and reforming Verizon Pennsylvania, Inc.'s ("Verizon's") operations that which have offered CLECs competitive access. These activities involved many proceedings over a number of years. The Pennsylvania Office of Consumer Advocate[1] ("Pa. OCA") participated extensively in those activities so that consumers in Pennsylvania might gain benefits through competition in the local exchange market in Verizon's territory.

The FCC issued its Public Notice on June 25, 2001 setting forth the procedural schedule under which these Comments are filed. The FCC also referenced its Section 271 filing requirements in that Public Notice as further set forth in its Public Notice of March 23,

[1] Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Pa. OCA to represent the interests of consumers before the Pa. PUC, federal agencies and the courts.

2001. The Pa. OCA recognizes those requirements and will conform with them in these Comments.

The material set forth in these Comments will be heavily based upon the record in the proceedings before the Pa. PUC and the arguments previously made by the Pa. OCA to the Pa. PUC, and now to the FCC. The Pa. OCA agrees that the access offered by Verizon to its CLEC competitors has improved over this period of time. However, there remain a number of problems that Verizon must correct before it is granted the authority to offer long distance service under Section 271.

While the Pa. OCA agrees with Verizon that Pennsylvania consumers would benefit from the additional competition that Verizon could bring to the long distance market, the Pa. OCA submits that it is necessary to resolve certain remaining issues before Section 271 approval can be granted.

II. SUMMARY

As explained above, the Pa. OCA agrees with Verizon that Pennsylvania consumers would benefit from the additional competition that Verizon could bring to the long distance market. However, the Pa. OCA submits that it is necessary to resolve certain remaining issues before Section 271 approval can be granted. The Pa. OCA submits that Verizon must complete certain actions before it should be granted interLATA authority through this proceeding. Briefly, Verizon must do the following:

- Verizon must offer to CLECs all of the loop qualification information to which Verizon Pennsylvania has access and develop a metric as to the accuracy of this information.

- Verizon must produce white page listings for CLECs with the same level of accuracy that it offers to its retail customers and develop a metric to measure such accuracy.

- Verizon must commit to not seeking to overturn the Pa. PUC's fundamental regulatory authority to implement and maintain self-effectuating metric remedies.

CLECs must have access to all loop qualification information before Verizon can be said to have met Checklist Item 2. At the present time Verizon has information available to itself concerning loop qualification for DSL services that it does not offer to CLECs. This is particularly important as the Pa. OCA is concerned that CLECs should be able to compete with Verizon in <u>all</u> regions of Pennsylvania to offer DSL service.

In order to make certain that this loop information is offered so that CLECs can effectively compete, a metric should be developed to measure the accuracy of this information. The Pa. OCA has found that some of that loop information offered in the past was not accurate and caused CLECs additional difficulty and expense.

Verizon must include CLEC customers in the white page directory with at least the same level of accuracy that it achieves for its own customers. The Pa. OCA has found that Verizon's process for placing CLEC customers in its directory is prone to errors and often results in inaccurate listings.

It is also necessary that Verizon should develop a metric to make certain that parity is maintained between the level of accuracy that it offers to its own customers and the level of accuracy offered to CLECs.

Verizon must not take any steps that would seek to eliminate the Pa. PUC's authority to enforce a performance metrics mechanism. The FCC has been clear that companies like Verizon must continue to have in place a self-effectuating remedy to inferior performance concerning CLEC access and use of the Verizon network. The Pa. OCA is concerned that Verizon has taken a legal appeal in the past, and may take such an appeal in the future, that would question the Pa. PUC's fundamental authority to create and enforce such a mechanism. The FCC should require from Verizon a commitment not to take such action.

III. COMMENTS

A. CLECs Do Not Have Equal Access To Loop Qualification Information and Such Lack of Equal Access Results in Verizon Not Achieving Compliance With Checklist Item 2.

1. Introduction.

In its Initial and Final Comments to the Pa. PUC,[1] the Pa. OCA raised several concerns regarding the lack of widespread deployment of DSL services[2] throughout Pennsylvania. The OCA is particularly concerned that CLECs should have access to all loop qualification information that is available to Verizon as 47 U.S.C. § 271(c)(2)(B)(ii) ("Checklist Item 2") requires that Verizon must maintain "[n]on-discriminatory access to network elements in accordance with 251(c)(3) and 252(d)(1)"[3]

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[1] Comments and Final Comments of Pa. OCA, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (dated Feb. 12, 2001 and Apr. 18, 2001) ("Pa. OCA Initial Comments" and "Pa. OCA Final Comments") (Pa. OCA Initial Comments attached as Appendix A and Pa. OCA Final Comments attached as Appendix B).

[2] Digital services are data services that customers use for internet connectivity, including Asymmetric Digital Subscriber Lines (ADSL), High-Speed Digital Subscriber Lines (HDSL) and other DSL services. The reference to digital services in this section generally relates to the same category of DSL services described in this footnote.

[3] Verizon discusses loop qualification information under 42 U.S.C. § 271(c)(2)(B)(iv), Checklist Item 4, which requires Verizon to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching, or other service." See Application by Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services inc., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, FCC Docket No. 01-138 at 132-35 (June 21, 2001) ("Verizon FCC 271 Application"). The Pa. PUC has addressed this issue under Checklist Item 4, but also the Pa. PUC noted that the FCC has addressed loop qualification issues under Checklist Item 2. Consultative Report of the Pa. PUC Public Utility Commission at 132, n. 291. Accordingly, the Pa. OCA in these Comments will address this issue under Checklist Item 2.

This Commission has directly addressed the extent to which Verizon must provide loop qualification information to CLECs. In the UNE Remand Order, this Commission required Verizon to provide CLECs with "the same underlying information that [Verizon] has in any of its own databases or other internal records."[4] The OCA submits that pursuant to the Telecommunications Act and this Commission's UNE Remand Order, Verizon must provide CLECs with equal access to the information available to Verizon

The OCA recognizes that Verizon has taken steps to improve CLEC access to Verizon's loop qualification information. However, CLECs do not *currently* have access to all the loop qualification information available to Verizon By not allowing CLECs equal access to loop qualification information, Verizon has not fully met the requirement of Checklist Item 2. The Pa. OCA is concerned that the potential for development of competition for DSL services in Pennsylvania, particularly in rural areas,[5] will be forestalled. The Pa. OCA concludes that until Verizon provides CLECs

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[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd at 3696 ¶ 427 (1999) ("UNE Remand Order"). The UNE Remand Order further states that "[t]he relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel." Id. at ¶ 430.

[5] In several of its orders, the Pa. PUC expressed a clear concern about the lack of competition regarding DSL services in rural areas of Pennsylvania as a result of Verizon's actions or inactions. As the Pa. PUC stated in its Global Order, "[Verizon's] delay in introducing DSL services suggests [a]. . .*lack of competition* in the relevant telecommunication services market [which] has forestalled the benefits of technological innovation and the availability of broadband services to Pennsylvania consumers." Joint Petition of Nextlink Pennsylvania, Inc., et al. Pa. PUC Docket Nos. P-00991648 & P-00991649, Orders entered September 30 & November 5, 1999, slip opinion, at 111 (emphasis added) ("Global Order") (attached as Appendix C), aff'd, Bell Atlantic Pennsylvania, Inc. v. Pa. P.U.C., No. 2790 C.D. 1999, et al, 763 A.2d 440 (Pa. Cmwlth.

with equal access to loop qualification information, its 271 application should not be granted.

2. The Pa. OCA Remains Concerned That CLECs Do Not Have Equal Access to Loop Qualification Information and That Such Information Should Be Accessible To CLECs *Before* Verizon's 271 Application Can be Granted.

a. The Loop Qualification Information Provided to CLECs by Verizon Is Insufficient In That It Does Not Provide Equal Access To CLECs

As stated above, the Pa. OCA is specifically concerned that CLECs must have equal access to accurate loop qualification information in order to deploy DSL services to all areas of Pennsylvania where Verizon has accessible DSL loops. In the Pa. PUC's Consultative Report to the FCC in this matter, the Pa. PUC also recognizes that progress needs to be made regarding Verizon's loop qualification database. The Pa. PUC stated, "[t]he loop qualification database available to CLECs via electronic access in 1999 was structured with information of primary value to the provision of Verizon's own retail ADSL services."[6] The Pa. PUC further stated in its Consultative Report to the FCC in this proceeding that "[s]ince then, the means of access has not improved."[7]

Oct. 25, 2000) ("Global Appeal"). In a more recent Order, the Pa. PUC expressed its concern about competition in rural areas of Pennsylvania. The Pa. PUC stated in its Structural Separation Order entered April 11, 2001 that "[i]n the rural areas of Pennsylvania, competition is *severely lacking*." Re: Structural Separation of Bell Atlantic-Pennsylvania Inc. Retail and Wholesale Operations, Pa. PUC Docket No. M-00001353, Opinion and Order (Apr. 11, 2001) at 38 (emphasis added) ("Structural Separation Order") (attached as Appendix D).

[6] Pa. PUC Consultative Report at 132 (citing Global Order at 114-115).

[7] Id. (citing Further Pricing of Verizon Pennsylvania Inc.'s Unbundled Network Elements, Petition of Covad Communications Company For an Arbitration Award

Specifically, in its Final Comments to the Pa. PUC, the Pa. OCA was concerned that Verizon's loop qualification database did not contain accurate information and did not contain information for central offices without collocation arrangements.[8] The Pa. OCA submits that to the extent that Verizon has access to any of this information, it should be made available to CLECs. Verizon must provide equal access to loop qualification information to CLECs *before* its 271 application can be granted.[9]

In his dissenting opinion, Pa. PUC Commissioner Terrance J. Fitzpatrick

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Against Bell Atlantic-Pennsylvania, Inc. Implementing the Linesharing of Unbundled Network Elements, Docket Nos. R-00005261, A-31-696, Recommended Decision at 33 (Mar. 22, 2001) ("UNE Pricing R.D.")). The Pa. OCA explained to the Pa. PUC in its Final Comments that there has been an unreasonable delay by Verizon to provide loop qualification information required in the Global Order. Pa. OCA Final Comments at 18-19 (stating "Administrative Law Judge Louis G. Cocheres stated in that Recommended Decision that the mechanized loop qualification information database currently being offered by Verizon has been 'criticized and rejected in the Global Order[.]' [UNE Pricing R.D.] at 33. Judge Cocheres recognized that it has been '[a]pproximately, a year and a half' since the Global Order and that Verizon still does not offer CLECs access to LFACS. Id. He went on to recommend that the Commission require Verizon to make available to CLECs 'the LFACS and similar databases through the OSS interface within 90 days of the entry of the Commission's order" in that proceeding.'")UNE Remand R.D. attached as Appendix E).

[8] See Pa. OCA Final Comments at 19-24.

[9] Since the Global Order and the Structural Separation Order, the Pa. PUC has taken several steps concerning DSL services to rectify the lack of competition in rural areas of Pennsylvania, and the Pa. OCA commends and supports the Pa. PUC's efforts to establish widespread competition throughout Pennsylvania for DSL services, particularly in rural areas of Pennsylvania. For example, the Pa. PUC, through the Structural Separation Order, has established a collaborative to develop industry standards to ensure that CLECs have access to Digital Subscriber Line Access Multiplexers ("DSLAMs") equipment at Verizon's remote terminals. Structural Separation Order at 42, ordering ¶ 9. Additionally, the Pa. PUC has also ordered that a collaborative be held to address the design and deployment of fiber and Next Generation Digital Line Carrier, as well as to address equal access to DSL over fiber lines. Id., ordering ¶ 11.

sets forth the standard by which Verizon must comply as stated by the FCC in Verizon New York's and Southwestern Bell Communications' 271 application:

> "[A] BOCs' promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of Section 271. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry instead of prospective evidence that is contingent on future behavior."[10]

Pa. PUC Commissioner Fitzpatrick further stated in his dissenting statement, "the Telecommunications Act plainly requires Verizon to satisfy the fourteen-point checklist before it enters the long-distance market."[11] Similarly, in the Pa. PUC's letter to Verizon, wherein the Pa. PUC stated that it would provide a favorable recommendation to the FCC on Verizon 271 application, the Pa. PUC stated, "Verizon has demonstrated its compliance *in most respects*" and that "Verizon has made *substantial progress*. . .to develop a competitive market in Pennsylvania."[12]". . .the Pa.

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[10] Pa. PUC Consultative Report, Appendix A, dissenting statement of Pa. PUC Commissioner Terrance Fitzpatrick, citing In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd. 3953, Memorandum Opinion and Order, FCC 99-404 at ¶ 37 (rel. Dec. 22, 1999) ("New York 271 Order"); In the Matter of Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, 15 FCC Rcd. 18354, Memorandum Opinion and Order, FCC 00-238 (rel. June 30, 2000) ("Texas 271 Order") at ¶ 38).

[11] Pa. PUC Consultative Report, Appendix A, dissenting statement of Pa. PUC Commissioner Terrance Fitzpatrick (emphasis in original).

[12] Id., Appendix I, Secretarial Letter dated June 6, 2001, attached to Pa. PUC Consultative Report (emphasis added); see also Pa. PUC Consultative Report at 16 (stating

PUC found that Verizon has demonstrated its compliance in most respects in regard to the statutory requirements of section 271, but further action would need to be taken to demonstrate that local exchange and access markets in Pennsylvania are fully and irreversibly open to competition.”).

The Pa. OCA submits that full compliance with these requirements is necessary before the FCC may grant Verizon’s application to provide long-distance service in Pennsylvania. The Pa. OCA encourages Verizon to provide CLECs with equal access to information available to Verizon and fully supports the Pa. PUC’s initiative to ensure that Verizon’s loop qualification database provides CLECs with all necessary loop qualification information. However, Verizon is not *presently* providing CLECs with access to all information available to it. Verizon admits in its Application that it only has loop qualification information for those central offices with collocation arrangements.[13] The OCA submits that Verizon should have loop qualification information available to CLECs for all central offices and remote terminals, even if there is no collocation at these central offices and remote terminals.[14]

At Pa. PUC Technical Conferences in this proceeding, Pa. PUC Administrative Law Judge Michael C. Schnierle expressed his understanding that information for central offices without collocation are not in the loop qualification database.[15] Judge Schnierle further stated that if CLECs wish to determine if any loops

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[13] See Verizon FCC 271 Application at 27.

[14] See Pa.OCA Final Comments at 23.

[15] See Pa PUC Feb. 28, 2001 Tech. Conf.,Tr. 158 (attached as Appendix F); Pa. OCA Final Comments at 23 (citing Pa. PUC Feb. 28, 2001 Tech. Conf., Tr. 158).

are useable for DSL services in central offices without collocation, they would first have to pay to have the central office collocated.[16] Verizon responded that while it has such information on its systems, it does not provide information for central offices without collocation because there is no CLEC demand for such information.[17]

The Pa. OCA submits that Verizon should provide CLEC access to loop qualification information for all central offices and remote terminals with and without collocation arrangements. The OCA is particularly concerned about central offices and remote terminals located in rural areas where there is no collocation. The Pa. OCA submits that CLECs should have loop qualification information available for central offices without collocation in order to facilitate CLECs' ability to provide DSL services to all areas of Pennsylvania.

Verizon claims that the information it currently provides in its loop qualification database is sufficient.[18] Verizon relies solely on the argument that, because it is offering the same loop qualification information in Pennsylvania as it is in Massachusetts, the Commission should give its approval.[19] In the Massachusetts 271 proceeding, the FCC found that Verizon had initiated "concrete and irreversible steps to implement enhancements to the process."[20] The Pa. OCA has no direct knowledge as to

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[16] Id.

[17] Id. at 159; Pa. OCA Final Comments at 24 (citing Pa. PUC Feb. 28, 2001 Tech. Conf., Tr. 159). While Verizon stated that it attempted for provide this information to CLECs, Verizon had not notified CLECs as to the availability of this information. Pa. PUC Feb. 28, 2001 Tech. Conf., Tr. at 159; Pa. OCA Final Comments at 24.

[18] See Verizon FCC 271 Application at 27.

[19] Id. at 26.

[20] Pa. PUC Consultative Report at 133 (citing SWBT Texas 271 Order at ¶¶ at 427-431; In the Matter of Application of Verizon New England, Inc., et al., For Authorization

how Verizon Massachusetts offers loop qualification information to CLECs in Massachusetts. Verizon may also be in the process of implementing a permanent access to additional loop qualification information; however, there is no indication that it is, for example, offering to CLECs loop qualification information for all its central offices and remote terminals. The OCA submits that Verizon must be further along in the process of providing CLECs with equal access to loop qualification information before its 271 application can be granted.

b. A Metric Should Be Put In Place To Measure The Accuracy Of Loop Qualification Information Provided By Verizon

As indicated above, the Pa. OCA is particularly concerned about the accuracy of the loop qualification information Verizon offers to CLECs through an electronic loop qualification information database. The Pa. OCA submits that in order to ensure that Verizon offers accurate information to CLECs in the future, a loop qualification accuracy metric should be put in place to measure how often CLECs receive inaccurate information. Pa. PUC Commissioner Nora Mead Brownell, stated in her dissenting opinion in this proceeding that in order for Verizon to receive 271 approval, it must "satisfactorily explain and, if necessary, correct apparent poor commercial performance with respect to its obligation to provide non-discriminatory access to local loops at measured by the appropriate metrics."[21]

A loop qualification information accuracy metric would, for example,

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to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, FCC Docket No. 01-130 ("Massachusetts 271 Order") at ¶¶ 54-69.

[21] Pa. PUC Consultative Report, Appendix A, dissenting statement of Nora Mead Brownell.

measure discriminatory access to loop qualification information. The results of a loop qualification accuracy metric would be contrasted with how often Verizon Advanced Data receives inaccurate information.[22] Additionally, the metric would measure the percentage of inaccurate information on Verizon's loop qualification database. As the Pa. OCA explained in its Final Comments to the Pa. PUC, Verizon's loop qualification database occasionally returned a zero foot distance with no additional information when the loop distance was something other than zero.[23] Requiring Verizon to have a metric in place to measure the accuracy of its loop qualification database will encourage Verizon to monitor the information it puts into its system and ensure that the information it provides to CLECs is accurate.

3. Conclusion.

The Pa. OCA submits that Verizon does not offer to CLECs equal access to its loop information, and, accordingly, has not yet met the Checklist Item 2 standard. Further, metrics must be developed as to the accuracy of such information offered so that access to accurate information can be assured in the future.

B. CLECs Do Not Have Equal Access to the White Page Directory and Such Lack of Equal Access Results in Verizon Not Yet Achieving Compliance With Checklist Item 8.

1. Introduction

The Pa. OCA filed Comments and Final Comments on the issue of Checklist Item Number 8 in the Section 271 proceeding before the Pa. PUC. 47 U.S.C.

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[22] Pa. OCA Final Comments at 43-44.

[23] Pa. OCA Final Comments at 21 (citing Pa. PUC Feb. 28, 2001 Tech. Conf., Tr. 43).

§ 271(c)(2)(B)(viii). Checklist Item Number 8 addresses white pages directory listings. Id. Checklist Number 8 under Section 271 requires CLEC access to "(w)hite pages directory listings for customers of the other carrier's telephone exchange service." Id. CLECs must be able to have their customers' directory listings published in the white pages. Verizon's tariff, the Pa. PUC, and FCC all require incumbents to include CLECs in their directories. [24]

The Pa. OCA has raised the white pages issue before the Pa. PUC because of significant problems that have occurred with the white pages listings. The Pa. OCA submits that Verizon must fix its white pages problems before being allowed to provide interLATA services. In order for viable local competition to exist, Verizon must include CLECs in the Verizon white pages based upon the same level of access that it offers to its own retail operations.

Notwithstanding this important requirement, the Pa. OCA submits that CLEC customers were omitted from the Verizon white pages on numerous occasions or the listings for these CLEC customers often contained errors. This has harmed CLECs and their customers as the customers have attempted to engage in competition by switching their local exchange carrier. These problems have impeded the progress and success of local competition.

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[24] Verizon PA Tariff, PA PUC No. 216, Section 2, First Revised Sheet 2 (Attached as Appendix G); Joint Petition of NEXTLINK Pennsylvania, Inc., RCN Telecommunications Services of Pennsylvania, Inc., et al, Docket No. P-00991643, Opinion and Order at 125-127 (Dec. 31, 1999)("Pa. PUC Performance Metrics Order")(Attached as Appendix H); Global Order at 251; In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No.00-217, Memorandum Opinion and Order at ¶¶ 246-247 (January 22, 2001) ("Kansas and Oklahoma 271 Order"); Texas 271 Order, ¶¶ 352-358.

The testimony provided at the Pa. PUC 271 technical hearings, the en banc hearings before the Pa. PUC, and the Comments provided by XO Pennsylvania, Inc. ("XO") and CTSI, Inc. ("CTSI") before the Pa. PUC demonstrate that problems exist with the white page directory listings and that in order for successful competition to exist the problems must be remedied. The importance of access to white page directory listings has been affirmed by the FCC in the petitions for interLATA long distance service in Kansas, Oklahoma, and Texas.[25] In the Texas 271 Order, the FCC stated that "irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes....if there was a systemic problem involving a number of listings, it would warrant a finding of noncompliance." [26] Where a problem is systemic, the FCC concluded that a finding of noncompliance could be considered a violation of Checklist Item Number 8. The Pa. OCA submits that the record developed in this case before the Pa. PUC demonstrates that the problems are systemic.

The Pa. PUC has addressed the importance of the white page directory listings on several occasions. The Pa. PUC, and subsequently the Commonwealth Court, affirmed the requirement to provide directory listings to CLECs in the Global Order.[27] Further, the Pa. PUC addressed this issue in examining the performance metrics of Verizon in the Performance Metrics Order. [28]

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[25] Kansas and Oklahoma 271 Order, ¶ ¶ 246-247; Texas 271 Order, ¶ ¶ 352-358.

[26] Texas 271 Order, ¶ 358.

[27] Global Order at 251 (*affirmed* Bell Atlantic-Pennsylvania, Inc. v. Pa. PUC, 763 A.2d 440, 465 (Pa. Cmwlth. 2000).

[28] Pa. PUC Performance Metrics Order at 125-127.

The Pa. OCA submits that CLECs must be able to ensure the accuracy of their directory listings. With an error or omission in a published directory, the consumer, whether residential or business, will have to contend with that omission or error for at least a year if not more. Corrections may be made more rapidly to a directory assistance listing, but in the published white pages the harm cannot be remedied for a significant period of time.

2. Identified Problems With CLEC White Page Listings.

Parties to the Pa. PUC 271 Technical Workshops extensively discussed the issue of CLEC access to the Verizon white page directory. Issues were also raised in the technical conferences on March 1, 5, 6, and 21, 2001, the hearings before the Commission on April 25-27, 2001, and in the initial and final Comments by the following parties: the Pa. OCA, the Pa. Office of Small Business Advocate ("Pa. OSBA"), the Pa. Office of Trial Staff ("Pa. OTS"), XO, CTSI, and AT&T Communications of Pennsylvania, Inc. ("AT&T").

At the Pa. PUC technical conferences, Renie Spriggs, Director of Wholesale Quality Assurance for Verizon, offered testimony concerning white page listings. [29] Her duties entail reviewing all the "metrics that are reported across the region to various jurisdictions." [30] According to Verizon, LSRs (Local Service Requests) are processed by Verizon and should result in listings in the Verizon white page directory. Ms. Spriggs stated concerning directory listings that "a little less than half of our LSRs, flow through to completion without intervention of human hands." [31] The LSRs that flow

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[29] Pa. PUC Mar. 1, 2001 Tech. Conf., Tr. 8- 9 (attached as Appendix I).

[30] Id. at Tr. 9.

[31] Id. at Tr. 11.

through are primarily those that originate from UNE-Platform or resale carriers. Id. at Tr. 12 to 13. The LSRs originating with facilities-based carriers do not flow through. According to Verizon,

> if the LSR is coming through the gateway and it does comply with the flow-through category, it actually goes to our service order generator, and in the case of Pennsylvania, through SOP/DOE and out to our service order access system where a confirmation is returned to our customer. If the order does not comply with the flow-through category, it is then dropped to the TISOC, the operations center, where the service order is processed by the service representative.[32]

The fact that so many CLEC orders from these categories of carriers do not flow through raises great concern. Where the orders do not "flow through" they must be hand processed and this creates additional difficulties and concerns. Verizon has not yet implemented any changes such that more directory listing requests would better flow through its system. The Pa. OCA does not contend that failing to flow through a directory request is a itself violation of Checklist Item Number 8. However, it has become very clear that where many CLEC requests must be typed into the system by manual intervention, but the Verizon retail requests flow through, such a system will likely result in poorer performance for CLECs than for Verizon. The record below clearly demonstrates that this distinction as to how CLEC and Verizon customers have their directory requests processed results in poorer performance for CLEC directory

[32] Id. at Tr. 11 to 12.

listings than for Verizon customers.

The Pa. OCA has been particularly concerned with those white page listing requests that do not flow through electronically and where a Verizon employee is required to manually retype the listing information. Accordingly, the Pa. OCA has proposed that all CLECs should be able to preserve the existing listings of their customers, as previously included in the Verizon white pages. [33]

The problems testified to by XO and CTSI, specifically, demonstrate that CLECs have suffered from poorer access to the directory than do Verizon's own customers. Numerous errors have occurred for the three CLECs who raised white pages issues in their Comments to the Pa. PUC: XO, CTSI, and AT&T. Because of the large amount of errors encountered by these CLECs, the Pa. OCA continues to believe that all carriers should have the option of simply retaining the directory listing that the customer had before switching to the CLEC.

The Pa. OCA submits that the primary source of directory listing errors has involved facilities-based carriers. For customers of facilities-based carriers, the Verizon system deleted the preexisting directory listing for that customer requiring Verizon to reenter the customer listing into the database. [34] As noted above, essentially whenever a Verizon customer switches to a CLEC that is a facilities-based carrier, the end user is disconnected from the Verizon white pages system. The CLEC must then submit an LSR or a subsequent DSR (Directory Service Request) for the directory listing. A DSR is also submitted if a correction is necessary. [35] XO testified that an LSR is an

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[33] Pa. OCA Initial Comments at 21-23.

[34] Pa. PUC Verizon Checklist Declaration at 134 (attached as Appendix J).

[35] Pa. PUC Mar. 21, 2001 Tech. Conf., Tr. 82 (attached as Appendix K).

order that would initiate service with XO Communications. [36] According to XO, a DSR involves a "stand alone" directory listing. [37] XO stated that the initial directory listing request is made in the LSR and corrections or changes to the directory listing are then done to the DSR at a later time. [38]

The CLEC may also elect to "check the box" of the ERL (End User Retained Listing.) This is for all intents and purposes an "as is" request to maintain the directory listing "as is" when the end user was a Verizon retail customer. For Resale and UNE-P CLECs, this "as is" ERL effectively retains the listing, and the order is flowed through without any manual intervention. However, for facilities-based carriers, this listing request must be manually retyped into the system even where the facilities based CLEC has requested that the listing should remain in place undisturbed. This is where many errors occur, *i.e.* the manual retyping of the name, address, and phone number(s) of the directory listing leads to errors. The Pa. OCA submits that Verizon has never justified this discriminatory practice against facilities based carriers.

The Pa. PUC states that Verizon will modify its SOP/DOE ("Service Order Processor/Directory Order Entry") system to allow the Telecom Industry Services Operations Center ("TISOC") employees processing "a loop LNP" or "LNP-only," where the end-user's listing(s) is to remain "as is," to automatically generate a service order that will contain the customer's directory listing information from the customer service record." Pa. PUC Consultative Report at 194. The Pa PUC further states that Verizon has committed to implement "business scenarios" in order to avoid inadvertent omissions

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[36] Id. at Tr. 161.

[37] Id. at Tr. 161.

[38] Id. at Tr. 162.

of directory listings. Id. at 195. To date, however, no agreement has been reached and Verizon has implemented no changes in order to correct these problems. The Pa. OCA submits that the implementation plan to develop system changes has not even been completed. Accordingly, the status quo still exists and will exist until a new system process is developed. There is no definitive way to determine whether the proposal being developed will work in the way that Verizon states it will or that the problems that have existed to date will be reduced by these changes.

Verizon has recognized that system problems have occurred and stated that it

supplied directory addenda to consumers in Harrisburg, Williamsport, Lock Haven, and Pittsburgh in order to attempt to cure white page errors.[39] Corrections via an addenda, however, are not the norm according to Verizon's witness, Helen Falcone. She stated that "we normally wait until the next year to correct the listing" when asked whether it was the policy to issue an addenda before the next edition of the white page directory was published. [40] Verizon additionally stated that it attempts to correct the customers' listed information in the Directory Assistance database in order to correct for next year's directory listing. [41] In either case, however, harm has already been created by the time the addenda are published or a correction is made because an erroneous name and number has been circulated to the public. In the case of omitted listings, the time period between the publication of an addenda and the directory listing is still a period in which the

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[39] See Pa. OCA Final Comments at Appendix A, OSBA Interrogatory to Verizon, No. I-5.

[40] Pa. PUC March 1, 2001 Tech. Conf., Tr. 256.

[41] See Pa. OCA Final Comments at Appendix A, OSBA Interrogatory to Verizon, No. I-15.

consumer has been harmed. While an addendum would help to resolve the situation, it does not go to the core problem, and the reoccurrence in future years.

It has also been demonstrated that the CLEC error rates are significantly higher than the error rate that Verizon has found for its own retail customers. CTSI raised similar complaints in its Comments before the Pa. PUC.[42] In CTSI's Pa. PUC Comments, CTSI identified 205 errors in Listing Verification Reports ("LVR") for the Lancaster directory. [43] CTSI claimed that CTSI advised Verizon of the errors and claims that 87, or 42.4% of the errors identified were not corrected in the Verizon publication.[44] Further, in testimony, CTSI claimed that 1,004 errors were identified on the LVRs for the Wyoming Valley.[45] Approximately, 188 of those errors were not subsequently corrected in the directory according to CTSI.[46] Whether Verizon or the CLEC erred initially, when the errors have been identified on the LVRs and those errors are not subsequently corrected, this results in a disturbing pattern of errors in the Verizon white page directory listings. The consumers are ultimately harmed by this process because their names and their businesses are either erroneous or completely omitted from the directories.

The number and percentage of errors for Verizon retail customers, as compared to CLEC customers, is much lower and effectively demonstrates the results of the discriminatory process used by Verizon for CLECs in the processing and publication of white pages directory listings. In response to CTSI Interrogatory No. 30 in the

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42 CTSI Comments to the Pa. PUC at 6 (attached as Appendix L).

43 Id.

44 Id.

45 Pa. PUC Mar. 21, 2001 Tech. Conf., Tr. 153.

46 Id. at Tr. 154.

proceeding below, Verizon stated that for 2000, Verizon had 1,156 consumer reported directory listing errors out of approximately 4.9 million listings, or approximately an error rate of 0.02%.[47]

This compares to the unfavorable experiences of the CLECs, XO and CTSI. Ms.

Denise Woods, directory provisioner from XO, testified that in the Philadelphia LVR Report there were 1,632 listings and 26 errors, which results in an error rate of 1.59%. [48] In the Allentown/Bethlehem directory, XO found 2,105 listings and 83 of these had errors, which results in an error rate of 3.9%.[49] The third directory had 1,037 XO listings with 42 errors, which represents an error rate of 4.05%. The testimony presented by XO included only errors involving ERLs. [50]

CTSI raised similar complaints in its Comments. [51] In CTSI's Comments, they identified 205 errors in LVRs for the Lancaster directory. [52] According to CTSI, CTSI advised Verizon of the errors and claims that 87, or 42.4%, of the errors identified were not corrected in the Verizon publication. [53] Further, in testimony, CTSI claimed that

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[47] See Pa. OCA Final Comments at Appendix A, CTSI Interrogatory to Verizon, No. I-30; see also Pa. PUC March 1, 2001 Tech. Conf., Tr. 213 to 214.

[48] Id. at Tr. 180.

[49] Id. at Tr. 181.

[50] Id. at Tr. 179.

[51] CTSI Comments to the Pa. PUC at 6.

[52] Id.

[53] Pa. PUC Mar. 21, 2001 Tech. Conf., Tr. 153.

1,004 errors were identified on the LVRs for the Wyoming Valley. [54] Approximately, 188 of those errors were not subsequently corrected in the directory according to CTSI. [55]

The CLEC error rates are significantly higher than the error rate that Verizon has

found for its own retail customers. Whether Verizon or the CLEC erred initially, when the errors have been identified on the Listing Verification Reports and those errors are not subsequently corrected, this results in a disturbing pattern of errors in the Verizon white page directory listings. The consumers are ultimately harmed by this process because their names and their businesses are either erroneous or completely omitted from the directories.

3. Pa. PUC Consultative Report

The Pa. PUC Consultative Report discusses Checklist Item Number 8. [56] While the Pa. PUC does not believe that the problems rise to the level of noncompliance, the Pa. PUC does recognize that there are problems with Verizon's directory listings process and states that the "CLECs in this proceeding did demonstrate the manual nature of much of the process heightens the chance of errors."[57] The Commission further states that "we would like to see, but do not presently require, system changes to allow all directory listing orders to flow through thereby mitigating manual intervention and thereby for errors." [58] In part, the Commission utilizes Verizon's efforts to rectify the

[54] Id.

[55] Id. at Tr. 154.

[56] Pa. PUC Consultative Report at 190-209.

[57] Id. at 208.

[58] Id. at 208-209.

directory listings problems as a basis for granting 271 approval. The Pa. OCA submits that Verizon's efforts at correcting its directory listings problems are appreciated. However, such corrections must be made before Verizon can be certified to have met Section 271 compliance.

The Pa. OCA further submits that there is no way of determining whether the problems that have existed to date will be reduced by these changes. In any event, none of these changes have yet taken place. Checklist Item Number 8 is clear that CLECs must have access to "(w)hite pages directory listings for customers of the other carrier's telephone exchange service." [59] The Pa. OCA submits that Checklist Item 8 does not state that Verizon must attempt to provide equal access in the future, but that Verizon must be found to have already met the requirements of this Checklist Item. Pa. PUC Commissioner Fitzpatrick stated in his Concurrence in Part and Dissent in Part that "(t)he Telecommunications Act plainly requires Verizon to satisfy the fourteen-point checklist before it enters the long-distance market." [60]

4. Metrics Related To White Pages

The Pa. OCA submits that a metric also needs to be developed relating to the accuracy of directory listings. The current metrics relating to directory listings: OR-6, Order Accuracy; PO-2, OSS Interface Availability; GE-1, Directory Listing Verification Reports.[61] None of these metrics measure the accuracy of the directory listings as published. The Pa. PUC stated in its Consultative Report that the record

[59] 47 U.S.C. § 271(c)(2)(B)(viii).

[60] Pa. PUC Consultative Report, Appendix A, dissenting statement of Pa. PUC Commissioner Terrance J. Fitzpatrick at 1 (emphasis in original).

[61] Pennsylvania Carrier-to-Carrier Guidelines Performance Standards Reports (Jan. 15, 2001) (Jan. 2001 C2C Report) (attached as Appendix M).

suggests that there is merit to the development of a directory listing accuracy metric, but did not require it as a pre-condition for meeting Checklist Item Number 8.[62] None of these metrics measure the accuracy of the directory listings as published. Metric GE-1 is the only specific metric involving a directory listing. GE-1 states that:

> This metric measures the percentage of directory listing verification reports transmitted on or before the due date. For the purposes of this metric, the due date for a directory listing verification report will be deemed to be the date 30 business days prior to the close out date for the directory. The process for obtaining listing verification reports is documented in BA's CLEC and Reseller Handbooks.[63]

Ms. Falcone testified for Verizon that "(t)he GE-1 metric is a metric that reports out whether the listing verification report is sent out on time." [64] This metric only reports whether the LVR has gone out by a certain date, which is 30 business days prior to the "close out" date on the directory. [65]

The Local Service Request Order Accuracy metric is listed at OR-6. Metric OR-6 states that:

> Order accuracy is defined as the percentage of orders completed as ordered by the CLEC. Two dimensions will be measured. The first is a measure of orders without BA (now Verizon) errors (Metric OR-6-01). The second is focused on the percentage of fields that are populated correctly.[66]

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62 Pa. PUC Consultative Report at 209.

63 Jan. 2001 C2C Report, Metric GE-1.

64 Pa. PUC Mar. 1, 2001 Tech. Conf., Tr. 111.

65 Jan. 2001 C2C Report, Metric GE-1; Pa. PUC Mar. 1, 2001 Tech. Conf., Tr. 112.

66 Jan. 2001 C2C Report, Metric OR-6.

Specifically, the Order Accuracy metric measures the accuracy of the Local Service Request or LSR. The LSR contains such information as the billed number, the PON number, telephone number, ported number (if applicable), Circuit ID, RSID or AECN, E911 Listing Information, Features (i.e. for Resale, UNE-P, and Switching Orders); Application Date; Due Date; Remarks; and *(if included)* Directory Listing Information. Metric OR-6-01 requires that 95% of LSR orders to Verizon be without errors. [67] However, this does not accurately measure the directory listing errors because the directory listing information would have to be submitted in the LSR. It also does not measure what this becomes in the published directory.

There is a metric that measures the accuracy of the Directory Assistance update database, OD-3.[68] The Directory Assistance metric is defined as:

> For Directory Assistance updates completed during the reporting period, the update order that the CLEC sent to BA is compared to the Directory Assistance database following the completion of the update by BA. An update is "completed without error" if the Directory Assistance database accurately reflects the new listing, listing deletion or listing modification, by CLEC.[69]

This metric, while important, still does not measure the accuracy of the published directory listings for CLECs as compared to those for Verizon.

No white page directory accuracy metric exists that compares the actual white page listing as published with the CLEC request. Also, no directory listing metric exists that measures the accuracy in the initial LSR or DSR and compares it to the

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67 Id.

68 Jan. 2001 C2C Report, Metric OD-3.

69 Id.

percentage of errors in the published directory listings for CLEC customers versus Verizon retail customers.

Verizon does not presently track accuracy of the white pages in the form of a metric. Verizon responded to a Pa. OCA in the proceeding below which asked if Verizon tracked the data on listings which were omitted or "dropped" from the Verizon white pages. Verizon responded that the Company "does not track this data." [70] Also, Verizon stated in response to Pa. OCA Set III, Interrogatory No. 6 that the number and percentage of listings omitted from white pages listings are not tracked by Verizon.[71] Further, Verizon stated in response to Pa. OCA Interrogatory Set III, No. 9 about an investigation being done as to the cause of loss of listings that:

> In the course of correcting individual listings omissions, the cause of the omission may be discovered. In addition, the cause of listings will be investigated if the reported number of listings omissions indicates a process or system problem.[72]

The Pa. OCA submits that this process is not sufficient to track the scope of the errors that may occur in directory listings. The Pa. OCA submits that this data must be tracked and submitted to the Pa. PUC through a separate metric. The extent of the problem must be tracked so that it can be rectified. The metric should also be subject to

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[70] See Pa. OCA Final Comments at Appendix A, Pa. OCA Interrogatory to Verizon, No. III-7; CTSI Interrogatory to Verizon, No. I-30.

[71] See Pa. OCA Final Comments at Appendix A, Pa. OCA Interrogatory to Verizon, No. III-6.

[72] See Pa. OCA Final Comments at Appendix A, Pa. OCA Interrogatory to Verizon, No. III- 9.

penalties for lack of compliance. Although the Pa. PUC has commenced a proceeding, Re: Performance Measures Remedies at

Docket No. M-00011468, in part, to deal with the issue of metric development, there are not yet any measures in place to track directory listing accuracy.[73]

5. Conclusion

Verizon should not be granted Section 271 approval until conditions are established that will improve the quality of the white pages directory listing process for CLEC customers, and metrics are in place to measure the level of accuracy for white pages.

C. Verizon Pa. Must Assure That It Will Allow The Pa. PUC To Apply A Performance Assurance Plan So That Verizon's Local Market Will Be "Irreversibly" Open to Competition Under the Public Interest Standard.

1. Introduction

In the Pa. OCA Initial and Final Comments to the Pa. PUC, the Pa. OCA opposed the issuance of a favorable consultative report, so long as Verizon's appeal of the Pa. PUC's authority to require Verizon to make payments to CLECs in the event of

[73] Re: Performance Measures Remedies, Pa. PUC Docket No. M-00011468 (2001). The proceeding was initiated from ordering paragraph 16 in Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Pa. PUC Docket No. M-00001353 and was modified by the June 6, 2001 Pa. PUC Secretarial Letter in Re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania, Pa. PUC Docket. No. M-000001435 (2001). Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Pa. PUC Docket No. M-00001353; Re: Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region InterLATA Service in Pennsylvania, Pa. PUC Docket. No. M-000001435 (2001).

Verizon's failure to meet performance standards was pending.[74] In particular, Verizon had appealed the Pa. PUC's imposition of what have been referred to as "Tier II" or self-effectuating remedies, whereby Verizon pays competitors for missed performance metrics.[75] As the Pa. OCA explained to the Pa. PUC, so long as Verizon's challenge of the Pa. PUC's authority was outstanding there could be no confidence that the local markets are now and would continue to be irreversibly open after Verizon's entry into the long distance market.[76]

The FCC has explained that one important factor that it will consider as a part of the public interest standard is whether "a BOC would continue to satisfy the requirements of section 271 after entering the long distance market." [77] The FCC has ruled that the Department of Justice standard of review as to "whether the local market is fully and *irreversibly* open" also is related to the public interest requirement. [78]

Approval of Verizon's 271 application would only be in the public interest

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[74] The Pa. PUC issued an opinion and order on December 31, 1999 which imposed a Performance Assurance Plans (PAP) on Verizon. Pa. PUC Performance Metrics Order at 11-12. Verizon filed an appeal of that Pa. PUC order with the Commonwealth Court of Pennsylvania at Docket 1902 C.D. 2000. Pa. OCA Initial Comments at 7.

[75] The Verizon Tier II PAP remedies appear roughly equivalent to the Tier-1 remedies under the SWBT Kansas and Oklahoma PAPs, that the FCC described as penalties which "apply generally to customer-affecting measurements" and "are paid to competitive LECs receiving the substandard performance...." Kansas and Oklahoma 271 Order at ¶ 271. In other words, this type of performance assurance remedy is not unique to Pennsylvania.

[76] Pa. OCA Initial Comments at 5-13, 15-17.

[77] New York 271 Order at ¶ 429.

[78] Id. at ¶ 429 (emphasis original).

so long as there is assurance that the local market will remain open after approval.[79] The FCC has repeatedly recognized the importance of state performance monitoring and enforcement mechanisms as "probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest."[80]

The Pa. PUC entered an order intended to create metrics and self-effectuating remedies for inadequate performance sufficient as to both form and amount to prevent competitive backsliding by Verizon.[81] The Pa. PUC made clear its intent that "these performance measures, standards and remedies shall be effective ... and shall continue beyond the filing and resolution of any section 271 proceeding commenced..." by Verizon. [82]

In Comments to the Pa. PUC in the proceeding below, Verizon opined that the Performance Assurance Plan ("PAP") imposed by the Pa. PUC Performance Metrics Order "meets the FCC's criteria in every respect." [83] Yet, at the same time, Verizon had appealed the Pa. PUC Performance Metric Order, alleging that the Pa. PUC lacks the basic authority under federal or state law to impose the self-effectuating, Tier II remedies which are part of the PAP.[84]

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79 Massachusetts 271 Order at. ¶ 233.

80 Kansas and Oklahoma 271 Order at ¶ 269; *see also* New York 271 Order at ¶ 429.

81 Pa. PUC Performance Metrics Order at 11-12

82 Id. at 161.

83 Verizon Comments at 86, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (Apr. 18, 2001) (attached as Appendix N).

84 Verizon Pennsylvania, Inc. v. Pa. PUC, "Verizon Docketing Statement Case Summary, Statement of Issues and Description of Previous Settlement Attempts" at 2,

As explained below, the Pa. OCA submits that Verizon's position that it may challenge the Pa. PUC's basic authority to implement and modify the PAP undermines any finding that approval of Verizon's 271 application is in the public interest.

2. Verizon Has Asserted That It May Still Challenge The Pa. PUC's Authority To Impose The Tier II, Self-Effectuating Remedies As Part Of A Performance Assurance Plan In The Future.

Verizon's statements made during hearings before the Pa. PUC made clear that Verizon wants a favorable consultative report and FCC approval of its 271 application, while reserving its right to challenge the PUC's basic authority to continue to monitor and enforce Verizon's performance through a PAP.

Specifically, during the technical conferences before the Pa. PUC, Verizon made clear that it could make concessions in the short term, including the possible withdrawal of its appeal of the Pa. PUC Performance Metrics Order, but that Verizon reserved its right to challenge the Pa. PUC's authority on this issue. Pa. PUC Law Bureau counsel Maryanne R. Martin specifically asked Verizon counsel to clarify Verizon's position, to which Julia Conover, Verizon counsel replied as follows:

> Ms. Martin ... Does that mean that Verizon's consent to a post-271 performance assurance plan, including the penalties, means that the PUC can modify the plan after any Verizon Pennsylvania application for 271 authority is granted?
>
> Ms. Conover I think what I would say is the metrics clearly have unilateral power to modify. We believe, however, that we

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filed August 31, 2000, Pa. Cmwlth Ct. Docket 1902 C.D. at 2000 (attached as Appendix O). The Pa. PUC had identified the multiple sources of its legal authority to issue the Performance Metrics Order and require Verizon to pay the specific remedies imposed at pages 9 to 13 of that Order.

> would agree to a reasonable modification on the liquidated damages side, but we cannot agree and *I would think we would reserve the right ultimately to challenge the underlying Commission's ability to impose a liquidated damage remedy.*
>
> ....
>
> I don't want to say that there is an open-ended agreement, but we would agree and we've said we would agree to a reasonable penalties post-271.[85]

In reply to further clarifying questions from Pa. PUC staff, Verizon counsel Conover stated

> Ms. Conover I guess that I would have to say is that our legal position is that the Commission does not have the statutory authority to impose liquidated damages. If we withdrew our appeal today, that would still be our legal position, and I don't think that there is any reason – *if we withdrew our appeal today and later you were to impose greater penalties and we wanted to take an appeal, I think this issue would still be open to us to appeal.*[86]

Thus, Verizon made clear that it considers the Pa. PUC's basic authority to impose Tier II remedies as subject to challenge in the future, at any time the Pa. PUC may decide that modification of these remedies are necessary and proper.

After the hearing phase of Verizon's proceeding before the Pa. PUC, the Pa. PUC issued a letter on June 6, 2001 to Verizon stating that the Pa. PUC cannot find that the Pennsylvania markets are fully open to competition "absent withdrawal of

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[85] Pa. PUC March 15, 2001 Tech. Conf., Tr. 125 (emphasis added) (attached as Appendix P).

[86] Id. at 126 (emphasis added).

Verizon's pending appeal challenging the Commission's legal authority to impose remedies..." as part of the Verizon PAP.[87] As noted in the Pa. PUC Consultative Report, Verizon withdrew that specific appeal on June 7, 2001.[88]

3. The FCC Cannot Grant Verizon's 271 Application Unless Verizon Is Prohibited From Undermining The Pa. PUC's Monitoring And Enforcement Efforts.

The Pa. OCA is concerned that Verizon's withdrawal of its most recent appeal addresses only part of the problem. Specifically, after 271 approval is granted, there will be nothing to prevent Verizon from reviving its argument in the future that the Pa. PUC lacks the basic authority to impose remedies of the type already imposed under the existing PAP. As the Pa. PUC noted, market conditions and commercial experience may warrant future changes in the PAP.[89] The Pa. OCA is concerned that Verizon may at that time challenge the Pa. PUC's underlying authority to impose any or all significant parts of the PAP. The Pa. OCA submits that Verizon's withdrawal of its appeal of the Pa. PUC Performance Metric Order did not end Verizon's ability to challenge the Pa. PUC's very same authority in the future. This casts doubt on whether approval of Verizon's 271 application can truly be in the public interest at the present time.[90]

The Pa. PUC clearly shares the Pa. OCA's concern. After summarizing the details of Verizon's June 7, 2001 commitments including withdrawal of Verizon's

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[87] Pa. Consultative Report, Appendix I - "Pa. PUC June 6, 2001 Secretarial Letter to Verizon" at 2.

[88] Pa. PUC Consultative Report at 262; see Appendix I to the Pa Consultative Report.

[89] Pa. PUC Consultative Report at 264.

[90] See Pa. PUC March 15, 2001 Tech. Conf., Tr. 125, 126 (statements of Verizon counsel).

appeal and voluntary implementation of increased self-effectuating remedies under Tier II of the PAP, the Pa PUC stated

> we expressly rely upon (a) the increased self executing remedies under Tier II, (b) the enhanced self-executing remedies for electronic billing metrics, and (c) Verizon PA's withdrawal of its pending appeal at No. 1902 C.D. 2000 challenging the Commission's statutory authority to impose self-executing remedies for our conclusion and recommendation to the FCC that the Pennsylvania PAP is adequate and permanent for section 271 purposes.[91]

Nonetheless, the Pa. PUC admonished Verizon that having "unconditionally accepted these terms for our positive recommendation to the FCC, we do not expect Verizon to seek to undo these terms in any subsequent litigation or proceeding." Id.

[91] Pa. PUC Consultative Report at 268.

However, the Pa. OCA is concerned that the Pa. PUC's admonishment is not sufficient to assure that the local markets are and will be irreversibly open to competition. As the Pa. OCA explained to the Pa. PUC, Verizon's pursuit of its appeal, in and of itself, likely had a chilling effect on competition through the creation of uncertainty as to the continuity of the PAP.[92] The Tier II remedies are an integral part of the Pa. PUC's plan to provide Verizon with an incentive to perform and provide access to competitors in a non-discriminatory manner.[93] Verizon's declaration of its right to challenge in the future the Pa. PUC's fundamental authority to impose Tier II remedies under the PAP is also likely to have a chilling effect, even if not exercised. The FCC should not find that approval of Verizon's application is in the public interest until this uncertainty has been eliminated.

Clearly, Verizon has not agreed to forego challenges to the Pa. PUC's authority to impose the Tier II type of remedies which are an integral part of the PAP. Yet Verizon asks the FCC in its 271 Application to accept the existence of the state imposed PAP as evidence that the local markets are open and will remain open. The Pa. OCA submits that approval of Verizon's 271 application cannot be in the public interest so long as Verizon has reserved the right to seek to dismantle the very PAP terms that the Pa. PUC found supportive of Verizon's application and that Verizon also relies upon in its 271 Application.

The Pa. OCA therefore urges the FCC to find that approval of Verizon's 271 application is not in the public interest unless or until Verizon commits to not challenge through litigation or other means the Pa. PUC's fundamental underlying

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92 Pa. OCA Initial Comments at 10-11.

93 Pa. PUC Performance Metrics Order at 1, 158-61.

authority to impose remedies of the type already incorporated in the Verizon PAP.[94]

[94] Verizon should be required to explicitly commit to not challenge through an appeal the Pa. PUC's fundamental authority to impose and modify the PAP, including the possible increase of Tier II remedies. Such a commitment would not bar Verizon from appealing a Pa. PUC order as an abuse of discretion or without support of substantial evidence, but would prevent Verizon from challenging the legality of the Commission's authority to impose remedies of the type already in place.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits that the Federal Communications Commission should not approve the request of Verizon to received Section 271 authority to offer interLATA service until Verizon shall address the problems set forth above.

Respectfully submitted,

_____

Philip F. McClelland
Senior Assistant Consumer Advocate
Barrett C. Sheridan
Lori Pantelich
Christy Appleby
Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: July 11, 2001
*64604

Pennsylvania Office of Consumer Advocate
Verizon Pennsylvania, Inc. - Pennsylvania

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APPENDICES

Appendix A Pa. OCA Initial Comments in Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (Apr. 18, 2001)

Excerpts re deployment of DSL services to rural Pennsylvania, Checklist Item 8 and white page listings, and Verizon's challenge to Pa. PUC authority to impose Performance Assurance Plan remedies.

Appendix B Pa. OCA Final Comments in Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (Apr. 18, 2001)

Excerpts re deployment of DSL services to rural Pennsylvaniaand Access to adequate loop qualification information.

Appendix C Joint Petition of Nextlink Pennsylvania, Inc., et al. Docket Nos. P-00991648 & P-00991649, Orders entered September 30 & November 5, 1999, slip opinion ("Global Order"), aff'd, Bell Atlantic Pennsylvania, Inc. v. Pa. P.U.C., No. 2790 C.D. 1999, et al, 763 A.2d 440 (Pa. Cmwlth. Oct. 25, 2000) ("Global Appeal").

Excerpt of Pa. PUC Order re DSL competition in rural Pennsylvania.

Appendix D Re: Structural Separation of Bell Atlantic-Pennsylvania Inc. Retail and Wholesale Operations, Pa. PUC Docket No. M-00001353, Opinion and Order (Apr. 11, 2001) ("Structural Separation Order")

Excerpt of Pa. PUC Order re DSL competition in rural Pennsylvania and colloboratives established by Pa. PUC for Digital Subscriber Line Access Multiplexers ("DSLAMs") and deployment of DSL over fiber lines.

Appendix E Further Pricing of Verizon Pennsylvania Inc.'s Unbundled Network Elements, Petition of Covad Communications Company For an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc. Implementing the Linesharing of Unbundled Network Elements, Pa. PUC Docket Nos. R-00005261, A-31-696, Recommended Decision (Mar. 22, 2001) ("UNE Pricing R.D.")

Excerpts of Pa. PUC Recommended Decision re Verizon's unreasonable delay in allowing CLECs access to LFACS and similar databases.

Appendix F Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435, Feb. 28, 2001 Technical Conference.

Excerpt of transcript including Pa. PUC Administrative Law Judge Michael C. Schnierle's discussion regarding loop qualification information for central offices without collocation.

Appendix G Verizon Pennsylvania, Inc., Tariff PA PUC No. 216, Section 2, First Revised Sheet 2

Verizon PA Tariff relating to white pages issue.

Appendix H Joint Petition of NEXTLINK Pennsylvania, Inc., RCN Telecommunications Services of Pennsylvania, Inc., et al, Docket No. P-00991643, Opinion and Order at 125-127 (Dec. 31, 1999)("Pa. PUC Performance Metrics Order")

Excerpts relating to the development of a Performance Assurance Plan, including directory listings metrics in Pennsylvania; PUC authority to impose remedies for substandard performance and scheme of remedies approved.

Appendix I Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435, Mar. 1, 2001 Technical Conference.

Excerpt of transcript relating to testimony given by Verizon Pennsylvania, Inc., XO Pennsylvania, Inc. and CTSI, Inc. on white pages issue.

Appendix J Verizon Pennsylvania, Inc. Competitive Checklist Declaration, Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435

Excerpt of Verizon's Checklist Declaration relating to white pages issues.

Appendix K Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435, Mar. 21, 2001 Technical Conference.

Excerpt of transcript including of XO Pennsylvania, Inc. and CTSI, Inc. witnesses on white pages issues.

Appendix L CTSI, Inc. Comments in Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (Apr. 18, 2001)

Excerpt of CTSI, Inc. Comments to Pa. PUC relating to white pages issues.

Appendix M Pennsylvania Carrier-to-Carrier Guidelines Performance Standards Reports (Jan. 15, 2001) ("Jan. 2001 C2C Report")

Excerpts of Pennsylvania Carrier-to Carrier Performance Standards Reports relating to metrics involving the white pages.

Appendix N Verizon Pennsylvania, Inc. Comments in Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435 (Apr. 18, 2001)

Excerpt of Verizon Comments to Pa. PUC on public interest standard and PAP remedies.

Appendix O Docketing Statement of Verizon Pennsylvania, Inc., Verizon Pennsylvania, Inc. v. Pa. PUC, Pa. Cmwlth Ct. Docket No. 1902 C.D. 2000 (Aug. 31, 2000).

Summary of Verizon's appeal of Pa. PUC's Performance Metrics Order.

Appendix P Consultative Report on Application of Verizon Pennsylvania, Inc. for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Pa. PUC Docket No. M-00001435, Mar. 15, 2001 Technical Conference.

Excerpt of transcript regarding Verizon's current and prospective appeal of the Pa. PUC's authority to impose PAP remedies.

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Pennsylvania Office of Consumer Advocate
Verizon Pennsylvania, Inc. - Pennsylvania

July 11, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

Application by Verizon Pennsylvania, Inc.
for Authorization under Section 271 of the
Communications Act to Provide In-Region,
InterLATA Service in the State of
Pennsylvania
CC Docket No. 01-138

Dear Ms. Salas:

Enclosed please find an original and one (1) copy of Comments of the Pennsylvania Office of Consumer Advocate to the Second Further Notice of Proposed Rulemaking. Please also note that these Comments have been filed with the Commission **electronically**.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip F. McClelland
Senior Assistant Consumer Advocate

Enclosure
cc: All Parties of Record (w/out Appendices)
Janice Myles/Common Carrier Bureau

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Application by Verizon Pennsylvania, Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Pennsylvania	:	CC Docket No. 01-138

I hereby certify that I have this day served a true copy of the foregoing document, Comments of the Office of Consumer Advocate to the Second Further Notice of Proposed Rulemaking, upon parties of record in this proceeding. Dated this 11th day of July, 2001.

Respectfully submitted,

Philip F. McClelland
Senior Assistant Consumer Advocate
Barrett C. Sheridan
Assistant Consumer Advocate

Counsel for
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

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